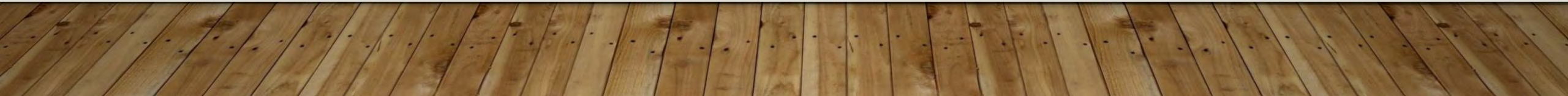
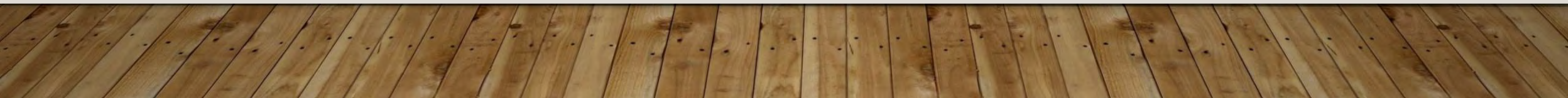


GUARDIANSHIP & ALTERNATIVES



INTRODUCTION

- Ways to Avoid Guardianship
- If Guardianship is Necessary
 - How does it work
 - What does it mean



Why Plan?



IS GUARDIANSHIP NECESSARY?

- Less Restrictive Alternatives = Sound Mind
- Guardianship = Incompetent + Need

PLANNING FOR LIFE

- Financial Power of Attorney
- Health Care Power of Attorney
- Living Will
- Mental Health Advanced Directive
- Assisted Decision-Maker
- Payee

FINANCIAL POWER OF ATTORNEY

- Designate Agent to make financial decisions
- Agent handles day to day financial affairs
- Amendable/Revocable
- Ohio does not require 3rd parties to recognize POAs
- Important to pick appropriate Agent—Ripe for abuse
- Limitations on Agent's power
- Specific Powers: Create Trusts/Stable Accounts

HEALTH CARE POWER OF ATTORNEY

- Designates Agent to make health care decisions
- Only effective when Principal unable to make decisions
- Amendable/Revocable
- Principal can insert limitations
- Agent makes end-of-life decisions unless Living Will in place
- Beware of HIPAA

LIVING WILL

- Effective once individual cannot communicate
- Must be permanently unconscious or terminally ill
 - Determined by 2 physicians
- Can be changed/revoked

MENTAL HEALTH ADVANCED DIRECTIVE

- Designates a Proxy
- May designate specific treatment plan (expires after 3 years)
- Becomes irrevocable if incapacitated due to mental health
- Two doctors must determine if you are incapacitated
- Has limitations

WHO CAN SIGN THESE?

- Standard is “Sound Mind”
- Ohio Courts apply a functional test to determining “Sound Mind”
- Do you have the capacity to make informed health care decisions
- You understand the basic purpose and consequence of signing the document
- Guardianship itself does not automatically bar execution

REPRESENTATIVE PAYEES

- SSI, SSA, SSDI
- Less restrictive alternative to guardianship of estate
- Accounts directly to SSA

PAYEE BANK ACCOUNTS

- Checking / Savings Account must reflect the beneficiary's ownership of the money.
- Rep Payee nor any third party can have ownership interest in the account.
 - No joint accounts allowed (with exception of spouses)
- Beneficiary not allowed to have direct access.
- Correct way to title account:
 - “(Beneficiary’s Name) by (your name), Representative Payee”
 - “(Your Name), representative payee for (beneficiary’s name)”

HOW TO USE THE MONEY

- Make sure beneficiary's day-to-day needs are met
 - Order of Priority in Use of Funds
 - FIRST: Food and Shelter
 - SECOND: Medical/Denial not otherwise covered
 - THIRD: Personal Needs (clothing and recreation)

PAYEE REPORTING

- File an annual accounting
 - “Representative Payee Report”
 - Now submitted online
- Not scrutinized or reviewed consistently or appropriately

CHANGING PAYEE

- Not always as easy as it should be
- Very inefficient process
- Most effective way is to do it in person at SS office

ASSISTED DECISION-MAKER

- ORC 5126.043
- Individual receiving services from DD can nominate assistant decision-maker
- Decision-maker cannot have financial interest
- Individual can revoke or change decision-maker authority
- Must be in writing

GUARDIANSHIP

- Last resort – look for alternatives!
- Individual must be Incompetent:

Any person who is so mentally impaired as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property

- Must be a Need for guardianship:

What is going on in the person's life that makes guardianship necessary?

GUARDIANSHIP TYPES

- Guardian of the Person Only(most common)
 - Responsible for day to day decisions
 - Consent for medical care
 - Residential Placement
- Guardian of Estate
 - Responsible for managing financial affairs
 - Responsible for litigation
 - Significantly more reporting requirements with court

ESTABLISHING GUARDIANSHIP

- Established through County Probate Court
- Takes 1-3 months to establish (plan ahead for child turning 18)
- Expert Evaluation must be completed by Physician or Psychiatrist
- Background Check
- Education
- Conflicts of Interest

DECISION-MAKING

- **DECISION-MAKING IS A PROCESS**
 - No one size fits all approach
- **“Best Interest”** means the course of action that maximizes what is best for a ward, including consideration of the **least intrusive, most normalizing, and least restrictive course of action** possible given the needs of the ward.

