

EXPLORING MY DECISION-MAKING OPTIONS



Florida's Working Interdisciplinary
Network of Guardianship Stakeholders



Florida Center for
INCLUSIVE COMMUNITIES

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SUPPORTED DECISION MAKING

A plan that acknowledges you are making the decisions on your own behalf but will utilize trusted supporters to assist in understanding information and making decisions.

Some people utilize a written agreement or plan to acknowledge the relationship between themselves and their supporters as well as to define the role of any or all supporters. The plan is person-centered and recognizes self-determination in decision making. This option may be made without professional assistance of an attorney. It may also be used when the person is under guardianship and wants to work toward restoring one or more rights.

Generally speaking, you have the sole right and authority to end a supporter's relationship with you or to add new supporters to your circle of supports, unless you are under guardianship. You have the sole right and authority to choose which supporters you turn to for guidance and assistance in making and effectuating your decisions.



MONEY MANAGEMENT OPTIONS

This enables you to decide who to entrust with your banking information and who will help you make and effectuate financial decisions through joint bank accounts, direct deposit, or online bill payments.

Banks will have requirements for establishing joint accounts, direct deposit, or online bill payments. Employers and Social Security will request banking information from you to set up direct deposit. In fact, Social Security prefers this method because it is simple, safe and secure. This option may be made without professional assistance of an attorney.

You must follow all of your bank's requirements for removing individuals from your joint bank accounts. You must follow all of your employers' instructions in terminating direct deposit of their earnings into their bank accounts. With direct payments, you can add new people to pay or change the amount you are paying at any time.

POWER OF ATTORNEY

A legal instrument that gives one adult legal authority to act for you. The person you give authority to is called your “Agent.” A power of attorney is “durable” if it specifically states it will remain in force even if you become incapacitated later. It can cover simple tasks like writing or endorsing checks or involve more complex matters like selling real estate.

This option may be made without professional assistance of an attorney. However, formal requirements such as two witnesses and notarized signatures, are required by Florida Statute § 709.2105. If you are unable to physically sign the document, the notary may sign for you pursuant to Florida Statute § 117.05(14).

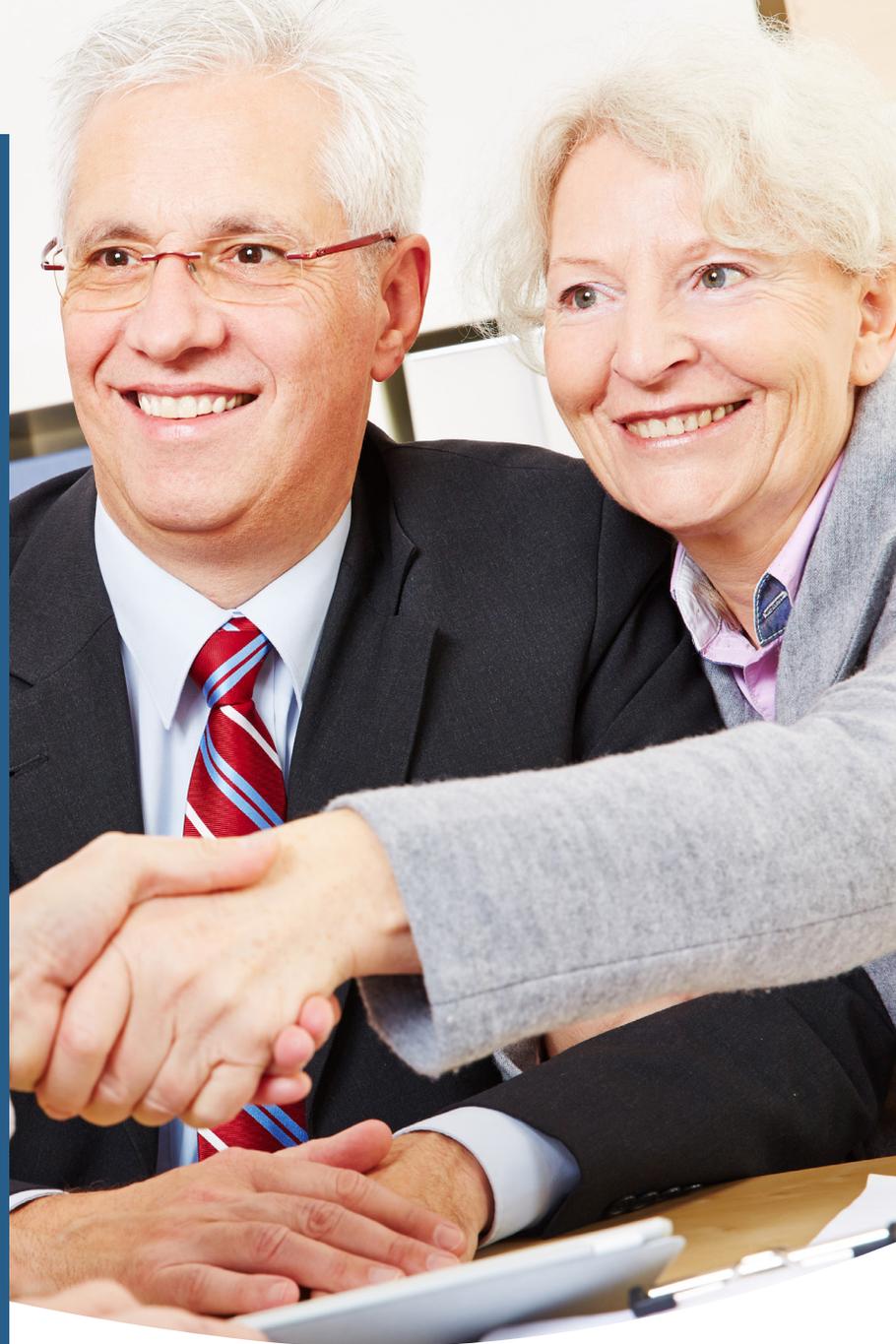
You may terminate the Power of Attorney by providing written notice to the Agent and anyone who reasonably relied on it. You may also terminate it by stating so explicitly in a new Power of Attorney. A Power of Attorney may also be time limited and set to expire on a specific date in the future or when a specific task is completed by the Agent. For banks and other financial institutions, there are additional rules to provide notice of your choice to end the Power of Attorney. A Court may terminate your Power of Attorney if the court determines you to be totally or partially incapacitated.

