

Slide 1 - Finding the Right Fit




Finding the Right Fit: Decision-Making Supports and Guardianship



Finding the Right Fit

Decision-Making Supports and Guardianship

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Slide 2 - Audio Check

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Finding the Right Fit: Decision-Making Supports and Guardianship

Before we begin...

Audio Check



This training contains audio voiceovers and links to videos. Please use the “test audio” button below to ensure that your audio is on and that the volume is adjusted properly before proceeding.



If you are in a public or open setting, we recommend that you use headphones or earbuds while taking this training.

TEST AUDIO

If you **heard the sample audio** when you pressed the button, then click the “NEXT” button at the bottom of the screen to continue.

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Finding the Right Fit: Decision-Making Supports and Guardianship

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Slide 4 - Main Menu



Finding the Right Fit: Decision-Making Supports and Guardianship


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Slide 5 - Who is this training for



Finding the Right Fit: Decision-Making Supports and Guardianship




REPLAY SLIDE

Who Is This Training For?

This training is about **helping others make decisions**. You may find it helpful if you:

- Have a **loved one who needs help** making decisions about their health, finances, living arrangements, or other issues.
- Are thinking about **becoming a guardian** for another adult.
- May need **help managing your own life**, or want to learn about your options in case you need help in the future.

 **What will I learn from this training?**

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We're so delighted that you have an interest in this training. This training is about helping others make decisions. You may find it helpful if you:


- Have a loved one who needs help making decisions about their health, finances, living arrangements, or other issues.
- Are thinking about becoming a guardian for another adult.
- May need help managing your own life, or want to learn about your options in case you need help in the future.

So, what exactly will you learn from this training. Click the "What will I learn from this training?" subtopic link to read on.

Slide 6 - What You Will Learn



Finding the Right Fit: Decision-Making Supports and Guardianship



About This Training


What will I learn from this training?


This training provides information on the many **different options** for **helping someone make their own decisions** whenever possible, and **providing a substitute decision-maker** when necessary, through:


- Supported decision-making
- Legal options for decision-making assistance such as a power of attorney and advance directive
- Adult Guardianship


This training can teach you how to:

- **Decide whether guardianship is necessary and the only option.**
- **Become a better guardian or conservator** by involving the person in decision-making whenever possible.
- **Practice supported decision-making**, which allows the person who needs help making decisions to continue to make their own decisions, with the help of one or more supporters.

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Slide 8 - Core Values

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Finding the Right Fit: Decision-Making Supports and Guardianship

Core Values that Guide This Training

1

People have the right to make their own decisions.

We may not always agree with or understand someone else's decisions and choices. We must protect the rights of others to make decisions whenever possible.

2

When assisting with decision-making, think about what the person needs AND wants.

There are times when we will assist someone with making a decision, or even make a decision for them. We must think not only about how to best help the person, but also about the person's preferences and values.

3

Only consider a guardian if other options will not work.

A guardianship will have a major impact on someone's life, because it takes away their rights to make decisions. But sometimes a guardianship is the only way to make sure a friend or loved one is not harmed by themselves or others.

4

Every form of decision-making assistance, from least to most restrictive, should come without intention to influence, take advantage, or harm.

Every form of decision-making support or assistance provides an opportunity to influence, take advantage of, and harm or exploit the person receiving assistance. Supporters, agents, and guardians must not act in their own interests when they are assisting others to make decisions.


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Slide 9 - Decision Making

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Finding the Right Fit: Decision-Making Supports and Guardianship

Decision Making



Most of us get **support making decisions** every day. Help comes from many places.

- Family
- Friends
- Case Manager
- Doctors
- Co-workers
- Neighbors
- Religious Leaders

People may need more or different supports. For example, people may need help to understand their choices. **Supported decision-making** can help people manage their lives and develop their decision-making skills but **the person always makes the final decision**.

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Slide 10 - How do I help someone

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Finding the Right Fit: Decision-Making Supports and Guardianship

How do I help someone make decisions?

How do you help someone make decisions? First, think about **what** the person needs and wants, and **how much help** they need and want.



Select each item listed below to learn more.

Helping Someone Make Decisions


- ✓ How do I know what the person wants/needs?
- ✓ What forms of help may someone need?
- ✓ Spectrum of Assistance Exercise
- ✓ Circles of Decision-Making Diagram
- ✓ Capacity – Why is this important?
- ✓ Supporting Someone in Making Decisions


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Slide 11 - Know the person's needs or wants




Finding the Right Fit: Decision-Making Supports and Guardianship





Helping Someone Make Decisions


How do I know what the person needs or wants?


Always try to talk to the person first. If the person cannot communicate what they need or want, **consider past conversations and observations.** Ask others in the person's network to share what they think the person needs or wants – family, friends, caregivers, religious leaders, community members.




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Slide 12 - What forms of help may someone need?



Finding the Right Fit: Decision-Making Supports and Guardianship



Helping Someone Make Decisions

What forms of help may someone need?





Help can come in **many different forms**, such as:

- Balancing a checkbook
- Listing the pros and cons of a healthcare decision
- Finding a job
- Preparing meals
- Paying bills on time
- Planning travel
- Completing forms





Slide 13 - Spectrum of Assistance



Finding the Right Fit: Decision-Making Supports and Guardianship

Helping Someone Make Decisions

Spectrum of Assistance

Drag and drop each decision-making option presented below onto the spectrum of assistance. Place the option that is least restrictive of the person's level of independence on the spectrum first, working your way up the spectrum, placing the most restrictive option on the spectrum last.

Least Restrictive

Most Restrictive

Correct!

SUBMIT

RESET

Not quite. Try again.

DECISION-MAKING OPTIONS

Guardianship

Informal Support

Limited Guardianship

Other Legal Options
(e.g., Power of Attorney, Healthcare Representative, Representative Payee, etc.)

Supported Decision-Making

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Slide 14 - Spectrum of Assistance Debrief



Finding the Right Fit: Decision-Making Supports and Guardianship



Helping Someone Make Decisions

Spectrum of Assistance: Debrief

Correct order shown below. **CORRECT!**

People want to be as **independent as possible**. That's why it is so important to **start with less restrictive options** before moving to more restrictive options.

Informal Support	Supported Decision-Making	Other Legal Options (e.g., Power of Attorney, Healthcare Representative, Representative Payee, etc.)	Limited Guardianship	Guardianship
------------------	---------------------------	---	----------------------	--------------

Least Restrictive

Most Restrictive

People who need help can be taken advantage of, and some **protections should be put in place**. As you move along the legal spectrum, it's important that there be some **oversight by a trustworthy person**. Otherwise, the person you are trying to help might end up being hurt or exploited if someone takes advantage of this legal arrangement.

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Slide 15 - Circles of Decision-Making

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ElderJustice INITIATIVE

Finding the Right Fit: Decision-Making Supports and Guardianship

Helping Someone Make Decisions

Circles of Decision-Making

The diagram consists of four concentric ovals. The innermost oval is green and contains a green silhouette of a person with the word 'Person' below it. The next oval is olive green and labeled 'Decision-Making Support'. The third oval is brown and labeled 'Others Chosen by the Person'. The outermost oval is red and labeled 'Family Decides'. Below the red oval, the text 'Courts Decide' is written. A 'Click Box' icon is in the top right corner. A 'REPLAY SLIDE' button is in the bottom right corner of the slide area.

REPLAY SLIDE

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Anyone could be the person in the middle, ideally making their own decisions. But, if they can't decide alone, they could talk to those around them that could help.

If they can't decide with the support of those around them, they may need an important person in their life to make decisions on their behalf.

Or they may need a family member to help make decisions.

Or, if none of those options are available or didn't work, the court may have to decide who can make their decisions. At this point, they would have much less autonomy and others are deciding for them.

Slide 16 - Capacity



Finding the Right Fit: Decision-Making Supports and Guardianship

Helping Someone Make Decisions (1 of 3)


Understanding Capacity to Make Decisions

Doctors, lawyers, and others may use the word “capacity” to describe **how much a person can understand** and **evaluate their options**, and whether the person can **communicate their choices**.

It is unusual for a person to have no capacity at all, such as when a person is in a coma and unable to speak or communicate. Usually it is much harder to decide whether a person lacks some capacity, and **how that possible lack of capacity affects their ability to make decisions**.

For example, someone with dementia may not be able to understand, or have the capacity to evaluate their decisions about a serious medical condition that needs treatment, but they can say that they want their spouse or child to make decisions for them. In other words, they have the capacity to assign a healthcare power of attorney.

State laws, with some differences, each define someone who needs a guardian as someone who does not have capacity to make their own decisions.



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Slide 17 - Need Help Making Decisions



Finding the Right Fit: Decision-Making Supports and Guardianship

Helping Someone Make Decisions (2 of 3)

When does someone need help making decisions?

Most of us make better decisions when we get advice from other people. Sometimes a person needs **help understanding their choices**. The law, doctors, case managers, and others may use the word **capacity** to describe what a person can understand about making decisions.



Mental capacity means what the person can understand about making decisions.



Legal capacity means how the law defines what decisions the person can make. Someone with a guardian does not have legal capacity to make many of their decisions. This does not mean that the person cannot make decisions. **A guardian should support the person in making their decisions as much as possible.**

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Slide 18 - Capacity Can Fluctuate



Finding the Right Fit: Decision-Making Supports and Guardianship



(3 of 3) 





Helping Someone Make Decisions

Capacity Can Fluctuate

Capacity can **decline** and **improve** or **swing back and forth**. Someone with Alzheimer's may experience "sun-downing," or "late-day confusion," which means their confusion, agitation, and other symptoms of Alzheimer's get worse at the end of the day.

MORE EXAMPLES

 When capacity can improve:	 When capacity can decline:
<ul style="list-style-type: none">• recovery from an accident or stroke, or a traumatic brain injury• changes in medication• after a person with an intellectual or developmental disability has more experiences with making decisions over time	<ul style="list-style-type: none">• progressive dementia or Alzheimer's• not taking prescribed medications• when prescribed medications are taken, <i>e.g., psychotropic medications can make people sleepy or agitated at certain points of the day; sometimes people are over-medicated to a point that they are not able to effectively make or communicate decisions, etc.</i>

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Slide 19 - How do I support someone in making decisions



Finding the Right Fit: Decision-Making Supports and Guardianship



Helping Someone Make Decisions

How do I support someone in making decisions?

No matter what option is the best fit, it is always important to remember we all have the right to make decisions and manage our lives. When someone needs help making decisions you can provide support by:

- Asking what they need
- Talking with them using words they understand
- Helping them identify and understand all their options
- Helping them get information they need to make an informed choice
- Letting them make their own choice




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Slide 20 - Supporting Decisions

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National Center for State Courts

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Finding the Right Fit: Decision-Making Supports and Guardianship

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Most of us get support making decisions every day. Help comes from many places, including family, friends, case managers, doctors, coworkers, neighbors, and religious leaders.

People may need more or different supports. For example, people may need help to understand their choices. Supported decision-making can help people manage their lives and develop their decision-making skills.

It's important to understand that with supported decision-making, the person always makes the final decision.

Slide 21 - Making Decisions

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Finding the Right Fit: Decision-Making Supports and Guardianship

Making Decisions

Making decisions and having control over at least some parts of life is important to feeling good about ourselves. Sometimes making decisions is called **self-determination**.

Supported decision-making is all about ... decisions, of course.

Select each item listed below to learn more.

- ☒ Is there a right to make decisions?
- ☒ What does it mean to make a decision?
- ☒ How do people make decisions?



Remember, with supported decision-making, the person needing help always makes the final decision.

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Slide 22 - Right to Make Decisions



Finding the Right Fit: Decision-Making Supports and Guardianship



Making Decisions

Is there a right to make decisions?

We all have the right to make our decisions and manage our lives. Asking for help, or agreeing to get help, doesn't mean giving up the right to make decisions. Sometimes, a judge can limit or take away the right to make decisions under certain circumstances. While the law is different in each state, usually a judge will ask whether the person can make their own decisions, and/or whether a person needs protection from abuse and neglect.

For more information about the right to make our decisions, see ***The Right to Make Choices: Introduction to Supported Decision-Making***, Missouri Developmental Disabilities Council.

[VIEW THE RIGHT TO MAKE CHOICES](#) 

Additionally, visit the National Resource Center for Supported Decision-Making at SupportedDecisionMaking.org 





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Slide 23 - Meaning of Making a Decision



Finding the Right Fit: Decision-Making Supports and Guardianship



Making Decisions

What does it mean to make a decision?

? Making a decision means:


- Thinking about the **pros and cons** of a choice;
- Thinking about **what could happen** with each choice; and
- **Making a choice.**

? We make decisions all the time. Most people have made many decisions before they leave their home for work, school, or other activities.


- Should I wake up when my alarm clock goes off, or should I hit snooze for ten more minutes?
- What should I wear today?
- What should I eat for breakfast?

!? There are serious decisions that may change our lives.


- How much money should I spend and how much should I save from my paycheck?
- Should I have an operation?
- Should I marry my boyfriend or girlfriend?




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Slide 24 - How People Make Decisions



Finding the Right Fit: Decision-Making Supports and Guardianship




Making Decisions


How do people make decisions?

When people make decisions, they **consider**:




Adapted from [My Voice Counts: Supported Decision-Making an Alternative to Guardianship](#) 

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Slide 25 - Supported Decision-Making

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Finding the Right Fit: Decision-Making Supports and Guardianship

Supported Decision-Making (SDM)



Supported decision-making can be defined as a series of relationships, practices, arrangements, and agreements, of more or less formality and intensity, designed to assist an individual with a disability to **make and communicate to others decisions** about the individual's life.


Select each item listed below to learn more.

How Supported Decision-Making Works

- ✓ How to Approach Supported Decision-Making
- ✓ Examples of Supported Decision-Making
- ✓ How Do People Pick Their Supporters?
- ✓ Responsibilities of a Supporter
- ✓ Communication Tips for Supporters
- ✓ Supported Decision-Making Agreements
- ✓ Real-Life Examples of SDM
- ✓ Risks of Supported Decision-Making


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Slide 26 - How to Approach Supported Decision-Making

 NATIONAL CENTER FOR STATE COURTS

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Finding the Right Fit: Decision-Making Supports and Guardianship

Supported Decision-Making

How to Approach Supported Decision-Making



There is **no “one-size-fits-all” approach** to supported decision-making. Just like every person is unique, every person’s supported decision-making set-up is different, and should be **tailor-made** to address the specific wants and needs of the person.

The National Resource Center for Supported Decision-Making has a **brainstorming tool** that helps people think about ways they are already using supported decision-making and think of new ways supported decision-making can work.

[VIEW BRAINSTORMING TOOL](#)

For more information, visit the National Resource Center for Supported Decision-Making at SupportedDecisionMaking.org

Click Box

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Slide 27 - Examples of Supported Decision-Making

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Finding the Right Fit: Decision-Making Supports and Guardianship

Supported Decision-Making

Examples of Supported Decision-Making (1 of 2)

**Helping with Important Decisions**

A person may want to **talk** to their supporters about whether to quit a job.

The person and supporters could write a list of pros and cons of quitting.


**Being a Companion to Appointments**

Going to a doctor's **appointment** with a friend, family member, or service provider as a supporter.


The supporter can listen to the doctor along with the person. The supporter can also remind the doctor to talk directly to the person if the doctor tries to only talk to the supporter. The supporter can help the person make decisions during or after the appointment.


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Slide 28 - Examples of SDM 2




Finding the Right Fit: Decision-Making Supports and Guardianship



Supported Decision-Making

Examples of Supported Decision-Making (2 of 2)



Daily or Regular Money Management

Someone might be able to make their own decisions about money, or has support in making those decisions, but also **needs help with carrying them out**, for example:


- bill paying
- preparing checks for signature
- bank deposits, handling cash
- payroll for home attendants and other staff
- tax preparation




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Slide 29 - Picking Supporters



Finding the Right Fit: Decision-Making Supports and Guardianship

Supported Decision-Making

(1 of 2)

How Do People Pick Their Supporters?




Usually, the people who help us make decisions are **those closest to us** — our friends, family, teachers, support professionals.

The one thing everyone does need for supported decision-making is a supporter. Not everyone will have someone in their life that they can trust and rely upon to support them in decision-making.

REMINDER: Everyone, even our supporters, has interests and biases. [See Core Value No. 4](#)


A supporter should be:


- picked by the person
- honest, trustworthy
- willing to help
- a good listener
- committed
- willing to explore possibilities





A person can have **more than one** supporter.
*Different supporters for different things can be helpful.
(Someone with specific knowledge about a decision; for example, a doctor or nurse may be a good person to help make a decision about a medical procedure.)*


Adapted from [My Voice Counts: Supported Decision-Making an Alternative to Guardianship](#)

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Slide 30 - Representative Payee or Guardian



Finding the Right Fit: Decision-Making Supports and Guardianship

(2 of 2) 

Supported Decision-Making Representative Payee or Guardian


Can a representative payee or guardian be a part of a supported decision-making network?


YES


A representative payee is appointed by the Social Security Administration to manage someone else's benefits. The representative payee can **be a supporter by working with the person to make decisions** about how to spend their benefits.


A guardian is appointed by a judge or a court to make decisions for or manage the money of another adult. A guardian should **include the person in decision-making** whenever possible.

If the guardian can help the person to develop their decision-making skills, the person may not need a guardian anymore.


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Slide 31 - Responsibilities of a Supporter



Finding the Right Fit: Decision-Making Supports and Guardianship




Supported Decision-Making

Responsibilities of a Supporter

Remember, all supported decision-making arrangements are different. Here are some **suggestions** for what a supporter can do:

- **Listen and think** – Talk to the person about their interests and goals. What does the person think is best for them? What kinds of decisions does the person want to make?
- **Identify opportunities and challenges** – What does the person need to make their decisions, and what is stopping them or could stop them from making their decisions? Money, access to a cell phone or email, family members?
- **Find friends** – Learn about people, agencies, and organizations that can help the person.
- **Coordinate Support** – Work with the person to develop a plan of who will help them with different decisions.
- **Write down the supported decision-making plan.** The supporter could help a person write down their supported decision-making plan.



Adapted from *The Right to Make Choices: Introduction to Supported Decision-Making*, Missouri Developmental Disabilities Council.

[VIEW THE RIGHT TO MAKE CHOICES](#)



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Slide 32 - Communication Tips for Supporters



Finding the Right Fit: Decision-Making Supports and Guardianship





Supported Decision-Making


Communication Tips for Supporters


Always give the person making decisions **enough time** to think about their options. Someone may need to have the same conversation **several times** and in **several different ways**. A supporter may have to be creative about **finding the best way** to communicate with the person making decisions. Remember to use:


- **Plain language** – Legal or medical terms can be confusing and intimidating.
- **Active listening** – Make sure the person knows that the supporters are listening. They can do this by replying to comments, using positive body language like nodding, and taking notes.
- **Alternative kinds of communications** – Pictures, role playing, and communication devices can be helpful when communicating.

