

Guardianship for the Elderly under China Law

Description

Part of the estate planning services always concerns the caring of the elderly people. After all, we are all getting old each day and we all probably lose capacity to act on our own some day in the future.

Guardianship is the legal system designed for people of no or limited capacity due to young age or loss of mental capability, so that their interests are being taken care of and protected.

In this post, we discuss the guardianship for elderly people only, since the guardianship and custody for children are actually more complicated under Chinese laws that will take a separate post for discourse.

Basically, rules and framework regarding guardianship for the elderly in China are provided in the relatively new General Provisions of Civil Code of China, effective as of October 1, 2017.

I. General Framework of Guardianship

The major breakthrough brought by the new General Provisions of Civil Code is the introduction of the so called “guardian appointment” mechanism where a person while being of full capacity is allowed to appoint his own guardian among people that are not restricted to his or her family members.

In the absence of a written appointment of guardian, a person’s guardian is determined in such order as prescribed in the General Provisions of Civil Code. Article 28 goes:

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Article 28 The following persons shall serve as the guardian for the adults of no or limited capacity in the prescribed order below:

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I. Spouse;

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II. Parents, children;

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III. Other relatives

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IV. other persons or organizations willing to serve as guardian, subject to the consent of

May 2019
Author
admin

Shanghai Landing Law Offices