

Rights

(examples of)

To contract,

To sue and be sued,

To apply for governmental benefits,

To manage property,

To determine his/her residence,

To consent to medical/dental treatment, and

To make decisions about his/her social environment or other social aspects of life.

Persons with developmental disabilities are most likely to have difficulty understanding:



what it means to consent to medical, dental and surgical procedures,



how to manage money and/or property,



how and when to apply for governmental benefits and entitlements, and



residential options and choices.

Only the rights that a person cannot handle should be removed.

It is recommended that you consult an attorney to assist with any option you may choose. You will definitely need an attorney if you think that one of the guardianship options is necessary.

Thank you to the Florida Developmental Disabilities Council for allowing the reproduction of a portion of the information contained in their booklet *Planning Ahead*. The booklet is included in all Yellow Notebooks and is also available from Family Care Councils or on-line @FDDC.org.

 agency for persons with disabilities

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Protecting Rights Using Options Other than Guardianship

Advance Directive
Guardian Advocate
Representative Payee
Durable Power of Attorney
Client Advocate
Co-signer on bank account
Living Will
Health Care Surrogate

Legal Options

Advance Directive: 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 pre-need 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:

Durable Power of Attorney - a written document that gives the designated person the legal authority to make decision on specific matters for the person who is disabled. Any legally competent adult who is disabled but who is capable of giving informed consent may give durable power of attorney to another adult. A **DURABLE** power of attorney can be relied upon until the death of the person who gave it, even if the person becomes incapacitated.

Living will – 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 written document naming another person as your representative to make medical decision 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 necessarily all of the rights necessary to care of 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. However, as with guardianships, if the ward only source of income is governmental benefits, courts may waive the annual financial reporting requirement.

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 744.102(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 744.102(8)(b), F.S.)