

ELDER LAW TODAY

Adrian & Pankratz, P.A.

Old Mill Plaza, Suite 400 • Newton, KS 67114 • Phone: (316) 283-8746 • www.aplawpa.com

Power of Attorney, Guardianship & Conservatorship

We continue to receive lots of questions from elder health care professionals and members of the community about powers of attorney, guardianship, and conservatorship.

A power of attorney is a legal document in which one person (the principal) authorizes another (the agent or attorney-in-fact) to act on the person's behalf. There are financial powers which allow your agent to make decisions for you regarding financial matters, and healthcare powers of attorney which allow your agent to make decisions for you regarding your healthcare needs.

Your power of attorney can be broad in scope, giving your agent the ability to make any and all decisions for you (a General Power of Attorney) or you can limit your agent's authority by specifying the types of decisions you would like the agent to make on your behalf (a Limited Power of Attorney). You may also choose to sign a Durable Power of Attorney, meaning that the power of attorney document remains in effect when and if you become incapacitated. Another option is to sign a Springing Power of Attorney which would not go into effect until you become incapacitated.

A guardianship is a legal relationship in which the Probate Court gives a person (the guardian) the power to make personal decisions for another (the ward). A family member or friend initiates the proceedings by filing a petition in the District Court in the county where the individual resides. A medical examination by a licensed physician is necessary to establish the mental capacity of the individual. If the judge finds that the person does not have the necessary mental capacity to care for his or her personal needs, the judge will appoint a guardian to make personal decisions for the individual. Unless limited by the court, the guardian has the same rights, powers and duties over his ward as parents have over their children. The guardian is required to report to the court on an annual basis.

A conservatorship is a legal relationship in which the Probate Court gives a person (the conservator) the power to make financial decisions for another (the conservatee). The court proceedings are very similar to those of a guardianship except the judge is determining if the individual has the capacity to manage his or her financial affairs. If the individual is determined not to have the necessary mental capacity, the judge will appoint a conservator to make financial decisions for the individual. Often the court appoints the same person to act as both guardian and conservator. Like the guardian, the conservator is required to report to the court on an annual basis.

It is always preferable to have a power of attorney in place rather than having to file for guardianship and conservatorship. However, if you become incapacitated and do not already have a power of attorney in place (for finances and healthcare), your family may have no choice but to begin guardianship and conservatorship proceedings.

By signing a power of attorney now, you can determine who will be able to make financial and healthcare decisions for you in the future should you be unable to make them yourself—and it costs relatively little to get the proper powers of attorney in place. Guardianship and conservatorship proceedings, on the other hand, can be very time consuming, costly, and they take decision-making authority away from you. A judge may appoint someone different that you should have appointed to make decisions for you. As always, you should consult with knowledgeable elder law attorney regarding the options that are best for you and your loved ones.

Services Available

Adrian & Pankratz, P.A. offers the following Elder Law services:

Division of Assets	Long Term Care Planning
Guardianship	Powers of Attorney
Estate Planning	Wills
Living Trusts	Special Needs Trusts



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