For more information about what it means to be a great supporter, see the ACLU Foundation's [What Is Supported Decision-Making and What Does a Supporter Do?](#) 

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Slide 33 - Supported Decision-Making Agreements



Finding the Right Fit: Decision-Making Supports and Guardianship



Supported Decision-Making

Supported Decision-Making Agreements

Someone who uses supported decision-making may want to write down what types of support the person will receive, who will provide it, how it will be provided, and when. Some people call this a **supported decision-making agreement**.

Right now, a few states have a law that says supported decision-making agreements are a legal document, like a power of attorney or contract. You can check if your state has a law about supported decision-making agreements on the [National Resource Center for Supported Decision-Making's](#) website.

One can build safeguards into Supported Decision-Making arrangements, such as having a diverse group of supporters (family members, friends, professionals) that can serve as “checks and balances” to each other by making sure no one oversteps their roles.





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Slide 34 - Real-Life Examples of Supported Decision-Making




Finding the Right Fit: Decision-Making Supports and Guardianship



Supported Decision-Making

Real-Life Examples of Supported Decision-Making

An Interview with “Dolores”
Hear an interview with the first senior to have a guardianship terminated in the District of Columbia and how her network of supporters helps her manage her own affairs.



Loading ...

*Credit: Quality Trust for Individuals with Disabilities.
First round audio editing by Sean Kimber.*

MORE REAL-LIFE EXAMPLES

A woman’s healthcare decision-making advocate and medical treatment team help her make a decision about having surgery. *Gabby’s story, the WITH Foundation*

[VIEW EXAMPLE](#)

The Center for Public Representation, a national legal advocacy center for people with disabilities, has started two supported decision-making projects in Massachusetts.


[VIEW EXAMPLE](#)


A parent’s perspective as a supporter for a young adult with an intellectual disability.


[VIEW EXAMPLE](#)

A parent and young adult child have a supported decision-making agreement. *Disability Rights Texas*

[VIEW EXAMPLE](#)



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Slide 35 - Risks of Supported Decision-Making




Finding the Right Fit: Decision-Making Supports and Guardianship



Supported Decision-Making


Risks of Supported Decision-Making





Most people have the best intentions for helping someone manage their money. But anyone, including a family member, caregiver, or friend, can take advantage of a person. **Just like the other decision-making options in this course, supported decision-making comes with a risk of abuse, neglect, or exploitation.**


- Since supporters and the person at the center of the supported decision-making network are often already good friends or family, the supporter may continue a pattern of making decisions for another person and call it “supported decision-making.”
- Someone may take on the position of “supporter” with the intention to take advantage of the person who should be making decisions. The supporter can “give advice” that is really in their own interests.

If you believe you are being exploited, or if someone you know is at risk, report this to Adult Protective Services or law enforcement.

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Slide 36 - Legal Options

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Finding the Right Fit: Decision-Making Supports and Guardianship

Using Legal Options



Legal Options to Help Someone Make Decisions

- Do not take away all or most of someone's rights
- Do not require going to court, which takes time and money
- Can plan ahead for a time when someone may need more decision-making support.

[✓ Pros and Cons of Less Restrictive Options](#)

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There are many other legal options available for someone who needs help making decisions concerning their money or healthcare. Sometimes, we call these options less restrictive options, because they do not take away all or most of someone's rights. In addition, the options we'll cover here do not require going to court, which takes time and money. These options are also flexible enough to allow one to plan ahead for a time when someone may need more decision-making support.

While the legal options we'll cover here vary, they do share some common benefits and drawbacks. Click the Pros and Cons of Less Restrictive Options subtopic link below to read on.

Slide 37 - Pros and Cons of Less Restrictive Options



Finding the Right Fit: Decision-Making Supports and Guardianship



Using Legal Options

What are the pros and cons of less restrictive options?


+ PROS


Less restrictive options:


- **Solve problems** instead of taking away all or most of a person's rights.
- **Do not require going to court**, which can be time-consuming, expensive, and overwhelming.
- **Plan for a future time** when one may not be able to make their own decisions.
- Can help someone who may need more or less help **at certain times**.
- **Can put the person in charge!**


- CONS

- Someone can use a less restrictive option to **take advantage of a person**.
- There is **no judge** to turn to if there are problems.
- Some less restrictive options require a **serious commitment of time and energy** from a friend or family member.


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Slide 38 - Less Restrictive Legal Options



DEPARTMENT OF JUSTICE

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Finding the Right Fit: Decision-Making Supports and Guardianship

Less Restrictive Legal Options

Two major categories of less restrictive options:

Select a category to explore.



HEALTHCARE



Click Box





FINANCIAL



Click Box



Once you have explored **both** categories, click the next button to proceed.



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NEXT

Slide 39 - Healthcare Decision-Making



Finding the Right Fit: Decision-Making Supports and Guardianship

Healthcare Decision-Making







Before exploring healthcare decision-making options, there are some **important things to understand** about the healthcare decision-making process. *Click each listed item below to learn more.*

What Does That Mean?


-  Healthcare Decisions
-  Informed Consent

Slide 40 - Healthcare Decisions





Finding the Right Fit: Decision-Making Supports and Guardianship


Healthcare Decisions





Healthcare decisions are about anything related to **medical treatment**. For example:


- Whether to take medicine
- Consenting to surgery
- What kind of treatment to provide when someone is dying



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Slide 41 - Informed Consent



Finding the Right Fit: Decision-Making Supports and Guardianship




Informed Consent




A doctor must get “**informed consent**,” for some **medical decisions**. This means patients must understand their choices, including risks and benefits, and be able to say yes or no to treatment.


There may be a time when **someone cannot give informed consent** for healthcare treatment. In those situations, **the doctor will ask**:

- 1) The person named as a **decision-maker in a power of attorney**.
- 2) If there is no power of attorney, the doctor can look for a family member or friend if they practice in a state with “**substitute healthcare decision-maker**” laws.
- 3) If there is no power of attorney, or family or friends, or family and friends are fighting over a decision, the doctor may say only a **guardian** can give permission.

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Slide 42 - Healthcare Decision-Making Options




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Finding the Right Fit: Decision-Making Supports and Guardianship

Healthcare Decision-Making Options

There may be a time when someone cannot make decisions or communicate their wishes about their healthcare treatment. The following options allow for planning ahead to make sure one's wishes are followed.

Explore each option below to learn more.



Choose someone to make decisions if the person cannot make them:

☒ Healthcare Power of Attorney

☒ Psychiatric Advance Directive (mental health)



If no one is available to make decisions, **write down choices** about medical care, including end-of-life decisions:

☒ Living Will

☒ Physician Orders for Life-Sustaining Treatment (POLST)



If the above options do not work or are not available, most states have a law that lists decision makers in order of preference.

☒ Substitute Healthcare Decision-Making laws

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Slide 44 - Healthcare Power of Attorney

Finding the Right Fit: Decision-Making Supports and Guardianship

Healthcare Power of Attorney (1 of 2)

Someone can write down what they would want in a legal document if the time comes when they cannot make their own decisions. Every state has its own laws and terms for these documents. They are often called a:

Living Will – a document with wishes and instructions for **end-of-life treatment**.

Healthcare Power of Attorney – a document that gives the authority to make healthcare decisions to another person. *This option can only work if someone has a friend, family member or other acquaintance that they trust.*

For more information about a healthcare power of attorney, see the Commission on Law and Aging of the American Bar Association's guide: *Giving Someone a Power of Attorney for Your Healthcare*.



GIVING SOMEONE A POWER OF ATTORNEY FOR YOUR HEALTHCARE

What is a healthcare advance directive?

In some states, a healthcare advance directive is a living will and a healthcare power of attorney in one document. Sometimes, a healthcare advance directive only refers to a healthcare power of attorney.

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Slide 45 - Pros and Cons Healthcare Power of Attorney



Finding the Right Fit: Decision-Making Supports and Guardianship

(2 of 2)

Healthcare Power of Attorney: Pros and Cons

+ PROS

Pros of a healthcare power of attorney:

- **Choice** of the kinds of healthcare decisions the person with decision-making authority can make.
- Important **evidence of someone's wishes** for a judge and/or guardian.
- The person named in the power of attorney **can speak up** for what the author of the power of attorney wants.

- CONS

Cons of a healthcare power of attorney:

- The person who makes decisions can **"overstep"** what they should be able to do.
For example, they can try to use the healthcare power of attorney to decide where the person lives, even if the power of attorney only gives the decision maker authority over healthcare decisions.
- A power of attorney can provide an **opportunity to isolate** someone from family and friends.

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Slide 46 - Psychiatric Advance Directives

NCSC

National Center for State Courts

DEPARTMENT OF JUSTICE

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Finding the Right Fit: Decision-Making Supports and Guardianship


Click Box

Psychiatric Advance Directives

A psychiatric advance directive allows someone to write down their **wishes for psychiatric treatment** if they are having an acute crisis and cannot express their wishes or give informed consent to treatment.

Learn more about psychiatric advance directives from the National Resource Center for Psychiatric Advance Directives.

NATIONAL RESOURCE CENTER FOR PSYCHIATRIC ADVANCE DIRECTIVES





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Slide 47 - Living Will





Finding the Right Fit: Decision-Making Supports and Guardianship


Living Will





A living will usually applies to **end-of-life decisions**, such as whether or not to use feeding tubes, ventilator support, and resuscitation.


Note: Many people call a living will a healthcare advance directive.





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Slide 48 - Physicians Orders for Life Sustaining Treatment




Finding the Right Fit: Decision-Making Supports and Guardianship





Physician's Orders for Life-Sustaining Treatment (POLST)


Someone who is very sick and likely to have a medical crisis or die within a year may want to consider a physician's order for life-sustaining treatment (POLST). A POLST is NOT a legal document, like an advance directive. A POLST IS a **medical order for end-of-life treatment**. *For example, whether the person wants their heart and lungs started again if they stop, how much medicine they want to control pain, and the use of feeding tubes.*


To develop a POLST, the patient and doctor discuss what the patient wants, and the doctor or other medical professional writes an order that should be followed by any medical professional, including doctors, nurses, and emergency medical technicians (EMTs).


A growing number of states allow POLST, or a model similar to POLST. To learn more and find out whether POLST or something similar is legal in your state, visit polst.org 



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Slide 49 - Substitute Health Care Decision Making



Finding the Right Fit: Decision-Making Supports and Guardianship

Substitute Healthcare Decision-Making

Most states have a law allowing a family member, friend, or someone else to make healthcare decisions for someone if:

- 1) they cannot make a decision; and
- 2) they have not written a healthcare power of attorney.

Medical treatment professionals should look for a substitute healthcare decision-maker **among family and friends** before asking a judge to appoint a guardian.

If family and friends cannot agree on medical treatment, **doctors or hospitals may ask a judge to appoint a guardian** to make the person's medical decisions.



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Slide 50 - Financial Decision-Making

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Finding the Right Fit: Decision-Making Supports and Guardianship

Financial Decision-Making



Guardians are often appointed when a person's ability to manage their own money is in question.

Before seeking a guardian, **consider less restrictive options** that may be enough to protect the person's money and still allow the person to have some control.

Before considering any financial decision-making options, there are some **important things to understand** about the financial decision-making process. *Click each item listed below to learn more.*

Important Considerations

[✓ Legal Duties](#)[✓ Financial Exploitation Risk](#)
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Slide 52 - Legal Duties of Fiduciary



Finding the Right Fit: Decision-Making Supports and Guardianship



Legal Duties of Someone Helping with Financial Decision-Making (Fiduciary)



Someone who helps another person with managing and making decisions about money has **legal responsibilities** to:

- 1) Act only in the **person's best interests**
- 2) Manage the money and property **carefully**
- 3) Keep the money and property **separate** from the agent's own money and property
- 4) **Keep good records**





For more information about these legal responsibilities, see the [Consumer Financial Protection Bureau's Managing Someone Else's Money guides](#). 



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Slide 53 - Financial Exploitation



Finding the Right Fit: Decision-Making Supports and Guardianship



Financial Exploitation

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Most people have the best intentions when helping someone manage their money. But anyone, including a family member, caregiver, friend, or someone else, can take advantage of a person.


All of the options in this course, including guardianship, come with a **risk of abuse, neglect, or exploitation**.


A guardian may be necessary to protect the person's money, especially if there are family members, "friends," or other individuals who have taken advantage of the person in the past or could continue to access the person's money and property.


Anyone who believes they or someone they know is at risk of or is being exploited should **call adult protective services or the police**.

For more information about financial exploitation, see the following:
[Department of Justice's Elder Justice Initiative](#) | [National Center on Elder Abuse](#)



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Slide 54 - Financial Decision-Making Options



Finding the Right Fit: Decision-Making Supports and Guardianship


Financial Decision-Making Options

The are many **options** that may be useful for support in helping a person **manage their money**. Several of those options are listed below. *Explore each option to learn more.*




A person may **choose someone to help** them manage their money:

- ☒ Financial Power of Attorney
- ☒ Trusts
- ☒ Joint Ownership




Or, a person **may not get to choose who's appointed** to manage their money:


- ☒ Representative Payees





In some cases, a **judge will make a decision** about a person's money:


- ☒ Protective Arrangement

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Slide 55 - Financial Power of Attorney



Finding the Right Fit: Decision-Making Supports and Guardianship

Financial Power of Attorney: Introduction (1 of 3)


A power of attorney is a **legal document** that **transfers** a person's **power to manage** their money and property to someone else.

To write a power of attorney, a person must:

- be able to **understand the pros and cons** of this decision



AND


- **trust someone** to manage their money.





LEGAL TERMS FOR POWER OF ATTORNEY


- **Principal:** person who chooses someone else to manage their money
- **Agent:** person chosen to manage the money
- **Durable Power of Attorney:** a power of attorney that is still effective if the person can no longer make their own decisions


For a more detailed guide to financial powers of attorney, see [Help for agents under a power of attorney](#) 
from the [Consumer Financial Protection Bureau's Managing Someone Else's Money](#)  guides.

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Slide 56 - Financial Power of Attorney Pros and Cons



Finding the Right Fit: Decision-Making Supports and Guardianship

Financial Power of Attorney: Pros and Cons (2 of 3)

+ PROS

Pros of a financial power of attorney:

- The person who writes the power of attorney **can change it, cancel it**, or appoint a new decision-maker at any time if the person still has capacity.
- The person has **control** over the kinds of decisions someone else can make for them.
- A power of attorney **may eliminate the need for a guardianship**.

- CONS

Cons of a financial power of attorney:

- A power of attorney gives the person with decision-making power the **opportunity to misuse** money and property. If they do so, it is very difficult to get back the money or property.
- There is generally **no court supervision**.
- If the person named as the **decision-maker quits, dies, or loses capacity**, there may be no one to supervise or manage the money or property.

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Slide 57 - Financial Power of Attorney Exploitation


 

Finding the Right Fit: Decision-Making Supports and Guardianship

(3 of 3)



Financial Power of Attorney: Exploitation




A power of attorney is a legal document, and it gives the person named as the agent a lot of power. It is very important to **appoint a trustworthy person** who will not take advantage of that power.


If someone (the agent) uses a power of attorney to take advantage of the person (principal), a guardian may be necessary to prevent more harm.


NOTE: Consult an attorney for ways to reduce the risks of a power of attorney.


Resources for Finding an Attorney

[National Academy of Elder Law Attorneys](#) | [Legal Services Corporation Legal Aid](#) | [ABA Find Legal Help](#)
[U.S. Administration on Aging Eldercare Locator](#) | [National Disability Rights Network](#)



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Slide 58 - Trusts



Finding the Right Fit: Decision-Making Supports and Guardianship

Trusts


(1 of 2)


A trust is a **written legal agreement** that **transfers ownership** of money and property from a person to a **trust**. The person in charge of the trust is called the **trustee**. Usually, a lawyer writes the trust document.


There are different kinds of trusts. Common forms include:


Revocable living trust gives someone else the authority to make decisions about money or property if a person is sick or injured. For more information, see [Help for trustees under a revocable living trust](#) from the [Consumer Financial Protection Bureau's Managing Someone Else's Money](#) guides.


Special needs trust allows a person with a disability to receive or keep certain income or property without losing their eligibility for needs-based public benefits.




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Slide 59 - Trusts Important Considerations



Finding the Right Fit: Decision-Making Supports and Guardianship

(2 of 2)





Trusts: Important Considerations


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Before setting up a trust, make sure to consider the following:


- Transferring funds to a trust **may affect public benefits.**
- Trusts are complicated. Setting up a trust **may require a lawyer**, which can be expensive.
- Usually, there is **no court supervision** of a trust unless specified in the trust documents.




The trustee, or person in charge of the trust, has **legal responsibilities**. [Click here for more information.](#)

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Slide 60 - Joint Ownership



Finding the Right Fit: Decision-Making Supports and Guardianship

Joint Ownership

(1 of 2)

Two or more people can own money or property together, as “joint owners.” A joint bank account is a kind of joint ownership.

If someone is not able to make decisions regarding property, a joint owner can continue to make decisions.

Usually there is no charge to set up a joint bank account. **The joint ownership can be discontinued at any time.**

Joint ownership can be a useful tool to allow someone to maintain some independence and to plan for the future. **But, one joint owner has a lot of opportunity to take advantage of another joint owner.**



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Slide 61 - Joint Ownership Important Considerations

Finding the Right Fit: Decision-Making Supports and Guardianship



Joint Ownership: Important Considerations





(2 of 2)



Before setting up a joint bank account or co-ownership of property, remember:

- Joint owners always share control over money and property.
- The joint owner can take out all money from the account. It doesn't matter which owner deposited the money.
- Joint owners **may not agree** on how to spend money or manage property.
- **Both owners must pay taxes** on the money and property.
- Joint ownership **might affect Medicaid eligibility**.
- **Creditors may be able to take all the money** in a joint account if one of the owners has debts or other legal liabilities.



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Slide 62 - Social Security Administration Representative Payee Program



Finding the Right Fit: Decision-Making Supports and Guardianship

(1 of 2)

\$



Social Security can appoint someone to **manage the benefits** of someone who cannot manage or direct the management of their benefits.
[Social Security Administration Representative Payee Program](#) 

+ PROS

The person keeps all their rights except for managing their benefits.

If Social Security benefits are a person's only income, a representative payee may address concerns about financial exploitation without appointing a guardian.

- CONS

The representative payee has complete control over the person's benefits, and could take advantage of a person's only income.

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Slide 63 - Veteran's Administration Fiduciary Program



Finding the Right Fit: Decision-Making Supports and Guardianship

(2 of 2)



Veteran's Administration Fiduciary Program



Similar to the Social Security Administration's Representative Payee Program, the **Veteran's Administration (VA)** appoints "fiduciaries" to manage the veterans' benefits of someone who cannot manage their own benefits. The [VA Fiduciary Program](#)  only applies to benefits earned by veterans.

+ PROS

If VA benefits are a person's only income, a **fiduciary may address concerns** about financial exploitation without appointing a guardian.

- CONS

The **fiduciary has total control** over the person's benefits and could take advantage of a person's only income.

