



Guardianship – When Your Special Needs Child Becomes An Adult

By Gregory P. Hawkins, JD

In less than a year my daughter, Mary, will turn 18 and become an adult in the eyes of the law. The entire family, including cousins, nieces and nephews will celebrate the occasion in grand style. However, because Mary has Down Syndrome, my wife and I will make sure to obtain a guardianship before that critical day.

In my experience as a lawyer, many parents assume that because their child has a disability they remain their adult child's legal guardian. This is not true. Legally, at eighteen every person is presumed to possess the full capacity to act as an adult (with some exceptions such as purchasing and consuming alcohol) with all the legal rights and responsibilities of an adult, despite their legitimate abilities or disabilities.

For nearly two decades you have lived with the reality that your special needs child will never compete in life on a level playing field, especially as an adult. Yet, on and after that magic birthday, they can sign contracts, make their own medical decisions, get married and the myriad other privileges accorded to an adult.

This creates a host of potential problems. For example, as a presumed adult your child with a disability may not receive the prompt medical treatment they require. While the law assumes full capacity until proven otherwise, most physicians are hesitant to provide treatment for a disabled adult who may have difficulty giving informed consent. As a result many doctors will only provide medical services that are judged to be medically necessary or life threatening.

There are several types of Guardianship, depending on how much control you will need to exercise over your child's decision making abilities. Most options require court approval.

1. Guardianship of the Person

The guardian makes basic life decisions on behalf of the ward (the incapacitated person), such as their residence, medical treatment, employment, leisure activities and daily routines.

2. Guardianship of the Property.

In Utah this is called a Conservatorship. The guardian is charged with the responsibility over the ward's financial affairs.

3. Guardianship of the Person and Property

Also called Plenary Guardianship, the ward retains no rights whatsoever or very few rights. This most common of Guardianships assumes that if the incapacitated person cannot make personal decisions they are incapable of financial decisions.

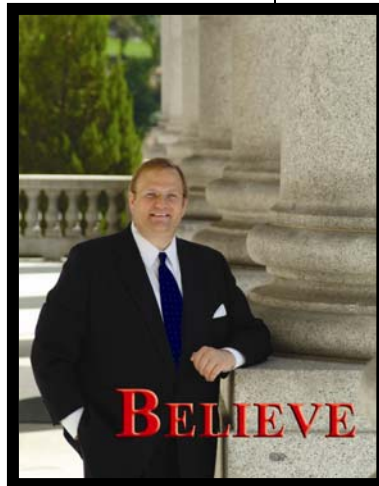
Below are Some of the Specifics With Regards to an Adult Guardianship in Utah:

A Guardianship over an adult who is unable to understand his or her rights, duties and responsibilities is obtained through the courts.

The "proposed ward," must be represented by an attorney.

In practice, the petitioner's attorney arranges for another attorney to represent the interests for the proposed ward. The court will determine whether a Guardianship is needed and whether the person named in the petition is the best person to be the guardian.

The law prefers that a Guardianship be limited to that control which is absolutely necessary. Still, as guardian you can be given the power to decide where your adult child lives, what food your child eats and what medical care is needed. A Guardianship will often include a Conservatorship, but an action for Conservatorship can be filed on its own. Again, a Conservatorship is much like a Guardianship, but the conservator controls the ward's property, not the ward's personal choices.



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