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TO LIVE THEIR BEST LIVES.

## Alternatives To Guardianship

**Presented By The:  
Resource Referral and Guardianship  
Coordinators**

# Legal Disclaimer

- 👤 All information presented is for educational purposes only and should not be mistaken for legal counsel from a professionally licensed attorney!
- 👤 We will only be able to speak in generalities and will not be able to offer suggestions for each individual situation.

# Supported Decision Making



Can person decide or direct this activity independently most of the time?



Can person decide or direct this activity with assistance most of the time?



Does the person requires substituted decision making support?

# What Does It Mean To Have A Guardian



- 🕒 A guardian is a person who is appointed by probate court and can only be removed through the court process.
- 🕒 The duties and responsibilities of a guardian vary depending on what type of guardianship is granted.

## **Example responsibilities:**

Provide proper care, maintenance, education, and support.

Supply food, clothing, shelter, and necessities.

Authorize medical, surgical, dental, psychiatric, and psychological care (although some medical treatments, such as experimental treatments, require court approval).

Making sure the protected person is properly trained and educated, and that the person has the opportunity to learn a trade, occupation, or profession.

File an Annual Report of the Guardian each year letting the court know how the protected person is doing

# What does it mean for a person to “have guardianship”?



***Guardianship is legal determination made by the courts severing the person’s ability to make decisions on their own. Due to a disabling condition that limits or prohibits their ability to make decisions in their own best interest.***

# If guardianship isn't my only option, what Are All of My Options?











- 🕒 Supported Decision Making
- 🕒 Power of Attorney
- 🕒 Durable Power of Attorney
- 🕒 Conservatorship
- 🕒 Limited Guardianship
- 🕒 Full Guardianship



# Power of Attorney (POA)

## **Power of Attorney (POA) is limited in function.**

 It allows the agent to make decisions, typically related to financial matters, on behalf of the individual

-  Pay Bills
-  Buy Property
-  Sell Property
-  File Taxes
-  Enter Into Contract
-  Cancel Contracts
-  The individual still has the authority to object to all business dealings and agreements

## **Is Nullified when/if the individual becomes incapacitated.**

# Durable Power of Attorney (DPOA)







## **Carries more authority than a POA.**

 Allows the Agent to:

 Make financial decisions

-  Pay bills
-  Sell Property
-  Buy Property
-  Enter Contracts
-  Cancel Contracts
-  Etc.

 Agent is also able to make medical decisions

-  Approval of treatments
-  Denial of treatments
-  End of life decisions



# Special Needs Trust



- 👤 A **special needs trust**, also known in some jurisdictions as a supplemental needs trust, is a specialized trust that allows the disabled beneficiary to enjoy the use of property that is held in the trust for his or her benefit, while at the same time allowing the beneficiary to receive essential needs-based government benefits (Wikipedia, 2023).

# Conservatorship

**Conservator:** Is a person appointed by the Probate Court to manage the individual's finances and resources.

- 🧑 Manages the bank accounts
- 🧑 Act as payee for benefits and other sources of income
- 🧑 Think of this like “guardianship for your money”.
- 🧑 The appointment is ongoing. It is not reviewed if unless a question of competence is raised.



# Limited Guardianship

Limited Guardianship is an option for some where in it provides the guardian with a limited scope of authority.

- 🏠 The petition clearly outlines what rights the individual retains and what areas of life guardian will have authority over.

- 🏠 Examples

  - 🏠 Medical Decisions

  - 🏠 Contracts

  - 🏠 Etc.

- 🏠 This allows the individual to exert control over areas of life they have successfully managed in the past.

# Establishing Guardianship



## *Some examples of why guardianship is established.*

- ④ *Manage finances*
- ④ *Medical decisions*
- ④ *Obtain necessary services*
- ④ *Cannot give informed consent*

***Caregiver stress is real. This is not a simple process.***

- ④ *Medical statement*
- ④ *Case manager, social worker, or attorney statement*
- ④ *Significant amount of paperwork.*

- ④ ***An attorney is appointed to represent the individual, Guardian at Litem***
- ④ ***If it is contested, each party presents exhibits arguing why they are the better option***
  - ④ *If anyone objects, including the person who would receive the guardian, then the hearing becomes more like a trial where witnesses will be examined and cross-examined*
- ④ ***If the individual does not have family or friends willing to serve as guardian, the Public Administrator will serve as guardian.***

# Guardianship continued



## *If a guardian is appointed that means:*

- 👤 *All rights are terminated*
  - 🗳️ *Right to vote*
  - 🍴 *Right to choose what you eat,*
  - 🏠 *where you live,*
  - 💞 *who you love...*

👤 ***Guardianship is all encompassing and can only be reversed through court process.***



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