For additional information, see [Help for Representative Payees and Fiduciaries](#)  from the [Consumer Financial Protection Bureau's Managing Someone Else's Money guides](#). 

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Slide 64 - Protective Arrangement



Finding the Right Fit: Decision-Making Supports and Guardianship



Protective Arrangement

Sometimes a **judge can make one decision** about property or money that will help avoid a guardianship. For example:

- Showing someone is eligible for public benefits;
- Managing money or property;
- Sale, mortgage, lease, or other transfer of property;
- Entering a contract;
- Adding to or creating a trust; and
- Making or breaking a contract, trust, will, or other transaction.



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Slide 65 - Guardianship Intro

NCSC DEPARTMENT OF JUSTICE ElderJustice INITIATIVE

Finding the Right Fit: Decision-Making Supports and Guardianship

Guardianship

REPLAY SLIDE

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The last legal option we'll cover is guardianship. However, unlike the other legal options presented, establishing a guardianship may remove considerable rights from an individual. Therefore, it should only be considered after other alternatives have proven ineffective or are unavailable.

Guardianship also requires going to court. You may ask the court to make you guardian of the person, guardian of the property, or both guardian of the person and property.

As you explore the following information on guardianship, we will indicate in the top right corner which slides apply to guardianship of the person, guardianship of the property, or both, by the use of the icons here.

It's important to note that guardianship laws and rules are state specific. Each state may use different terms for these roles, however for this course guardianship of the person and property will be used.

Slide 66 - Guardianship



Finding the Right Fit: Decision-Making Supports and Guardianship

Guardianship

Select an option to explore.





GUARDIANSHIP OF THE PERSON

Click Box



GUARDIANSHIP OF THE PROPERTY

Click Box

You may ask the court to make you guardian of the person or guardian of the property or **both**.

NOTE: Guardianship laws and rules are state specific. Each court may also have procedures that are different. Each state may use different terms for these roles. For this course, guardianship of the person and property will be used.



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Slide 67 - Guardianship of the Person

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Finding the Right Fit: Decision-Making Supports and Guardianship

What Is Guardianship of the Person?



A judge or a court can give a family member, friend, or a professional the **power to make personal decisions** for another adult.

Guardianship **removes many of a person's rights**, such as deciding where to live, whether to marry, and choice of doctors and medical treatment.

Select each item listed below to learn more.

Understanding Guardianship of the Person



- ☒ Levels of Guardianship
- ☒ Key Players
- ☒ Responsibilities of a Guardian
- ☒ Decision-Making Guidance






Guardianship should be a **last resort**.
Consider other ways of solving the problem first.

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Slide 68 - Levels of Guardianship Person



Finding the Right Fit: Decision-Making Supports and Guardianship







Guardianship of the Person and Property



Levels of Guardianship

There are **multiple levels** of guardianship. In each, the court decides how much **power** to give the guardian.




Limited	<p>The guardian can only make certain decisions that the person is no longer able to make. <i>Examples:</i></p> <div><div>Guardian of the Person:<ul style="list-style-type: none">Guardian can only make decisions about medical treatmentGuardian can only make decisions about where the person will live</div><div>Guardian of the Property:<ul style="list-style-type: none">The Guardian can only make decisions about money or property valued at more than \$25,000The Guardian can only make decisions about managing property the person rents to others</div></div>
Full (Plenary)	<p>The guardian has authority to make all decisions.</p>
Emergency/Temporary	<p>A guardian whose authority is temporary and usually only appointed in an emergency. There is usually an expiration date set for 60 or 90 days.</p>



Slide 69 - Key Players of Guardianship Person





Finding the Right Fit: Decision-Making Supports and Guardianship







Guardianship of the Person and Property



Key Players



Multiple people are involved in a guardianship, and often the **terms or names** can vary and are based on the court process. Here are some of the key players.























Respondent

The person who the petitioner says needs assistance in making decisions. If the court decides the person does need assistance, they become the person subject to guardianship.

The term “person subject to guardianship” is a new term for respondent. Terms you may also hear are “ward” or “protected person.”



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Slide 70 - Responsibilities Guardian of the Person



Finding the Right Fit: Decision-Making Supports and Guardianship



Guardianship of the Person

Responsibilities of the Guardian of the Person




The guardian of the person is responsible for **meeting a person's needs**, such as:

- Making sure the person has access to food
- Planning for shelter
- Medical care
- Transportation
- Social services
- Education
- Rehabilitation
- Safety







Slide 71 - Decision-Making Guidance



Finding the Right Fit: Decision-Making Supports and Guardianship



Guardianship of the Person


Decision-Making Guidance





The guardian of the person should **include the person in all decisions** when possible.


If the person cannot or does not wish to be involved, the guardian should try to make decisions based on the **person's wishes, beliefs, and values** either as communicated currently or before the guardianship.

If that is not possible or harm would result, the guardian should **act in the person's best interest**.

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Slide 72 - Guardianship of the Property

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Finding the Right Fit: Decision-Making Supports and Guardianship

What is Guardianship of the Property?



A judge or a court can give a family member, friend, or a professional the **power to make decisions** about money and property.

Guardianship of the property removes many of the person's rights. The person usually loses the right to decide how to spend money, whether property is purchased or sold, and what investments to make. In some states, the person may also lose the right to vote.

Select each item listed below to learn more.

Understanding Guardianship of the Property



- ✓ Levels of Guardianship
- ✓ Key Players
- ✓ Responsibilities of a Guardian
- ✓ Decision-Making Guidance






Guardianship should be a **last resort**. Consider other ways of solving the problem first.

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Slide 73 - Levels of Guardianship Property

Finding the Right Fit: Decision-Making Supports and Guardianship









Guardianship of the Person and Property



Levels of Guardianship

There are **multiple levels** of guardianship. In each, the court decides how much **power** to give the guardian.




Limited	<p>The guardian can only make certain decisions that the person is no longer able to make. <i>Examples:</i></p> <div> <div>Guardian of the Person:</div> <ul style="list-style-type: none"> Guardian can only make decisions about medical treatment Guardian can only make decisions about where the person will live </div> <div> <div>Guardian of the Property:</div> <ul style="list-style-type: none"> The Guardian can only make decisions about money or property valued at more than \$25,000 The Guardian can only make decisions about managing property the person rents to others </div>
Full (Plenary)	The guardian has authority to make all decisions .
Emergency/Temporary	A guardian whose authority is temporary and usually only appointed in an emergency. There is usually an expiration date set for 60 or 90 days.

Slide 74 - Key Players of Guardianship Property





Finding the Right Fit: Decision-Making Supports and Guardianship







Guardianship of the Person and Property



Key Players



Multiple people are involved in a guardianship, and often the **terms or names** can vary and are based on the court process. Here are some of the key players.























Respondent

The person who the petitioner says needs assistance in making decisions. If the court decides the person does need assistance, they become the person subject to guardianship.

The term “person subject to guardianship” is a new term for respondent. Terms you may also hear are “ward” or “protected person.”



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Slide 75 - Responsibilities Guardianship of the property

Finding the Right Fit: Decision-Making Supports and Guardianship



Guardianship of the Property

Responsibilities of the Guardian of the Property





A guardian of the property is a **fiduciary**. This means the guardian is responsible for **managing someone else's finances** and has a legal duty to make careful decisions.

A guardian of the property must:



- Act only in the best interests of the person
- Manage money and property carefully
- Keep money and property of the person separate from money and property of the guardian
- Keep good records

For additional information, see [Guides for court-appointed guardians](#) from the [Consumer Financial Protection Bureau's Managing Someone Else's Money guides](#).

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Slide 76 - Decision-Making of the Guardian of the Property



Finding the Right Fit: Decision-Making Supports and Guardianship

Guardianship of the Property



Decision-Making Guidance



The guardian of the property should **advocate** for the person's goals, expressed wishes, and needs. The guardian should **include the person** in making decisions.

If the person cannot express their wishes, even with help, then the guardian should try and find out from others **what the person would want.**

If the guardian cannot find out the person's wishes or if they would end up really harming the person, then the guardian should act in the **person's best interests.** "Best interests" means thinking about what the least-restrictive way is to meet the person's needs.



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Slide 77 - When is Guardianship Necessary



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Finding the Right Fit: Decision-Making Supports and Guardianship

When is Guardianship Necessary?



Guardianship removes most or all a person's independence and rights, so it should only be used after considering:

 Are there ~~other~~ legal options?

 What are the pros and cons of guardianship?





Scenarios for Different Situations

To get an idea of how various supports and legal options can impact a person's living situation, visit the **Scenarios** section of this training.

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Slide 78 - Consider Less Restrictive Options



Finding the Right Fit: Decision-Making Supports and Guardianship





Is Guardianship the Right Choice?

Consider Less Restrictive Options


- Guardianship **should not be used** just because someone has a certain disability or diagnosis
- Guardianship **does not fix** issues such as homelessness, addiction, or risk of arrest.


STOP & THINK: If someone is thinking about guardianship, first think about whether there are **other options** that can help the person without losing some or all of their **independence**. Sometimes, we call these options “**less restrictive options**.”





The UMKC Institute for Human Development's [Stoplight Tool](#)  assists with identifying a person's ability to make decisions and manage key areas of life.

To learn more about less restrictive legal options, go to [Legal Options](#).




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Slide 81 - Pros of Guardianship



Finding the Right Fit: Decision-Making Supports and Guardianship



Is Guardianship the Right Choice?

Pros and Cons of Guardianship (1 or 2)

+ PROS

- Guardianship provides authority to make decisions when a person does not have the ability to do so themselves, even with support, AND has not planned for the situation, for example, with a power of attorney.
- Guardianship may sometimes be the only way to fix or prevent further abuse, neglect, or exploitation.

- Guardianship means a court has the power to supervise the guardian and how the guardian does their job. This may be helpful to make sure the person is safe and healthy.



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Slide 82 - Cons of Guardianship



Finding the Right Fit: Decision-Making Supports and Guardianship




Is Guardianship the Right Choice?


Pros and Cons of Guardianship (2 of 2)


- CONS


- Guardianship removes the rights of person. It is a last resort.
- Guardians have a lot of power. Some guardians may take advantage of the person they are supposed to protect.
- Guardianship requires going to court and undergoing continued court supervision.
- Guardianship frequently requires time-consuming reports to be filed with the court.

- Guardianship is expensive. There are legal fees, court fees, and possibly attorney and guardianship fees.
- If a family member is a guardian and dies, a judge may appoint a stranger as a replacement.
- A judge may appoint a stranger to be or replace a guardian. This may happen if the judge feels a family member is not a good choice to be the guardian or if a family member dies.

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Slide 83 - Guardianship - How it Works

DEPARTMENT OF JUSTICE
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Finding the Right Fit: Decision-Making Supports and Guardianship

When Guardianship is Necessary: How it Works



Guardianship is a **legal process** in the courts where a judge decides if the person needs a guardian and who should serve as the person's guardian.

Below are items you should be aware of before beginning this legal process. *Click each item listed below to learn more.*

Items to Consider:

- ☒ Attorney Costs and Court Fees
- ☒ Due Process Rights of the Person

Guardianship of the Person

- ☒ Apply for Limited Guardianship?
- ☒ Who should become the guardian?

Guardianship of the Property

- ☒ Apply for Limited Guardianship?
- ☒ Who should become the guardian?


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Slide 84 - Potential Costs of Guardianship

Finding the Right Fit: Decision-Making Supports and Guardianship



When Guardianship is Necessary: How It Works

Potential Costs of Guardianship

Hiring an Attorney

Guardianship is a **complicated legal process** and if you can afford an attorney, you will want one that specializes in guardianship/conservatorship law. **In some states an attorney is required.**

Filing a Petition



The process begins with the **filing of a petition (form)** at local court. Note: there **may be a fee** to file the petition.

The fee payment can come from the person's account. If there is not sufficient money to pay the fee, you can ask for a fee waiver.








Slide 85 - A Right to Due Process



Finding the Right Fit: Decision-Making Supports and Guardianship



When Guardianship is Necessary: How It Works



A Right to Due Process



Generally speaking, in a guardianship case, the person in need of a guardian **has the right** to:

- be told that a **petition** for guardianship was filed
- have a **hearing** on the need for a guardianship
- be **represented by an attorney** at all court hearings
- be **present** at all hearings and court proceedings
- bring their own **witnesses** and **evidence**
- a finding of “clear and convincing evidence” that the guardianship was **necessary**
- be **notified** of all court orders and hearings
- **appeal** any court determination.

NOTE: These rights may be different in your court



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Slide 86 - Applying for Limited Guardianship: Person



Finding the Right Fit: Decision-Making Supports and Guardianship



When Guardianship of the Person is Necessary: How it Works

Applying for Limited Guardianship

If you have explored all other options and determined that a guardianship is necessary, it is time to file a court petition. In the petition **only ask for authority over the area where support is needed**. For example, a person may be able to manage cash for daily tasks, but need help with more difficult decisions. When the court grants the guardians only those specific powers needed, it is called a **limited guardianship**.

Listed below are **common areas** where support might be sought.

Select the support area(s) you are considering by dragging it from the list below to the petition area at right.

Residential
Medical Treatment
Services and Care
Ability to Sign Contracts (if no guardian of the property)
Apply for Public Benefits

PETITION





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Slide 87 - Applying for Limited Guardianship: Property



Finding the Right Fit: Decision-Making Supports and Guardianship



When Guardianship of the Property is Necessary: How it Works

Applying for Limited Guardianship

If you have explored all other options and used the stoplight tool to determine what kinds of decision-making authority are necessary, it is time to file a court petition. In the petition **only ask for authority over the area where support is needed**. For example, a person may be able to manage cash for daily tasks, but need help with more difficult decisions. When the court grants the guardians only those specific powers needed, it is called a **limited guardianship**.

Listed below are **common areas** where support might be sought.

Select the support area(s) you are considering by dragging it from the list below to the petition area at right.

Pay Bills
Make Contracts
Sell Real Estate
Make Gifts
Make Investments
Apply for and Manage Public Benefits

PETITION





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Slide 88 - Who Can Apply to be Guardian of the Person

Finding the Right Fit: Decision-Making Supports and Guardianship



When Guardianship of the Person is Necessary: How it Works

Who Should Become the Guardian?

- If possible, the court should consider **who the person would want** to be their guardian.
- Most states **prefer a family member** to be the guardian if one is available and appropriate.
- A guardian must be **18 years of age or older**.
- A guardian may be required to pass a **background check**.

Is being a guardian for you?

You should **consider the demands of being a guardian** and determine if you are the best person to fill the role and if you can meet the requirements of the court. As a family member **you do not have to become the guardian**. You may wish to maintain your current relationship as it is and have someone else take on the role of guardian. Get information from your local court to learn what is required of a guardian.



Slide 89 - Who Can Apply to be Guardian of the Property



Finding the Right Fit: Decision-Making Supports and Guardianship



When Guardianship of the Property is Necessary: How it Works



Who Should Become the Guardian?

- If possible, the court should consider **who the person would want** to be their guardian.
- Most states **prefer a family member** to be the guardian if one is available and appropriate.
- A guardian must be **18 years of age or older**.
- A guardian may be required to pass a **background check**.
- The proposed guardian of the property must be able to be **bonded**, which requires a **good financial/credit history**.



Is being a guardian for you?

You should **consider the demands of being a guardian** and determine if you are the best person to fill the role and if you can meet the requirements. **Managing someone else's finances and reporting to the court can be complicated and stressful.** As a family member **you do not have to become the guardian.** You may wish to maintain your current relationship as it is and have someone else take on the role of guardian. Get information from your local court to learn what is required of a guardian.



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Slide 90 - Steps to Applying for Guardianship

DEPARTMENT OF JUSTICE
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Finding the Right Fit: Decision-Making Supports and Guardianship

How do I apply to become a guardian?



Steps to Applying for Guardianship

Select each step listed below to learn more.

✓ **Step 1:** File a Petition with the Court

✓ **Step 2:** Visit from the Court

✓ **Step 3:** The Court Hearing

✓ **a:** Notice of the Hearing

✓ **b:** Appointing an Attorney

✓ **c:** Preparing for the Hearing

✓ **d:** Presenting Evidence

✓ **e:** The Judge's Decision


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Slide 91 - File a Petition with the Court



Finding the Right Fit: Decision-Making Supports and Guardianship



Steps to Applying for Guardianship

1. File a Petition with the Court

Before filing, find out what the person needs. Talk to the person. Talk to their friends, family, and service providers. Are there any other options? Is a guardian really necessary?



To ask the court to appoint a guardian, **file a petition**.

Check the court website for **forms** required/recommended by your local court. **Often the petition form is online.**

Hiring an Attorney

You may need to **hire an attorney** to help with the petition. You can find an attorney through your state bar association or from the [National Academy of Elder Law Attorneys](#). 

If you do not hire an attorney, you are considered to be **self-represented**, or “**pro se**,” and there may be helpful guidelines, forms, or other resources on the court website.

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Slide 92 - Visit from the Court



Finding the Right Fit: Decision-Making Supports and Guardianship

Click Box

Steps to Applying for Guardianship

2. Visit from the Court

After the petition is filed, the court may appoint the visitor (may be called a court visitor, an investigator, or a guardian ad litem) to **visit the person you are seeking guardianship for**. This person will then submit a report in writing to the court.



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Slide 93 - The Court Hearing



Finding the Right Fit: Decision-Making Supports and Guardianship

Click Box

Steps to Applying for Guardianship

3. The Court Hearing

The court will **schedule a hearing** to determine if a guardianship is needed. In many states, the person has a right to attend the hearing and be represented by an attorney.




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Slide 94 - Notice of the Hearing






Finding the Right Fit: Decision-Making Supports and Guardianship



Steps to Applying for Guardianship

3a. Notice of the Hearing

Before the hearing, the person and all interested people must receive **information about the petition** and the **date of the hearing** for guardianship. Interested people should attend the hearing to inform the court about special circumstances or other concerns to consider regarding whether to appoint a guardian, and who to appoint.



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Slide 95 - Appointing an Attorney



Finding the Right Fit: Decision-Making Supports and Guardianship



Steps to Applying for Guardianship

3b. Appointing an Attorney



In some states the court will appoint an attorney if the person does not already have one.

The attorney's job is to **represent the rights and wishes of the person**.
The attorney should communicate in a way the person can understand.







Slide 96 - Preparing for the Hearing



Finding the Right Fit: Decision-Making Supports and Guardianship







Steps to Applying for Guardianship

3c. Preparing for the Hearing



To prepare for the hearing, the person asking the court for a guardianship should **be ready** to tell the court:

- What is the **problem** for which a guardian is needed?
- Why **other options won't work**?
- What **supports** and services does the person need?
- Why the **proposed guardian** should be selected?






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Slide 97 - Presenting Evidence



Finding the Right Fit: Decision-Making Supports and Guardianship





Steps to Applying for Guardianship


3d. Presenting Evidence


The person asking the court for a guardianship **must show why** the person needs a guardian. The **evidence regarding the capacity of the person** is presented to the judge.


