Practical Probate:
Designation of Conservator

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In my last few articles, I discussed different legal tools available to adults in Connecticut to plan for incapacity: durable powers of attorney, living wills, and healthcare representatives.

A disadvantage all of these tools share is the fact that a third party, such as a healthcare provider or financial institution, may not recognize the authority granted to an attorney in fact or a health care representative. Sometimes, when that situation occurs, an application might need to be made to the probate court to appoint a conservator. Once appointed by the probate court, the authority granted by the probate court to the conservator must be recognized by third parties within the state of Connecticut. If the conserved person leaves Connecticut, the conservatorship will not likely be recognized.

Also, the conservator will likely not have authority over assets located outside of Connecticut, such as out of state real property and financial accounts at out of state institutions with no offices in Connecticut.

Unlike powers of attorney and healthcare representatives, a conservator must be appointed by a probate court. Looked at another way, while capable adults may appoint someone to be their attorney in fact or healthcare representative, they cannot appoint their own conservator.

What adults may do is either make an application for the probate court to appoint a conservator for him or her, or execute a document known as an advance designation of conservator.

In a conservatorship, the probate court transfers someone's right to make decisions for themselves to another, responsible adult. Because of that, it's a very serious matter. In a voluntary conservatorship, someone asks the probate court to appoint a conservator for him or her. Whenever I conduct a hearing on that type of application, it's important that the person asking me to appoint a conservator understands that they will lose their right to make certain decisions for themselves if the application is granted.

There are also involuntary conservatorships, where someone makes an application to the probate court to appoint a conservator to make decisions for another person. In that case, the person for whom the conservatorship is being sought must be found incapable, or the application will be denied. I will discuss involuntary conservatorships in more detail in another column.

An advance designation of conservator is a document prepared before the person signing it becomes incapacitated. It identifies the person who the signer would want to serve as

their conservator if the probate court should ever decide to appoint an involuntary conservator. If the person named in the advance designation of conservator is willing and able to serve as conservator, and the probate court grants the application to appoint an involuntary conservator, the probate court must appoint the person designated in the document unless there is a good reason to appoint someone else.

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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