



**SOONER OR LATER:
POWERS OF ATTORNEY AND GUARDIANSHIP
AS TOOLS FOR HANDLING
CHANGING SCENARIOS IN THE LIFESPAN**

Lindsey T. Burke, AM, JD
MICAHA LEGAL

SOME PRELIMINARY DEFINITIONS

Powers of Attorney (KRS 457, updated July 2020)

Principal: Person who grants the power to an agent to act on her/his behalf

Attorney-In-Fact: the agent charged with handling the Principal's affairs

Durable PoA: One that takes effect at time of Principal's signature and lasts through her/his disability

Springing PoA: One that takes effect when two doctors determine the Principal is incapacitated/disabled

Guardianship (KRS 387)

Ward: Person over whom the Court has granted power; Ward may lose rights to act on her/his own behalf

Guardian: the agent charged by the Court with handling all of the Ward's affairs

Limited Guardian: the agent only has certain powers, ie medical decision powers

Conservator: the agent only has financially-related powers over the Ward

POWERS OF ATTORNEY AND GUARDIANSHIP: HOW ARE THEY SIMILAR?

POWERS OF ATTORNEY CAN:

Allow the Attorney-in-Fact to Handle Business or Financial Transactions for the Principal, including the sale of property

Allow the Attorney-in-Fact to Handle Tax Payments and Disputes for the Principal

Allow the Attorney-in-Fact to Consent to Medical Treatment and the Withholding Thereof

Allow the Attorney-In-Fact to Sue on Behalf of or Handle Suit against the Principal

Allow the Attorney-in-Fact to make gifts of Principal's Assets

GUARDIANSHIP CAN*:

Allow the Guardian/Conservator to Handle Business or Financial Transactions for the Ward, including the sale of property*

Allow the Guardian/Conservator to Handle Tax Payments and Disputes for the Principal

Allow the Guardian/Limited Guardian to Consent to Medical Treatment and the Withholding Thereof

Allow the Guardian/Conservator to Sue on Behalf of or Handle Suit against the Ward

Allow the Guardian/Conservator to make gifts of the Principal's Assets*

*Subject to District Probate Court's Approval

POWERS OF ATTORNEY AND GUARDIANSHIP : HOW DO THEY DIFFER?

POWERS OF ATTORNEY:

Are granted by the person who wants help;

Are able to be easily revoked;

Do not require a Court's approval;

Creates only limited oversight of Agent;

Do not require court fees, bonds, or bond fees.

GUARDIANSHIP:

Are granted by the Courts on behalf of someone who needs help (is legally disabled, by testimony of three interdisciplinary professionals), whether or not they themselves agree to it or can understand it;

Are more challenging to revoke or undo;

Require regular involvement with the Court and more substantial oversight of Agent;

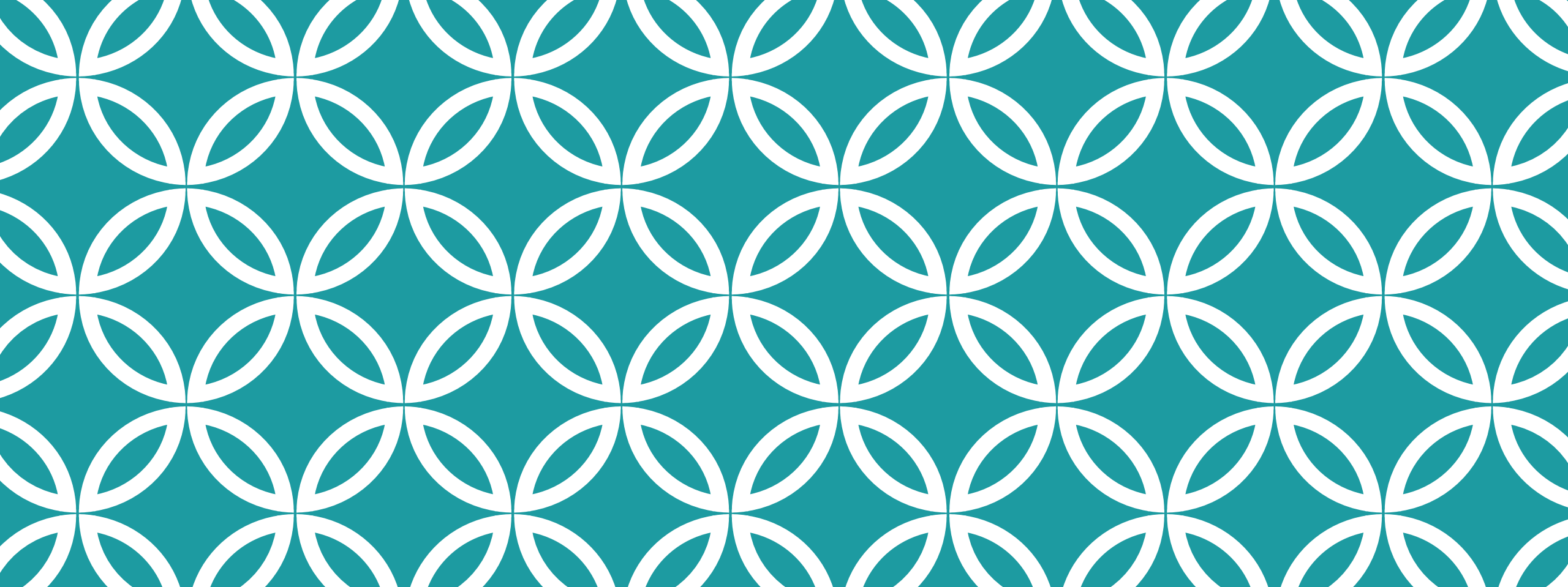
Require payment of court filing fees, GAL fees (if Ward is not indigent), bonds, and bond fees.

FACTORS INFLUENCING DECISIONS ABOUT POWERS OF ATTORNEY + GUARDIANSHIP

Timing and Capacity/Disability of Principal

Trustworthiness of possible Agents

Proximity of possible Agents



QUESTIONS?

Micah Legal
219 E. Short Street
Lexington, KY 40507
859-568-3129