At the hearing **questions may be raised** by any interested person, including the proposed guardian.






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Slide 98 - The Judge's Decision



Finding the Right Fit: Decision-Making Supports and Guardianship




Steps to Applying for Guardianship


3e. The Judge's Decision


At the hearing the judge or court clerk should **listen to everyone** who comes to the hearing and **review** any motions, evaluations, or other **evidence**.


The judge may **make a decision** at the end of the hearing or decide later:


- **If there should be a guardian**, and if so:
- **Who** the guardian will be
- **What authority** the guardian will have




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Slide 99 - What I Need to Know




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Finding the Right Fit: Decision-Making Supports and Guardianship

What do I need to know if I am appointed?



After the court hearing, if you are appointed guardian, there are several points you need to be aware of. Explore each of these elements below.



Before You Begin Serving

✓ Background Checks & Bonding

✓ Training

✓ Letter of Guardianship

Important Reminders

✓ It's Not a Quick Fix

✓ Court Approval

✓ Protecting Rights

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Slide 100 - Background Checks & Bonding



Finding the Right Fit: Decision-Making Supports and Guardianship





What do I need to know if I am appointed?


Background Checks & Bonding


If the court has decided a guardianship is necessary, the court may require the guardian to:


- Obtain a [surety bond](#)
- Complete a **background check**
- Complete a **credit check**
- Complete a **criminal background check**





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Slide 101 - Training




Finding the Right Fit: Decision-Making Supports and Guardianship

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What do I need to know if I am appointed?

Training

As the guardian, the court may require you to attend training or complete online training in addition to this training. Check with your local court to determine the requirement.



NOTE: Even if you are not required to take a training you may want to check out the resources available in the resources tab of this training for further information. Being a guardian is a difficult job and there are many tools and resources available that can assist you.


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Slide 102 - Letter of Guardianship



Finding the Right Fit: Decision-Making Supports and Guardianship




What do I need to know if I am appointed?





Letter of Guardianship

Once the guardian has completed all screening requirements required by the court, the court will issue a Letter of Guardianship, sometimes known as “**Letters**.”



These Letters will serve as the guardian’s **proof of authority** granted by the court.

Remember the **date of the Letters**, as that date may be important to the guardian’s **reporting requirements**.






Slide 103 - It's Not a Quick Fix



Finding the Right Fit: Decision-Making Supports and Guardianship




What do I need to know if I am appointed?





It's Not a Quick Fix

Guardianship is not the solution you may think it is.

Guardians cannot:

- **Fix every problem.** *For example, guardians cannot stop someone from being arrested, and in some states, a guardian cannot force someone to take medication.*
- **Change someone's behavior,** even with control of finances. *For example, a guardian of the property can restrict a person's funds so they cannot buy alcohol or drugs. But the guardian cannot stop the person from seeking other means to purchase alcohol or drugs.*





Slide 104 - Court Approval



Finding the Right Fit: Decision-Making Supports and Guardianship



What do I need to know if I am appointed?

Court Approval

Even if all authority is given to the guardian, there are still **limitations** on what a guardian can do. Those vary by state, but these are examples of what a **court would likely need to approve**:

- abortion
- forced mental health treatment
- experimental medical procedures
- placement of the person in a facility or institution
- removal of life support
- sale of real estate and some personal property
- payment of guardian or attorney fees
- sterilization
- filing for divorce
- consenting to termination of parental rights



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Slide 106 - Protecting Rights



Finding the Right Fit: Decision-Making Supports and Guardianship



What do I need to know if I am appointed?


Protecting Rights

A guardian must **make sure rights** of the person are **not violated**.

The right to:

- Be treated with dignity and respect
- Be protected from abuse and neglect
- A safe living, working and learning environment that is the least restrictive
- Privacy
- Religious preference
- Interpersonal relationships and sexual expression
- Receive appropriate services
- Advocacy from the guardian
- Receive equal treatment under the law
- Explanations for medical treatment
- Confidentiality of personal information
- Receive prudent financial management
- Notice of all guardianship proceedings
- Petition the court to modify or terminate the guardianship
- Speak privately with an attorney or advocate
- Have the guardian meet the needs of the person at all times
- Continuous review of the need for full or partial restoration of right
- Bring a grievance against the guardian or request the court to review the guardian's actions
- Request removal and replacement of the guardian





Slide 107 - Serving as a Guardian Intro



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Finding the Right Fit: Decision-Making Supports and Guardianship



Serving as a Guardian



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Serving as a guardian for someone in need is an honorable role of great responsibility. As a guardian, you are charged with handling the affairs of someone that has been entrusted to your care by the court. Whether approving medical treatments, coordinating day-to-day care, or overseeing financial accounts, the role of a guardian is more than just checking off a list of to-do's. In addition to following all laws and court orders, being a guardian means treating the person with great dignity and care, and advocating for the person's goals, needs, and preferences.



Slide 108 - What More I Need to Know



Finding the Right Fit: Decision-Making Supports and Guardianship



What more do I need to know if I am appointed?

There are also specific points that you should be aware of **depending on the type of guardianship**.
Review your area(s) of interest below.




Guardian of the Person


- ☒ Ethical Principles
- ☒ Duties & Reporting
- ☒ Charging Fees





Guardian of the Property


- ☒ Ethical Principles
- ☒ Personal Involvement
- ☒ Proper Management
- ☒ Duties & Reporting
- ☒ Charging Fees

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Slide 109 - Ethical Principles



Finding the Right Fit: Decision-Making Supports and Guardianship




What do I need to know if I'm appointed Guardian of the Person?

Ethical Principles





National Guardianship Association Ethical Principles

A Guardian:

- Treats the person with dignity.
- Involves the person to the greatest extent possible in all decision making.
- Selects the option that places the least restrictions on the person's freedom and rights.
- Identifies and advocates for the person's goals, needs, and preferences.
- Maximizes the self-reliance and independence of the person.
- Keeps confidential the affairs of the person.
- Avoids conflicts of interest and self-dealing.
- Complies with all laws and court orders.
- Manages all financial matters carefully.
- Respects that the money and property being managed belongs to the person



[View NGA Standards and Ethical Principles](#)



Slide 110 - Duties & Reporting



Finding the Right Fit: Decision-Making Supports and Guardianship



What do I need to know if I'm appointed Guardian of the Person?

Duties & Reporting

Be aware of all **requirements and obligations** you have to the court. It is your duty to know what you need to do as a guardian.

The court will require certain **reports and actions** from you. Ask the court what you need to do to complete these requirements.

You will need to **file reports with the court** on at least an annual basis regarding the well being of the person. Create a system for all **records and documentation** pertaining to the person subject to guardianship.



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Slide 111 - Charging Fees



Finding the Right Fit: Decision-Making Supports and Guardianship



What do I need to know if I'm appointed Guardian of the Person?

Charging Fees

Guardians may charge fees, but can only be paid with **court approval**. Keeping **documentation** for fees is very important.

Documentation should include the date and amount of time for each task the guardian performed. Fees should be charged based on the skill needed to complete the task. The guardian should ask the court what documentation is needed for fees.



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Slide 112 - Personal Involvement



Finding the Right Fit: Decision-Making Supports and Guardianship



What do I need to know if I'm appointed Guardian of the Property?

Personal Involvement

As the guardian of the property:

- **Do not mix your money** with the person's money.
- **Do not borrow the person's money** for your own or anyone else's benefit.
- **Avoid having any interest**, financial or otherwise, in any transaction or activity related to the guardianship.
Example: You are the guardian for your aunt. Your spouse has a handyman business. You should not hire him to work on your aunt's home.


For additional information, see [Guides for court-appointed guardians](#) 
from the [Consumer Financial Protection Bureau's Managing Someone Else's Money guides](#). 






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Slide 113 - Proper Management



Finding the Right Fit: Decision-Making Supports and Guardianship








What do I need to know if I'm appointed Guardian of the Property?

Proper Management

A guardian of the property is a **fiduciary**, with the highest duty of trust and confidence and the responsibility, at a minimum, to:



- **Involve the person** in decisions and act only in their **best interest**
- **Manage** money and property **carefully**
- Keep the person's money **separate** from the guardian's money
- **Keep good records**






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Slide 114 - Fulfilling Duties & Reporting




Finding the Right Fit: Decision-Making Supports and Guardianship



What do I need to know if I'm appointed Guardian of the Property?

Duties & Reporting





Be aware of all **requirements and obligations** you have to the court. It is your responsibility to **know what you are required to do** to fulfill your obligations to your local court.



The guardian of the property will need to*:

- **File regular financial reports with the court**, and know what detail is required and how often to file the reports.
- Establish a system for **maintaining all records and documentation**.
- Know what **expenses the guardian is authorized to make** without court approval and when court approval is needed. In many courts, large and unusual expenses need court approval.
- Make expenses **only for the benefit of the person** under guardianship.
- Let the court know if there are **any changes** to the person's needs (*example: they need a higher level of care*) or the person dies.

* Always check with your court do determine what you need to do.



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Slide 115 - Charging Fees



Finding the Right Fit: Decision-Making Supports and Guardianship



What do I need to know if I'm appointed Guardian of the Property?

Charging Fees

Guardians may charge fees, but can only be paid with **court approval**. Keeping **documentation** for fees is very important.

Documentation should include the date and amount of time for each task the guardian performed. Fees should be charged based on the skill needed to complete the task. The guardian should ask the court what documentation is needed for fees.




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Slide 116 - Now that I'm a Guardian



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Finding the Right Fit: Decision-Making Supports and Guardianship

I Am the Guardian. Now What?



Now that you are a guardian, there are several requirements of your position that you must perform.
Select each option below to learn more.



Guardian of the Person and/or Guardian of the Property

✓ Reporting Requirements

✓ Duties & Responsibilities

✓ Immediate Actions

✓ Develop a Plan

✓ Long-Term Actions





For Guardian of the Property

✓ Post a Bond

✓ Research Assets and Property

✓ Taking Control of the Assets

✓ Create a Budget

✓ Inventory Report

✓ Annual Account

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Slide 117 - Reporting Requirements



Finding the Right Fit: Decision-Making Supports and Guardianship



I am the guardian. Now what?

Reporting Requirements

As guardian, you must **report to the court regularly**. Find out:

- **When** your reports (forms) are **due** to the court.
- **What forms to use.**
 - Make sure you locate the forms and read the forms so you know what information you will need to keep.
- What is the date the forms/reports are due to the court? Treat this date like other important dates, mark it on your calendar, and create a reminder.
- What do you do if the **person's needs change** or the **person dies**?
- Who do you ask if you have **questions**?



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Slide 118 - Duties & Responsibilities



Finding the Right Fit: Decision-Making Supports and Guardianship



I am the guardian. Now what?

Duties & Responsibilities

As guardian, you have a duty to:

- **Involve the person in decision making** and communicate in a way the person understands
- **Identify** service and supports, and **advocate** for the person's goals, needs, and preferences
- **Help the person exercise their rights**
- **Connect the person** with people important to him or her
- Put the **person at the center** of the decision and plans





Slide 119 - Immediate Actions 1



Finding the Right Fit: Decision-Making Supports and Guardianship

I am the guardian. Now what?

Immediate Actions (1 of 2)


When you first become a guardian:

- If you don't already, **get to know the person** and develop a relationship.
- Find out if there are **immediate concerns** that you must address right away.
- Review the person's needs and meet with any service providers to find out if the person's needs are being met or services need to be changed.
- Set up **health-related evaluations** of the person, particularly if the person has not had them in a while (this could include mental health evaluations).





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Slide 120 - Immediate Actions 2



Finding the Right Fit: Decision-Making Supports and Guardianship



I am the guardian. Now what?

Immediate Actions (2 of 2)

- Determine what **mail** you will need directed to you and what can remain directed to the person. Change the **mailing address** as needed.
- Ensure that any **personal property** of the person is identified and protected or insured if needed.
- Apply for any **benefits** they are not currently receiving and may be eligible for.
- Search for any existing **healthcare directives**, such as living wills, organ donor statements, powers of attorney.
- **Keep a file of all information** both for your records and to complete your annual reporting to the court.





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Slide 121 - Develop a Plan



Finding the Right Fit: Decision-Making Supports and Guardianship




I am the guardian. Now what?

Develop a Plan



Once immediate needs are taken care of, it is important to have a person-centered plan moving forward.


Develop a **Person-Centered Guardianship Plan**.


- The plan should have both **short- and long-term goals**.
- The plan should address medical, psychiatric, social, vocational/educational, residential, recreational needs of the person under guardianship.
- The plan should be **directed by the wishes of the person** and their strengths and abilities.
- The goal of the plan is to **move to independence** and enable the person subject to guardianship to have control of their life and ultimately no longer need a guardian.


Download an example [worksheet](#)  for developing a person-centered plan from the Community Housing Network website.


NOTE: This plan is different than a nursing-home or assisted-living care plan.



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Slide 122 - Long Term Actions




Finding the Right Fit: Decision-Making Supports and Guardianship





I am the guardian. Now what?


Long-Term Actions


- Make sure the **person** is as **involved** in all **decision-making** as possible.
- Provide the **supports** that the person wants, *for example, access to family and friends.*
- Provide **access to resources** that help increase the person's skills.
- **Notify** medical practitioners, service providers, and interested parties of **life events** and **court hearings**.
- **Regularly review** any plans and goals to make sure they continue to meet the person's goals, desires, and abilities as they change over time.
- **Regularly assess** the person under guardianship to determine if the guardianship is still necessary. **Alert the court** of any changes in needs or abilities, or if the person dies.






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Slide 123 - Post Bond



Finding the Right Fit: Decision-Making Supports and Guardianship




I am the guardian of the property. Now what?

Post Bond

When you first become a guardian of the property the court may require you to buy a **surety bond** to protect the property of the person. A bond is a type of insurance that will replace the person's money if the guardian doesn't perform their role and money is lost or stolen.

Real estate will be protected by **insurance**, which the guardian will need to ensure is appropriate for the value of the real estate and the person's other personal property.



For additional information, see [Help for Court-appointed Guardians of Property and Conservators](#) from the [Consumer Financial Protection Bureau's Managing Someone Else's Money guides](#).

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Slide 124 - Research Assets and Property 1



Finding the Right Fit: Decision-Making Supports and Guardianship

I am the guardian of the property. Now what?

Research Assets and Property (1 of 2)

The guardian of the property must **find all the money and property** of the person. *Here are some suggestions that may help:*

- Search the mail and home
- Look for and review any financial statements for other accounts, investments, safety deposit boxes, storage facilities.
- Look for debt such as loans and credit cards
- Check Department of Motor Vehicles
- Check Department of Natural Resources for recreational vehicles
- Check property records for real estate
- Check unclaimed property records
- Look at previous tax returns for investments and income
- Look for legal documents such as promissory notes, titles/deeds, credit reports
- Ask family and friends
- Inquire at local banks
- Look for insurance policies that may need to have premiums maintained (i.e.: long term health insurance, etc.)



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Slide 125 - Research Assets and Property 2



Finding the Right Fit: Decision-Making Supports and Guardianship



I am the guardian of the property. Now what?

Research Assets and Property (2 of 2)

The value of some property items may not be obvious. Here are some ideas on how to determine what the value may be:

For personal property:

- For cars, boats, or other vehicles, check for the blue book value
- For jewelry and collectible items such as art, coins, antiques, you may want to get an appraisal

As you locate money and property, **document all information** regarding that money or property. You will need to report this information to the court on the inventory that you file. You may also need to **provide proof** of the money or property and its value to the court.





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Slide 126 - Take Control of the Assets



Finding the Right Fit: Decision-Making Supports and Guardianship




I am the guardian of the property. Now what?


Take Control of the Assets


As the guardian of the property, you will need to change all financial accounts to become **guardianship accounts**. To do this:


- Get a certified copy of your letters of guardianship from the court and take it to the bank
- Get canceled checks from the bank for your records

You may want to consider a **credit freeze** to prevent potential financial exploitation. A credit freeze will prevent anyone from opening new accounts in the person's name. You will need to do this for each of the three credit bureaus: Equifax, TransUnion, and Experian.





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Slide 127 - Create a Budget



Finding the Right Fit: Decision-Making Supports and Guardianship




I am the guardian of the property. Now what?

Create a Budget

A budget will help the guardian manage the assets more wisely. Some courts may require you to file a budget.

If your court does not provide a template to you, the following form from the Family Law Self-Help Center of Southern Nevada may be a helpful guide. [View budget form example](#)





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Slide 128 - Inventory



Finding the Right Fit: Decision-Making Supports and Guardianship



I am the guardian of the property. Now what?


Inventory

Once you have found all the person's money and property you need to report this to the court. This is called **the inventory**.

The inventory is usually **due within the first few months** of becoming a guardian (*usually within 60 to 90 days*).

If you later find other property or money, you should alert the court.

You will want to create a system for tracking the money and property.





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Slide 129 - Annual Account



Finding the Right Fit: Decision-Making Supports and Guardianship




I am the guardian of the property. Now what?


Annual Account


You will be required to **file an accounting of income and expenses** of the person's money and property. Most courts require this **annually**.


Keep good records and document all income and expenses.


Check with your court at the time of appointment to find out what you are required to file, how it needs to be filed, and when it should be filed.



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Slide 130 - Avoiding Harm or Exploitation

DEPARTMENT OF JUSTICE
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Finding the Right Fit: Decision-Making Supports and Guardianship

How can I help make sure the guardianship is not used to harm the person?



One of the roles of the guardian is to protect the person from harm.

Depending on your state law, you may be required to **report suspected abuse, neglect, and exploitation** to authorities, usually Adult Protective Services.



Select each item below to learn valuable information to ensure guardianship is not used to harm or exploit.

Be Aware

- ☒ Types of Exploitation
- ☒ Red Flags: Guardian of the Person
- ☒ Red Flags: Guardian of the Property
- ☒ What to Do When Abuse Occurs

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Slide 131 - Types of Exploitation



Finding the Right Fit: Decision-Making Supports and Guardianship



Avoiding Harm or Exploitation in Guardianship

Types of Exploitation

Physical Abuse: an act, rough treatment, or punishment that may result in injury, pain, or impairment.

Psychological Abuse: psychological, verbal, or emotional abuse causing suffering, emotional pain, or distress

Sexual Abuse: non-consensual sexual contact of any kind, including but not limited to forcing sexual contact or forcing sex with a third party.

Financial Abuse or Exploitation: illegal or improper use of a person's money or property.



Neglect or Abandonment: intentional or unintentional failure or refusal to provide care or help to an older adult; an extreme form of neglect.

Self Neglect: occurs when an adult cannot perform or obtain services necessary to maintain their own health or welfare.





