



LEGAL DECISION-MAKING OPTIONS FOR ADULTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

This document is not legal advice. Please discuss your individual situation with an attorney. Contact The Arc of King County at 206.829.7053 or ask@arcofkingcounty.org with questions.

This document contains information about: Independent Decision Making, Supported Decision Making, Power of Attorney (POA), Durable Power of Attorney (DPOA), Limited Guardianship, Full Guardianship, and Guardianship for Native American adults. Always keep in mind the rights and self-determination of the person in which support options are being considered. There are several options for families to meet the needs of your loved one while supporting their rights, promoting self-determination, and ensuring their health and safety.

Guardianship should **only** be considered if less restrictive options do not meet the individual's needs. Many parents are told by schools or other parents that they will need to apply for guardianship for their loved one. This is not always the case. Sometimes, to assure the well-being of a loved one with disabilities, well intentioned parents and caregivers may feel the need to have control of their loved one's decision making, to nurture and to protect them. However, it is likely the more parents and caregivers manage the person with disability's decision making, the less responsibility the person with disability and others will take on, and the more reliant they will become on parents and caregivers.



Independent Decision Making: Independent Decision Making is the least restrictive option for legal decision making and naturally occurs at age 18 if another decision-making option has not been previously set up. Independent Decision Makers can still informally communicate with others to help make legal decisions. Instead of seeking to manage every interaction and decision, parents and caregivers can act as a supporter. Sometimes the shift from control to support can be as simple as some small adjustments to the language used: Instead of telling someone what to do, ask them what they want to do. Making this a gradual process will give you or your loved one a sense of security in the process of moving towards greater self-determination. The more parents, caregivers, and other support people can work together to adapt and understand each other the better independence skills will develop.

Supported Decision Making: Supported Decision Making is an option where the person with disability keeps their rights and their decision-making capacity. Ultimately, the individual with I/DD makes the final decisions about their own life. A person using supported decision-making

appoints trusted advisors such as friends, family, or professionals, to serve as supporters.

Some states have formal legal recognition or specific laws for Supported Decision Making. While Supported Decision Making is not a legally recognized practice in Washington, an individual with I/DD can still utilize this practice, formally and informally. One may consider signing a formal document along with their identified support network stating that they all agree to undertake supported decision making. While this document may not always have legal authority, it can help doctors, bankers, lawyers, and other third parties feel more comfortable in accepting the decision of the person with disability without fearing lawsuits or malpractice claims.

The person with disability may change the supporters they use at any time they want, and in Washington this does not require a court process. Having more than one supporter provides a check against abuse, manipulation or exploitation by any one supporter. A monitor can also be appointed to oversee the supporters and is advisable when finances are included. The strengths and needs of the person are discussed by the person and their supporters. The person's abilities are based on what they can do both alone and with supports. The person can modify the supports they need and the supporters who provide these over the course of their life as they continue to learn and develop decision-making skills.

Power of Attorney (POA): A Power of Attorney (POA) is a legal document that gives an identified individual (the agent) the right to speak and/or make decisions on behalf of another individual (principal) if they are unable to do so for themselves (Click [here](#) for RCW 11.125). An individual who has an intellectual or developmental disability may adopt a POA so that the agent can make legal decisions on their behalf, however, should the person with disability disagree with the agent or make a different decision than the agent, the person with disability's decision overrides that of the agent. A POA can be either temporary, or be put in place for routine, ongoing support.

Power of Attorney can be used for financial decision making, medical decision making or both. Sometimes a person with a disability may struggle getting to the bank to open a new account or may need assistance communicating with physicians about decisions surrounding medications, therapies, and other medically necessary decisions. For both of these types of decisions, the agent can assist the person with disability by providing advice and clarification.

The only way to enact a POA is for the person with disability (principal) to grant the authority in writing for someone else (the agent) to act on their behalf. An agent can be granted broad authority through the POA that lasts a lifetime or be limited to a specific legal transaction, such as the sale of property. The rules and requirements for POAs vary from state to state, but it is typically an inexpensive and relatively simple process to complete.

