



Legal Rights and Decision-Making



**Office of Public and Professional Guardians
Department of Elder Affairs, State of Florida**

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Decision-Making Types



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Types of Decision-Making Assistance

Supported Decision-Making

APD Client Advocate

Power of Attorney (POA) / Durable Power of Attorney (DPOA)

Living Will

Health Care Surrogate

Types of Decision-Making Assistance

Representative Payee

Medical Proxy

Guardian Advocacy under Ch. 393, Fla. Stat.

Guardianship

Supported Decision-Making

The most common type of decision-making for all adults, supported-decision making refers to the informal process of building and using a team of people to help the individual make decisions. This may be a spouse, family member, support provider, community member, etc. As of late, many people have chosen to produce a formalized Supported Decision-Making Agreement to help memorialize the support plan discussed. Some forms of financial supported decision-making agreements utilize trusts or banking services.



APD Client Advocate

A client advocate is a person designated to assist and clarify any support plan services chosen by the APD client. Client advocates must complete an APD designation form, and are not allowed access to HIPAA-protected information, or to make decisions



Power of Attorney (POA) / Durable Power of Attorney (DPOA)

- A Power of Attorney is a legal document that authorizes one person to act on behalf of another. A Power of Attorney can be rescinded by the person at any time. A Durable Power of Attorney can also be rescinded at any time; however, in the event that a person becomes incapacitated, the Durable Power of Attorney remains in place. POAs and DPOAs take effect as soon as the document is executed. POAs and DPOAs can be used for property, medical, or any other wishes of the person noted in the document.



Living Will

- A living will is an oral or written statement signed in front of two witnesses that denotes the person's wishes regarding life-prolonging procedures and expresses any spiritual, personal, or emotional wishes. A living will becomes effective when a person loses the ability to express a decision in the event of 1) end-stage condition of a disease; 2) terminal illness; or 3) persistent vegetative state.



Health Care Surrogate

A health care surrogate is a document which names an individual that a person chooses to make health care decisions in the event that the person becomes incapacitated. The surrogate form must be signed in front of two witnesses in advance, while the person still has capacity. A health care surrogate can make decisions about health care, public benefits, end-of-life decisions, medical records access, medical treatments, admission and discharge from health care facilities, organ donation, and APD services; however, a health care surrogate form does not go into effect until a physician determines that the person is incapacitated, unless the health care surrogate form states otherwise.



Representative Payee

A representative or “rep” payee is an individual appointed by the Social Security Administration (SSA) to manage federal benefits on behalf of another person. Rep payees are responsible for ensuring the proper management and disbursement of social security benefits are carried out on behalf of an individual.



Medical Proxy

A medical proxy is a person authorized to make medical decision when a doctor has determined that the person does not have the capacity (or has a developmental disability) and no other advance directive is in place. Florida law lists the order of priority for whom may serve as the medical proxy, and the proxy is given the same rights to execute decisions on behalf of a person as the health care surrogate, listed above. *Sec. 765.401, Fla. Stat.*



Guardian Advocate

Guardian advocates under Ch. 393, Fla. Stat., are persons appointed to make decisions on behalf of a person with a developmental disability, as determined by the court. A guardian advocate may make decisions on health needs, finances, property, social arrangements, residence, benefits, and APD services, *only if* the court has delegated that right to guardian advocate. The guardian advocate statute does not label a person incapacitated, and as such, the person must be able to exercise at least one right.



Guardianship

The most restrictive form of decision-making assistance, guardianship, as defined in Ch. 744, Fla. Stat., requires that an examining committee of three professionals, one of whom must be a physician, evaluates a person to determine their level of capacity. If a person is determined to be incapacitated, a lengthy and often expensive court process requires that a guardian and the incapacitated person, called a “ward,” participate in court proceedings to determine what decision-making rights, if any, the person can exercise without the assistance of a guardian. The guardian, who is appointed by the court, is required to retain an attorney for the duration of the guardianship and must report to the court annually, be subject to legal fees, and meet all the requirements for a guardian set forth in statute.



Types of Guardianship and Guardians

Types of Guardianship

- Plenary (full): All delegable rights have been removed
- Limited (Partial): Some rights have been removed
- Emergency Temporary Guardian (ETG): Time-limited
- Guardian Advocacy Under Chapter 393, F.S. and 394, F.S.

Types of Guardians

- Non-Professional (Family) Guardians
- Professional Guardians
- Public Guardians
- Guardian Advocates under Chapter 393, F.S. and 394 F.S.