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Slide 132 - Red Flags: Guardian of Person



Finding the Right Fit: Decision-Making Supports and Guardianship







Avoiding Harm or Exploitation in Guardianship

Red Flags: Guardian of Person

While it doesn't happen often, guardians can neglect or abuse people. Here are some things to look out for that may indicate neglect or abuse:

- Guardian **does not cooperate** with health or social service providers and is reluctant to spend money on the respondent.
- Guardian is **not forthcoming** about the services the respondent can afford or says the person **cannot afford services** when that is not the case.
- Guardian **does not file court documents**, including accountings, on time.
- Guardian is providing **questionable quality of care**.
- Guardian is the **subject of repeated complaints** from family members, neighbors, friends, or the respondent.
- Guardian is **not visiting or actively overseeing** the care of the person.



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Slide 133 - Red Flags: Guardian of Property 1

Finding the Right Fit: Decision-Making Supports and Guardianship

Avoiding Harm or Exploitation in Guardianship

Red Flags: Guardian of Property (1 of 2)

While it doesn't happen often, guardians can exploit people. The assets belong to the person subject to guardianship and should be used only for their benefit. Here are some things to look out for that **may indicate exploitation, neglect, or abuse**:

- Takes out large amounts of money **without explanation**
- **Gives loans or gifts** to family or others such as a new "best friend"
- Not paying bills or **not paying bills timely**
- **Not receiving benefits** that the person is entitled to (e.g., Social Security)
- The guardian has an **improved change in lifestyle** after becoming guardian
- Tries to **wire large amounts** of money
- Buys items or services that **don't seem necessary**



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Slide 134 - Red Flags: Guardian of Property 2





Finding the Right Fit: Decision-Making Supports and Guardianship



Avoiding Harm or Exploitation in Guardianship



Red Flags: Guardian of Property (2 of 2)

- **Missing items** such as a television set or other items are listed in the accounting filed with the court but are not present in the person's home
- Writing numerous **checks for cash**
- Guardian **reimbursing self** repeatedly without explanations
- **Purchasing an automobile** but the person cannot drive or use the vehicle
- Frequent use of an **ATM**
- Gaps and **missing entries** for expected income (*e.g., pensions, Social Security, rental income*)
- **Changes beneficiaries** of a will, life insurance or retirement funds.
- Statements indicating the **guardian thinks the assets are their inheritance.**






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Slide 135 - What to Do When Abuse Occurs



Finding the Right Fit: Decision-Making Supports and Guardianship



Avoiding Harm or Exploitation in Guardianship





What to Do When Abuse Occurs

The **court should be notified** of any concern.

The court may:

- Limit the authority of the guardian
- Remove the guardian
- Appoint a successor guardian
- Freeze assets
- Order money repaid
- Require the bond company to repay
- Refer the case for investigation by law enforcement or adult protection

Consider notifying adult protective services and law enforcement.



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Slide 136 - Ending a Guardianship

DEPARTMENT OF JUSTICE
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Finding the Right Fit: Decision-Making Supports and Guardianship

How do I end a guardianship?



The guardian must always **review the person's needs** and report to court if there are important changes.

The guardian should continually consider whether there is still a need for guardianship, and if not, ask the court to end it and restore the person's rights.

Consider **restoration of rights** when:

- Conditions change
- Supports change
- New information is available that wasn't when the guardianship was created

Ending a Guardianship



- ✓ Reasons: Guardianship of the Person
- ✓ Reasons: Guardianship of the Property
- ✓ How to End a Guardianship
- ✓ Real-Life Examples of Ending a Guardianship



Sometimes ending a guardianship is called a "termination," because the guardianship is "cut off," or "done." Sometimes ending a guardianship is called a "restoration," because the rights that were lost when a guardian was appointed are returned or restored to the person.

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Slide 137 - Reasons to End a Guardianship of the Person








Finding the Right Fit: Decision-Making Supports and Guardianship

Ending a Guardianship

Reasons to End a Guardianship of the Person (1 of 2)



- **Circumstances have changed** and the person with a guardian can manage their own affairs.
For example:
 - Friends and family can support the person in making their own decisions.
 - A medical condition that was once severe and prevented the person from making decisions, has improved.
- The **guardianship is not protecting the person** from harm.
For example:
 - A guardian was appointed to help someone get out of a dangerous living situation. The guardian helped the person move into a safe, permanent residence. The guardian is no longer necessary.
 - A guardian was appointed because the person refused to consent to surgery. The person continues to refuse and the doctor will not force the person to have surgery. There is nothing left for the guardian to do.

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Slide 138 - Reasons to End a Guardianship of the Person 2



Finding the Right Fit: Decision-Making Supports and Guardianship



Ending a Guardianship

Reasons to End a Guardianship of the Person (2 of 2)



What is the guardian's role in ending a guardianship?

A guardian should regularly ask, **does the person I am serving still need a guardian?** If the answer is no, the guardian should file a petition/ask the judge in writing to end the guardianship. And, if the person wants to end the guardianship, the guardian should **work with the person to achieve their goal.**



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Slide 139 - Reasons to End a Guardianship of the Property

Finding the Right Fit: Decision-Making Supports and Guardianship

Ending a Guardianship

Reasons to End a Guardianship of the Property





Examples:


- The person has **gained the ability to make decisions** and is no longer in need of surrogate decision making.
- The **financial situation has changed** and other options are now appropriate.


What is the guardian's role in ending a guardianship?

A guardian should regularly ask, **does the person I am serving still need a guardian?** If the answer is no, the guardian should file a petition/ask the judge in writing to end the guardianship. And, if the person wants to end the guardianship, the guardian should **work with the person to achieve their goal.**


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Slide 140 - How to End a Guardianship 1



Finding the Right Fit: Decision-Making Supports and Guardianship


Ending a Guardianship


How to End a Guardianship (1 of 4)




Tell the judge or court that the guardianship is not necessary


Usually, courts require a **petition** or court document explaining why the guardianship is not necessary. The person, a lawyer for the person, or someone else can file the petition. In some states, the person who has a guardian can send a letter or a handwritten note to the judge asking the judge to end the guardianship and restore their rights.

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Slide 141 - How to End a Guardianship 2



Finding the Right Fit: Decision-Making Supports and Guardianship

Ending a Guardianship

How to End a Guardianship (2 of 4)



The role of a lawyer is very important

In some states, a person who has a guardian and wants to end the guardianship has a **right to a lawyer**, and will be appointed one for free by the court. In other states the person will have to find their own lawyer. This is difficult because most lawyers require payment. There are some legal services organizations that are willing to provide services for free.

A lawyer is very important to successfully ending a guardianship, because the lawyer's job is to **find and present evidence and convince the judge to end the guardianship**. The lawyer should represent the person just as the lawyer would represent any client – following the direction and wishes of the client.

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Slide 142 - How to End a Guardianship 3

Finding the Right Fit: Decision-Making Supports and Guardianship

Ending a Guardianship

How to End a Guardianship (3 of 4)





The court hearing


After the judge receives a petition or request to end a guardianship the judge can schedule a hearing. At the hearing, the person or party requesting the end of the guardianship can **show the judge why guardianship is not necessary**. Anyone or any agency in support of keeping the guardianship will also have a chance to participate in the hearing.

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Slide 143 - How to End a Guardianship 4




Finding the Right Fit: Decision-Making Supports and Guardianship



Ending a Guardianship

How to End a Guardianship (4 of 4)





Show the court the person no longer needs a guardian


There are many ways to show a person no longer needs a guardian, including:


- The **person** can speak to the judge or “**testify**” **at a hearing**, about why they can make their own decisions and/or what has changed in their life so that they do not need a guardian.
- **Letters** from a psychologist, social worker, or therapist recommending that the person does not need a guardian. These **professionals** can also share their opinions in court.
- Letters from friends, family, employers, service providers, religious leaders, or anyone else who knows the person about the supports available to the person to help with decision-making.

Anyone who supports the person may be able to speak to or present a letter to the judge.
For example, if the person is active in their church, the church's leader could talk to the judge about how the church supports its members. Or, a service provider could write a letter to the judge about the life skills a person has developed after starting a new job.

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Slide 144 - Examples of Ending Guardianship



Finding the Right Fit: Decision-Making Supports and Guardianship



Ending a Guardianship

They won! — Examples of Ending Guardianship and Restoring Rights



A judge ended the guardianship of each of the following people. While every case is unique, each of these individuals showed the judge that they had a supported decision-making network, or other supports in place, and did not need the assistance and protection of a guardian.

[NOTE](#): All links below will open in a new browser window.

- [Corey](#) in Massachusetts
- [Dameris L](#) in New York
- [“Dolores”](#) in the District of Columbia
- [Jamie Beck](#) in Indiana
- [Jenny Hatch](#) in Virginia
- [Joshua Strong](#) in Maine
- [Lartarsha Clegg](#) in the District of Columbia
- [Mike McCreight](#) in Florida
- [Ryan King](#) in the District of Columbia
- [Suzie Heck](#) in Kentucky



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Slide 145 - Tales from a Supportive Guardianship

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Finding the Right Fit: Decision-Making Supports and Guardianship

Tales from a Supportive Guardianship



Communication is extremely important in being a supportive guardian. Robert Dinerstein, in his publication *Tales from a Supportive Guardianship*, gives examples of real **conversations** he has had with his sister, for whom he is her guardian.

Listen to these series of conversations between a brother and sister, where the brother is the guardian, and learn how you too can be a supportive guardian, helping a person **understand their choices and their consequences**.



Listen in on the Conversations

- ✓ Listening: What does a person really want or mean?
- ✓ Listening: A Medical Procedure
- ✓ A Person's Will: Agreement Not Always What It Seems
- ✓ A Person's Will: Day Program
- ✓ A Person's Will: Taking Advantage of the Situation

The name of Robert's sister has been changed to protect her identity. In these conversations, we will call her "Sarah".

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Slide 146 - Tales: What does a person really want or mean



Finding the Right Fit: Decision-Making Supports and Guardianship



The Importance of Listening: What does a person really want or mean?

Listening carefully to someone—whether a client or a loved one—is an important interpersonal quality. Listening is an important skill for a guardian. What I have learned as my sister's guardian is to **listen not only to what she says, but to what she does not**. Here is an example:

A conversation from *Tales from a Supportive Guardianship* by Robert Dinerstein



Robert Dinerstein

Robert's Sister

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Conversation Excerpts from
Tales from a Supportive Guardianship
by Bob Dinerstein

Bob Dinerstein is guardian for his sister and these excerpts come from real conversations.

The importance of listening- what does a person really want or mean?

Listening carefully to someone--whether a client or a loved one--is an important interpersonal quality. Listening is an important skill for a guardian. What I have learned as my sister's guardian is to listen not only to what she says, but to what she does not. Here is an example:



- Sister (S): My friend invited me to her birthday party, but I'm not sure that I should go.
- Dinnerstein (D): Why don't you think you should go?
- S: I don't know.
- D: Are you sure? Why don't you think you should go?
- S: Well, I am not sure she really invited me.
- D: How did your friend invite you to go?
- S: She asked me to come.
- D: If your friend asked you to come, that means she wants you there. So if she hasn't asked you to not come, you can assume she still wants you at her party.
- S: I guess. I'm still just not sure she wants me to come.
- D: Is there some other reason why you don't want to go?
- S: Well, yes. Linda lives on the second floor of her house.
- D: So you are concerned that you would have to go up the stairs to get to her apartment?
- S: Yes.
- D: That makes sense, and I understand your concern about maybe not being able to get up the steps to Linda's apartment. I have seen you climb many staircases though and am confident you can make it up if you take your time. If you worried you will fall, the staff will always be there to help you. Plus, because it is summertime, the


party might be outside so you wouldn't have to climb the stairs at all.

S: You're right. I think I will go her party.

Even though my sister can climb stairs, the unsteadiness of her gait makes her lack confidence when climbing or descending stairs. I reassured her that (1) she could in fact climb the stairs if she took her time; (2) staff would assist her, so that she would not fall; and (3) because it was the summer time, it was possible that the party would be outside and would not involve her having to climb the stairs. At that point, my sister said she would go to the party. Someone with greater cognitive capacity might have been able to say from the beginning why she was uncomfortable going to the party. But that was not--and generally is not--my sister's way. It may be that she is not adept at weighing the pros and cons of a particular decision without being prompted. Or she may have thought at some level that her reason for not attending the party would not stand up to scrutiny. Either way, if I had just taken her answer at face value, she might well have not attended the party and missed out on a pleasurable experience.

Slide 147 - Tales: A Medical Procedure



Finding the Right Fit: Decision-Making Supports and Guardianship



The Importance of Listening: A Medical Procedure

My sister was over 50 and her doctor wanted to perform a colonoscopy. As my sister's guardian I have the authority to approve medical procedures, but I did not want to do so without **discussing it with my sister**. My sister can have difficulty with articulation, and "colonoscopy" can be a difficult word to pronounce for people with typical pronunciation ability. More challenging was trying to explain what the procedure was. As is my practice, I tried to be accurate without being too technical in my language.

A conversation from *Tales from a Supportive Guardianship* by Robert Dinerstein







Robert Dinerstein

Robert's Sister

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Bob Dinerstein is guardian for his sister and these excerpts come from real conversations.

The importance of listening continued...a medical procedure.



My sister was over 50 and her doctor wanted to perform a colonoscopy. As my sister's guardian I have the authority to approve medical procedures, but I did not want to do so without discussing it with my sister. My sister can have difficulty with articulation, and "colonoscopy" can be a difficult word to pronounce for people with typical pronunciation ability. More challenging was trying to explain what the procedure was. As is my practice, I tried to be accurate without being too technical in my language.

- D: The doctors suggested to me that you have a colonoscopy. It's a procedure where the doctor looks inside your intestines – where food goes after leaving your stomach.
- S: I don't want to have it.
- D: I've had the same procedure, and I know that it might sound a little scary, but it wasn't too bad and isn't as bad as it sounds.
- S: I don't care. I don't want to have it.
- D: Is there some reason you don't want a colonoscopy?
- S: I just don't like needles. Whenever I go to the doctor, he always give me shots with needles.
- D: Ok, so there's some good news and some bad news. Which do you want to hear first?
- S: The good news.
- D: Ok, the good news is that there is no needle in the procedure. And it is not painful at all, especially on the day you have it.
- S: Good.
- D: Now for the bad news.
- S: Ok.
- D: The day before the colonoscopy, you won't be able to eat regular meals. You'll only be able to have liquids and you are going to have to go to the bathroom a lot to clean yourself out. You'll be miserable, but it won't hurt.


S: Ok, I'll do it.

My sister did not disclose the underlying premise of why she didn't want the procedure. Once she was given more information, she was able to make a reasoned decision. I was prepared to forgo the procedure had she continued to object; absent an emergency or serious medical situation, I would not exercise my authority as her guardian to override her decision.

Slide 148 - Tales: Agreement Not What It Seems





Finding the Right Fit: Decision-Making Supports and Guardianship



The Power of a Person's Will: Agreement Is Not Always What It Seems

People with disabilities are often in situations in which they believe they have to **agree to something for fear of displeasing someone** with power over them, whether it is a staff person or a family member (or a guardian). I have learned that my sister sometimes appears to agree to a course of action only to undermine it, or take advantage of a chink in the armor of the decision-making process.

A conversation from *Tales from a Supportive Guardianship* by Robert Dinerstein



Robert Dinerstein

Robert's Sister

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Conversation Excerpts from
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The power of a person's will- agreement is not always what it seems

People with disabilities are often in situations in which they believe they have to agree to something for fear of displeasing someone with power over them, whether it is a staff person or a family member (or a guardian). I have learned that my sister sometimes appears to agree to a course of action only to undermine it, or take advantage of a chink in the armor of the decision-making process.

My sister loves drinking soda. It is one of the supreme pleasures in her life. Some years ago, staff persuaded her to drink diet soda, but they still try to get her to limit her intake. Over the years, they have tried to come up with different rules about how much soda she should drink. The staff tries to negotiate these rules with my sister, who appears to agree with them. "New Hope says I can have one diet soda a day. Is that OK with you?" I don't really care whether this particular rule is the best one for her, but if the staff have proposed it and she has agreed, I am happy to go along with it. (I certainly would intervene if I thought the proposed rule or guideline was unreasonable or overly restrictive.) What I do know is that my sister (apparently) likes rules and that a response such as "You can do what you want," would not satisfy her.

But the human will is powerful and my sister is quite capable of undermining the rules, or her prior acquiescence to them, when it suits her. I recall the time that we were having dinner at the Liberty Diner, her favorite restaurant. The dinner occurred during a period when she was trying to limit herself to drink no more than one diet soda a day. Earlier that day she had had a diet soda at lunch so as we sat down in the booth, and before we ordered, we discussed whether she should have a diet soda with dinner. She volunteered that since she had had a diet soda at lunch she would not have one at dinner. I was pleased that she was able to understand "the rules" and plan her behavior to conform to them.

[At S's favorite restaurant for dinner. S and D just sat down to eat and are waited on by a waitress (w) who knows S.]

D: What are you going to order to drink?

S: I'm trying to not have more than one diet soda every day, and I already had one at lunch, so I won't order one to drink at dinner too.

D: That's a great idea. I'm pleased you are sticking to the rules you are making for yourself.

W: Hi. What would you all like to drink?

D: I will have a water. Thank you.

W: Ok. S, I know diet soda is your favorite. Do you want a Diet Coke, hon?



S: Yes.

[S and D laugh.]


D: I guess that changes your rule – no more than one diet soda per day unless the waitress offers you one!

My sister's eyes lit up as if she had just been released from custody--she immediately answered yes, and then looked over at me, triumphantly, as if to say, "Just try to enforce the rule now." We laughed at what was now clearly an amendment to the rule: no more than one diet soda per day unless the waiter or waitress offers you one.

Slide 149 - Tales: Day Program



Finding the Right Fit: Decision-Making Supports and Guardianship



The Power of a Person's Will: Day Program

At my sister's annual meeting she expressed concerns about the day program she attends. Her service coordinator suggested that she might like a different program, and proposed that she might visit that program to see if she preferred it. As the meeting proceeded, she seemed to back off of her criticisms of the existing program. She said she might not like the new program. She didn't want to disappoint the people in the current program. She clearly had some ambivalence, even though the team (including me) assured her that visiting the program did not mean that she had to move if she did not want to do so. She agreed to visit the new proposed program.

A conversation from *Tales from a Supportive Guardianship* by Robert Dinerstein




Robert Dinerstein

Robert's Sister

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Conversation Excerpts from
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Bob Dinerstein is guardian for his sister and these excerpts come from real conversations.

The power of a person's will continued...day program

At my sister's annual meeting she expressed concerns about the day program she attends. Her service coordinator suggested that she might like a different program, and proposed that she might visit that program to see if she preferred it. As the meeting proceeded, she seemed to back off of her criticisms of the existing program. She said she might not like the new program. She didn't want to disappoint the people in the current program. She clearly had some ambivalence, even though the team (including me) assured her that visiting the program did not mean that she had to move if she did not want to do so. She agreed to visit the new proposed program.

[At S's annual meeting about the day program she attends]

S: I don't like this program very much anymore.

Service coordinator (SC): There is a program nearby that you might like better. You can go and visit it to see if you prefer that one over this one.

S: Well, I'm not sure. I might not like that program as this one I guess. I like everyone here, and I don't want to disappoint you.

