



GOLDSTEIN & CORNICK

ESTATE AND ELDER LAW NEWS FOR YOU

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"We help you plan for
your future"

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SURROGATE DECISION MAKING

Recently, a number of our clients have asked for literature on the differences between a Durable Power of Attorney, Conservatorship and Guardianship. This month's newsletter discusses three ways to authorize others to make decisions on your behalf.

What is a Power of Attorney?

A power of attorney is a legal document where one person (the principal) authorizes another (the agent) to act on their behalf. There are financial powers of attorney, which allow your agent to make decisions regarding your property, and healthcare powers of attorney, which allow your agent to make decisions regarding your health care needs.

A power of attorney can be broad in scope, giving the agent the ability to make any and all financial and personal decisions for you (a General Power of Attorney), or the power of attorney can limit the agent's authority by specifying the types of decisions the principal would like you to make on their behalf (a Limited Power of Attorney).

The principal has the choice whether he or she would like their agent to have the ability to make decisions both now and if they become incapacitated (a Durable Power of Attorney), or the agent can be limited to make decisions only when the principal becomes incapacitated (a Springing Power of Attorney).

What is a Guardianship?

Guardianship is a legal relationship in which the court gives a person (the guardian) the power to make personal decisions for another (the ward). A family member (or other interested party) initiates the legal proceedings by filing a peti-

tion in the Superior Court in the county where the incapacitated person resides. Two medical examinations, by licensed physicians, are necessary to establish the incapacity of the individual. The court then determines if the individual is unable to care for his or her financial and physical affairs. Unless limited by the court, the guardian has the same rights, powers and duties over his ward as parents have over their minor children. The guardian is required to report to the court on a pe-



riodic basis.

What is a Conservatorship?

A Conservatorship is a legal relationship in which the court appoints one individual to assist another with their financial affairs. A Conservatorship may only be created if the person requiring assistance (the Conservatee) and the person providing assistance (the conservator) both consent to the arrangement. Unlike a Guardianship, both parties work together to maintain the conservatee's financial affairs. A Conservatorship is only available when the "frail" party is mentally competent; if he or she is not, a Guardianship is the appropriate arrangement.

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"Please feel free
to contact our
office to discuss
what situation is
right for you. As
always, planning
ahead makes life
easier for you
and your loved
ones."

**SURROGATE
DECISION MAKING**

As with a Guardianship, The Conservator is required to report to the court on a periodic basis.

The Differences

A power of attorney is a relatively economical and private way to decide which family member or trusted friend will have the legal authority to carry out your wishes, if you can no longer speak or act for yourself. If you do not have a power of attorney, or if your power of attorney is not drafted properly, and something happens that results in your inability to make decisions, your family or loved ones may later face court proceedings to arrange for a Guardianship. A court proceeding is not only costly, but the person appointed as your guardian/conservator may not be the person who you would have chosen yourself.

A Conservatorship is very much like a court monitored power of attorney. In some cases, one or both parties may feel more at ease if they know that a court is monitoring the actions of the relationship. There are times when an individual requires assistance, but has no close friends or family who can assist them. In those cases, the parties may wish to operate under a Conservatorship, whereby the court would review the relationship on a periodic basis. The lawyers at Goldstein & Cornick often serve as fiduciaries for individuals who are in need of help, but who do not have a family member or loved one in the area who is able to provide assistance.

No matter what your age or health situation, you should consider who would assist you in your af-

fairs in the event you are unable to make your own decisions. By making these decisions while you are healthy you will decide your future. Please feel free to contact our office to discuss what situation is right for you. As always, planning ahead makes life easier for you and your loved ones.

**WE WELCOME ERCILIA CORREA TO
OUR TEAM!!!**

Goldstein & Cornick is happy to welcome Ercilia Correa to the firm. Ercilia brings much experience and enthusiasm to the firm. Ercilia is currently completing her paralegal degree at Raritan Valley Community College. As if that's not enough, Ercilia and her husband have three young children at home to keep them busy!!!

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**Please contact this office at
(908) 253-0404 if you would like to
have our attorneys speak to your
organization on any issues involving
estate and elder law planning.**

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