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Does Guardianship Override Power of Attorney?

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A guardianship is a court-imposed arrangement for incapacitated individuals, whereas a power of attorney (POA) is a voluntary document that allows a competent person to appoint an agent of their choice to make decisions on their behalf.

How Do Guardianships and Power of Attorney Differ?

While guardianships and powers of attorney are both legal arrangements that involve one person making decisions on behalf of another person, they differ significantly in terms of their nature, initiation, scope, control, and duration.

Nature

- A Guardianship is a legal arrangement established by a court when an individual is deemed legally incapacitated and unable to make decisions about their personal or medical affairs. It is often considered a more restrictive and intrusive option because it involves the court's oversight and decision-making authority. Also, a guardian has an obligation to act in the ward’s best interest and can be legally liable for a failure to do so.
- A Power of Attorney is a voluntary legal document that a competent person (the principal) creates to appoint another person (the agent) to make decisions on their behalf. It is typically used when the principal is still competent but wants to delegate decision-making authority. As compared to a guardianship, an agent’s power is discretionary; an agent is not obligated to act on the principal’s behalf.

Initiation

- A Guardianship is initiated by someone (often a concerned family member, friend, or medical facility) filing a petition in court to have a guardian appointed for an incapacitated individual. The court process involves an assessment of the individual's capacity.
- A Power of Attorney is initiated by the principal voluntarily signing a power of attorney document while they are still competent. It does not involve court proceedings unless there is a dispute or challenge.

Scope

- A Guardianship typically covers personal and medical decisions, including decisions about healthcare, living arrangements, and daily activities. It is often used when the individual is incapable of managing these aspects of their life.
- The scope of a Power of Attorney can vary widely based on the language of the document. It can be limited to specific tasks (e.g., managing finances, real estate transactions) or broad and encompass all financial and legal decisions. It allows the agent to act on behalf of the principal within the specified

scope.

Control and Oversight

- A Guardianship involves court oversight, meaning that the court monitors the guardian's decisions and actions to ensure they are acting in the best interests of the incapacitated person. The guardian must report regularly to the court.
- A Power of Attorney grants the agent authority to act on the principal's behalf, but it does not involve court oversight unless there is a dispute. The principal can revoke or amend the power of attorney as long as they are mentally competent.

Duration

- A Guardianship is typically ongoing until the court determines that the individual is no longer incapacitated or until the individual passes away. It may be difficult to terminate without a court order.
- A Power of Attorney can have a specified duration or can be revoked by the principal at any time, as long as they are competent. It automatically terminates upon the principal's incapacity or death unless it is a durable power of attorney, which continues in effect even after the principal becomes incapacitated.

When Does Guardianship Override Power of Attorney?

Powers of attorney are generally less restrictive and offer more control to the principal, while guardianships are often seen as a last resort when the individual cannot make decisions for themselves and requires court intervention.

While rare, there are situations in which a guardianship can be put into place, even when the principal individual has a power of attorney. The guardianship would thus override the power of attorney. The relevant situations are:

- If the power of attorney has a specified or limited duration, or if the power of attorney is not durable, as noted above.
- If the power of attorney is deemed insufficient, misused, or not in the principal’s best interest.

The court - or more specifically a judge - makes these determinations, and can also revoke or limit the power of attorney agent’s powers to prevent conflicts or protect the principal.

What Happens to an Existing POA When Guardianship Is Granted?

If the court determines that the existing power of attorney is ineffective or being misused, as described above, the guardianship will supersede the POA. The POA becomes invalid and not relevant to the principal’s situation and decisions.

Are There Situations Where POA Still Applies?

There may be rare situations in which a power of attorney would still apply for a principal, even if a guardianship is also established. There could be specific language in the original POA, allowing for specific powers or measures to be taken. There could also be limits to the guardianship, which still respect all or parts of a POA. Finally, the court has the authority to make an assessment of what serves the principal’s best interests, and that could include various tools, including POA and guardianship.

Who Can Override a Power of Attorney?

In Pennsylvania, the following parties can override or revoke a power of attorney, depending on the circumstances.

The Principal

The individual who created the POA can revoke it at any time, as long as they are mentally competent. Revocation must be done in writing, signed, and notarized. The principal should notify the previously named agent, as well as any institutions relying on the POA, like a bank or healthcare provider.

The Court

As described above, a court and judge can intervene and override or revoke a POA, typically in light of a petition for guardianship. Again, this typically occurs if the agent is abusing their authority, the POA is being misused, or there is evidence of neglect, fraud, or self-dealing.

Family Members or Interested Parties

While they cannot directly revoke a POA, family members or interested parties can challenge an agent's actions, petition the court for review or guardianship, and/or present evidence of misconduct or incapacity to initiate legal proceedings with the court.

Medical or Legal Professionals

A doctor's declaration of incapacity can trigger court review if the principal can no longer make decisions. Attorneys can assist in filing revocation documents or court petitions, and they can also review and advise on any and all related documents for clarity.

How to Contest or Revoke a Power of Attorney or Guardianship

The best way to start the process of revoking an existing power of attorney or guardianship is to consult with a qualified attorney. The lawyer will help you draft a revocation document, which should clearly state your intention and goal, and include your name, the agent's name, and the date of the original POA. The petition should include medical evidence, witness statements, financial records, and/or testimony supporting your argument. You must sign and notarize the document for it to be legally valid in the eyes of the court.

Next, the attorney will help you notify all parties, including the agent, financial institutions, healthcare providers, and anyone who received the original POA. If the original document was recorded at a courthouse or government office, you must file the revocation there as well. In Pennsylvania, this will be the Orphans' Court.

The Orphans' Court will then hold a hearing to review the petition and hear arguments. The principal has the right to seek legal counsel as well, and to present their own evidence, if they are able to do so. The judge makes the final decision whether or not to revoke the original POA or guardianship.

Why You Should Speak With an Elder Law Attorney

Legal documents such as powers of attorney and guardianships can be relatively simple; however, their execution and details can become complicated quickly. There are specific situations in which a POA or guardianship can work well, and other times when either can be misused or simply not in the best interest of the principal.

A qualified estate or elder law attorney can help guide you and your loved ones through POA and/or guardianship issues, including efforts to revoke or amend either legal document. Our elder law team at Knox Law can help you sift through the issues and determine the best path forward.

Contact us today for a free consultation for your specific POA or guardianship matter.



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