



Mental Competency

- A. Standard for a **Power of Attorney or Advance Health Care Directive**
- a. Adult is presumed to have capacity to execute POA (§75-9-102) or AHCD (§75-2a-104)
 - b. Adult understands they have certain rights over their property and;
 - c. They knowingly give those (limited or general) rights to another.
- B. Standard (for **Conservatorship** - §75-5-401(2) U.C.A. - Court must determine a person:
- a. is unable to manage property and affairs effectively due to:
 - i. mental illness
 - ii. mental deficiency
 - iii. physical illness or disability
 - iv. chronic use of drugs or intoxication
 - v. confinement, detention or disappearance **and**;
 - b. has property which will be wasted or lost unless proper management is provided **or**
 - i. funds are needed for the support, care, and welfare of the person **and**;
 - c. protection is necessary or desirable to obtain and/or provide funds.
- C. Standard for **Guardianship** - §75-5-304(1) U.C.A. - **Court must find** the person is:
- a. Incapacitated ****** (§75-1-201)(22)) and;
 - b. Appointment is necessary as a means of providing continuing care and supervision of the incapacitated person. (§75-1-201(22)).
 - i. ****** "incapacitated" is not a medical determination it requires a judicial finding
 - ii. measured by functional limitations
 1. an adult's ability to do the following is impaired to the extent that they cannot, even with appropriate assistance, (i.e. home care, case manager, medication management) meet the essential requirements for –
 - a. physical health, safety, or self-care;
 - b. consistently receive and evaluate information;
 - c. make and communicate decisions;
 - d. consistently provide for necessities
 - i. food
 - ii. shelter
 - iii. clothing
 - iv. healthcare or safety