

Planning with Advanced Directives: How to Avoid Mental Hygiene Law Article 81



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What is a Mental Hygiene Law Article 81 Guardianship and how can you help your clients or loved ones avoid needing to be subject to one in the future? This article will help you as a practitioner or concerned family member point out best practices and highlight why advance directives are equally as important to any estate plan as any other document such as a last will and testament or trust.

An Article 81 Guardianship is a judicial proceeding, typically filed in New York State Supreme or County Court, where the court is asked to determine whether an individual needs a guardian and who should be that guardian. Typically, the parties who commence Article 81 Guardianship proceedings are either close family or friends, a government agency such as Adult Protective Service, or a medical facility. The relief requested can normally be avoided by advanced directives: power of attorney documents for legal and financial decisions; and health care proxies for medical decisions.

As estate planning practitioners, it is our job to not only educate our clients of the importance of having advanced

directives but make sure the document accomplishes their estate planning goals currently and in the future. This will avoid a court making these decisions for them.

The shortlist below includes several considerations on advance directives that can assist in avoiding being the subject of an Article 81 Guardianship in the future:

- 1. Keeping original versions of documents secure
- 2. Ensuring the document terms are expansive but narrowly tailored to provide for future planning within the client's desired estate plan, should they lack capacity in the future
- 3. Ensuring the documents are properly executed
- 4. Choosing individual(s) who will best be appropriate for the role

Please contact Lippes Mathias' [trusts and estates practice team](#) at 716.853.5100 to ask any questions regarding the above or to schedule a time to get your advanced directives in place.

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