SC: It doesn't hurt to go and visit and see if you like it. No one will be mad at you if you decide to go somewhere else. Plus, visiting doesn't mean you have to move there if you don't want to.

S: Ok, you're right. I will go visit the new program first and then decide.


[Two days later]

S: I have no interest in going to visit the new program. I will stay here. I don't like change and like it here. I don't think I will like it as much at the other day program.

For all of her criticisms (including of past programs or her residence), she is averse to making changes in her life. As noted, she does not want to disappoint people, even when they reassure her that no one will criticize her if she makes the proposed change.

But it also might be that because she has difficulty articulating, let alone weighing, the pros and cons of a particular situation (e.g., "I like aspect x of the workshop but do not like aspect y), it is only when a change becomes concrete that she really examines whether, all things considered, a change is what she wants. For now, she remains in the current program.

Slide 150 - Tales: Taking Advantage



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Finding the Right Fit: Decision-Making Supports and Guardianship

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The Power of a Person’s Will: Taking Advantage of the Situation

My sister can be very insightful but is not above **taking advantage of a situation when it suits her**. At one of the first annual meetings I attended, when she had just moved to a new house (not the one in which she currently lives), the staff person leading the meeting asked her a series of questions about her experience at the home. We all sat around a long dining room table. Other than my sister and me, everyone else at the meeting was a staff person: direct care staff, house manager, nurse, service coordinator, and clinician. There were about 20 people around the table, and I wondered whether my sister would be intimidated by there being so many staff there. I need not have worried. The service coordinator initiated the following dialogue with her:


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A conversation from *Tales from a Supportive Guardianship* by Robert Dinerstein



Robert Dinerstein



Robert's Sister

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Conversation Excerpts from
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by Bob Dinerstein

Bob Dinerstein is guardian for his sister and these excerpts come from real conversations.

The power of a person's will continued...taking advantage of the situation

My sister (S) can be very insightful but is not above taking advantage of a situation when it suits her. At one of the first annual meetings I attended, when she had just moved to a new house (not the one in which she currently lives), the staff person leading the meeting asked her a series of questions about her experience at the home. We all sat around a long dining room table. Other than S and me, everyone else at the meeting was a staff person: direct care staff, house manager, nurse, service coordinator, and clinician. There were about 20 people around the table, and I wondered whether S would be intimidated by their being so many staff there. I need not have worried. The service coordinator (SC) initiated the following dialogue with her:

SC: Hi everyone, we are here to review S's experience at our home this year. S, I'm going to ask you some questions about the activities you do here and how you feel about the home in general.

S: Ok.

SC: S, you can choose the clothes you wear each day. Are you doing that?

S: No, the staff does that for me.

SC: S, you can make your lunch each day before you go to your program. Are you doing that?

S: No, the staff does that for me.

SC: S, you can gather your laundry and put it in the washing machine. Are you doing that?

S: No, the staff does that.

SC: But S, you were doing all of these things at your prior house. Why aren't you doing them here?

S [smiling and looking triumphant]: Because I am a guest here.

The group cracked up (as did S, who appreciated the apparent absurdity of the situation). But although the staff was appropriately trying to foster her independence,

and while I was fully in support of this goal, S was not above getting other people to do things for her if they were willing to do them. I am sure the service coordinator had a conversation with the direct care staff after the meeting, but for one moment, at least, S was able to assert her independence, ironically by being willing to take advantage of her dependency. Was it in her best interest not to do things for herself when she could do so? I don't know, but the sense of agency she had by being defiant was priceless.

Slide 152 - Scenarios Introduction

NCSC
National Center for State Courts

DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE

Finding the Right Fit: Decision-Making Supports and Guardianship

Scenario Examples

Supported Decision-Making Less Restrictive Legal Options Guardianship

REPLAY SLIDE


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There are a variety of supports and legal options available to help someone manage their health, money, and lifestyle. While learning the ins and outs, and pros and cons of these options is important, we know it's also helpful to see how the use of these options can play out in real life.

The following scenarios depict some common types of situations in which someone may need help. Just like in real life, as you proceed through each scenario you will encounter a decision that needs to be made about a choice of care. You will be able to select from various options to see how that decision impacts the person and their situation.

While every person and situation are unique, we hope that from these scenarios, you will gain a greater understanding of how you can help those in your life with making decisions.

Slide 153 - Scenario Descriptions




DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE

Finding the Right Fit: Decision-Making Supports and Guardianship


Scenario Examples

Explore the scenario examples below to get an idea of how various supports and legal options can impact a person's living situation.




✓ Sam

Sam is a 17 year old with some intellectual disabilities requiring long-term supports.




✓ Maria

Maria, 65 years old, had a stroke. She's in the hospital in a coma. Her only living relative is her brother Bob.




✓ Jimmy

Jimmy is a 66 year old with a diagnosis of bipolar disorder. Jimmy has a job and lives with his younger sister.



✓ Martha

Martha, 40 years old, has an intellectual disability. She has a job and lives with roommates. She is close with her family.



✓ Edward

Edward, a 78 year old diagnosed with Alzheimer's disease, is being financially exploited by his sister.

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Slide 154 - Sam Scenario




Finding the Right Fit: Decision-Making Supports and Guardianship

Meet Sam

Sam is 17 years old and has Down syndrome. He lives at home with his parents and attends public school.

Sam's guidance counselor told his parents they should become his legal guardians so they can continue to be involved with his education and other major life decisions. There are other options that would allow Sam's parents to remain involved without a guardianship.

Explore each option below to learn more about how Sam's parents can stay involved in his life without becoming his guardians.



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Slide 155 - Sam: Financial Decisions



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Finding the Right Fit: Decision-Making Supports and Guardianship

Financial Decisions

Sam has had a part-time job for the last two years. He is a dishwasher at a local restaurant. He is paid biweekly and he currently manages his own checking account with the help of his mom. Last month he overdrew his account three times. This has not happened before.


What options do Sam's parents have to help him?

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Guardianship of the Property

Power of Attorney


Joint Ownership



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MAIN MENU

Slide 156 - Sam: Guardianship of the Property




Finding the Right Fit: Decision-Making Supports and Guardianship


Financial: Guardianship of the Property


By obtaining a guardianship of the property, Sam will lose all his rights to manage his own money and property. Overdrawing an account is a mistake, and all people have the right to make mistakes. Sam's parents should use this as an opportunity to discuss with Sam why it happened and what can be done to prevent it from happening in the future. A guardianship of the property is not the least restrictive legal option at this time.


To learn more about guardianship of the property, go to [Guardianship of the Property](#).





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MAIN MENU

Slide 157 - Sam: Power of Attorney



Finding the Right Fit: Decision-Making Supports and Guardianship

Financial: Power of Attorney


It is important to talk to Sam about his bank account to find out why he made the mistake of getting an overdraft. This will help his parents determine if they need to be more involved. Sam has the right to make a mistake.

One option is a power of attorney:

Sam may want to give the power to make decisions about money and property to someone he trusts. Sam would be known as the **principal**. He can name a trusted person as his **agent** in a legal document called a power of attorney.


A financial power of attorney is a powerful tool to manage someone's money when the principal cannot or does not wish to manage it on their own. It also has the potential to be an instrument of harm if the agent uses it to exploit the person's finances. Does Sam need his parents to have control of his money at this time?


To learn more about power of attorney, go to [Power of Attorney](#).




SAM SCENARIO



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MAIN MENU

Slide 158 - Sam: Joint Ownership




Finding the Right Fit: Decision-Making Supports and Guardianship

Financial: Joint Ownership

Sam's parents may find Sam made some mistakes adding up his bank account. To help him they could ask Sam if he is interested in putting their names on his account as a joint owner.


Being joint owners of the account means that Sam and his parents can both access the money in the account and the money would be considered to belong to both Sam and his parents. Sam's parents can now see if Sam takes money out of the account and help him track his spending. Is a joint account the best option for Sam to keep the most independence?


To learn more about joint ownership go to [Joint Ownership](#).




SAM SCENARIO



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MAIN MENU


Slide 159 - Sam: Health Decisions



Finding the Right Fit: Decision-Making Supports and Guardianship

Health Decisions

SAM SCENARIO





Sam has moved out of his parents' home to a supported living apartment. He is very happy and enjoys spending time with his friends and participating in activities. When he was living at home, Sam's parents made sure he ate healthy food. Sam is now going out with his new friends to fast food restaurants and is eating lots of snacks. He has gained weight and his parents are very concerned that it will continue and result in health issues. Sam is pre-diabetic. Sam's parents are thinking about having Sam move home to better control his diet and health, but he wants to stay in his new environment.


What options are best for Sam?

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Slide 160 - Sam: Health | Supported Decision-Making


Finding the Right Fit: Decision-Making Supports and Guardianship

Health: Supported Decision-Making

This is the perfect time to engage Sam's support community to help him learn about making healthy food choices. It may take some time for Sam to adapt to his new independence and he may make some mistakes along the way. With input from his support community, he can learn from those choices.




Some examples of the people that could make up Sam's support community may include his parents, siblings, teachers, social worker, clergy, coaches, and neighbors.

To learn more about supported decision-making, go to [Supported Decision-Making](#).




SAM SCENARIO

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Slide 161 - Sam: Health | Guardianship



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Finding the Right Fit: Decision-Making Supports and Guardianship

Health: Guardianship


While Sam’s parents are frustrated with Sam’s choices, guardianship is not the solution. Sam’s transition to adulthood and desire to be more independent can be challenging for him and his parents. However, it is important to consider what other resources and supports are available. Other less restrictive options might include working with the residential provider, program manager, or social worker. Sam may be able to work with a nutritionist to learn about better food choices.

To learn more about guardianship, go to [Guardianship](#).


SAM SCENARIO




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Slide 162 - Sam: Lifestyle Decisions

Finding the Right Fit: Decision-Making Supports and Guardianship

Lifestyle Decisions

SAM SCENARIO



Sam has expressed to his parents that he would like to get a skull and crossbones tattoo on his neck up close to his ear and onto his face. Sam and his parents talk about how everyone will see the tattoo and this might make it hard to get a job. They also discussed getting a tattoo on that part of the body is painful. Sam feels strongly about getting the tattoo on his neck. Sam and his parents talk more about different areas of his body Sam could get a tattoo. They make a list of pros and cons of putting a tattoo on his neck. Sam is now 18 and does not need his parent's permission to get a tattoo. He states he is going to get the tattoo.


What are his parents' options?

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Slide 163 - Sam: Lifestyle | Supported Decision-Making



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Finding the Right Fit: Decision-Making Supports and Guardianship


Lifestyle: Supported Decision-Making

Sam's parents could contact a Developmental Disabilities Program Manager to see what support services may benefit Sam. It may be helpful for Sam and his parents to meet with the school social worker or psychologist to work through their anxieties and find common ground with their son.


Maybe Sam would be on board with first trying a temporary tattoo on his neck to make sure he really liked it and if it changed how other people and employers treated him, in ways that he didn't expect or want. However, ultimately, getting a tattoo should be Sam's choice.

To learn more about supported decision-making, go to [Supported Decision-Making](#).


SAM SCENARIO




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MAIN MENU

Slide 164 - Sam: Lifestyle | Guardianship




Finding the Right Fit: Decision-Making Supports and Guardianship


Lifestyle: Guardianship


A guardianship is not an appropriate option at this time. While Sam's transition to adulthood and desire to be more independent can be stressful for him and his parents, it is important to remember Sam is an adult. Consider what other resources and supports are available. A guardianship is a last resort when no other less restrictive legal options are available. Other options might include working with a program manager or social worker.


To learn more about guardianship, go to [Guardianship](#).





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Slide 165 - Sam: Education Decisions

Finding the Right Fit: Decision-Making Supports and Guardianship

Education Decisions

Sam's parents want to continue to support Sam in his education, even after he turns 18. Sam says he wants to continue classes for job training. He eventually wants a full-time job so he can have more money and be more independent. Sam's parents have always taken care of class registration and the paperwork needed for him to enroll in classes. They aren't sure if he is ready to take on those responsibilities.

Explore each option below to learn about how Sam's parents can stay involved with his education.





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Slide 166 - Sam: Education | Guardianship




Finding the Right Fit: Decision-Making Supports and Guardianship

Education: Guardianship


Guardianship is often recommended when children turn 18 so parents can still be involved in their child's education. However, parents can stay involved without a guardianship. Check the other options to learn how.


To learn more about guardianship, go to [Guardianship](#).




SAM SCENARIO



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Slide 167 - Sam: Education | Supported Decision-Making



Finding the Right Fit: Decision-Making Supports and Guardianship

Education: Supported Decision-Making


SAM SCENARIO





Sam has built a support community at his school over the past 4 years. He has a resource specialist, teachers, and friends he relies on and trusts. Sam and his parents discuss the activities he will need help with when he turns 18, like registering for classes. They make a list of who will help Sam with each activity. Sam and his parents will register for classes together next year.

To learn more about supported decision-making, go to [Supported Decision-Making](#).



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Slide 168 - Sam: Education | Power of Attorney




Finding the Right Fit: Decision-Making Supports and Guardianship

Education: Power of Attorney


At this time, Sam may not feel ready to take on the forms and other administrative responsibilities of staying enrolled in school. Sam wants to focus on classes only. One option is an educational power of attorney that would allow Sam to choose someone he trusts to handle educational decisions.


For now, Sam would like to make his parents his agent in an educational power of attorney.


Power of attorney is a powerful tool. To learn more about power of attorney, go to [Power of Attorney](#).





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Slide 169 - Maria Scenario




Finding the Right Fit: Decision-Making Supports and Guardianship

Meet Maria

Maria is 65 years old and had a stroke. She was taken by ambulance to the hospital and is currently in a coma and unresponsive. Her only living relative is her brother, Bob, who lives in another state eight hours away and just arrived at the hospital.





Here are some issues facing Maria.

MARIA SCENARIO





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Slide 170 - Maria: Health Decisions

Finding the Right Fit: Decision-Making Supports and Guardianship

Health Decisions

When Bob arrives at the hospital he is asked by the medical staff if he has legal authority to make decisions for Maria. He knows that she does not have a healthcare directive.

What should Bob do?



 MARIA SCENARIO

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[Substitute Healthcare Decision-Making](#)[Get an Advance Healthcare Directive](#)[Petition the Court for Emergency Guardianship](#)

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Slide 171 - Maria: Health | Substitute HCDM




Finding the Right Fit: Decision-Making Supports and Guardianship

Health: Substitute Decision-Making




Maria is not able to communicate right now. [Supported Decision-Making](#) is not an option at this time because Maria cannot be part of the conversation to tell Bob what she wants. Bob knows his sister quite well and has a good idea what she would like concerning her health.

Most states authorize close family members to step in as substitute healthcare decision makers for some or all health decisions in cases like Maria's. In those states, Bob can make healthcare decisions for Maria focusing on what Maria would do if she was making the decision herself. However, if the hospital does not agree with Bob's decisions for Maria, the hospital could petition the court for a non-family guardian to make decisions instead of Bob.



To learn more about substitute healthcare decision-making, go to [Substitute Healthcare Decision-Making](#).

MARIA SCENARIO

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Slide 172 - Maria: Health | Health Care Directive

Finding the Right Fit: Decision-Making Supports and Guardianship


Health: Healthcare Directive

A healthcare directive is not a practical option at this time. Maria did not have a healthcare agent or proxy before her stroke. Because she is in a coma, she is not currently capable of understanding or signing a healthcare directive.




It is important to appoint a healthcare agent while you can do so.

To learn more about healthcare directive, go to [Healthcare Directive](#).



MARIA SCENARIO



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Slide 173 - Maria: Health | Emergency Guardianship




Finding the Right Fit: Decision-Making Supports and Guardianship

Health: Emergency Guardianship


If Maria is in a state that does not have substitute healthcare decision-making, Bob may need to petition the court for an emergency guardianship. An emergency guardianship will give Bob the ability to make necessary decisions for Maria. An emergency guardianship is temporary and lasts for a limited time period (depending on the law in your state). As Maria's health improves, Bob must re-evaluate in what areas she needs his help.


To learn more about the different levels of guardianship, go to [Levels of Guardianship](#).


MARIA SCENARIO





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MAIN MENU

Slide 174 - Maria: Financial Decisions




Finding the Right Fit: Decision-Making Supports and Guardianship

Financial Decisions

Maria has been in a coma for 6 weeks. Bob is trying to manage her bills and take care of her house. He is having difficulty because the bank will not allow him access to Maria's account to see if she has money to pay the bills that are coming in. He is also worried because there should have been a bill for her mortgage and it has not arrived in the mail. He doesn't know what she has set up on automatic payments.




What should Bob do?





MARIA SCENARIO

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[Supported Decision-Making](#)[Get a Power of Attorney](#)[Petition the court for Emergency Guardianship of the Property](#)

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Slide 175 - Maria: Financial | Supported Decision Making



Finding the Right Fit: Decision-Making Supports and Guardianship

Financial: Supported Decision-Making

MARIA SCENARIO





Maria is not able to communicate at this time. Supported Decision-Making is not an option because Maria cannot be part of the conversation to tell Bob what she wants. Bob knows his sister quite well and has a good idea what she would like concerning her finances.


Bob has no legal authority to access Maria's financial accounts or make decisions about her money and property.

To learn more about supported decision-making, go to [Supported Decision-Making](#).



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MAIN MENU

Slide 176 - Maria: Financial | Power of Attorney



Finding the Right Fit: Decision-Making Supports and Guardianship


Financial: Power of Attorney

Maria did not have a power of attorney before her stroke. Because she is in a coma she is not capable of understanding or signing a power of attorney at this time. The urgency of the situation requires her brother to get financial authority now to manage Maria's finances.


If Maria had already written a financial power of attorney, the problem could be avoided.


To learn more about power of attorney, go to [Power of Attorney](#).


MARIA SCENARIO





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Slide 177 - Maria: Financial | Emergency Guardianship of Property




Finding the Right Fit: Decision-Making Supports and Guardianship


Financial: Petition for Emergency Guardianship of Property


Like many people, Maria does not have any documents in place to give her brother authority over her finances. Bob needs access to Maria's bank accounts to take care of her bills and manage her home. To get this authority, Bob will need to petition the court for an emergency guardianship over Maria's property. An emergency guardianship is temporary and lasts for a limited time period (depending on the law in your state). This will provide Bob with the ability to make necessary decisions for Maria. Bob could use the ACLU's [assessment tool](#) provided to determine the areas that Maria needs help with at this time. As Maria's health improves, Bob must re-evaluate what supports Maria needs.


To learn more about the different levels of guardianship, go to [Levels of Guardianship](#).

MARIA SCENARIO



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Slide 178 - Maria: Lifestyle Decisions



Finding the Right Fit: Decision-Making Supports and Guardianship

Lifestyle Decisions

MARIA SCENARIO



Maria's stroke was 2 months ago. She has come out of her coma and is getting better. She is regaining her speech and doing physical therapy to help her walk and build her strength. She will soon need to leave the hospital, but the doctor told Bob she will not be able to return home and live on her own for some time. Maria is able to have a conversation with Bob about what she wants the next phase of her recovery to look like. She knows what rehab facility she prefers, and that she'd like to have in-home care as soon as possible. The 60-day emergency guardianship/conservatorship will expire in a few days, and Bob will no longer have authority to make decisions for Maria.



