

Aging Happens: What you need to know about guardianships

By Ellen Waldman

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Here's what happened with June. June's niece, who was her health care representative, died unexpectedly. June lived in a memory care facility, had no other family, and now had no one who could be her voice and advocate for her health care needs. It was too late for her to fill out a new advance directive (AD), as she no longer had the cognitive capacity to understand this document. What needed to occur was that someone had to be appointed as her legal guardian, and she would then be a "protected person." Guardianship is a legal relationship, designed to protect incapacitated individuals and promote their well-being.

If someone you know gets to this point, and either has no AD or cannot alter the one they do have, this outcome could affect them as well. Additionally, there are circumstances, even with an appropriate AD in place, where a guardian still needs to be appointed. One such case might be upon admission into a memory care facility. Some, but not all, require this document be in place prior to or soon after moving into their residence. The reasons for this are varied, but in general, it gives authority to this legally appointed guardian to place their protected person into this facility.

An AD does not really give anyone the right to move a person from wherever they're presently living into a care facility, be it skilled nursing or dementia care, if they don't want to move. Someone who is incapacitated by dementia might very well not understand or agree with what their care needs really are. However, a guardian has the right and the responsibility to be sure that their person's medical and housing needs are well met.

Here's some edited information from the state of Oregon with regards to being appointed a guardian. The term "protected person" refers in this case, to the person with dementia.

A guardian undertakes serious duties and responsibilities that are required by the laws of Oregon. Chapter 125 of the Oregon Revised Statutes governs guardianships and outlines those responsibilities (www.oregonlegislature.gov/bills_laws/ors/ors125.html). A guardian must:

- Follow the laws about being a guardian.
- File a guardian's report every year.
- Get court approval before using the protected person's funds for room and board.
- File a statement with the court and notify the protected person before placing an adult protected person in a residential facility.

Here are some additional details of how guardianship works, and what guardians are permitted to do and expected to address. A guardian is appointed when a petition is filed, a court hearing is held, and the court determines, based on the evidence presented, that the individual is incapacitated according to the law of that state, and guardianship is appropriate. The guardian is appointed by a circuit court judge to manage the affairs of the protected person who is too incapacitated to make decisions on their own. The guardian makes decisions about personal health, programs, medical care, residence and release of

confidential information. A guardian can also arrange for the protected person's care and maintenance, training and education, and advance funeral and burial needs.

There is a lot more to know than this information provides, but this is meant to be an overview of this important legal appointment. You must work with an attorney for this to be enacted, often an elder law or estate planning attorney. This is not an inexpensive process, and legal fees plus filing fees can add up to a couple thousand dollars.

We have many excellent attorneys here in Ashland who are quite capable of helping you with this process. There is at least one practice in town, the law offices of Robert Good and Sarah Vaile (www.goodashlandlaw.com; 541- 482-3763) who offer a reduced-rate to establish a guardianship that is necessary for placement in a memory care facility. You might check with others as well.

Hopefully, this will not be a process you will have to experience first-hand, but knowing what might lie ahead is always helpful. Meanwhile, be sure your AD is up-to-date and current both with your wishes and the person you chose as your representative. For most people, the AD works quite well for the duration of their lives.