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Understanding Adult Guardianship: When and How It Works

As we navigate through life, the possibility of becoming incapacitated—whether due to illness, injury, or cognitive decline—can raise important questions about how our affairs will be managed. If such a situation arises and you can no longer handle your own affairs, there are two primary avenues through which someone else can legally act on your behalf: a Power of Attorney or a court-appointed guardianship. Understanding these options is crucial for effective planning and ensuring that your wishes are respected.

Power of Attorney: A Private Solution

A Power of Attorney (POA) is often regarded as one of the most vital tools in estate planning. This legal document allows you to appoint an agent—someone you trust—to make decisions regarding your financial and legal matters if you become unable to do so yourself. The scope of authority granted in a POA should be broad, ensuring your named agents aren't limited in the ways they can support you if the need arises.

Advantages of a Power of Attorney

1. **Cost-Effective:** Establishing a POA is generally less expensive than pursuing a guardianship through the Court.
2. **Privacy:** The POA process is private, and the details of your affairs do not become a matter of public record.
3. **Choice of Agent:** You have the freedom to choose who will act on your behalf, ensuring that your agent is someone who understands your values and wishes, and that you trust implicitly.

However, if a valid, thorough POA is not in place, or if conflicts arise regarding its interpretation, the need for a guardianship may become necessary.

Guardianship: A Court-Mandated Process

When a person is deemed incapable of managing their affairs and a POA is insufficient or non-existent, a guardianship may be sought through the Court of Chancery. This is a more formal and public process that involves several steps and requirements.

How Guardianship Works

1. **Petitioning the Court:** A person wishing to become a guardian must file a petition with the Court. This petition typically requires medical and other evidence demonstrating that the individual is indeed incapacitated. Formal notice of the pleadings must also be given to all interested parties.
2. **Appointment of Attorney Ad Litem:** The Court appoints an attorney to represent the person with an alleged disability. The attorney ad litem's role is to confirm to the Court that the person needs a guardian and that the petitioner is the best candidate for this role.

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3. **Court Assessment:** The Court will evaluate the evidence presented, and if it finds that the individual cannot manage his or her own affairs, it will appoint a guardian. This guardian can be responsible for the person's health and personal care, financial matters, or both.

4. **Ongoing Oversight:** Once appointed, the guardian is required to submit annual accounts to the Court throughout the duration of the guardianship, providing updates on the incapacitated person's health and financial status. This oversight ensures that the guardian acts in the best interests of the individual.

Disadvantages of Guardianship

1. **Public Proceedings:** Unlike a POA, guardianship proceedings are public, which means personal income and asset information is exposed. Related and interested parties must also be publicly notified and receive copies of the pleadings.

2. **Potential for Disagreement:** The Court may appoint a guardian who is not your preferred choice, potentially leading to conflicts among family members or friends.

3. **Cost and Complexity:** Guardianship can be a lengthy and costly process, often requiring legal assistance to navigate Court filings and hearings.

Choosing the Right Option for You

While a POA is generally the preferred method for ensuring your affairs are managed according to your wishes, it is essential to have it in place well in advance of any potential incapacity. If a POA is not established, if it is not thorough and comprehensive, or if complications arise, guardianship may be the necessary route.

At Procino-Wells & Woodland, LLC, we understand the complexities of guardianship proceedings. Our team provides knowledgeable guidance and representation throughout the process, ensuring that your interests are safeguarded. We aim to assist you with compassion and respect, helping you navigate these important decisions with clarity and confidence. Your future is important, and we're here to help you plan for it.