

Disability

Perhaps one of the most frightening aspects of living in modern times is, ironically, the very real possibility that we will *survive* an accident or serious illness which renders us incapacitated. Indeed, medical technology increasingly assures survival of strokes and traumatic head injuries that may leave one **legally incompetent** (incapable in the eyes of the law to contract on one's own behalf). Without a plan for such a contingency, and if such circumstances arise, someone typically would have to come forward to petition a court for appointment of a **guardian** of the injured individual or **conservator** of his property. The guardian or conservator is appointed by the court to make decisions and enter into contracts for the benefit of the incompetent person (known as the "ward"). Besides the high legal costs associated with guardianship proceedings, the process of petitioning the court for guardianship is often a dehumanizing and degrading experience for the ward, who is thereafter adjudicated by decree of the court as being incompetent and may regain "normal" status through yet another legal process.

The real pity about guardianship is that it can be avoided if disability is a considered contingency during the planning of one's estate. In fact, one may not only avoid the necessity for guardianship, but one could realistically pre-plan the details of his or her lifestyle during a period of such disability. To do so, however, important decisions need to be made: *Who* would be my agent for handling my legal affairs and managing my property? *Where* would I live in the event of disability? Nearly everyone would rather make these decision themselves then rely upon the choices of others; but these important life decisions can be made only by "competent" persons and therefore must be made *prior* to an incapacitating injury and preserved in a *legal instrument* such as a **Durable Power of Attorney** or a **Living Trust**, which has to be created and executed while one is legally competent. If one does not pre-plan, the most common alternative available is a guardianship proceeding, where one's control over his or her property and lifestyle is legally assigned to another (not by the choice of the ward, but by appointment of the court) and where the ward's property—not the ward's care—is monitored and supervised by the court.