



YIGAL ARNON & CO.  
LAW FIRM

## Client Update – April 2017

### Amendment to The Law of Legal Capacity and Guardianship Ongoing Power of Attorney and Decision Making Support

On April 11, 2017, Amendment No. 18 to The Law of Legal Capacity and Guardianship, 5722-1962 (the "**Law**") came into effect. This is a wide ranging amendment regarding the institution of court-appointed guardianship. The main goal of the amendment is to decrease the use of guardianship to the extent possible, so that guardianship will be imposed as a last resort, after less restrictive measures are considered. The amendment reflects the growing understanding that guardianship is complex and has significant disadvantages: it is supervised by the Administrator General, a governmental agency; and it is not suitable for the management of businesses and properties that require ongoing decision making over an extended period or the making of medical decisions which are consistent with the subjective will of the person.

The amendment presents two primary alternatives to the institution of guardianship:

- The granting of an "**ongoing power of attorney**" which allows the grantor to plan the grantor's own future through the appointment of a proxy who will manage the grantor's affairs on behalf of the grantor in the event that the grantor is not competent to do so himself or herself. It also allows the grantor to provide preliminary guidelines as to how the proxy will do this.
- The appointment of a "**decision making supporter**" as a type of advisor to the person who appoints him or her, to assist the appointer with making and executing decisions, thereby enabling the appointer to live an independent life without necessarily resorting to a guardian.

The above mechanisms are not perfect, but they do provide a solution to some of the disadvantages that currently exist with guardianship. In a reality in which life expectancy is gradually rising, ongoing powers of attorney and a decision making supporters are integral parts of any family arrangement and proper economic planning among all families, whether or not they have significant assets.

**Only an attorney who has been specially trained by the Administrator General may handle an ongoing power of attorney and preliminary guidelines.** As of today, the person in our office to turn to for the purpose of drafting an ongoing power of attorney and preliminary guidelines is **Adv. Guy Sagiv** of the Family Wealth Management department, whose contact information is below.



## Ongoing Power of Attorney

The key provision of the Amendment is a legal mechanism allowing the granting of an ongoing power of attorney and the provision of preliminary guidelines. This allows a person to choose in advance how the person will manage his or her life going forward, in the event that the person is not fit to make his or her own decisions. With an ongoing power of attorney, the grantor decides who will take care of the grantor's affairs and how the proxy will deal with them, whether at a point when the grantor is not able to make his or her own decisions, or at a predetermined date indicated in the ongoing power of attorney.

An ongoing power of attorney can be very comprehensive, including personal, medical, and business purposes, or it can be narrowly drafted to deal with just a few items. Contrary to a regular power of attorney that expires when a person becomes incompetent, an ongoing power of attorney does not expire in this situation, as its purpose is to take effect exactly at this point.

The proxy is entitled to make any decision relating to the matters covered by the power of attorney, excluding those matters that the grantor restricted, and excluding actions that in essence, must be performed in a personal manner, for example: editing a will, participating in elections, etc.

The grantor is entitled to include in the ongoing power of attorney preliminary guidelines for the proxy as to how the proxy should act in a particular matter or in all of the grantor's affairs. The proxy will be authorized to act contrary to the preliminary instructions if the proxy believes that their performance is impossible or if the grantor is able to understand the matter and wants to deviate from his or her preliminary instructions. In addition, the grantor is authorized to provide in the power of attorney, that his or her will, as expressed in the power of attorney, will prevail over his or her will as expressed at the subsequent time of the execution of the action. For example, in the case of psychiatric hospitalization, the grantor is authorized to determine how he would act in advance of the event's materialization, and even if he objects to the hospitalization at the relevant moment, his original will still must be fulfilled, as was determined in the preliminary guidelines (subject to the restrictions and conditions prescribed by law).

## Decision Making Support

Appointment of a "decision making supporter" enables a person who has difficulty making decisions (but is still competent) to be assisted by support and guidance given to him by another person and through this support to make decisions and execute them, which may prevent the appointment of a guardian.

Unlike a guardian or an ongoing power of attorney, a decision supporter is authorized to perform actions in the name of the person and to assist him, but he is not entitled to make decisions in his place.

This measure will take effect within a year, subject to and after the promulgation of rules and regulations that will produce material content for the principles set forth in the law.



## Guardianship

The amendment to the law reflects a change in the legislator's approach to everything relating to the institution of guardianship. It shows a change beyond the approach that focuses on the desire to protect a helpless person from exploitation and harm, to an approach that focuses on the need to preserve a person's right to dignity, property, and freedom of choice.

The amendment replaces the term "protected person" by "whoever has been appointed a guardian"; provisions require the court, in the process of appointment, to hear the person who is appointed a guardian, and not to rely solely on a medical opinion; the court appointing a guardian to an adult shall reduce, to the extent possible, the matters within the responsibility of the guardian and the period of his appointment, while establishing conditions and restrictions for the guardian's actions. Additionally, the court must justify the considerations that favored the appointment of a guardian to a person; an obligation was imposed on the guardian to include the person that has had the guardian appointed in the decision making; the right of the person to predetermine the identity of the guardian that will be appointed was recognized, and also to determine the preliminary guidelines for the guardian in relation to decisions affecting their property and body, as opposed to the situation which existed prior to the amendment.

## Contact

For further information please contact Adv. Amnon Lorch at [amnon@arnon.co.il](mailto:amnon@arnon.co.il) and Adv. Guy Sagiv at [guys@arnon.co.il](mailto:guys@arnon.co.il).

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Family Wealth Management  
Practice Group

Yigal Arnon & Co.

[www.arnon.co.il](http://www.arnon.co.il)

(+972) 2 623 9240