If Maria wants to have Bob to stay involved in her decision-making what are her options?

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Slide 179 - Maria: Lifestyle | Supported Decision Making



Finding the Right Fit: Decision-Making Supports and Guardianship

Lifestyle: Supported Decision-Making

MARIA SCENARIO





Maria has improved in the past two months. She is now able to talk to Bob. Bob's emergency guardianship of Maria's person and property is about to end. Bob reviewed the ACLU's [assessment tool](#) with Maria and she is able to talk with him about her choices. Bob can ask Maria where she wants to live to complete her rehabilitation and help her make arrangements for that to happen. Maria can now take care of her living arrangements herself with assistance from Bob. Bob is providing the support she needs. No formal legal documentation is necessary.


Note: If Maria goes to a rehab center, they may ask for a legal document about decision-making. Maria should make a power of attorney naming Bob if she is able to do so. It could say that Bob will make decisions for Maria if needed, but will ask Maria what she wants and support her choices.

To learn more about supported decision making, go to [Supported Decision-Making](#).



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Slide 180 - Maria: Lifestyle | Power of Attorney



Finding the Right Fit: Decision-Making Supports and Guardianship

Lifestyle: Power of Attorney

MARIA SCENARIO





Maria has improved in the past two months. She is now able to talk to Bob. Bob's emergency guardianship of Maria's person and property is about to end. Bob reviewed the ACLU's [assessment tool](#) with Maria and she is able to talk with him about her choices. She is able to understand and sign financial and legal documents with Bob's help.


It may be helpful, because Maria trusts Bob, to give him limited power of attorney in the event that Maria has another stroke and ends up in the same situation. A power of attorney does not need to remove Maria's rights. The power of attorney could say that Bob will make decisions for Maria if needed, but will ask Maria what she wants and support her choices.

To learn more about power of attorney, go to [Power of Attorney](#).



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Slide 181 - Maria: Lifestyle | Petition for Guardianship




Finding the Right Fit: Decision-Making Supports and Guardianship

Lifestyle: Petition for Guardianship


Maria has improved in the past two months. She is now able to talk to Bob. Bob's emergency guardianship of Maria's person and property is about to end. Bob reviewed the ACLU's [assessment tool](#) with Maria and she is able to talk with him about her choices. She is able to understand and sign financial and legal documents with Bob's help. She can make decisions regarding her care and where she wants to live during her treatment. Petitioning for a guardianship is not needed at this time. The emergency guardianship will expire and not automatically become permanent.


To learn more about guardianship, go to [Guardianship](#).




MARIA SCENARIO



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Slide 182 - Jimmy Scenario




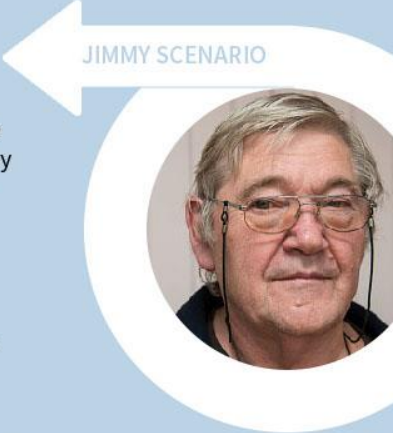
Finding the Right Fit: Decision-Making Supports and Guardianship

Meet Jimmy

Jimmy is 66 years old and has a diagnosis of bipolar disorder. He works full-time at a movie theater and lives with his younger sister, Michelle. Jimmy does not pay Michelle rent, but he does give her \$200 a month to help out with expenses like groceries and the cable bill.

Sometimes, Jimmy has mental health crises that last for a few weeks at a time. Lately Jimmy hasn't been taking his medication and has been having more frequent crises. When Jimmy has a crisis, he makes decisions that he would not normally make. These decisions can lead to problems.

Michelle wants to provide Jimmy with a stable home, and she wants him to be happy. Her goal is to protect Jimmy's money, and to make sure that he is safe and in good health, both mentally and physically. Michelle is concerned that as she ages, she will not be able to support Jimmy as much emotionally and financially.



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Slide 183 - Jimmy: Options



Finding the Right Fit: Decision-Making Supports and Guardianship


What are Jimmy's options?

Jimmy knows his decisions can have long-lasting effects. He trusts Michelle, but he feels that she is overprotective of him and does not support his desire to be independent.

There are options that would allow Michelle to support Jimmy with financial and healthcare decisions when he needs help during a crisis.

When thinking about what option is best, Jimmy and Michelle should talk about how and when Michelle will help Jimmy make his own decisions.

Have a Talk First



JIMMY SCENARIO

Want to learn more about how Michelle can support Jimmy to make decisions about his money and health? Select an option below.

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Slide 184 - Jimmy: Talking Points




Finding the Right Fit: Decision-Making Supports and Guardianship

Talking Points

Finding the right way to support Jimmy takes preparation, trust, and honest conversation. No matter how much they love each other, Michelle and Jimmy will find there are topics that will be hard and even painful to discuss. For example:

- Does Jimmy trust Michelle to follow his wishes?
- If Jimmy agrees to give Michelle some control now in a power of attorney, and later decides he wants to take that control away and cancel the power of attorney, how would Michelle feel about giving it back?
- Is Michelle willing to let Jimmy make his own decisions, even if she disagrees with his choices?



JIMMY SCENARIO

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Slide 185 - Jimmy: Supported Decision-Making




Finding the Right Fit: Decision-Making Supports and Guardianship

Supported Decision-Making

When he is having a crisis, Jimmy trusts Michelle to make some decisions for him. When Jimmy is stable and able to make his own decisions, he would like to be able to go to Michelle for advice without feeling like she will continue to make his decisions for him. Michelle tries to help Jimmy so he can make decisions on his own. Sometimes, this is called “supported decision-making.”

There are many ways people use supported decision-making. In all supported decision-making arrangements, the person, Jimmy, remains in the center and directs their own decisions as much as possible. Whether Jimmy decides to appoint Michelle as his agent in a [healthcare power of attorney](#) or open a [joint bank account](#) with her, they can work together to make sure Jimmy makes as many decisions as possible for his healthcare and money.

To learn more about supported decision-making, go to [Supported Decision-Making](#).



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Slide 186 - Jimmy: Financial Decision-Making




Finding the Right Fit: Decision-Making Supports and Guardianship

Financial Decision-Making

When Jimmy stops taking his medication for a few days, his behavior becomes self-destructive. Recently, Jimmy stopped taking his medication and went on a shopping spree. Jimmy now has \$30,000 of credit card debt.

What steps can Jimmy and Michelle take to deal with this situation and prevent Jimmy from adding more debt?




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Guardianship of the Property


Financial Power of Attorney


Joint Ownership

Freeze Credit



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Slide 187 - Jimmy: Financial | Guardianship of the Property

Finding the Right Fit: Decision-Making Supports and Guardianship




Financial: Guardianship of the Property

JIMMY SCENARIO



If Michelle became guardian of his estate, Jimmy would lose the right to manage his money at any time. There are other ways that Jimmy and Michelle can limit or supervise Jimmy's spending without taking away all of his control.



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Slide 188 - Jimmy: Financial | Power of Attorney

Finding the Right Fit: Decision-Making Supports and Guardianship


Financial: Power of Attorney

Jimmy can write down who he wants to make decisions about his money in a document called a power of attorney. The person Jimmy chooses is called an “agent.” Jimmy can change or cancel his power of attorney at any time. A power of attorney allows Jimmy to decide:

- Who will manage his money (the agent)
- When the agent can manage his money
- How the agent will manage his money




For example, Jimmy can name Michelle as his agent to manage his money only when he is not able to manage it himself. He can choose how much authority to give Michelle. For example, he can give her the authority to pay his rent and bills, but not to manage his savings. Jimmy can even require Michelle to give him spending money every week or month.

For more information about financial power of attorney, go to [Financial Power of Attorney](#).





JIMMY SCENARIO

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Slide 189 - Jimmy: Financial | Joint Ownership




Finding the Right Fit: Decision-Making Supports and Guardianship


Financial: Joint Ownership


Jimmy and Michelle could open a joint bank account. With a joint bank account, Jimmy and Michelle would both be able to deposit and withdraw money. A joint bank account would allow Michelle to watch Jimmy's spending. Jimmy and Michelle must set forth rules before they open a joint account. For example, does Michelle need permission before using Jimmy's funds for household expenses?


To learn more about joint ownership, go to [Joint Ownership](#).





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Slide 190 - Jimmy: Financial | Freeze Credit




Finding the Right Fit: Decision-Making Supports and Guardianship

Financial: Freeze Credit


Jimmy can consent to Michelle freezing his credit. If he does not consent, she can go to court and ask the judge to freeze his credit. A single action by a judge is sometimes called a protective arrangement.


To learn more about protective arrangements like freezing credit, go to [Protective Arrangements](#).


JIMMY SCENARIO





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Slide 191 - Jimmy: Health Decision-Making



Finding the Right Fit: Decision-Making Supports and Guardianship

Health Decision-Making

Recently, Jimmy stopped taking his medication and moved out of Michelle's home. Jimmy stayed with a friend for a few days, but after they had a fight, Jimmy moved into a homeless shelter. Jimmy found it was too hard to sleep in the shelter and preferred sleeping outside on the street. After a few weeks, the police found Jimmy and brought him to the local emergency room. With Jimmy's permission, the hospital contacted Michelle. The hospital wants to treat Jimmy for health issues he developed on the street. Jimmy hates being in the hospital. It reminds him of the shelter and makes him uncomfortable. He thinks it is going to make his mental health crisis worse.

Michelle is worried if Jimmy leaves the hospital, he will return to the streets, and end up in the hospital again, maybe in worse health. What can she do?

Before talking about these options, Michelle and Jimmy should talk.


Have a Talk First


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Healthcare Advance Directive


Psychiatric Advance Directive

Guardianship



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Slide 192 - Jimmy: Health | Supported Decision-Making



Finding the Right Fit: Decision-Making Supports and Guardianship

Health: Supported Decision-Making

JIMMY SCENARIO



The first thing Michelle can do is try to talk to Jimmy. This may be difficult if Jimmy does not wish to sit and talk. If he is willing, Michelle can ask him what he wants, what are his concerns about remaining in the hospital, and whether there is anything that would make Jimmy feel more comfortable. This type of informal support is sometimes called supported decision-making. Michelle helps Jimmy think about his options, and he makes his own decisions.





Michelle could also ask Jimmy if there is someone else in his life, a friend, family member, case manager, who he might want to help him learn about his choices and make a decision about his health.

If Jimmy is open to talk to the doctors, Michelle could offer to talk with Jimmy and the doctors together. She could listen to the doctors, ask questions, and make sure that the doctors explain why they want to treat Jimmy in the hospital, and answer Jimmy's questions.



In the end, whether to stay in this hospital for treatment is Jimmy's decision.

To learn more about supported decision-making, go to [Supported Decision-Making](#).

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Slide 193 - Jimmy: Health | Guardianship



Finding the Right Fit: Decision-Making Supports and Guardianship


Health: Guardianship

Jimmy needs help right now, but he may not need the same kind of help in the future. A guardianship removes a person's ability to make decisions. If Michelle became his guardian, she would have the responsibility of being Jimmy's guardian all the time, and not just when he was in a crisis.


If Michelle feels that Jimmy must stay in the hospital, she may consider asking a judge to appoint her or another person as Jimmy's emergency or temporary medical guardians. A temporary guardianship would allow Michelle to make decisions for Jimmy for a few weeks. To become a guardian, even a temporary one, Michelle will have to go to court and tell a judge that Jimmy cannot make decisions, he is at serious risk of harming himself or others, and a guardianship is the only way to protect him.


Even if Michelle becomes Jimmy's guardian, she can still ask him what he wants and make decisions with him about his healthcare. Her goal should be to support Jimmy in reaching a place where he can make his own decisions.


To learn more about guardianship, go to [Guardianship](#).




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Slide 194 - Jimmy: Health | Healthcare Advance Directive



Finding the Right Fit: Decision-Making Supports and Guardianship

Health: Healthcare Advance Directive

JIMMY SCENARIO







If Jimmy is able and willing to communicate his wishes and instructions about his healthcare treatment, he could write them down. He may want to discuss what he wants with Michelle, a social worker at the hospital, or another friend or important person in his life. Whoever talks to Jimmy about his wishes should listen and make sure he writes down what he wants, and not what they want or what the doctors want. Sometimes this document is called a healthcare advance directive.

Jimmy could also choose Michelle as his decision maker if a time comes when he cannot understand his choices and is not able to communicate what he wants for himself. This document may also be called a healthcare advance directive or a power of attorney.



If Jimmy has a document that states his wishes, the hospital staff should follow its instructions unless they cannot in “good conscience.”

To learn more about advance directive and power of attorney, go to [Healthcare Advance Directive](#).

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Slide 195 - Jimmy: Health | Psychiatric Advance Directive



Finding the Right Fit: Decision-Making Supports and Guardianship

Health: Psychiatric Advance Directive

JIMMY SCENARIO







Jimmy may want to write a psychiatric advance directive. Like a healthcare advance directive, this is a document where Jimmy can state his wishes for psychiatric treatment. If Jimmy has a mental health crisis, he may not be able to communicate what he wants at that time or make decisions. In his psychiatric advance directive, he can state his preferences about treatment, such as which medications he does and does not like, and whether he prefers to be left alone or be comforted. He can also name Michelle or someone else to make decisions on his behalf if he cannot make decisions. A psychiatric advance directive can help a treatment team follow Jimmy's wishes.


Jimmy may want to talk about what he wants with Michelle, a social worker at the hospital, other professional, or another friend or important person in his life. Whoever talks to Jimmy about his wishes should listen and make sure he writes down what he wants, and not what they might want or what the doctors want.

To learn more about psychiatric advance directive, visit [Psychiatric Advance Directive](#).

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Slide 196 - Martha Scenario



DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE

Finding the Right Fit: Decision-Making Supports and Guardianship


Meet Martha

Martha is 40 years old, she works at a public library, and she lives in a house with three other women. She is close to her parents, Mark and Susan, and her brother George. Martha has a boyfriend named Peter, and gets along well with her coworkers and many friends. Martha has an intellectual disability and needs help understanding her choices about money and healthcare.

Martha is happy living on her own and making her own decisions.

Click below to learn more about how Martha’s network of friends, family, and others support her to make decisions.

MARTHA SCENARIO



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Slide 197 - Martha: Health



DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE

Finding the Right Fit: Decision-Making Supports and Guardianship


Healthcare Decisions

Martha has been seeing the same doctor, Dr. Smith, for 20 years. Martha’s mother, Susan, always goes with her to see Dr. Smith. If Martha does not understand something the doctor has said, Susan asks Dr. Smith to explain it to Martha again. Sometimes, Susan takes notes.

Dr. Smith told Martha at her last appointment that she should have surgery to fix a problem she has with her shoulder. Martha did not like the idea of being unconscious for an operation and told Dr. Smith “no way!”

How can Dr. Smith and Susan help Martha to understand her choices about surgery?

MARTHA SCENARIO



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Slide 198 - Martha: Health | Supported Decision-Making



Finding the Right Fit: Decision-Making Supports and Guardianship

Supported Decision-Making (SDM)

MARTHA SCENARIO







Dr. Smith and Susan can listen to Martha's concerns. They can:



- Ask Martha why she answered “no way”?
- Show Martha that she has control over this situation with active listening - nodding, taking notes, repeating back Martha's statements and asking questions.
- Dr. Smith can draw a picture of Martha's shoulder to show why she thinks surgery will be helpful.
- Susan can take notes and go over her notes with Martha after the appointment.

Martha may need to talk about this decision for many days or even weeks. Martha can schedule another appointment for the next week to talk about the surgery. This will give Martha time to think and to talk to her other supporters.

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Slide 199 - Martha: Health | SDM 2



Finding the Right Fit: Decision-Making Supports and Guardianship

Supported Decision-Making (cont.)

MARTHA SCENARIO



Martha and Susan agreed to come back to Dr. Smith's office in a week. Martha sat down with Susan, her dad, Mark, and her brother George to talk about the surgery.


Martha wrote a list of pros and cons for having the surgery. Her family added to the list.


George told Martha about the time he had surgery on his knee. He explained that anesthesia means having medicine that should make her feel relaxed, and then fall asleep. He also explained that Martha would wake up right after the surgery. Martha was glad to hear this, because she had been worried she would be asleep for days.


Susan and Mark told Martha if she had the surgery, they would go with her to the hospital and wait until the surgery was over. They said they would like her to stay in their house while she was recovering. They also promised she would go back to her home as soon as she felt able to take care of things for herself, like taking a shower.


Martha said she wanted to talk to her boyfriend, Peter, about the surgery.

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Slide 200 - Martha: Health | SDM 3




Finding the Right Fit: Decision-Making Supports and Guardianship

Supported Decision-Making (cont.)

Martha talked to Peter first. Peter gave her an idea – write down a list of questions for the doctor so she would not forget anything. Peter listened to Martha go through her list of pros and cons again. Martha told Peter she was worried about having to live with her parents after the surgery. She did not want to hurt their feelings, but she really liked staying at her home with her friends more. Peter promised to visit Martha every day at her parents' house. He also said Martha could ask if she could have a nurse help her at home instead of living with her parents.

MARTHA SCENARIO



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Slide 201 - Martha: Health | SDM Informed Consent



Finding the Right Fit: Decision-Making Supports and Guardianship

SDM: Informed Consent

MARTHA SCENARIO




Martha and Susan went back to Dr. Smith's office. There was another doctor in the office – Dr. Carter, the doctor who would perform the surgery on Martha. Martha had never met Dr. Carter. Dr. Carter only talked to Susan. He did not look Martha in the eye or ask her if she understood what he was saying. Martha got really mad when Dr. Carter said “she will be asleep for the whole operation” to Susan, as if Martha was not even in the room!


Susan asked Dr. Carter to talk to Martha. She told him he had to slow down and explain everything again because Martha understands things better if she hears them two or three times. Dr. Smith also told Dr. Carter that Martha could understand everything with some help from Susan. Dr. Carter explained everything again, and this time he looked at Martha while he was talking. At the end he told Susan she could sign the “informed consent” forms that said that Martha could have the surgery as a [substitute healthcare decision-maker](#).


Martha got mad again. She wanted to know why she couldn't sign her own forms? Dr. Carter explained that he thought Martha understood most of what he said, but he was not comfortable that she understood enough of the possible complications from the surgery to say yes or no.


What can Martha do to be more involved with agreeing to the surgery?

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Slide 202 - Martha: Health | SDM IC 2



Finding the Right Fit: Decision-Making Supports and Guardianship

SDM: Informed Consent (cont.)


