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Title 14 : Decedents Estates And Fiduciary Relations

Chapter 111 : Guardianship

Subchapter 012 : Persons In Need Of Guardianship

(Cite as: 14 V.S.A. § 3069)

§ 3069. Powers of a guardian

(a) If the court enters judgment pursuant to subsection 3068(f) of this title, it may appoint a guardian if it determines that the respondent is unable to manage, without the supervision of a guardian, any or all aspects of his or her personal care and financial affairs.

(b) When the person under guardianship has an advance directive, the authority of the agent and the instructions contained therein shall remain in effect unless the Probate Division of the Superior Court expressly orders otherwise in a petition for review of the advance directive under 18 V.S.A. § 9718.

(c) The court shall grant powers to the guardian in the least restrictive manner appropriate to the circumstances of the respondent and consistent with any advance directive. Guardianship powers shall be ordered only to the extent required by the respondent's actual mental and adaptive limitations. The court shall specify which of the following powers the guardian shall have and may further restrict each power so as to preserve the respondent's authority to make decisions commensurate with respondent's ability to do so:

(1) The power to exercise general supervision over the person under guardianship. This includes care, habilitation, education, and employment of the person under guardianship and choosing or changing the residence, subject to the requirements of sections 2691, 3073, and 3074 of this title.

(2) The power to seek, obtain, and give or withhold consent to the initiation or continuation of medical or dental treatment, subject to the provisions of section 3075 of this title and any constitutional right of the person under guardianship to refuse treatment, provided that the court in its discretion may place limitations on the guardian's powers under this subdivision if appropriate under the circumstances, including requiring prior court approval for specific surgeries, procedures, or treatments.

(3) The power to exercise general financial supervision over the income and resources of the person under guardianship. This includes the power to seek or apply for, receive, invest, and expend all wages, compensation, insurance benefits, public benefits, and pensions for the benefit of the person under guardianship, to liquidate personal property for the benefit of the person under guardianship, to settle accounts, demands,

claims, and actions by or against the person under guardianship, and to take any other action reasonably necessary to secure, preserve, protect, and defend the financial interests of the person under guardianship.

(4) The power to approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make.

(5) The power to approve or withhold approval of the sale or encumbrance of real property of the person under guardianship subject to subchapter 6 of this chapter.

(6) The power to obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

(d)(1) When a guardian has been granted some but not all guardianship powers, the guardianship shall be identified as a “limited guardianship” and the guardian identified as a “limited guardian.”

(2) A person for whom limited guardianship has been granted retains all the powers identified in subsection (c) of this section except those which have been specifically granted to the limited guardian.

(e) The guardian shall exercise supervisory powers in a manner which is least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision.

(f) The guardian shall encourage the person under guardianship to participate in decisions, to act on his or her own behalf when practicable, and to develop or regain the capacity to manage his or her own personal affairs to the maximum extent possible. The wishes, values, beliefs, and preferences of the person under guardianship shall be respected to the greatest possible extent in the exercise of all guardianship powers.

(Added 1979, No. 76, § 15; amended 2005, No. 198 (Adj. Sess.), § 12, eff. Sept. 1, 2006; 2007, No. 186 (Adj. Sess.), § 1; 2009, No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011.)