



ELDER LAW AND ESTATE PLANNING

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Voluntary guardianship may be solution for still-competent father with Alzheimer's

Question: My father, 71, was just diagnosed with Alzheimer's disease. So far he is still relatively competent and he is able to make decisions that are appropriate. He is thinking about the future in very practical terms. Primarily he is concerned with my mother's financial security. One of his big worries is that he'll start to mismanage money when his judgment declines. To prevent this, he has already transferred his assets into a trust that my mother controls. However, he has not yet transferred his IRA because of the tax implications of doing so. Are there solutions for this?

Answer: We recently helped a family with the identical issue. If your dad is competent now, he can petition the court for a **voluntary** guardianship. Pay special attention to the word "voluntary." He should request that the court appoint a guardian, probably it would be your mother, for the purpose of managing his IRA. That way, if he does become unable to manage money responsibly, the IRA will be protected.

You and other readers may be asking, *Why a voluntary guardianship? Doesn't a durable power of attorney accomplish the same thing as a voluntary guardianship?* The answer is no. A Durable Power of Attorney can empower someone else to manage your father's finances, but will not prevent him from

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managing his own. With a voluntary guardianship, he would be prevented from having access to his IRA. It would be protected from him.

While your father remains competent, he has a right to terminate the guardianship at any time, through the court. Your mother will have to provide annual financial accountings as well as medical documentation that your father is still competent. Once he is no longer competent, the court would move to have the guardianship converted into an **involuntary** guardianship.

Please urge him and your mother to talk with an experienced elder law attorney regarding how to proceed.

Joseph Karp and Jonathan Karp are Florida Elder Law and Estate Planning Attorneys. The Karp Law Firm is located in Palm Beach and St. Lucie counties. It assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration, estate litigation, and probate and elder law mediation.