

THE RISELING REPORT

EXCLUSIVELY FOR THE ESTATE PLANNING PROFESSIONAL

GUARDIANSHIPS TRUMP DURABLE POWERS OF ATTORNEYS IN OKLAHOMA

Definitions

In Oklahoma,

- **Agent** - is the person(s) appointed by a Principal to manage the principal's assets pursuant to a DPOA.
- **Durable Power of Attorney ("DPOA")**- is a written instrument signed by a Principal, witnessed and notarized in accordance with the Oklahoma Uniform Durable Power of Attorney Act (58 O.S. §1071-1077) where the Principal appoints an Agent or Health Care Proxy, or both.
- **Guardian of the Person** - is a person appointed by a Court to manage an incapacitated person's health care. Think "Court Appointed Health Care Proxy"
- **Guardian of the Property** - is a person appointed by a Court to manage an incapacitated person's property. Think "Court Appointed Agent"
- **Principal** - is the individual who, *while not incapacitated*, executed a DPOA appointing an Agent or Health Care Proxy, or both.
- **Ward** - is a person determined by a Court to be incapacitated.

Established law

The Uniform Durable Power of Attorney Act allows a Principal to appoint an Agent or Health Care Proxy, or both outside of Court, to manage the Assets and Health Care Matters of the Principal.

Prior to November 1, 2010, a Guardian of the Property and an Agent could co-exist - - - meaning you could have both a Guardian of the Property (appointed by the Court) and an Agent under a DPOA (appointed by the Principal) managing your property.

New Law

On November 1, 2010, a new law became effective, which amended Oklahoma's DPOA Statute. The new law (58 O.S. §1074) provides that, if a Guardian of the Property is appointed by a Court of the Ward's domicile, any DPOA executed by the Ward terminates upon notice of that appointment. The new law, however, does not provide for how this notice is to be served upon the Agent, Ward or any financial institution holding the Ward's funds. Proper notice may entail receipt of a certified copy of Letters of Guardianship from the Guardian of the Property.

Until the legislature clarifies what type of notice is required to terminate a DPOA, third parties should be able to continue to rely on a properly executed DPOA, provided that they do not have any notice of the appointment of a Guardian of the Property. If any doubt arises about whether a DPOA is valid or has been terminated, you should consult with your own legal counsel.

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