The person with disability should, of course, choose an agent whom they can trust. An agent can be a family member, close friend or even an attorney. The person with disability decides what powers to give their agent through the POA and can revoke the POA at any time, unless they become deemed mentally incapacitated, in which case the POA ceases.

The POA is individualized to represent exactly what the person with disability needs assistance with. A POA requires the signature of the person with disability and can either be signed by a witness that is a non-interested party, or Notary signed. There are numerous POA templates that can be found online. For an example of a simple POA template:

<http://www.lawyercox.com/Sample%20Power%20of%20Attorney.htm>

Durable Power of Attorney (DPOA): The Durable Power of Attorney (DPOA) allows the agent to continue acting on behalf of the principal even if they become mentally incapacitated or too ill to make decisions on their own. The person with disability must, however, be ‘mentally competent’ when they first complete and sign the POA. A POA is a document through which the person with disability gives the agent legal authority to act for them; a DPOA includes language indicating that the power will continue even if the person with disability becomes incapacitated. If the document lacks this kind of language, the POA is not “durable,” and it terminates if the principal becomes incapacitated.

The language used in the DPOA document determines the extent of the agent’s powers. The document may give powers over financial affairs, healthcare, or both. Financial powers may be narrow or broad. A DPOA may be written to take effect immediately or to take effect only when the person becomes incapacitated. DPOAs should include language describing how incapacity will be determined.

DPOAs have many advantages. They are relatively simple and inexpensive to arrange compared to legal guardianships. The agent under the POA/DPOA is a fiduciary, meaning legally required to manage the person with disability’s assets in the interest of the principal. POAs/DPOAs can be revoked easily when the principal has the mental capacity to do so. There are numerous DPOA forms that can be found online. For a sample of a DPOA template:

https://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/392A5117-D581-FCE9-5EF2-E382E46B92AC/9608en_power-of-attorney-documents.pdf

Legal Guardianship Options: Guardianship is a legal proceeding that removes some, or all, of an individual’s decision-making rights. Guardianship can restrict an individual’s choices about where they live and work, their medical care decisions and whether they can marry. A guardian may be a parent, sibling, family member, friend, or professional agency. Since guardianship places major restrictions on fundamental rights, there is a rigorous process to evaluate whether a guardianship is needed. Guardianship may be granted for ‘person’ which covers the care, medical decisions, and living arrangements of the person with a disability OR guardianship of ‘estate’, which covers the person with disability’s financial and property affairs. Guardianship may be granted for both person and estate. Once a guardianship is created, it is very difficult to undo. It is important to understand that when a guardian is no longer able to serve, a professional guardian may be appointed to make every choice for the individual. These professional guardians are often making choices for dozens of people and will not personally know the person with disability. It is important to note that a guardian cannot do things like limit an individual’s access to another person or family member, nor can they inappropriately control interpersonal relationships. It is the guardian’s duty to make decisions in the best interest of the person with a disability and to always take into account their expressed interest.

Limited Guardianship: A Limited Guardianship grants the authority to make specific decisions identified in a court order and may be time-limited. Unlike Full Guardianship, Limited Guardianship is appointed by the court for individuals who need a guardian for specific decision making, but not all. Limited Guardianship must be renewed every three to five years to remain legal. The application for Limited Guardianship is rather quick, but the process to gain Limited Guardianship can be lengthy. Limited Guardianship is most often granted for a child or an adult with disability and is intended to protect liberty and autonomy of incapacitated persons and should be restricted to the minimum extent necessary. The incapacitated person should not be presumed to lose any rights except those listed in the court order. Limited Guardianship will grant **only** those powers necessitated by the person’s limitations.