TRUSTS

A legal relationship where a person (the grantor) gives property to someone (the beneficiary), which must be managed by someone for the benefit of the beneficiary (the trustee). Property given can include cash, real estate, stocks, jewelry or anything of value. Generally, if you are the beneficiary of a trust, the grantor is a family member and the trustee is another person, a bank or a trust company.

There are different types of trusts. Each type of trust has different requirements to ensure it properly safeguards the beneficiary’s assets and protects the beneficiary’s benefits if needed. Determining which type of trusts are available and best meet the needs of the beneficiary is a complicated legal decision that should be made with professional advice from an attorney.

If the trust is created to handle income or assets for someone who is applying for or already receiving government benefits, such as Medicaid or Social Security benefits, the trust should be irrevocable and the trustee must be someone other than the person benefitting from the trust. Any requests to change or terminate a trust should be made with professional advice from an attorney.



REPRESENTATIVE PAYEE

An individual or agency who receives and manages your federal benefits from the Social Security Administration (SSA) and is required to report how the money is spent for your benefit.

If you don’t feel like you can manage your supplemental security income (SSI), Social Security Disability Insurance (SSDI) or social security retirement, you can request SSA to appoint someone who manages your payments for your benefit. When friends or family members are not able to serve as payee, the SSA will look for qualified organizations to serve as Representative Payee. Anyone can apply to the SSA to be a Representative Payee.

If you believe you no longer need a Representative Payee, you must contact the Social Security Administration and show that you are now mentally and physically able to handle your money on your own.



The Health Care designation can designate a separate surrogate to consent to health care only, mental health care treatment only, or to both.

HEALTH CARE SURROGATE

A written document that informs health care practitioners and others how you want your health care rights handled and who you want to exercise your medical rights when you are unable to make those decisions. It allows the surrogate to make health care decisions, apply for public benefits and access medical records. The surrogate is named in advance, but the surrogate designation does not take effect until the treating physician decides you are incapacitated.

The health care surrogate designation must be in compliance with Florida Statute § 765.203. The designation must be signed by you in front of two witnesses. This option may be made without professional assistance of an attorney.

A health care surrogate designation may also provide for an alternate decision maker. A health care surrogate designation remains in effect until it is revoked. If a guardianship is later established for you, the Court may modify or revoke the surrogate's designation. The Court might otherwise have the surrogate report your health care status to the guardian. Absent this, practitioners would follow the hierarchy for medical decisions as listed in Florida Statute § 765.403.

