

10299 Grand River, Suite N • Brighton, Michigan 48116 • Phone: (810) 229-0220

## ***Power of Attorney vs. Guardianship***

One of our readers recently called our office to ask if we had literature on the difference between a Durable General Power of Attorney and a Guardianship. Due to the over-whelming number of times our office has been asked that question, we chose to make it the topic of this month's Elder Law Today.

### **What is a Power of Attorney?**

A power of attorney is a legal document where one person (the principal) authorizes another (the agent) to act on their behalf. There are financial powers of attorney which allow your agent to make decisions regarding your property and healthcare powers of attorney which allow your agent to make decisions regarding your health care needs.

Your power of attorney can be broad in scope, giving your agent the ability to make any and all financial and personal decisions for you (a General Power of Attorney) or you can limit

your agents authority by specifying the types of decisions you would like them to make on your behalf (a Limited Power of Attorney).

You also have a choice whether you would like your agent to have the ability to make decisions both now and if you become incompetent (a Durable Power of Attorney) or your agent can be limited to make decisions only when you become incompetent (a Springing Power of Attorney).

### **What is a Guardianship?**

Guardianship is a legal relationship whereby the Probate Court gives a person (the guardian) the power to make personal decisions for another (the ward). A family member or friend initiates the proceedings by filing a petition in the Circuit Court in the county where the individual resides. A medical examination by a licensed physician is necessary to establish the condition of

the individual. A Court of law then determines the individual is unable to meet the essential requirements for his or her health and safety and appoints a guardian to make personal decisions for the individual. Unless limited by the court, the guardian has the same rights, powers and duties over his ward as parents have over their minor children. The guardian is required to report to the court on an annual basis. A Conservatorship is a legal relationship whereby the Probate Court gives a person (the conservator) the power to make *financial* decisions for another (the protectee). The Court proceedings are very similar to those of a Guardianship except the Court of law determines an individual lacks the capacity to manage his or her financial affairs and appoints a conservator to make financial decisions for the individual. Often the court appoints the same person to act as both guardian and conservator

for the individual. Like the guardian, the conservator is required to report to the court on an annual basis.

### **The Differences**

A power of attorney is a relatively low cost and private way to decide which family member or trusted friend will have the legal authority to carry out your wishes if you can no longer speak or act for yourself. If you do not have a power of attorney or if your power of attorney is not drafted properly, and something happens that results in your inability to make decisions, your family/friends may later face court proceedings and court supervised Guardianship and/or Conservatorship. A court proceeding is not only costly, but the person appointed as your Guardian/ Conservator may not be the person whom you would have chosen yourself. Contact an attorney to see which is most appropriate in your situation.