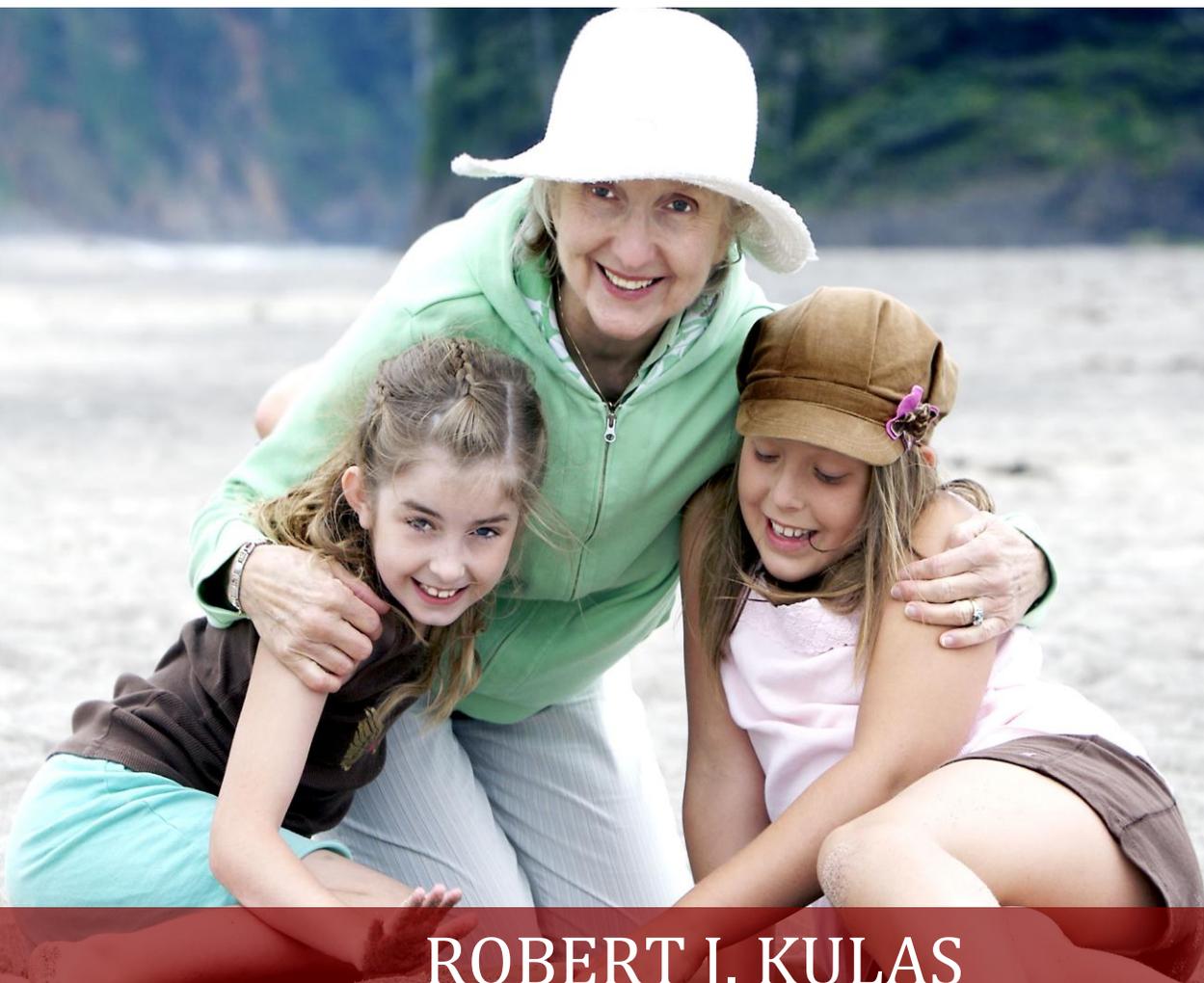


FLORIDA GUARDIANS – PART 2

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ROBERT J. KULAS
FLORIDA ESTATE AND MEDICAID PLANNING ATTORNEY



Last month, when we discuss guardians in Florida, we talked about some basic legal concepts that underlie every guardianship situation. This month we thought we would apply those basic concepts and extend them to some practical implications that people facing guardianship questions have to face.

More specifically, we want to talk about some options or tools you might be able to use to exert control over guardianship questions, and to help you better protect yourself, and your family.

CAPACITY AND YOUR CHOICES

In order to make any kind of decision about guardians, or representatives in general, you first have to be an adult, and you second have to be capable. Being



capable means you have the ability to make your own choices, and that those choices will be respected as legally enforceable by others. Not everyone has this ability, but most adults do.

However, if you ever lose the ability to make decisions, you also lose the ability to make choices about what happens to you and who your guardian or conservator might be. Once capacity is lost it isn't always regained, and if you did not create any guardianship

protections or other incapacity planning tools while you were capable, you leave it up to a court to make these decisions for you.