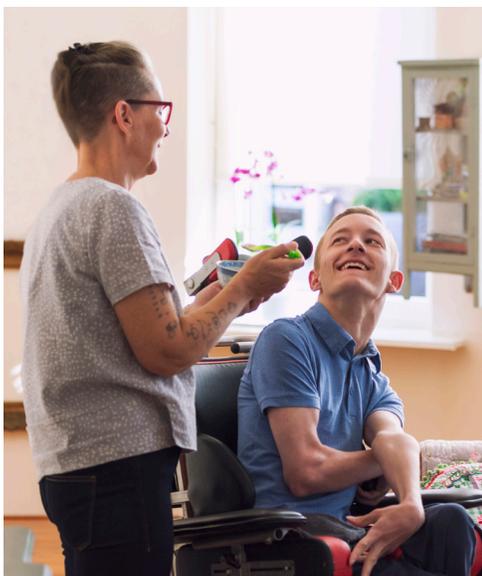


MENTAL HEALTH ADVANCE DIRECTIVE

A written document designating someone as the person to make mental health care decisions for you.

Pursuant to Fla. State § 765.202, the document must be signed by you or, if unable to sign, witnesses that you directed another person to sign for you. There must also be two adult witnesses. If you designate a Health Care Surrogate for other health care decisions and do not separately designate another person for mental health treatment decisions, the health care surrogate will be presumed by the court to be your choice to make decisions for mental health treatment. This option may be made without professional assistance of an attorney.

Unless you state a specific timeframe, the designation is in effect until you revoke it. However, if a court appoints a designated mental health surrogate as the Guardian Advocate pursuant to Florida Statute § 394.4598, the Guardian Advocate ends when you are discharged from an order for involuntary outpatient or inpatient placement or when you are transferred from involuntary to voluntary status.





LIVING WILL

A written document with your instructions on life-prolonging procedures, such as cardiac resuscitation or artificial feeding. It also allows you to express spiritual, personal or emotional wishes.

A Living Will takes effect if you lose capacity or the ability to express a decision and one of these three conditions exists: (1) end-stage condition of a disease, (2) terminal illness, or (3) persistent vegetative state. This option may be made without professional assistance of an attorney.

A Living Will is in effect until you revoke it, usually in writing, but you can communicate revocation orally. A Living Will can also be terminated if you execute a new Living Will that is materially different than the former document.

MEDICAL PROXY

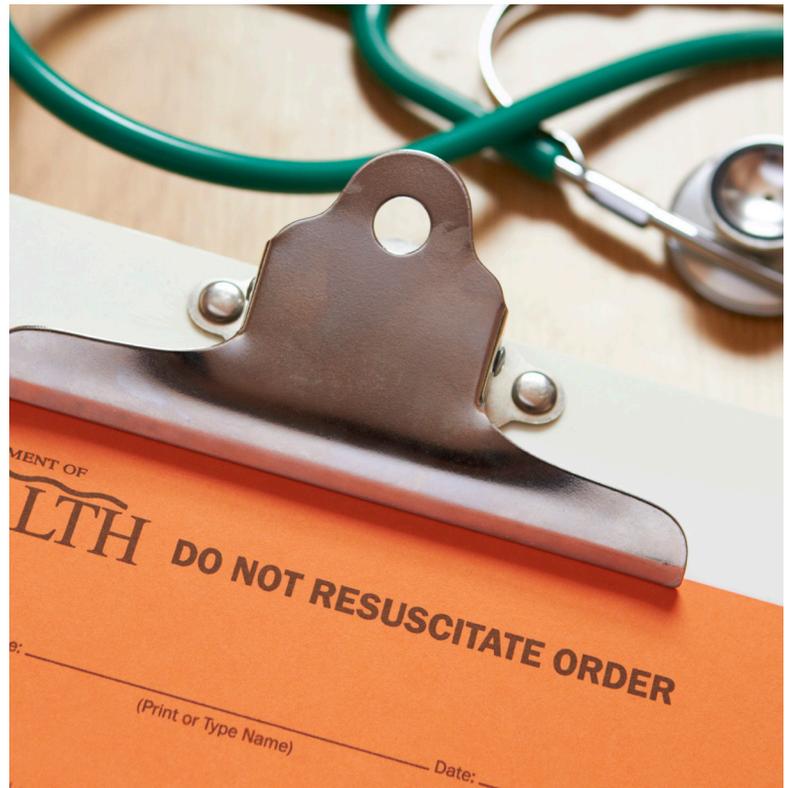
A medical proxy is an option that can be used when someone has not designated an advance directive and needs medical decision-making assistance. The person must have a developmental disability or lack clinical capacity as determined by the primary or attending physician. Unlike an advance directive, the person needing assistance does not choose who will make his or her health care decisions.

