legal lines

from

MOORE, SUSLER, MCNUTT, WRIGLEY & ROOT, L.L.C.

Lawyers

GUARDIANSHIP:
It Can Happen When You Least Expect it

By: Karen L. Root

Imagine this scene: You have been summoned into court by one of your children. The document you have been served with alleges that you are no longer able to care for yourself or your property and someone needs to be appointed your guardian. There is even a statement from your doctor saying you need a guardian. You appear in court on the designated day and find your son or daughter sitting at a table with their attorney. There is another attorney who introduces himself as the guardian ad litem and says he is there on behalf of the court. You will find out later in the proceedings that you are paying for both of these attorneys. Yet, no one is there to speak up for you! So, you might ask, don't you have any rights at all?

You absolutely do. First, you have the right to be represented by an attorney of your choosing and to object to these proceedings. But you must let the court *know* you object either by writing a response to the petition that was served on you, or by telling the guardian ad litem or judge in open court. The burden then falls on the petitioner (in this scenario, your child) to prove that you are disabled and need a guardian.

Of course, the court will rely heavily on your doctor's report. But where is your doctor getting his information? Perhaps at your last appointment, you mentioned that the activities of daily life had become more difficult for you to handle; maybe the nurse spoke with the person who brought you to the appointment after you left the room; or maybe your doctor just reached his/her own conclusions without really taking the time to talk with you or evaluate your situation. A give and take dialogue with your doctor at every appointment can make a big difference in the conclusions he draws and the recommendations he makes for you. That does not mean he won't still think you need some help in certain areas of your life; but that help may be limited to specific needs rather than an all-encompassing need for a guardian.

Illinois law states that guardianship shall be utilized only as is necessary to protect and promote the well-being of the disabled person, and only to the extent necessary as determined by the individual's limitations. But the law, as it is phrased, already assumes that the subject of the guardianship is disabled and that is not always the case. The ability to care for oneself is not easy to measure. For one thing, it is constantly changing. One day, a person may be able to perform a simple act and the next day the same act is overwhelming. There is no yardstick that draws the line between ability and disability. Even the inability to do some things such as drive a car or balance a checkbook, are not, by themselves, enough to justify a full guardianship. You must then be willing to demonstrate that whatever limitations you have are not so debilitating as to justify a guardianship, or that some simple remedies such as having your groceries delivered or asking the bank to balance your checkbook will resolve the problem. In other words, you do not have to become a willing victim to a guardianship proceeding; you can exercise your right to maintain control of your life to the fullest extent you are able.

Continued…

Susler Retires

Marshall Susler, who joined the firm as a partner in 1986, retired effective January 1, 2000. Marshall has been of counsel since April 1999. He plans to remain active as a mediator, arbitrator and consultant. He teaches in the School of Business at Richland Community College and intends to continue doing so.

Marshall has been active in many bar-related and community activities. He is immediate past-president of the Decatur Bar Association and, among other activities, has served as a member of the Review Board of the Attorney Registration and Disciplinary Commission from 1976 to 1991, lectured at several continuing legal education courses, and was on the board of the Decatur Public Library and served as its president.

Guardianship (Continued from page 1)

If you are served with a guardianship petition, try to visualize the proceedings as an opportunity to show your family that you still have control over your life. Your child may truly believe that she is doing what is best for you, but once you object you may be able to talk about the situation and what each of you hope to achieve.

If a compromise is not possible, the guardian ad litem will interview all interested persons and consider the medical opinions. The lawyer you retain to represent you can advocate your desire to remain independent but you must be your own best evidence if you want to persuade the court that guardianship is not necessary nor in your best interest. At hearing, the court will listen to the testimony, read the medical report, consider the recommendation of the guardian ad litem, and weigh the evidence. The court may then order the appointment of a full guardian, a limited guardian, or no guardian at all.

The guardianship laws exist as a shield to protect those individuals who really are not able to care for themselves and desperately do need a guardian. But the law is not a sword to be used to strip people of their rights, their dignity and their independence without justification. In the event you find yourself at the end of such a sword, do not hesitate to fight back by using the system to your advantage.

Advance Directive Update

Beginning January 1, 2000, the driver's license bureau began asking a new question to those applying for, or renewing their driver's license. Along with being asked if you are an organ donor, you will also be asked if you have an Advance Directive (for example, a Power of Attorney for Health Care or a Living Will). If you do, you will be given a sticker to apply to the back of your driver's license. It will alert health care providers that you have such a document and to look in your wallet for a companion card that outlines which document you have, where it is located, who your doctor is and who you may have named to make health care decisions for you. Health care providers must still see the actual document for the specifics, but this early alert will assist in getting in touch with your designated decisionmaker (agent), if you have a Power of Attorney for HealthCare or if you have outlined your wishes in writing about end of life care and your condition is considered terminal. If you cannot tell the provider what your wishes are, the earlier it is known you have these documents and copies of them can be obtained, the sooner your wishes can be followed.

Congratulations to Seniorama Winners...

Thanks to all those who visited with our attorneys and staff at the Seniorama at the Decatur Civic Center...and congratulations to the winners of our drawing prizes:
Mr. and Mrs. Albert Weidlich won movie theater gift passes; **Goldie Mosely** won a book reading light; **Evelyn Miller** won *Soul's Code Book*, and **John Riley** won the *Home Field* Book. We also gave away gift certificates for two for the Old Country Buffet.

Look for us again at the 2001 Seniorama!

A Tax That's Going Down ?

By Dan Moore

In effect, it's true. The bad news is that you have to give assets away or die to take advantage of it.

In 2000 the unified credit against federal estate and gift tax increases. This means that an estate of up to $675,000.00 will then be able to pass free of federal estate tax. A husband and wife, with a proper estate plan, could (in addition to annual exclusion gifts that will remain at $10,000.00 per beneficiary) pass along to family and friends a combined estate of $1,350,000.

And beyond all this, there are always unlimited tax-free gifts to qualifying charities.

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