

Guardianship is a court procedure by which a person is given the responsibility to make decisions about the care of another individual. A guardian is appointed when an individual is unable to make informed decisions independently, and a guardianship is necessary to provide continuing care and supervision of the incapacitated. A court can grant a guardian power to make healthcare decisions, to determine where an individual should live, to receive money belonging to an individual and use it for their care.

A conservator is appointed by the court to handle investments and other assets of an individual who cannot effectively manage them.

Guardianship and conservatorship are court-supervised proceedings by which an incapacitated person's affairs are handled. Guardians and conservators must file accountings with the probate court. They must seek court approval before engaging in certain transactions. Guardianship and conservatorship can be costly, time-consuming, and unduly restrictive. Many believe that if they are incapacitated, a spouse, child or relative can automatically act for them.

However, without proper planning, a court will make decisions for you if you cannot make your own decisions. Guardianship and conservatorship were designed to protect those who cannot protect themselves.

Guardianship and conservatorship are sometimes referred to as a "living probate" because of the bureaucracy and cost involved. You can avoid guardianship and conservatorship by executing a durable power of attorney and patient advocate designation.

A power of attorney is a written document in which you delegate to another person, your agent, or attorney-in-fact, financial and medical responsibilities. It is, in essence, a financial permission slip.

A durable power of attorney continues in effect even if you become incapacitated. You can make a durable power of attorney effective immediately, or only upon your disability. If effective upon disability, you can outline who will determine disability and how it will be determined.

Your durable power of attorney can grant your agent broad powers or more limited powers. You could give your agent power to manage and lease, but not sell your property. You could give your agent power to make gifts of your property at their discretion, or pursuant to standards you set forth.

It is important to have a power of attorney that specifically addresses a broad array of issues. Otherwise, a third party might not permit your agent to act in your place.

It is also imperative you choose your agent wisely. Choose someone who is trustworthy, loyal, and responsible.

In addition to a durable power of attorney, you should designate a patient advocate. Your patient advocate can make decisions for you when you become unable to participate in medical treatment decisions yourself. You can grant your patient advocate the right to withhold or withdraw treatment.

While Michigan has no statute recognizing living wills, you can express your wishes concerning end-of-life treatment. Your patient advocate has a duty to try to honor your wishes. Your patient advocate must sign an "acceptance" before he or she can act.

The durable power of attorney and patient advocate are powerful planning tools for dealing with incapacity and disability.