DECISION-MAKING PROCESS

- **Due Diligence:** “...communicating with the ward and being fully informed...”
- **Least Restrictive Alternative:** “...imposing the least limitations on the ward’s rights, freedom or ability to control the ward’s environment.”
- **Person-Centered Planning:** “A guardian shall strive to balance a ward’s maximum independence and self-reliance with the ward’s best interest.”

RIGHTS UNDER GUARDIANSHIP

- Guardian is an advocate—not a sheriff!
- Dignity of Risk
 - Health and Safety Issue or Just a Bad Habit?
- Behavior Support Rule
 - DD Bill of Rights
- Voting / Driving / Dating / Friendships

LIMITED GUARDIANSHIPS

- Least Restrictive Type of Guardianship
 - Medical
 - Placement
 - Programming
 - Behavioral
 - Time/Duration

COURT INTERACTION

- Review Hearings
- Change of Residence
- Guardian Report / Annual Plan
- Statement of Expert Evaluation
- Reporting Abuse, Neglect and Exploitation
 - MUIs
- Continuing Education
- Complaints

DIRECT SERVICES / CONFLICTS OF INTEREST

“Direct services” means services typically provided by home and community-based care and institutionally-based care providers, including medical and nursing care, care or case management services, care coordination, speech therapy, occupational therapy, physical therapy, psychological services, counseling, residential, legal representation, job training, and any other similar services. The term “direct services” does not include services of a guardian.

TERMINATION

- Death
- Restoration
 - Need is resolved
 - Less restrictive alternative
 - Change in circumstance/maturity

SUCCESSION PLANNING

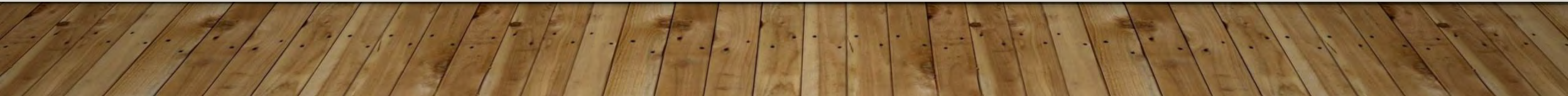
- Guardianship
 - Parents can nominate a successor in writing
 - Others can still nominate a successor—just no official legal weight
- POAs / Alternatives
 - The written instrument should set forth a list of successors
 - Think ahead / include contingencies if necessary

LIFE PLANNING – WHERE TO LIVE?

- Moving out of the family home is a major life event
- Death of parent(s) is a major life event

DO YOU WANT THESE TO HAPPEN AT THE SAME TIME?

If not—plan ahead!



ABLE ACT

- Eligibility
 - SSI / SSDI / Certification of Disability
- Contributions
 - Not ideal for estate planning
 - \$14,000.00 annually (anything more will be returned)
 - Lifetime limit of appx \$400,000.00 / SSI limit of \$100,000.00
- Subject to Medicaid Payback
- Create online at www.stableaccount.com

STABLE ACCOUNTS

- Less Restrictive Alternative to Guardianship of Estate
- Also a better alternative to Special Needs Trust in certain situations

ELIGIBILITY

- Individual must be blind or have a disability that manifests prior to age 26; and
- Eligibility tied to SSA disability test

ELIGIBILITY (CONT)

- Unable to engage in “substantial gainful activity” due to physical or mental impairment...
- IRS uses honor system
 - Person opening account must swear under penalty of perjury that the beneficiary meets eligibility requirements
 - Must be able to produce a physician’s statement upon request.

HOW TO OPEN A STABLE ACCOUNT

- Accounts can be opened by Beneficiary, Parent, Guardian or POA.
- Open online at <http://www.stableaccount.com>

FUNDING STABLE

- Any person/entity can contribute
 - This includes the beneficiary.
- Total annual contributions cannot exceed \$14,000.00
- Maximum balance allowed: Tied to state's limit for 529s
 - \$414,000.00
- Excess contributions will be returned or penalized.

IMPACT ON BENEFITS

- STABLE designed to not interfere with other benefits.
- SSI only impacted if account balance exceeds \$100,000.00
- Medicaid uninterrupted even if balance exceeds \$100,000.00
 - Accounts are subject to Medicaid Payback

HOW TO USE STABLE

- Basic Living Expenses
- Housing
- Transportation
- Education
- Assistive Technology
- Employment Training
- Personal Support Services
- Legal Fees
- Health & Wellness
- Financial Management

WHEN IS STABLE AN OPTION?

- Disperse with excess income
- Small inheritances
- Small legal settlements
- Accumulated assets

POTENTIAL STABLE PROBLEMS

- Record Keeping
- Access to Debit Card
- Guardian of Person Only
- Limited Guardianship of Estate option?
- Accounting Mechanism not Yet Determined

QUESTIONS?

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