PROTECTING ADULTS

So, assuming you are a mentally capable adult, you have the ability to create a variety of tools that will control who gets to make choices for you in the event you lose capacity. These tools include commonly known tools such as powers of attorney and advance medical directives, but also lesser-known incapacity

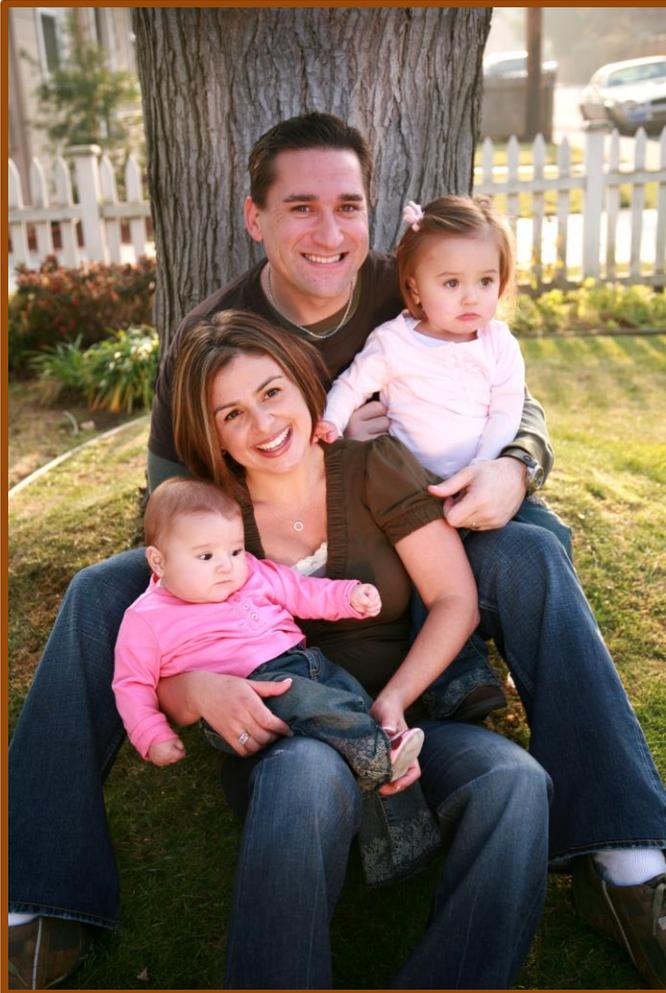


planning tools such as various kinds of trusts.

Regardless of the specific tool you decide to use, all of them will allow you to choose a representative, and name the kinds of choices that representative can make for you should

you lose capacity. For example, if you create a durable power of attorney for finances, your agent will be able to manage your property and financial affairs when you are no longer able to do so. Similarly, a health care directive will allow you to name a health care agent who will be able to communicate your healthcare wishes to your doctors, review medical records, and otherwise be your healthcare representative when you can no longer represent yourself.

PROTECTING CHILDREN



When it comes to protecting children, or protecting your choice about who the guardian of your child should be, the process is a little different. You, as the capable adult parent or guardian of a young child, have the ability to decide who you want to care for your child in the event you become incapacitated or die. But, unlike choices you make about your own guardians or representatives, your choice of guardian over a child cannot take effect until a court has approved it. However, unless you make a guardianship nomination that is clearly ineffective or otherwise

unsuitable for caring for your child, a court will typically approve of a parent's nomination when assigning guardianship responsibilities.

There are some practical concerns you will have to take into consideration when choosing a guardian for your child. First, your chosen guardian has to be capable of caring for a child, and must be willing to take on the responsibility. Second, if your child has another parent or guardian, the choice that person makes for replacement guardian should be identical to yours. If it isn't, a court will have to decide between the two nominated people. Finally, you need to make your decision known in a legally enforceable manner, such as by writing the names of

your chosen guardian, as well as potential alternates, in your last will and testament.

PROTECTING YOUR CHOICES

One of the most important, if not the most important, ideas you should take away from our discussions on guardians in Florida is that nothing you desire, say, or choose will have any effect on your ability to control guardianship situations unless you act. While you, as a capable adult, can make choices that will control what happens in the future, none of those choices mean anything until you make them known in legally enforceable tools. Should you fail to act, or fail to create



these specific tools, all of your education, decision-making, and choices will be effectively useless.

In other words, if you haven't already done so you need to contact us as soon as possible so we can discuss guardianship issues with you. Whether you already have an estate

plan or are just beginning the process of making one, understanding your options and acting in an appropriate manner is absolutely essential if you want to protect yourself and your loved ones. So, contact us today so we can schedule an appointment in which we can sit down with you and discuss your concerns.

About the Author



Robert J Kulas

Robert is the founder and principal shareholder in the Port St. Lucie and Vero Beach law offices of Robert J. Kulas, P.A. Because he believes that helping his clients manage their personal affairs wisely is one of the most worthwhile professional activities he can pursue, he has devoted his practice exclusively to estate planning.

Robert has invested considerable time and energy helping to educate others in estate planning and is widely regarded as a dynamic speaker who can make even the most complex estate planning issues easy to grasp. He provides free monthly seminars to inform the public on the importance of proper estate planning. Over the past twenty years, thousands of people have come to hear him speak. "Helping people understand their options for estate planning is very important to me," Robert said. "I like to think that people in our community can look to me for the kind of quality information they need to decide what is best for them and their families."

About Robert J. Kulas, P.A. Attorneys at Law

Robert J. Kulas, P.A. Attorneys at Law is a full service estate planning and wealth preservation law firm servicing Port St. Lucie and Vero Beach, Florida.

The firm is dedicated to providing you with quality estate planning resources, so you can become familiar with all of the existing options. When you visit or call the office, we want you to feel comfortable discussing such an important issue concerning both you and your family. We want to arm you with the information you need to make an informed decision about your family's future.



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