



Legal Authority

Understanding Legal Authority

We are often asked about the need for and value of guardianship and other forms of legal authority, especially as they relate to “protecting the person.” The answer to what is appropriate depends upon the person. *It is critical to remember that guardianship and similar measures are simply legal authority on a piece of paper. They cannot prevent someone from doing something or undo something that has been done.*

Dignity of Risk and Supported Decision Making

In recent years, a movement has grown to talk about the “dignity of risk” we all have in life. The concept is simply that all people need help making some decisions and we all learn by making bad decisions. For example, many people rely on tax accountants or doctors to explain life decisions in simple terms they can understand. And, many of us have learned the most from our biggest mistakes. People with disabilities should have the same opportunities to make decisions and learn through natural consequences and a support team about how to proceed the next time. We also all express preferences in some ways. Using those preferences, along with a support from a person-centered team, to make educated decisions is called “supported decision making.” A team of people (one person or more) who care about the person with a disability are asked by the person to work together to help them understand and make decisions. It does not involve taking away legal rights; instead it builds a foundation for growing decision making ability and independence over time, centered around working with the person on expressing their preferences. It has no cost and is probably what you are already doing. You can learn more about Supported Decision Making and view webinars on the topic at <http://supporteddecisionmaking.org/>

Guardianship and Conservatorship

Guardianship or conservatorship is a legal, court-ordered relationship in which one individual is appointed by the court to become the substitute decision maker for another. This is the most restrictive form of limiting civil rights. Guardians handle contract and medical decisions. Conservators manage financial affairs. You can have both or either restrictions in place and the same person can serve in both roles. If you do explore guardianship or other legal authority, remember that no matter what you legally sign and agree to do, the person with a disability ultimately consents by participating or not.

Alternatives to Full Guardianship

Limited Guardian of the Person: The courts can limit or specify the authority and responsibilities of the guardian to specific areas of the individual’s life; such as medical and health care decisions. The courts can maintain specific rights for an individual through a written order like the rights involving voting, marriage, and driving.

Medical Power of Attorney: An agreement that grants an individual the authority to act on someone else's behalf for health-related matters. This allows the individual to make decisions about things like medical treatments, prescriptions, and nursing home arrangements.

Durable Power of Attorney: A durable power of attorney will remain in effect for the person designated as an individual with the authority to act on someone’s behalf even if the individual later becomes mentally incapacitated.

Special Education Power of Attorney: This document allows an appointed decision maker to participate in/consent to IEPs and other school documents. It is only valid in public primary and secondary schools, not universities/colleges. You can find a template here: http://www.doe.virginia.gov/special_ed/regulations/state/transfer_rights_students_disabilities.pdf

Temporary Guardianship: For specific reasons, a person can be appointed as temporary guardian on a time-limited basis. For example: to assist in moving an individual to a residential placement; to make medical decisions, etc.



Alternatives to Conservatorship

Limited Conservatorship: The courts can limit the authority of the conservator to specific areas of the individual's life. For example, the sale of a property, establishing a trust, or handling estate matters. Limited conservatorship can also be time-limited.

Special Needs Trust: An arrangement with a trustee (another person, an attorney, an organization or a financial institution) to manage property or assets for the benefit of an individual.

Financial Power of Attorney: An individual appoints a person to serve as their agent to make decisions on their behalf.

Representative Payee: A person appointed by the Social Security Administration to manage an individual's governmental benefits to pay living expenses and daily needs.

Temporary Conservatorship: For specific reasons, a person can be appointed as a temporary conservator on a time-limited basis. For example: to assist in moving the individual's assets to another agent; to manage assets of an estate; make financial decisions regarding buying or selling property such as a home or car; to handle inheritance, etc.

Obtaining Legal Authority

- Supported decision making doesn't involve any cost or court relationship. It is a matter of working as a team to present information to the person with a disability in a way they understand it and using guiding principles important to the person to help them.
- Guardianship and conservatorship (full, limited, and temporary) all involve court processes. Generally, the person seeking guardianship hires an attorney who meets with the individual and individual who may be in need of decision making supports. The attorney will ask for evaluations showing a diminished ability to make decisions and relevant diagnoses. Then the attorney will work with the courts to have a Guardian ad Litem (GAL) appointed. The GAL is an independent attorney who should meet with the individual and proposed guardian to ensure the proposed arrangement is appropriate and ensure the individual understands what is going on, to the best of their ability. If all goes well, the parties appear briefly before a judge in civil court for a legal appointment to take place. It is very important to work with an attorney experienced in this field. The process usually takes a handful of months and costs about \$3,000-\$4,000. You can request payment plans or reduced fees, but there is no guarantee of either.
- Powers of Attorney can be drafted by attorneys or you can use an online template. They are notarized, which can often be done by your local bank or any other notary. The cost is minimal or free. For links to free POAs, visit <https://powerofattorney.com/virginia/>
- Representative Payees are put in place at Social Security. There is no legal process to do this. It is quick and free.
- Special Needs Trusts are set up with a non-profit (like [The Arc of Northern Virginia](#)), at attorney, or a bank. There is usually a fee to establish the trust. It is \$1,050 at The Arc of Northern Virginia. There is then a fee to manage the trust, usually a small percentage of the value of the trust.
- You can visit <https://www.youtube.com/user/VideosatTheArcofNoVA> to see recorded webinars that covers this topic in great detail

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