

# GAPS LEGAL, PLLC NEWS & NOTES

Volume 1/ Issue 5

## ALMOST 18? 18? OLDER?

### ABOUT US

We focus our practice on Guardianship, Advocacy, Probate, Planning, and Special Needs. We actively listen to your needs to recommend an effective and efficient solution.

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When your child reaches age 18, he or she is an adult who can make his or her own decisions. Good or bad decisions. Mom or Dad or siblings have very limited ability to intervene without the child's consent. Many well-meaning people may tell you that your child needs a guardian or guardian advocate at age 18 because of a developmental or an intellectual disability diagnosis. That may not be appropriate advice depending on your specific circumstances. There is not a one-size-fits-all answer. Here we discuss the legal options that are available to families to assist an adult with decision-making.

### Option 1 - Estate Planning

If an adult can make informed decisions and understand the legal documents necessary to designate authority to other individuals to assist them, then the least restrictive option is signing estate planning documents (such as a Durable Power of Attorney, Designation of a Healthcare Surrogate and a Living Will). A Supported Decision-Making Agreement might be appropriate as well. This option does not require the court's involvement. Estate Planning is not just for your child, but for you too!

### Option 2 - Guardian Advocacy

A Guardian Advocacy is only for individuals with specific developmental disabilities diagnosed prior to turning 18. Florida only allows a Guardian Advocacy if the individual is diagnosed with an Intellectual disability, Cerebral Palsy, Autism, Spina Bifida, Prader-Willi, Down syndrome, or Phelan-McDermid syndrome. It is a court process but there is no court order determining the person to be "incapacitated." The court uses the developmental diagnosis and testimony to determine if the person lacks the decision-making ability to do some, but not all, of the tasks necessary to care for his or her person or property. The person keeps all legal rights except those given to the Guardian Advocate. There are initial and annual court requirements.

### Option 3 - Guardianship

Guardianship is for anyone that requires decision-making assistance. It does not require a specific diagnosis. The court sends out an examining committee to evaluate the individual and file reports with the court. It will result in a legal determination of the person's incapacity, the removal of the right to make decisions, and gives those rights to a guardian. There are initial and annual court requirements.

### Option 4 - Do Nothing

Sadly, many families and individuals chose this option for themselves for various reasons. The result of not planning is that in a crisis there is no time to explore options.

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*"If you don't plan, the court will plan for you."*

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