

Make Your Life Decisions Now – Don't Let Others Make Them For You



**VIRTUAL SENIOR LAW DAY
OCTOBER 28, 2020 11:00 A.M.**

**PRESENTED BY
NORFOLK & PORTSMOUTH BAR ASSOCIATION
&
SENIOR SERVICES OF SOUTHEASTERN VIRGINIA**

Presenters



- **M. Bradley Brickhouse, Attorney at Law**
 - **Oast & Taylor**

- **Jessica A. Hayes, Attorney at Law**
 - **Wolcott Rivers Gates**

- **Moderated by Caryn R. West, Attorney at Law**
 - **Parks Zeigler**

Agenda



- **Guardianships/Conservatorships**
- **Financial Decisions**
 - **General Durable Power of Attorney**
 - **Revocable Living Trusts**
- **Medical Decisions**
 - **Medical Power of Attorney**
 - **Advance Medical Directive or “Living Will”**

Guardianships & Conservatorships



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OAST & TAYLOR
Trusted Elder Law Professionals

Guardianship of Adults



- Guardianship is “of the person.”
- Guardianship is normally used when individual does not have proper documents already in place (i.e., AMD)
- Ability to make decisions for an incapacitated person
 - Residential
 - Medical
 - Educational
 - Employment
- Guardianship may be limited or general

Conservatorship of Adults



- Conservatorship is “of the estate.”
- Conservatorship is used when individual does not have proper documents already in place (i.e., POA)
- A conservator has the ability to make financial decisions for incapacitated person
- Conservatorship may be limited or general

Appointment Process



- Petitions to appoint a Guardian and/or Conservator filed with Circuit Court
 - For adults over the age of 18
 - Can be done up to six months in advance of child turning age 18
- Parents can also nominate standby Guardian and/or Conservator at the same time
- Petitioner does not have to be person seeking appointment
- Guardian and Conservator can be the same person
- Can have Co-Guardians and Co-Conservators

Appointment Process



- **Circuit Court appoints Guardian ad litem (GAL) for proceedings**
 - Attorney licensed in Virginia with special training
 - “Eyes and ears” of the Court
 - GAL provides the Court with a report of his or her findings
- **Person is provided notice of the proceedings**
 - Process takes away his or her civil rights
- **Doctor provides a medical evaluation**
- **Court holds a hearing on the petition**
- **Court appoints Guardian and/or Conservator, who then qualifies before the Clerk of Court**

Duties



- **Guardian**
 - Files annual report with Department of Social Services
- **Conservator**
 - Files annual accountings with the Commissioner of Accounts
 - Surety bond normally required
 - May require Court permission for some specific acts
 - ✦ Selling real estate
 - ✦ Gifting to spouse or children

DPOA/AMD vs. Guardianship and Conservatorship



- **DPOA/AMD**
 - Preserves independence
 - Preserves legal rights (contract, vote, marry, drive)
 - Streamlines decision-making
 - But – can revoke documents
- **Guardianship and Conservatorship**
 - Can provide additional protection
 - Revokes legal rights
- **Legal Incapacitation**
 - Emphasis on functional capacity, not disease
 - Poor judgment alone is not sufficient proof of incapacitation

Powers of Attorney



Jessica A. Hayes
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General Durable Power of Attorney



- Principal
- Agent (Attorney-in-Fact)
- Agent is given the power to handle your finances. Generally your agent can do anything that you can do.
- Some actions require specific authority:
 - Gifting – may be restricted to specific gifts
 - Changing beneficiary designations
 - For each of these, restriction to consistency with existing estate plan may prevent fraud
- Springing Powers – Require a Doctor's Certification that the Principal is incapacitated.

Advance Medical Directive



- **Medical Power of Attorney**
 - Appoints an agent for health care decisions in the event that you cannot communicate your wishes.
 - May grant your agent the authority to assist with organ donation.
- **Living Will**
 - Only applies if you are in a persistent vegetative state or you have a terminal condition from which there is no reasonable chance of recovery.
 - Specify whether you wish your life to be prolonged by artificial means.

Selection of Agent



- Your agent should:
 - Have good financial habits
 - Have some basic knowledge of finances and tax law, or the ability to learn.
 - Have time to commit to taking care of your finances
 - Be trustworthy
- If possible, consider an independent fiduciary

Questions?



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LEGAL INFORMATION & RESOURCES
A PROJECT OF THE SENIOR LAWYERS' CONFERENCE
OF THE VIRGINIA STATE BAR**

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