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GUARDIANSHIPS V. CONSERVATORSHIPS: BREAKING DOWN THE DIFFERENCES UNDER OHIO LAW

From the “Free Britney” movement to Netflix’s “I Care A Lot,” conservatorships and guardianships have garnered media attention over the past year. Although some headlines have cultivated a negative connotation surrounding these court-ordered relationships, rest assured that safeguards are implemented by the courts and law in Ohio to protect the rights and interests of Conservatees and Wards. This rise of media coverage has also left many wondering, what is the difference between a guardianship and a conservatorship? Well, each state is different.

In Ohio, a guardianship is an involuntary relationship between the Ward, a legally incompetent person, and a Guardian, the person appointed by the probate court to manage the Ward’s personal and/or financial affairs. The relationship is involuntary because someone other than the prospective Ward must file the application for guardianship. But, most importantly, before a guardianship can be established, the probate court must hold a hearing to determine whether the

prospective Ward is legally incompetent. Under R.C. 2111.01(D), “incompetent” means:

(1) Any person who is so mentally impaired, as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person’s self or property or fails to provide for the person’s family or other persons for whom the person is charged by law to provide;

(2) Any person confined to a correctional institution within this state.

Ultimately, if the probate court determines that the prospective Ward is incompetent, a guardianship is established and a Guardian is appointed. While the Guardian has the authority to manage finances and/or activities of daily life in furtherance of the Ward’s best interest, the probate court itself is the superior Guardian. Accordingly, the Guardian must receive approval from the probate court prior to making most decisions, including spending guardianship



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funds, moving the Ward into a more restrictive residence, and filing a lawsuit on behalf of the Ward.

A conservatorship, on the other hand, is a voluntary relationship in Ohio, between the Conservatee, a person who is mentally competent but physically infirm, and a Conservator, the person appointed by the probate court to manage the Conservatee’s personal and/or financial affairs. This relationship is voluntary because a competent adult must file a petition with the probate court on their own behalf, requesting the appointment of a Conservator. Accordingly, the biggest difference between guardianships

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and conservatorships in Ohio rests on competency.

Each state has their own set of rules and laws regarding guardianships and conservatorships. Indeed, Britney Spears’ conservatorship in California is much different than a conservatorship in Ohio. That is because California conservatorships are more akin to guardianships in Ohio. However, constancy throughout guardianships and conservatorships in every state is the ultimate purpose to protect and act in best interest of the Ward and Conservatee. ■

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Are there non-obvious ways to choose a lawyer? The first two ways that come to mind are asking a friend and asking Google. Both we go to because we trust, right? Should we? Although this is a good place to start, there are more sophisticated ways to consider hiring counsel that fits your needs.

First, advertisements connect the public to the profession, but that doesn’t mean that someone with myriad ads will be more present in your case. Did you know some firms do little to no marketing through public media (radio, billboards, magazines, newspaper) because they don’t need to gain business that way? You should always look beyond what the dollar can buy. Even if they aren’t marketing to you with words and pictures in an ad, the firms that pay the most for SEOs are the ones

HOW TO CHOOSE A LAWYER

that appear on the first search results page on Google. After all, when do we ever go to the second page of Google?

Second, knowing what kind of lawyer you need is an especially important. Most lawyers these days are not general practitioners who deal with all the common legal issues. The vast majority of attorneys only practice in one, or a few, areas of law. This allows them to focus all of their expertise on that. Doing some practice area research online or by phone will generally lead you to the right place to look. You can also always give the Columbus Bar Association a call to



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request a legal referral at (614) 221-4112.

Third, look into the lawyer’s background. Go to the firm’s website and search the attorney bios. Or call and ask for their CV. A way lawyers can separate themselves from others in the profession and prove their knowledge on a larger scale is by speaking engagements. If they are comfortable speaking

in front of an audience, it likely translates to the courtroom. Would you want the person litigating your case to be able to teach others through podcasts, local bar seminars, national conferences,

news conferences and the like? Lawyers must really know what they are taking about to instruct other lawyers. Speaking engagements are almost always listed under that attorney’s bio on the firm’s website.

Once you think you have found a lawyer, talk to them. The conversation with them should tell you what you need to know. Can I trust this person? Can I be open with this person to tell them my needs? Do they have time for me? Ultimately, this could be the person who helps to resolve your issues, so ask them questions about themselves and about the case. You should feel confident upon leaving the initial consultation that you have found someone who will make you feel heard and protect you. ■



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