



Welcome

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What are you afraid of?

- They will be exploited or taken advantage of in some way.
- They can't manage their meds or they can't make medical decisions.
- The doctors will no longer talk to me (mom/dad) or allow me to continue to make medical decisions for my child/loved one.
- There is no one else to do this.
- Behaviors and I can no longer advocate for them or protect them.
- I can no longer advocate for them at school.

How can we allay those fears?

Fears	Possible Solutions
<ul style="list-style-type: none">• Credit Cards, etc.• Can't talk to doctor, etc.• No one to act on their behalf• Behaviors and I can't protect them• Can't talk to educators, etc.	<ul style="list-style-type: none">• Freeze credit if allowed (www.consumer.ftc.gov)• Release of Information/HIPAA Release• Don't forget your own estate plan• Registry through OCSD/identifying bracelet/seat belt/shoe tag• Authorization

What are my options?

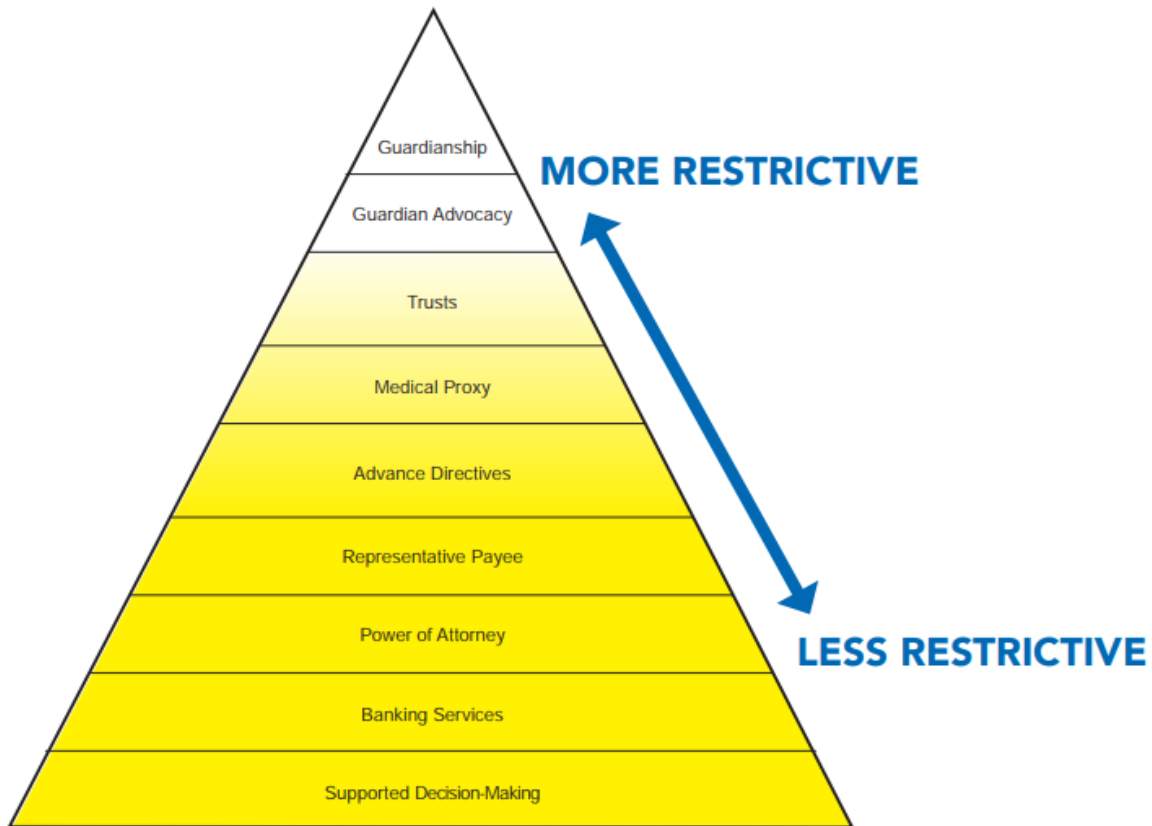
Supported Decision Making

Substituted Decision Making:

- a. Financial Power of Attorney
- b. Health Care Surrogate

Guardian Advocacy

Guardianship



Florida Developmental Disabilities Council, Inc.

Supported Decision Making (SDM)

A tool that allows people with disabilities to retain their decision making capacity by choosing supporters to help them make choices. A person using SDM selects trusted advisors, such as friends, family members, or professionals, to serve as supporters. (from ACLU website)

The supporters agree to help the person with a disability understand, consider, and communicate decisions, giving the person with a disability the tools to make informed decisions. (from ACLU website)

Where can I learn more?

