

Guardianship ABCs

A guardianship proceeding seeks a court determination as to whether an individual is incapable of handling their own financial and/or personal needs and, if not, to appoint a guardian to act on behalf of the individual. Such a proceeding is both costly and time-consuming.

You can expect a guardianship proceeding to cost thousands of dollars. The costs include court filing fees, attorney fees, the fee for the Court Evaluator, a person appointed by the court to investigate the facts and circumstances, render an opinion as to the need for a guardian and recommend who should serve in that capacity, and even the fees for an attorney appointed by the court to represent the allegedly incapacitated person.

It is not unusual for the proceeding to take months to complete. During this time, without a valid and enforceable power of attorney and health care proxy, no financial or health care decisions can be made on behalf of the allegedly incapacitated person. Moreover, no Medicaid planning can be implemented until the court has issued a Commission authorizing the guardian to act on his or her behalf. This may result in the expenditure of *significantly* higher long term care costs. Instead of being able to implement Medicaid planning and secure benefits at the earliest date, nothing can be accomplished during the pendency of the guardianship proceeding.

These are just some of the reasons that Berwitz & DiTata LLP strongly encourages clients and friends to implement powers of attorney, health care proxies and living wills at the earliest time. This not only ensures your retention of control over this important decision-making and permits your trusted agents to engage in asset-protection planning if you lose the capacity to do so, but it also eliminates some of the family stress and dissension that may occur when a loved one is ill.