Full Guardianship: Full Guardianship is created when a court authorizes someone to manage **all** of the personal rights and/or finances of an adult with disabilities. A Full Guardianship can be established for the

person only, the estate only, or the person and estate of the individual. Guardianship of the person authorizes the guardian to arrange for needed personal services such as living arrangements, transportation, and medical services. Guardianship of the estate authorizes the guardian to make decisions related to finances. Full Guardianship authorizes the guardian to make decisions about the estate and person, but should be designed to help them keep as much independence and self-determination as possible. Granting guardianship is taken seriously by the courts because the person's rights are being taken away. The courts take into consideration whether the person is completely or partially incapacitated, if the person wants to have a guardian, and if it is the person's best interest to have a guardian.

Process for Guardianship: A Petition for Guardianship must be prepared and filed with the court of the county where the person resides¹. The Petition for Limited or Full Guardianship contains general information regarding the person, including age, address, physician, the nature of the incapacity, an estimate of the incapacitated individual's net worth, names of the proposed guardians, and the person's relatives. The court will appoint a *guardian ad litem* who acts as the person's advocate and represents the best interest of the person in which guardianship is being sought. The guardian ad litem is required to investigate and make a recommendations as to whether a guardianship is in the best interest of the person with disabilities and whether the proposed guardian is appropriate. A written report is made to the court by the guardian ad litem regarding the investigation. If the person with disabilities does not want a guardian, the court will appoint an attorney to represent them. If the person's assets are less than \$3000 the county will pay for the attorney. After a guardianship is established, the guardians will be required to report back to the court annually, or every three years, if the person has few assets.

Guardianship for Native American Adults: For Native American adults, a guardianship proceeding are often brought into tribal court instead of state court. Many Indian Tribes have their own guardianship codes and court requirements. Before deciding whether to file a guardianship involving a Native American person in tribal court or state court, contact the tribe or a lawyer who regularly appears in the tribal court. Tribal courts may provide a less formal and more culturally sensitive forum for decisions regarding incapacitated tribal members. Tribal court may be the only available forum with a working relationship with the Bureau of Indian Affairs (BIA) or tribal programs delivering BIA services.

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- 1. King County Courthouse: 516 3rd Ave, Room W-382, Seattle, WA 98104, (206) 296-9092**
King County Courthouse districts are: All of King County north of I90 and including Mercer Island, Bellevue, Issaquah, North Bend, Vashon and Maury Islands

Maleng Regional Justice Center: 401 4th Ave, Room 3-D, Kent, WA 98032, (206) 205-2526
Maleng Regional Justice Center districts are: all of King County south of I90, excluding those assigned to the King County Courthouse area.

Additional Resources

Contact **The Arc of King County** at 206.829.7053 or ask@arcofkingcounty.org for additional information or questions.

If I think an adult is being abused, neglected, or financially exploited what should I do?

- Call 1-866-ENDHARM to ask Adult Protective Services (APS) to investigate. APS may explore whether to pursue guardianship, or other alternatives.

For More Information on Guardianship:

- Guardianship Series: Individual Rights: <https://informingfamilies.org/topic/guardianship/>

Resources to Establish/Maintain Guardianship:

- Guardianship Forms: <https://kingcounty.gov/courts/superior-court/ex-parte-probate/guardianship-forms.aspx>
- Establish Guardianship: Download instructions “G1- Establishing a Guardianship” to get started.
- Maintain Guardianship: Download instructions “G4- Order Approving Guardian’s Report and Accounting”
- How to Modify or Remove a Guardianship:
<https://www.kingcounty.gov/~media/courts/superior-court/docs/family/family-law-instructions/G-12-modification-or-remove-of-guardianship.ashx?la=en>
- Or contact the **Family Law Facilitator**: <https://kingcounty.gov/courts/superior-court/family/facilitator.aspx>

Legal Resources:

- **Northwest Justice Project** CLEAR (income limits apply): <https://nwjustice.org/get-legal-help>
- **King County Bar Association** Neighborhood Legal Clinics: <http://www.kcba.org/For-the-Public/Free-Legal-Assistance/Neighborhood-Legal-Clinics>