ACLU Disability Rights Program, www.aclu.org/disability

National Resource Center for Supported Decision Making,
www.supporteddecisionmaking.org

Quality Trust for Individuals with Disabilities, www.dcqualitytrust.org

Florida Developmental Disabilities Council, Inc. www.fddc.org

Florida's Working Interdisciplinary Network of Guardian Stakeholders-
<https://flwings.flcourts.org/>

Turning 18-Turning18.org

Durable Power of Attorney

A power of attorney is a legal document delegating authority from one person to another. In the document, the maker of the power of attorney (the “principal”) grants another the right to act on the principal’s behalf as their agent. What authority is granted depends on the specific language of the power of attorney. A person giving a power of attorney may make it very broad or very limited.

What are some uses of a power of attorney?

A power of attorney may be used to give another the right to sell a car, home or other property. It might be used to allow another to access bank accounts, sign contracts, make health care decisions, handle financial transactions or sign legal documents for the principal. A power of attorney may give another the right to do almost any legal act that the maker of the power of attorney could do, including the ability to create trusts and make gifts.

Must a person be competent to sign a power of attorney?

Yes. The principal must understand the power of attorney document at the time it is signed. The principal must understand the effect of a power of attorney, to whom the power of attorney is being given, and what property may be affected by the power of attorney.

(as explained in the Consumer Pamphlet, Florida Power of Attorney)

Health Care Surrogate/Patient Advocate

A Health Care Surrogate document is a legal document that names another person as the principal’s representative, to make medical decisions for the principal if they are unable to make such decisions for themselves. This can include instructions about any treatment the principal wants or does not want, similar to a living will. An alternate surrogate can also be designated.

Every competent adult has the right to make decisions concerning his or her own health, including the right to choose or refuse medical treatment.

<http://www.floridahealthfinder.gov/reports-guides/advance-directives.aspx>

I have to do what? Why?

Prior to the age of 18, everyone is presumed incompetent.

Over the age of 18, everyone is presumed competent, unless the court rules otherwise.

How do I decide what is right for my loved one?

Turning18.org

Guardianship

- Incapacity for any reason, i.e., Alzheimer's, auto accident, minor child - Chapter 744
 - Types: Person (medical, social, etc.) and/or Property (assets, government benefits)
 - Any or all rights can be taken away from the Protected Person/Ward.
 - Both the Guardian and the Protected Person/Ward must be represented by (separate) attorneys.
 - Requires the court's determination of incapacity of the Protected Person/Ward.
1. Some triggering events that may require a guardianship to be established include: dementia/Alzheimer's disease, mental health issues, accident or injury, minority, etc.
 2. Rights that can be taken away in a Guardianship:
 - a) to personally apply for government benefits;
 - b) to contract;
 - c) to sue and defend lawsuits;
 - d) to manage property or to make any gift or disposition of property;
 - e) to determine [his/her] residency;

- f) to consent to medical and mental health treatment;
- g) to make decisions about [his/her] social environment or other social aspects of life;
- h) to marry;
- i) to vote;
- j) to travel;
- k) to have a driver's license;
- l) to seek or retain employment.

3. Examining committee: 2 doctors and a trained layperson

4. Attorney ad Litem/Elisor appointed for Alleged Incapacitated Person

5. Difference in costs between Guardianship/Guardian Advocacy; the cost of establishment, as well as the annual expenses

6. Time difference of 3-5 months (for establishment)

Guardian Advocacy

- Developmental Disability - Florida statutes, Chapter 393
- Only certain rights taken away, not all.
- Person and/or Property
- If including property, then Petitioner/Guardian must have an attorney; if seeking Guardian Advocate of the person only, then the Petitioner/Guardian does not have to be represented by an attorney.
- Requires a letter from treating physician that Protected Person/Ward has a Developmental Disability that manifested prior to the age of eighteen (18) and that the individual is unable to handle his/her own personal matters related to finances and physical well-being and that he/she does need the assistance of a guardian advocate to meet the essential requirements for his/her physical health and/or safety.
- Intellectual Disability manifested prior to the age of eighteen (18)
 - List set forth in Chapter 393 of the Florida Statutes:
 - ASD

- Cerebral Palsy
- Down syndrome
- Phelan-McDermid syndrome
- Prader-Willi syndrome
- Spina Bifida
- Rights that can be taken away in a Guardian Advocacy of the person, without an attorney for the petitioners (usually parents or other members of immediate family):
 - to determine residence;
 - to consent to medical, dental, and surgical care and treatment;
 - to make decisions about the social environment or other social aspects of the person with a developmental disability's life;
 - to act as representative payee of government benefits and/or to seek such benefits.

Can we change our mind?

