Practical Probate:
Voluntary Conservatorships

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In my last few articles, I discussed planning for incapacity, including powers of attorney, healthcare representatives, and living wills. I also discussed involuntary conservatorships. Another subject related to these types of legal tools is voluntary conservatorships. Voluntary conservatorships are a means of arranging for a trusted adult to have the legal authority to make decisions on your behalf. However, there are a number of very significant differences between voluntary conservatorships and items covered in my previous columns.

The most significant difference between voluntary conservatorships and powers of attorney and appointments of healthcare representatives is that the appointment of a conservator requires court intervention. Any capable adult may appoint a healthcare representative or attorney in fact; it's not necessary to involve the probate court for those appointments. Only a probate court may appoint a conservator.

Another difference is that a conserved person loses rights to make decisions for themselves. For example, if the conservator has authority over financial decisions, the conserved person loses the legal right to make those decisions. However, the conservator is required to take the conserved person's wishes and preferences into account when making decisions; the conservator is also required to involve the conserved person in the decision making process as much as possible. And just like involuntary conservatorships, the conservator cannot force the conserved person to do something against the conserved person's wishes.

A healthcare representative only has authority to act when the person who appointed them is incapable of conveying their wishes to their healthcare professionals. Someone who appoints an attorney in fact through a power of attorney retains all rights to make decisions for themselves.

As an agent of the court, a conservator is accountable to the probate court, and must provide periodic reports and accounts as part of their responsibilities. Only under certain circumstances is an attorney in fact accountable to the probate court.

There are also important differences between voluntary conservatorships and involuntary conservatorships (which were the subject of my previous article). In a voluntary conservatorship, the applicant is asking the probate court to appoint a conservator for him or herself. With involuntary conservatorships, a third party is asking the probate court to appoint a conservator for another

person. With voluntary conservatorships, the court makes no finding of incapacity – the person for whom the conservator is appointed may possess full capacity. For involuntary conservatorships, the court is required to make a finding of incapacity in order to appoint a conservator.

To terminate a voluntary conservatorship, the conserved person need only submit a letter to the probate court stating that they no longer wish to be conserved. The probate court must terminate the involuntary conservatorship within 30 days of receiving that letter. For involuntary conservatorships, the conserved person must make an application to have the conservatorship terminated, and must prove by a preponderance of the evidence that they are no longer incapable in order for the conservatorship to be terminated.

About the author

Dom Calabrese has been a Connecticut Probate Judge since 2002. He's currently the judge in the Region 22 Probate District in Southbury, Connecticut and is a judge in the Waterbury Regional Children's Court.

Dom also practices law with locations in Stamford and Watertown, Connecticut. His areas of practice include probate, estate planning, trusts, wills, planning for incapacity, asset protection, commercial transactions, contracts and agreements, and business counsel.

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