

HOW PLANNING AHEAD CAN AVOID GUARDIANSHIP/CONSERVATORSHIP COURT PROCEEDINGS

As an elder law/estate planning attorney I see many cases where estate planning ahead of time could have avoided stressful and expensive guardianship and/or conservatorship court proceedings. A good example is a an appointment I had this week.

I met with an elderly gentleman whose wife is in a psychiatric hospital and now he cannot manage their financial affairs, and the wife's healthcare decisions. The wife had been managing all of the couple's finances and the husband has no idea of what their assets are or the total value of the estate. His name is on their joint checking account but there are only limited funds in the checking account and he is not titled on any of their other assets. The bank would not give him any information about the couple's savings account because he was not titled on the account. The husband is now at home going through all of his wife's financial records to try to determine the nature of their assets.

To remedy this situation, we will have to file a petition with the court to have him appointed as conservator so that he can gain access to the financial accounts in order to pay the ongoing bills. Currently, he could not even sell his house if he wanted to because it's in joint tenancy and the wife is incapacitated. To further complicate matters, the psychiatric hospital is concerned about keeping the wife at the hospital without someone with legal authority consenting to her care because the wife is incompetent to give informed consent to treatment at the hospital. Therefore, we will also have to ask the court to appoint the husband as her mental health guardian in order to authorize the continuing treatment of the wife at the psychiatric hospital.

When all is said and done, this could cost him up \$3,000 to \$4,000 in legal fees and court costs. It also means that the court will have continuing jurisdiction over the case and the husband will have to file annual accountings with the court setting forth the receipts and expenditures related to the wife's funds. The couple has been married for over 50 years; isn't it unfortunate that this late in their lives they have to undergo this kind of stress and expense? It all could have been so easily avoided.

In this situation, the husband and wife, at a time when they were both competent should have made an appointment with an estate-planning attorney. At that time the attorney could have

required them to bring in a list of all of their assets. The attorney could have recommended either a will or a trust to address the passing of their assets on death, a financial power of attorney to allow someone to manage their financial affairs in the event of their incapacity, and a health care power of attorney/living will to address health care decision making in the event of their incapacity. The attorney could have also discussed with them the option of a mental health power of attorney, which would have allowed the agent to admit the husband/wife to a psychiatric hospital at a time when he or she was unable to give informed consent to treatment. Under new Arizona law, an agent appointed under a regular health care power of attorney cannot admit the principal into an inpatient psychiatric facility unless this authority has been specifically granted in the document.

The lesson to be learned is that we all should plan ahead. When someone becomes incapacitated it is too late to sign legal documents. Avoid the time and expense involved in guardianship and conservatorship proceedings. Talk with your attorney now about the legal documents needed to protect you in the event of incapacity.