

## GLOSSARY OF TERMS

**Attorney Ad Litem** – According to the Probate Code, “an attorney who is appointed by the court to represent and advocate on behalf of the proposed ward or an incapacitated person in a guardianship proceeding.” It is literally translated “for the suit” or for the purposes of the lawsuit being prosecuted.

**Bond** is required by the court as a surety that the guardian will faithfully discharge the duties of guardian. The bond shall be fixed by the court in an amount sufficient to protect the assets and income of the ward.

**Civil Commitment** – The label historically given the involuntary placement of a mentally ill or developmentally disabled person in a hospital or other large facility for protection and/or treatment. Currently, the term is more descriptive of one’s loss of liberty to a state authority, which may result in hospitalization, but may also mean placement in a group home or even outpatient status conditional upon the following some course of treatment.

**Durable Power of Attorney** – A legal document which, when executed, authorizes another person to act as agent. This document continues in effect upon the onset on incapacity of the principal. (See definition of Power of Attorney, also.)

**Durable Power of Attorney for Health Care** – A legal document that authorizes another person to make decisions regarding medical treatment when one becomes incapacitated. It may be revoked at any time. (See definition of Power of Attorney, also.)

**Fiduciary**– A person or entity to whom property is entrusted. It may be a trust company or a bank having trust powers.

**Guardian** – An adult appointed by the probate court to have care, custody, and control of a person who is incapacitated. An individual may be appointed guardian of the person, guardian of the estate, or guardian of the person and estate.

**Guardian of the Person** – The personal representative given responsibility only for the health, well being and personal needs of the ward, not for the financial affairs.

**Guardian of the Estate** – The personal representative made responsible only for managing the assets (real or personal property) of the ward – paying bills, selling property, managing finances.

**Guardian Ad Litem** – According to the Probate Code, “a person who is appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding.”

**Incapacitated Person** – According to the Probate Code, “an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing or shelter for himself/herself, to care for the individual’s own physical health, or to manage the individual’s own financial affairs.” The essential elements of a finding of incapacity at the judicial level are that the individual a) does not understand the nature of treatment choices presented; b) does not appreciate the implication of various alternatives; and c) cannot make and communicate a reasoned choice.

*Irrevocable Trust* – A trust providing for the transfer of the title of the trust proceeds to the trustee and the person creating the trust reserves no right to alter, cancel, or abolish the trust.

*Least Restrictive Alternative* – When an individual has diminished capacity to make decisions, some measure of substituted decision-making is required. That substituted decision-making, whether public or private, should intrude upon personal autonomy only to the extent necessitated by the person's actual impairments and the decision actually required. In guardianship proceedings, testimony is taken to enable the Judge to issue an order appointing a guardian, in such a way as to preserve the person's ability to decide as much as possible.

*Letters of Guardianship* – An official letter issued by the County Clerk's office that is written evidence of the appointment and authority of the guardian to act for the ward.

*Living Will (Advanced Directive)* – An instrument in which a person can instruct the physician to withhold life sustaining procedures if the principal has an irreversible, terminal condition.

*Power of Attorney* – A legal document by which one person ("the principal") authorizes another ("the attorney-in-fact") to act on his/her behalf in one or more matters. The wording will determine whether it is a general power of attorney or limited to a specific act, such as selling a house. It may have a time limit and will expire when the principal is declared incompetent unless there is specific language providing otherwise, (See Durable Power of Attorney). Appointment of a guardian terminates the power of attorney. Since an attorney in fact is not accountable to the court, great care should be taken to protect against abuse.

*Representative Payee* - An arrangement by which a governmental agency may appoint a substitute person to receive federal funds on behalf of a recipient who, by reason of physical or mental disability, is unable to manage the funds. Agencies that use this arrangement include the Social Security Administration, Veteran's Administration, and the Railroad Retirement Board.

*Ward* – The legal term for the incapacitated person who is under guardianship.