Florida law lists the order of priority of persons who can make health care decisions:

1. A legal guardian or guardian advocate
2. A spouse
3. An adult child or a majority of adult children
4. A parent
5. An adult sibling or a majority of adult siblings
6. Any other adult relative
7. A close friend
8. A licensed clinical social worker who meets certain criteria

A medical proxy has the same authority as a health care surrogate. A medical proxy can:

- ♦ Apply for public benefits, such as Medicare, Medicaid and veterans' benefits.
- ♦ Provide informed consent for all medical and mental health treatments, including preventive, diagnostic, therapeutic, rehabilitative and palliative care.
- ♦ Access and release medical records and information.
- ♦ Authorize the admission, transfer or discharge from health care facilities.
- ♦ Authorize end-of-life decisions under certain conditions, like a terminal illness.
- ♦ Donate organs.



DO NOT RESUSCITATE ORDER

A doctor's order to withhold or withdraw resuscitation if you experience cardiac or pulmonary arrest. It is part of a prescribed medical treatment plan and must have a doctor's signature. It is usually written for patients who are terminally ill, suffering from an end-stage condition or who are in a persistent vegetative state.

The Florida Department of Health developed a form to identify people who do not wish to be resuscitated in the event of respiratory or cardiac arrest. The Do Not Resuscitate Order (Form 1896) is simply signed by you or your healthcare surrogate/proxy and your doctor. It must be printed some shade of yellow paper to be valid for Emergency Medical Services (EMS).

The DNRO form can be revoked at any time either orally or in writing, by physical destruction, by failure to present it, or by orally expressing a contrary intent by you or your health care surrogate.



GUARDIAN ADVOCACY

A formal guardianship, without being deemed incapacitated, that removes some rights and delegates them to a Guardian Advocate, if you have a developmental disability and require assistance in some or all aspects of decision making to care for yourself or your property.

This option may be made without professional assistance of an attorney though it requires a Court process. A Guardian Advocacy is a court ordered relationship between a person with a developmental disability that needs assistance in decision making and the Guardian Advocate. It requires a petition in a Court of law by either the person with the developmental disability or another adult person that is a resident of Florida. The Court will consider evidence of the person's disability and need for assistance to make decisions in their life.

A Guardian Advocacy ends when a Suggestion of Restoration of Rights is filed and granted by the Court pursuant to Florida Statute § 393.12(12). A Court may restore to you some or all of the rights removed when the Guardian Advocate was appointed.

LIMITED GUARDIANSHIP

A formal court proceeding in which you are deemed to be incapacitated and only some, but not all of your rights, are removed or delegated to the Guardians to make decisions for you.

A Petition for Incapacity must be filed first and the judge must find you are incapacitated for at least some of your rights. The judge will appoint an Examining Committee made up of professionals that visit you, review your records, and make a recommendation to the judge. Then someone must petition the judge to be your Guardian. Only the rights in which you lack capacity can be removed and delegated to the Guardian. A non-resident of Florida can be the Guardian if they are related to you in specific ways.

A Limited Guardianship ends when a Suggestion of Capacity is filed and granted by the judge pursuant to Florida Statute § 744.464. If the Limited Guardianship is created only to manage property, the Limited Guardianship ends when the property is gone. A Limited Guardianship will end if your domicile changes and a judge with jurisdiction appoints a new guardian.



Plenary

A formal guardianship in which you are deemed incapacitated and all of your rights are removed and delegated to the Guardian to make decisions for you.

The same process for a Limited Guardianship is followed, but the Court must determine that you lack capacity as to all of the listed rights in the Order Determining Incapacity. The Court should state which rights have been delegated to the guardian in the Letters of Guardianship.

A Guardianship ends when a Suggestion of Capacity is filed and granted by the Court pursuant to Florida Statute § 744.464. A Guardianship may also end if the Guardian loses contact with you or if you move and a court with jurisdiction appoints a new guardian.

*Thank you to the Florida Center for Inclusive Communities at USF and to Disability Rights Florida for their support. For detailed information on each of the decision-making options, refer to the *Lighting the Way to Guardianship and Other Decision-Making Alternatives*: https://www.fldc.org/sites/default/files/LTW_FamilyManual2017%20-%20201.pdf*





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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.