

"Your Estate Matters" Legal-ease

By Ronda M. Gabb, NP, JD, RFC



CONTINUING Tutorships

Special needs planning comprises about one-quarter of my law practice and is by far the most rewarding part of my job. Proper planning for special needs persons (both adults and children) can make a huge difference in the lives of the entire family, and there is very little margin for error. A Continuing Tutorship (sometimes called a Permanent Tutorship) is a legal proceeding for special needs children with intellectual disabilities who are age 15, 16, or 17. The legal standard states when the child "possesses less than two-thirds of the intellectual functioning of a person of the same age with average intellectual functioning..." The parents or children usually do not have to make a Court appearance. Based on the documentation given to the Court to prove the intellectual disability of the child (usually IEP evaluations/IQ tests, medical and school records), and with the concurrence of the Coroner (via a signed letter stating the above legal standard has been met to the Coroner's satisfaction), the Judge will then decide if the child would be competent to make decisions after attaining the age of majority (18 in Louisiana). If warranted, then a Judgment of Continuing Tutorship is granted.

The Continuing Tutor, usually one of the parents (sometimes both, if married), will be named by the Court to "continue" to be the adult child's "tutor" (in Louisiana, a guardian is called a "tutor") in the same capacity as when the child was a minor. For example, the tutor continues to make medical, legal and educational decisions for the child and remains legally responsible for their actions.

We often see families with special needs children who have just reached the age of majority and they are seeking our guidance as providers (doctors, teachers, social workers, etc.) for their "adult" special needs children are now asking if an "interdiction" for their child has been done. These providers can no longer speak to the parent about their "adult" child or the child's health care matters. Imagine the shock that a parent feels when their child's pediatrician has to tell them this. Unfortunately, because of HIPAA laws and changing times, this has now become the norm. In years gone by, even if your disabled child was now 35 years old, the doctors would still talk to the parents and take all health care instruction from them. The problem is that now the medical professionals face severe legal penalties if they continue to

do this. So the talk of "interdictions" is commonplace these days.

Once a special needs person with profound intellectual disabilities turns 18, there really is no option other than an interdiction. An "interdiction" is a Court proceeding where a special needs person is "sued" in order to deem him or her incompetent to manage his or her own affairs. The Court appoints a "legal guardian" (called their "Curator") to do so. A Sheriff must serve the special needs person with the lawsuit, an attorney is appointed for the special needs person and one for the parents too. As you can imagine, this is a pretty scary process for everyone but especially your special needs child. Not to mention, this Court proceeding is costly, time-consuming, and oftentimes humiliating.

Unlike an interdiction, in a Continuing Tutorship proceeding an attorney is not needed for the child, and no court documents are served by the Sheriff. It is often faster, far less expensive, and is definitely a less stressful alternative to an interdiction, but it must be done prior to age 18. If you think your teenaged child would be a candidate for a Continuing Tutorship, give our office a call to schedule an appointment.



See other articles and issues of interest!

Ronda M. Gabb and Ronald "Chip" W. Morrison Jr. are both Board Certified Estate Planning and Administration Specialists, certified by the Louisiana Board of Legal Specialization. Chip and Ronda combined have devoted over 40 years of practice solely to estate planning, and are Members of the American Academy of Estate Planning Attorneys, National Academy of Elder Law Attorneys, and the Governor's Elder Law Task Force. Ronda is also a Registered Financial Consultant. While Chip and Ronda both reside on the Northshore, Gabb Morrison LLP has offices in Covington and Metairie.