Rights a Court Can Remove Under a Guardianship or Guardian Advocacy

Delegable Rights	Non-Delegable
Right to Apply for a Job	Right to Marry
Right to Apply for Government Benefits	Right to Vote
Right to Decide Living Arrangements	Right to Travel
Right to Make Medical Decisions	Right to Apply for a Driver's License
Right to Manage Money or Property	
Right to Control Social Life	
Right to Contract	
Right to File Lawsuits	

Quick Review chart

	Must be executed by a person with capacity	Delegates rights to another to make decisions	Is overseen by the court	May make medical or life care decisions	May make decisions on benefits and services	May make decisions on property and money
Supported Decision-Making				✓	✓	✓
APD Client Advocate						
Power of Attorney/ Durable Power of Attorney	✓	✓		✓	✓	✓
Living Will	✓	✓		✓		
Health Care Surrogate	✓	✓		✓	✓	
Representative Payee		✓			✓	
Medical Proxy		✓		✓	✓	
Guardian Advocacy		✓	✓	✓	✓	✓
Guardian of the Property		✓	✓		✓	✓
Guardian of the Person		✓	✓	✓	✓	

Quick Review chart

Civil Rights that can be removed by a Court	Rights that CAN be delegated to a guardian or guardian advocate	Rights that CANNOT be delegated to a guardian or guardian advocate	Guardian or Guardian Advocate of the Person	Guardian or Guardian Advocate of the Property	Plenary Guardian
Right to apply for government benefits	✓			✓	✓
Right to manage money and property	✓			✓	✓
Right to determine residence	✓		✓		✓
Right to consent to medical and mental health treatments	✓		✓		✓
Right to make decisions about social environment	✓		✓		✓
Right to contract	✓			✓	✓
Right to sue and defend lawsuits	✓			✓	✓
Right to marry		✓	✓		
Right to vote		✓	✓		
Right to apply for a driver's license		✓		✓	
Right to travel		✓	✓		
Right to seek and retain employment		✓		✓	



What does a WSC need to know?



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Documentation – Common Problems

1. A person says they are someone's legal representative
2. Documentation does not meet the requirements:
 1. Dual signatures for witnesses
 2. Not notarized or authorized properly
 3. Out-of-date documentation
 4. Not in compliance with Florida laws
3. The person executes rights not delegated to them
4. They have multiple decision-makers



Documentation – What should you do?

1. Collect ALL documentation for your files on legal representatives.
2. Ask annually for any changes or updates.
3. Read the documentation carefully to see what rights are delegated, if any, to the legal representative.
4. Check the dates on the documentation.
5. When in doubt, send to APD for review of the document.



Reporting

1. Adult Protective Services Hotline for abuse/neglect/exploitation of a vulnerable adult
2. Law enforcement
3. Social Security Administration for Rep Payees
4. APD for APD-licensed facilities or providers
5. Agency for Health Care Administration for all AHCA-licensed facilities
6. State Ombudsman for long term care facilities – Nursing Homes and Assisted Living Facilities
7. Office of Public and Professional Guardians
8. Veterans Affairs (VA) for VA benefits or fiduciaries
9. Department of Health for state-licensed medical providers



Scenarios



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Scenario 1

Jane is a 42-year old woman with intellectual disability on the Waiver. Jane is not verbally communicative, and resides with her parents in her family home. Jane does not have the capacity to consent to services, or participate fully in her support plan meetings; however, Jane's parents are serving as her representative payee for SSA benefits, she attends an ADT Monday – Friday, and Jane's parents have a Medical Proxy for her health care needs. Since her parents are aging, they want to involve Jane's brother, Thomas, in her support plan. A DPOA is executed by Jane's parents to do so.



Scenario 2

Nathaniel is a 26 year-old, non-verbal, man with cerebral palsy and intellectual disability residing in an APD-licensed behavioral group home. Nathaniel's mother, Maria is his family (non-professional) guardian who makes decisions on all his delegable rights (plenary). Maria, has noticed that items are going missing from Nathaniel's room and suspects that one of the group home staff is stealing. Maria tells the Support Coordinator that she intends to set up a nanny-cam to monitor what's happening inside Nathaniel's room when no one is watching.





Resources



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Resources

1. Florida Developmental Disabilities Council's Resources at www.fddc.org:
 1. "Lighting the Way to Guardianship and Other Decision-Making Alternatives" Manual
 2. "Lighting the Way to Guardianship and Other Decision-Making Alternatives" Online Module
 3. LTW Educators Series:
 1. Educator Facts Sheets
 2. Student Facts Sheets
 3. Parent Facts Sheets
 4. Building Abilities Series:
 1. A Workbook for Persons with Disabilities
 2. A Guide for Supports
 3. A Legal Manual



Questions?



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