



By Barbara Coenson

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## CARING FOR LOVED ONES WITHOUT COURT INVOLVEMENT

Caring for a loved one may come naturally. However, sometimes we lack the legal authority to protect and keep safe those we cherish most. Without proper planning, we may need a court to appoint us as legal guardian to gain authority to care for our loved ones. A guardian is a person appointed by a court for the benefit and protection of those people who do not have the ability to care for themselves or their property.

Florida law requires a guardianship for minor children to receive more than \$15,000 from an inheritance. Planning with a trust can avoid this type of guardianship.

*Sherry died, leaving her 10-year-old son, Tommy, \$100,000 in life insurance. Sherry's husband, Sam, tried to collect the money for Tommy. The insurance company required Sam to establish a guardianship for Tommy to receive the funds. The court directed the funds be held in a restricted account requiring Sam to obtain court approval to use the funds for Tommy.*

Sherry could have planned to avoid guardianship by creating a trust for Tommy and naming the trust as the beneficiary of the life insurance. Sam, as trustee, could spend the money for Tommy without court involvement and guardianship expense.

If a court determines that an adult is incapacitated, then the court may appoint a guardian over the person's welfare and property. The guardian must seek court permission to spend funds for the person's benefit. The guardian



must also provide financial, health, and welfare reports regarding the person for court review.

*Jonah became caregiver for his mother, Bernice, following her stroke. He needed to access her investment accounts to pay for home healthcare. The investment company would not speak to Jonah because he did not have legal authority to obtain any information or access Bernice's funds. Jonah had to file to be appointed guardian by the courts to obtain legal authority to access his mother's investment account to pay for the home healthcare. Jonah must report to the court and obtain permission for expenditures on Bernice's behalf for the rest her life. Because Jonah is required by law to be represented by an attorney, Bernice's funds may be exhausted at an earlier date than if guardianship was not required.*

Bernice could have planned to avoid a guardianship if, prior to her incapacity, she had executed a valid durable power of attorney

which would have given Jonah the authority to access her investment accounts. Bernice also could have established a trust to hold her investment account and named Jonah as trustee upon her incapacity. In both cases, Jonah could have cared for his mother without court involvement. Additionally, Bernice could have named Jonah as her surrogate to make medical decisions for her if she wasn't able.

If parents die, a court can appoint a guardian to oversee the care of a minor child. Parents can plan for this by designating who they would like the court to appoint as guardian for their children in their last will and testament or in a designation of preneed guardian for a minor.

A comprehensive estate plan can provide sufficient authority to care for our loved ones and their property. However, guardianship is an important alternative when planning has not been done.