- Absolutely!
- Guardian advocacy may be right for your family right now, but you may still need to transition to guardianship in the future.
- What if my loved one continues to grow and mature and no longer needs help (or as much help)?
- Example: The attorney files a Suggestion of Capacity, and the court appoints a doctor to examine the Ward. The court-appointed doctor then makes recommendations to the court about which rights can be restored to the Ward.
- What if I can't or don't want to be Guardian/Advocate any more?

Next Steps

- Determine what is right for your family-www.turning18.org
- If Guardianship is best, then select an attorney to assist you
- If Guardian Advocacy is best for your family, consider the following:
- Can I work through the process on my own using the materials available including the step by step guide?
- Do I need an attorney to review my paperwork before submitting it to the clerk of the courts?

- Do I need an attorney to prepare my paperwork and guide me through the process but I can do the rest on my own?
- Do I need an attorney to handle the entire process for my family?
- If the use of Legal Instruments is best then determine the need for the following:
 - Power of Attorney, Medical Proxy, Trusts, etc.
 - Use a reputable attorney to prepare your documents
 - Florida Bar Referral Service
- If Supportive Decision Making is the right choice for your family, then do your research and be aware of how best to support your family member.
- “Lighting the Way to Guardianship and Other Decision-Making Alternatives A Manual for Individuals and Families” manual available online www.fddc.org

Legal Options Key Terms

Advance Directive: An advance directive is a document that expresses a person's desires concerning any aspect of his or her health care, or a written form directing an anatomical donation after death is considered as an advance or preneed directive. As the term indicates, this option is written in advance of the need and the person must be competent at the time he/she signs the directive. Some people write them when they are diagnosed with a life-threatening illness.

Examples of these directives include:

Power of Attorney: Power of Attorney is a written document naming another person as your representative to make decisions for you if you are unable to make them yourself. The areas in which they may make decisions for you will be specified in the document and usually relate to financial and/or health related issues.

Living will: A living will is a written document that directs the providing, withholding, or withdrawal of life-prolonging medical procedures if you are unable to make your own decisions and you have a terminal illness or are in a persistent vegetative state.

Health care surrogate: A health care surrogate is a written document naming another person as your representative to make medical decisions for you if you are unable to make them yourself. You can include instructions about any treatment you want or do not want, similar to a living will. You can also designate an alternate surrogate. If you designate a health care surrogate and alternate be sure to ask them if they agree to take this responsibility, discuss how you would like matters handled, and give them a copy of the document. It is important that any advance directive be witnessed by at least two individuals. Laws on health care advance directives are in Chapter 765 of the Florida Statutes (Available at your local library or at www.leg.state.fl.us. The Chapter includes sample documents of a living will, designation of a health care surrogate, and donor of anatomical gifts.)

Client Advocate: Section 393.0651, F. S. allows a person receiving services through the Department of Children and Families, Developmental Disabilities Program to appoint (with the approval of the Support Planning Committee) a family member or friend to become officially recognized as a client advocate. The client advocate may assume a variety of roles depending on the needs and wishes of the individual. For example, a client advocate can assist you with understanding information but may not make decisions for you.

Co-signer on Bank Account: This is an easy way to have some degree of control over decision-making in expenditures by requiring more than one signature on the check. Provision should be made for the money in the account to be accessed if any of the signatories were to die.

Representative Payee: An individual may be given authority by the Social Security Administration to receive and manage federal benefits for another person found unable to manage his own money. The representative payee receives the benefit payment and is required to account for its expenditure on behalf of the person for whom it is intended.

Guardian Advocate: Section 393.12 F.S. defines this type of guardianship which does not require an adjudication of incapacity of the individual. It transfers the authority to do some, but not all of the tasks necessary to care for the individual's person, property or estate. Many consider this to be the least restrictive, less costly and much preferred type of guardianship for persons with developmental disabilities. Like guardianship, this option requires an annual reporting to the court.

Guardianship: Section 744. F. S. covers all persons who might need decision making assistance for any reason (e.g. dementia, head trauma, mental illness or any disability). This type of guardianship requires two actions by the court: an adjudication of incapacity of the individual, and a transfer of authority to do some or all of the person's rights. The types of guardianship found in Section 744, F. S. are:

Voluntary Guardianship - an order by a court appointing a guardian or co-guardian of the property of a person who, though otherwise mentally competent, is unable to manage property. The petition is made voluntarily by the individual and can be terminated by the individual. (Section 744.341, F.S.)

Emergency Temporary Guardianship - an order by a court appointing a temporary guardian where there appears to be imminent danger to the person. This is only done after a petition for incapacity has been filed. This type of guardianship expires if the court does not proceed with a permanent guardianship proceeding. (Section 744.3031, F.S.)

Limited Guardianship - an order by a court adjudicating the individual incapacitated in specific areas and appointing a guardian or co-guardian in those particular areas. (Section 02(8)(a) F.S.)

