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Guardianship– Different Strokes for Different Folks

Generally speaking, guardianship is a legal relationship, authorized by a Court, under which one person, the "guardian," has the right and duty to care for another, the "ward," and/or their property. In New York, there are three (3) different types of guardianship proceedings, each suited to a different set of circumstances.

Article 17 of the Surrogate's Court Procedure Act outlines the process for the appointment of a guardian for a minor, a child under the age of 18. While parents are considered the natural guardians, if a child's parents pass away or the child becomes the owner of significant assets, whether through a settlement, an inheritance or otherwise, the Court will appoint a guardian and, if there are assets, oversee the management of assets until the child reaches 18, when the assets are turned over to the child.

Article 17-A of the Surrogate's Court Procedure Act concerns the appointment of a guardian for individuals who are mentally retarded or developmentally disabled. Often, parents of a child that is disabled assume that they will continue to make decisions on the child's behalf even after the child reaches 18. However, in New York, everyone who turns 18 is automatically presumed to be legally competent to make decisions for themselves. In order to secure the legal authority to make decisions, or continue making decisions, for a mentally retarded or developmentally disabled person who is 18 years of age or older, a guardianship proceeding is required. Parents or family members should consider seeking appointment as guardian if a family member has a disability that interferes with decision making abilities. For example, a child who has difficulty communicating basic wants and needs is a good candidate for this type of guardianship.

How does one go about becoming a 17-A guardian? Article 17-A guardianship is handled by the Surrogate's Court. If the disabled person is under 18, the proceeding is brought in the county where the guardian lives. If the disabled person is over 18, his or her home county is used. The proposed guardian must file a petition that is supported by medical forms which must be completed by either two physicians or a physician and psychologist. The doctors must certify that the disabled person needs a guardian. When a parent/family member applies for guardianship, a standby guardian can also be selected. A standby guardian is able to automatically take over guardianship duties if the guardian dies or becomes incapacitated. The standby

guardian can make decisions immediately, but must go to the court within sixty (60) days to request permanent guardianship status.

When does one seek 17-A guardianship? Ideally, guardianship should be established prior to age 18. A proceeding under Article 17-A typically takes several months to complete. Therefore, it is recommended that families start the guardianship process one year prior to the 18th birthday.

Article 81 of the Mental Hygiene Law addresses the particulars of the type of guardianship that is generally considered to be appropriate when an individual who had been competent now suffers from cognitive or functional limitations that interfere with his or her ability to manage their own affairs, perhaps as the result of an accident, illness or the aging process. Guardianship under the Mental Hygiene Law is sought in the Supreme Court of the county in which the disabled person resides. Because this type of guardianship is so different from the others, we will devote more time to it in our next issue of "A Step Ahead."