

Considerations Prior to Filing a Petition

Adult guardianship is a difficult decision for anyone. A common arena where this arises is when adult children of an elderly person recognize that mom or dad just can't manage their own affairs. They have either already been ripped off by con-artists, or are just squandering resources that they will need for future living needs. Or they are in a nursing home and need to make decisions regarding their care and well-being but just cannot communicate, understand, or make a decision. The nursing home needs to know who has the proper authority to make needed decisions.

Another area where the need for adult guardianship arises is with incapacitated minors who reach the magic age of eighteen. On their eighteenth birthday the law automatically grants them the rights and responsibilities of an adult. If they are still in school, the school needs to know who can make decisions. Doctors need to know who has the authority to consent to treatment and make decisions regarding treatment plans. The law allows a person to file for Guardianship as early as six months prior to the proposed ward's 18th birthday, but practically speaking you may want to file around 2 months prior to the proposed ward's 18th birthday. (It generally takes 2-3 months from filing to hearing.)

In both of these situations, it is often healthcare providers who identify the problem for the family first. If an incapacitated adult needs to make significant decisions about treatment plans or residential facilities, or enter into agreements, they may simply not be able to do so. Our law has developed so that someone with capacity must be responsible for the proper care and control of an incapacitated individual. If there are valid powers of attorney, they should be presented to those who are suggesting the need for a conservator. If you have POAs, you should be able to avoid the need for a guardianship or conservatorship. You may have to provide copies for the doctor's records.

Georgia recently enacted a new Guardianship Code which uses new terms. The old terms were guardianship of the person, and guardianship of the estate. Now the terms used are guardianship and conservatorship respectively. Thus we now have guardians and conservators.

Guardians are responsible for the person of the ward, whereas conservators are responsible for the property of the ward. The guardian and the conservator can be the same person. The guardian is responsible for making decisions regarding health and safety of the person with some lesser responsibilities concerning resources, while the conservator is responsible for the assets and liabilities of the individual.