Full (plenary) Guardianship - an order by a court adjudicating the individual incapacitated and appointing a guardian or co-guardian in all delegable legal rights and powers. It removes all rights relating to both person and property. (Section 02(8)(b) F.S.)

Excerpted from the Development Disabilities Program from the Department of children and families (11/03)



Florida's Working Interdisciplinary Network of Guardianship Stakeholders

Exploring My Decision-Making Abilities

Name of Individual: _____ _____ Date Completed: _____	Name of person completing this form (if not individual): _____ _____ Relationship to individual (circle one): Self ____ Family ____ Friend ____ Guardian ____ Other: _____ How long have you known the individual? _____
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For each question below, mark the level of support you think you need when making and communicating decisions and choices. For general information about the various decision-making options available under Florida law, refer to pages 1 - 6 of the Overview of Decision-Making Options. For more detailed information, refer to Lighting the Way to Guardianship and Other Decision-Making Alternatives (https://www.fddc.org/sites/default/files/LTW_FamilyManual2017%20-%201.pdf).

DETERMINE IF ANY SUPPORTS ARE NEEDED	I CAN DECIDE WITHOUT SUPPORT	I NEED SUPPORT TO DECIDE	I NEED SOMEONE TO DECIDE FOR ME
SELF-ADVOCACY			
Can I express my own choices and preferences?			
Can I ask my family, friends or circle of support for help?			
Can I receive services that provide support?			
Can I communicate approval to share information with family members, and friends who are not legal guardians?			
Can I plan what my day looks like?			
Can I understand and communicate permissions regarding legal documents like a basic phone or Internet contracts or power of attorney?			
Can I choose someone I want to support me with making my own decisions if needed?			
Can I pick someone to make decisions on my behalf if I cannot do it myself?			
Can I understand my right to vote?			
EMPLOYMENT			
Can I choose a job or identify volunteer work I'd like to do?			
Can I apply for and find a job or volunteer work?			
Can I seek accommodations if needed for a job or volunteer work?			
MONEY MANAGEMENT			
Can I manage my money?			
Can I apply for benefits I am eligible to receive?			
Can I make everyday purchases?			
Can I pay bills on time?			
Can I tell if someone is taking my money and not using it in my best interest?			

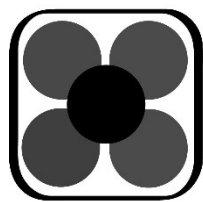


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DETERMINE IF ANY SUPPORTS ARE NEEDED	I CAN DECIDE WITHOUT SUPPORT	I NEED SUPPORT TO DECIDE	I NEED SOMEONE TO DECIDE FOR ME
HEALTH CARE MANAGEMENT			
Can I make decisions about where, when, and what to eat?			
Can I take medicines as directed?			
Can I understand the need to maintain personal hygiene and dental care?			
Can I make and communicate decisions regarding medical treatment, including the consequences of not accepting treatment?			
Can I understand health consequences associated with high risk behaviors (such as drug and alcohol abuse, tobacco use, unprotected sex, etc.)?			
Can I alert others and seek medical help for serious health problems?			
Can I make my medical appointments (such as doctor, dentist or therapist)?			
Can I make an advance directive (for example, identify wishes regarding life-prolonging procedures, such as CPR or artificial feeding)?			
Can I make medical choices in urgent care situations or in an emergency?			
Can I explain what my medications are for?			
Can I make choices about drugs or alcohol?			
RELATIONSHIPS			
Can I understand the need to consent to sex?			
Can I choose where and when (and if) I want to practice my faith?			
Can I make choices about what to do and who to spend time with?			
Can I understand that how I talk with and touch others depend on the type of relationship I have with them, such as family, friends, co-workers, support staff, boyfriend/girlfriend?			
PERSONAL SAFETY			
Can I avoid common dangers like traffic, sharp objects, hot stoves, or poisonous products?			
Can I recognize when someone is taking advantage of me, hurting me or abusing me?			
Can I protect myself or seek assistance in protecting myself?			
Can I know who to contact if I am in danger, being exploited, or being treated unfairly?			
Can I make emergency preparation plans?			
SOCIAL AND COMMUNITY LIVING			
Can I access community resources like church or a local recreational center?			
Can I understand what is involved with maintaining a home that is safe?			
Can I understand and make choices about the supports I want or need?			
Can I understand how to follow the law and how not to break the law?			

CONGRATULATIONS!

You have taken quality time to thoroughly consider your abilities and potential needs for decision-making assistance. Since abilities change over time, you may want to revisit this chart periodically. The decision-making options provided are not legal advice. You have the choice to seek a Florida attorney for legal advice about any of the options described.



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