MARTHA SCENARIO





Martha can write a [healthcare power of attorney](#). With a healthcare power of attorney, Martha chooses who consents to her surgery. She can write the power of attorney to only apply to this one surgery, or she can write one that would apply to any situation when she cannot give consent to medical treatment. The power of attorney can explain that whoever Martha chooses to give permission for her will take the time to talk the situation over with Martha and follow Martha's wishes as much as possible.


Martha chooses Susan and her brother George to give permission for the surgery in a power of attorney. She also writes that if she cannot make decisions about her healthcare in the future, she wants Susan or George to make decisions for her.

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Slide 203 - Martha: Health | SDM Alternative to Guardianship



Finding the Right Fit: Decision-Making Supports and Guardianship

SDM: An Alternative to Guardianship

MARTHA SCENARIO



Martha goes to the hospital for her surgery. Even though she has signed a power of attorney that says Susan and George can say yes to surgery, a new doctor who will help with the surgery, Dr. Roberts, says Martha must have a guardian to make that decision for her. Martha has a meeting with Susan, George, Dr. Carter, the hospital social worker, the hospital lawyer, and Dr. Roberts.

Susan explains to the doctor that Martha has a large supported decision-making network that helps her make decisions. Dr. Carter said that he had talked to Martha and Susan many times about this surgery and that he felt Martha understood why she needed the surgery. He also felt that Martha and Susan understood the risks of the surgery.

Dr. Roberts asked how Martha could sign a power of attorney if she has an intellectual disability? The hospital lawyer explained that someone with an intellectual disability has the right to sign a power of attorney, and a judge should not appoint a guardian as long as Martha could sign the power of attorney. Martha spoke up and said she knew she should have the surgery, even though she did not want it.

After learning about supported decision-making and power of attorney, Dr. Roberts accepted Susan's consent with a power of attorney.

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Slide 204 - Martha: Financial

Finding the Right Fit: Decision-Making Supports and Guardianship

Financial Decisions

Martha gets paid every month for her work at the public library. Martha and her support network make sure that she can manage her money and keep the money safe with several methods.

Explore each method below.


MARTHA SCENARIO

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[Joint Bank Account](#)[Money Management](#)[Power of Attorney](#)

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Slide 205 - Martha: Financial SDM Joint Account




DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE

Finding the Right Fit: Decision-Making Supports and Guardianship

Financial SDM: Joint Bank Account

Martha's monthly paycheck is deposited directly in her bank account. Martha opened her bank account five years ago. The bank wanted her to open a joint account with another account holder. Martha's brother, George, is the co-account holder. George has to agree when Martha wants to take money out of her account or write a check. Every month, George and Martha go over how much money she has in her account, her monthly expenses, and how much she has left over for spending money. George helps Martha to make sure she has enough money to pay her bills. When George and Martha agreed to have a joint account, they also agreed that George would never ask Martha about her spending money. Once they agree on an amount every month that Martha can take out of her account for spending money, Martha can spend it as she wishes.

MARTHA SCENARIO



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Slide 206 - Martha: Financial SDM Money Management



Finding the Right Fit: Decision-Making Supports and Guardianship

Financial SDM: Money Management

MARTHA SCENARIO





This summer, Martha wants to take a vacation with her boyfriend, Peter, to the beach. Martha's parents were concerned at first with her plan for a few reasons. They want to know if Martha has enough money to go on the trip, and whether Martha will also pay for Peter's vacation. Martha talks to her case manager, Sharon, about her parents' feelings, and Sharon invites Martha's parents, Peter, and her brother George, who is the co-holder on Martha's bank account, to meet and talk about the vacation.


Sharon leads the meeting. The first thing she asks is for Martha to talk about her vacation and her goals for the vacation. Martha says she wants to go for seven days, she wants to swim in the ocean, and she wants to stay in a hotel with Peter.


Sharon explains the purpose of the meeting is to find out whether Martha has enough money to go on this vacation. Martha isn't sure if she can save enough money for the trip. Sharon asks the group to brainstorm all of the expenses for the trip. They make a list - transportation, hotel, food. Then the group works together to figure out about how much the trip will cost.

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Slide 207 - Martha: Financial SDM MM2



Finding the Right Fit: Decision-Making Supports and Guardianship

Financial SDM: Money Management (cont.)

MARTHA SCENARIO



George says that Martha does not have enough money to go for seven days, but she does have enough for three days. Peter offers to pay for an extra night for Martha in the hotel so they can go for four nights. Mark and Susan, Martha's parents, ask Peter how he plans to pay for his trip and some of Martha's. Peter explains that he has saved enough money for a seven-day trip, so if they can only go for three days he will have some extra money.



Martha agrees to go on a four-day trip instead of a seven-day trip. She says Peter can pay for one night for her at the hotel, and she wants to take him out to dinner.

Sharon writes down a plan for Martha to save enough money for three days at the beach.

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Slide 208 - Martha: Financial SDM Power of Attorney

Finding the Right Fit: Decision-Making Supports and Guardianship

Financial SDM: Power of Attorney





MARTHA SCENARIO




Martha lives in an apartment with three other friends. Martha's parents, Susan and Mark, always have paid Martha's rent. Martha wants to start paying for part of her rent with her earnings from her job. Susan and Mark suggested that Martha pay them and then they will pay the landlord. Martha said she did not want to just pay her parents. She wants to pay the landlord.

Susan and Mark suggested Martha give them [power of attorney](#) to pay her rent. That way, she chooses who pays her rent by naming Susan and/or Mark in the power of attorney. Martha can always cancel the power of attorney or change it and make someone else the "agent."

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Slide 209 - Edward Scenario



DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE


Finding the Right Fit: Decision-Making Supports and Guardianship

Meet Edward

Edward is 78 years old and being financially exploited by his sister, Agnes. Edward was diagnosed with Alzheimer’s disease three years ago and is no longer capable of making his own decisions. He struggles with complex thinking tasks and can no longer pay his bills or manage communications like email or speaking on the telephone. Before Edward’s Alzheimer’s progressed to the point where he could not make his own decisions, he wrote a power of attorney for healthcare and a power of attorney for financial decisions. He made his sister, Agnes, the decision-maker in both documents.

Here are some issues facing Edward.

EDWARD SCENARIO





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Slide 210 - Edward: Financial Decisions

Finding the Right Fit: Decision-Making Supports and Guardianship

Financial Decisions




When he first went to the nursing home, Agnes paid for Edward's care on time. Last year, Agnes told Edward's nephew that Edward had almost \$1 million dollars available to pay for his own care. Lately, Agnes has not been paying his nursing home bill on time. Edward has been at the nursing home for 6 months and should have ample funds for his care. Edward's nephew is concerned that Agnes is spending Edward's money. She brags to family about her new car and she has been away on two exotic vacations recently.

What options does the nephew have to intervene?

Note: If you suspect financial exploitation, contact your state or local adult protective services or law enforcement.



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Guardian of the Property](#) [Power of Attorney](#) [Joint Ownership](#)

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Slide 211 - Edward: Financial | Guardian of the Property



Finding the Right Fit: Decision-Making Supports and Guardianship

Financial: Guardian of the Property

EDWARD SCENARIO



The nephew made a report to Adult Protective Services and a financial exploitation investigation found that Agnes used Edward's money to buy her new Corvette and pay for her two vacations to Fiji, draining Edward's account of over \$400,000 in less than a year.


The nephew could go to court and ask a judge to appoint an emergency guardianship of Edward's estate (conservatorship).


The nephew could revoke or remove Agnes as the agent under a power of attorney (POA). This would remove Agnes from managing Edward's assets.


The nephew could also ask the judge to order the account(s) frozen until the emergency conservator has obtained access to the assets and removed Agnes's access.

To learn more about guardianship, go to [Guardianship](#).



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Slide 212 - Edward: Financial | Power of Attorney


Finding the Right Fit: Decision-Making Supports and Guardianship

Financial: Power of Attorney (POA)

Agnes has power of attorney for Edward, however, she is misusing the power of attorney and exploiting Edward's money. The existing power of attorney needs to be revoked. If Edward has the ability to understand, he can revoke the POA. If he no longer understands, a judge will need to revoke the POA.




The nephew should get legal advice about how to inform Agnes, other individuals, and businesses such as banks that the POA has been revoked.

To learn more about power of attorney, go to [Power of Attorney](#).





EDWARD SCENARIO

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Slide 213 - Edward: Financial | Joint Ownership




Finding the Right Fit: Decision-Making Supports and Guardianship

Financial: Joint Ownership




Money and property can be owned jointly with another person. If someone is not able to make decisions about their money and property, a joint owner can continue to make decisions. One simple kind of joint ownership is a joint bank account.

In this case, joint ownership is not a solution to stop the financial exploitation. Edward is no longer able to make financial decisions so he cannot add another person to his bank account. Even if he could, it would not stop Agnes from having access to Edward's money.



To learn more about joint ownership, go to [Joint Ownership](#).

EDWARD SCENARIO

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Slide 214 - Edward: Health Decisions




Finding the Right Fit: Decision-Making Supports and Guardianship

Health Decisions

The nursing home staff is not happy with the medical decisions Agnes has been making and have had difficulty reaching her when decisions are needed. They have complained to the nephew that someone else who is responsive and available to answer their questions needs to help Edward.

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Slide 215 - Edward: Health | Guardianship




DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE

Finding the Right Fit: Decision-Making Supports and Guardianship

Health: Guardianship

EDWARD SCENARIO



Edward's healthcare power of attorney is not working to take care of his needs. Agnes is not responding to the nursing home.

If Edward still had the ability he could appoint someone else as his power of attorney to replace Agnes.

If there is immediate need for healthcare decisions, a petition for a court appointment of an emergency guardianship and revoking or removing Agnes as the healthcare power of attorney, would provide Edward with a responsive person to act on his behalf.

If Edward's health needs are not immediate, a petition for guardianship (NOT emergency) and removing Agnes as the healthcare power of attorney would provide Edward with a responsive person to act on his behalf.

To learn more about guardianship, go to [Guardianship](#).



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Slide 216 - Edward: Health | Supported Decision-Making

Finding the Right Fit: Decision-Making Supports and Guardianship




Health: Supported Decision-Making

Edward's Alzheimer's disease has advanced, and he is not able to fully understand his healthcare needs. To the extent possible, his caregivers should engage Edward in the discussions surrounding his care and help him to make choices where he is still able to do so.



To learn more about supported decision-making, go to [Supported Decision-Making](#).

EDWARD SCENARIO

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Slide 217 - Edward: Health | Keep Power of Attorney

Finding the Right Fit: Decision-Making Supports and Guardianship




Health: Do Nothing / Keep Healthcare Power of Attorney

EDWARD SCENARIO




At this time not acting would lead to further exploitation. Agnes is not responding to the requests of the nursing home regarding medication and medical history. Agnes is no longer meeting her responsibilities as power of attorney. Edward no longer has the cognitive capacity or decision-making ability to complete another power of attorney for a different agent.

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Slide 218 - Edward: Lifestyle Decisions



DEPARTMENT OF JUSTICE
ElderJustice
INITIATIVE


Finding the Right Fit: Decision-Making Supports and Guardianship

Lifestyle Decisions

Edward's Alzheimer's has progressed and the nursing home is no longer able to manage the care he needs. He needs to move to a care facility with a memory care unit. The financial and healthcare powers of attorney that Agnes had have been revoked and the court has appointed Edward's nephew as the guardian to manage Edward's money and well being.

Who can make this decision regarding Edward's healthcare?

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Slide 219 - Edward: Lifestyle | Supported Decision-Making




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Finding the Right Fit: Decision-Making Supports and Guardianship

Lifestyle: Supported Decision-Making


EDWARD SCENARIO




Edward is no longer able to communicate his wishes to his guardian. If she is willing and reliable, Agnes can provide the guardian (nephew) with knowledge of Edward's wishes so the nephew can act according to Edward's wishes to the extent possible, unless substantial harm would result. If that is the case, then they should act in his best interest in accordance with what the nephew believes Edward's wishes would have been, to the greatest extent possible.

To learn more about supported decision-making, go to [Supported Decision-Making](#).


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Slide 220 - Edward: Lifestyle | Guardianship

Finding the Right Fit: Decision-Making Supports and Guardianship




Lifestyle: Guardianship

The guardian will work to find the most appropriate place for Edward to live based on his wishes, his needs, and his financial situation. If the guardian does not know about Edward's values, preferences and wishes, he should try to find out by asking those that know Edward.


To learn more about guardianship, go to [Guardianship](#).

EDWARD SCENARIO

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Slide 221 - Edward: Lifestyle | Keep Power of Attorney




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ElderJustice
INITIATIVE

Finding the Right Fit: Decision-Making Supports and Guardianship

Lifestyle: Do Nothing / Keep Healthcare Power of Attorney

Edward’s healthcare power of attorney has been revoked. A plenary guardian (for both healthcare and financial decisions) has been appointed.

EDWARD SCENARIO



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Slide 222 - Resources



DEPARTMENT OF JUSTICE
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Finding the Right Fit: Decision-Making Supports and Guardianship

Resources

[VIEW GLOSSARY OF TERMS](#)

[NOTE](#): All resource links below will open in a new browser window.

Supported Decision-Making

National Resource Center for
Supported Decision-Making
[Resource Library](#) | [Education Videos](#)

[Practical Tool for Lawyers: Steps in
Supporting Decision Making](#)
American Bar Association

Less Restrictive Legal Options

[Managing Someone Else's Money guides](#)
Consumer Financial Protection Bureau

[Identifying Alternatives to Guardianship
Worksheet 2nd ed. \("Stoplight Tool"\)](#)
University of Missouri Kansas City,
Institute for Human Development

Guardianship

[Managing Someone Else's Money
guides for court-appointed guardians](#)
Consumer Financial Protection Bureau

[The Fundamentals of Guardianship:
What Every Guardian Should Know](#)
American Bar Association Senior
Lawyers Division and National
Guardianship Association

[What is the Extent of Elder Abuse in
Guardianship & What Can We Do
About It?](#) (Presentation)
American Bar Association
Commission on Law and Aging

[NGA Standards of Practice](#)
National Guardianship Association

Guardianship Training for Family
Guardians (person and property)
National Guardianship Association
[Self-Study Courses](#) (\$) [Webinars](#) (\$)

[How to Protect our Nation's Most
Vulnerable Adults Through Effective
Guardianship Practices](#)
(Powerpoint download)
National Association for Court
Management

Elder Protections [USDOJ Elder Justice Initiative](#) | [National Center on Law & Elder Rights](#) | [National Center on Elder Abuse](#)

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Glossary of Terms

Term	Similar terms	Use this definition
Accommodation	Disability Support	A change that makes it possible for a person with a disability to do something they could not do before. For example, installing a ramp at the entrance of a building will allow people who use wheelchairs to enter when before they could not use the stairs.
Advance Directive	Living will Health care directive	A written document that allows someone to plan for a time when they may not be able to say what they want for their health care or decisions about end of life treatment. Health care includes decisions about medicine, surgery, and other treatments. End of life treatment includes questions about whether someone does or does not want a feeding tube, resuscitation, or other possibly life saving measures.
Agent	Attorney-in-fact	The person appointed in a power of attorney to make decisions and manage the money, property or healthcare of another person.
Guardian Plan		A report the guardian gives to the judge (or court) explaining the guardian's plan for the medical, mental, and physical care of the person.
Annual Guardian Report	Personal Well being report	A report the guardian gives to the judge (or court) (usually annually) describing the well-being of the person. The guardian report may include information about the person's health, personal care, living arrangements, finances, and visits with friends and family.
Autonomy		The control a person has over their life. For example, a person has the autonomy to choose friends, a place to live, and what to eat. People who need help making decisions may lose some or all autonomy.
Best Interest		Depending on the situation, there are different definitions of best interests. When a person cannot tell a guardian what they want, and the guardian has to make a decision for them, the guardian should do what the guardian believes the person would have wanted. If the guardian does not know what the person would have wanted, the guardian must use their judgment to decide what would be best for the person.
Capacity	Competency	Most guardianship laws are based on a definition of whether a person has capacity. Capacity is what a person can understand about their choices, and whether a person can make a choice or decision. See also competency.

Term	Similar terms	Use this definition
Clerk of the court		A court employee responsible for making sure events in court go smoothly. Sometimes in a guardianship case, the clerk will be involved. The parties may see the clerk more than the judge.
Competency		Some guardianship laws refer to competency. Competency is the ability to do something. Sometimes it means the ability to make decisions. See also capacity.
Conservator	Guardian of the estate	A person appointed by a judge or court to manage a person's money and property.
Court		A judge sits in a court and makes decisions. Sometimes the word "court" is used instead of "judge."
Court Order		A legal document, signed by a judge, that has to be followed. For example: Order of guardianship, visitation orders, restraining orders.
Dementia		A decline in memory or other thinking skills that gets in the way of daily life. Includes Alzheimer's disease.
Developmental Disability		A mental or physical disability that shows before a person reaches the age of 22. A developmental disability limits three or more areas of major life activity: self-care; language, learning, mobility, self-direction, independent living, economic independence.
Direct Services		Includes medical and nursing care, care/case management and case coordination, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training and other similar services
Power of Attorney		A person can give authority to someone else to make decisions for them in a legal document called a power of attorney. Sometimes the power of attorney works rights away, and sometimes it will only work if the person can no longer make their own decisions.
Emergency Guardian	Temporary guardian Emergency Temporary Guardian	A guardian appointed in an emergency for a specific time period. Usually 60 to 90 days. After the emergency guardian is appointed, the parties must come back to court at any time between a few days to months so the judge can decide whether a long-term guardian is needed.
Estate		Anything that can be owned: money and property.
Family Guardian		Someone who is a guardian for a family member.

Term	Similar terms	Use this definition
Fiduciary		Someone who is named to manage property or money for someone else.
Financial Exploitation		Illegal or improper use of a person's money or property.
Guardian	Guardian of the person Conservator of the person	A person appointed by the court who has the legal authority to make decisions for another person, because that person cannot make their own decisions.
Guardian ad litem	Court visitor Court investigator Monitor	Sometimes a judge will decide a person who may need a guardian cannot say whether or not they want a guardian. The judge can appoint a guardian ad litem to look into the situation and share what they believe is best for the person.
Hearing		A meeting in a courtroom at which the judge decides whether a person needs a guardian or conservator
Incapacity or Incompetency		A person's inability to make and then act upon personal and/or property decisions on his or her own behalf.
Individual subject to conservatorship	Protected person	Someone <u>for</u> whom a has been appointed a conservator has been appointed.
Individual subject to guardianship	Ward	Someone for whom a has been appointed a guardian <u>has been appointed</u>
Informed Consent		When a person makes a choice, usually about a medical procedure, understanding the risks and benefits of their choice.
Interested Party	Interested person	Someone who has the right to notice in a guardianship case. Individuals are usually parents, adult children, siblings, spouses, and sometimes residential providers.
Limited Guardianship/conservatorship	Partial guardian	When the guardian/conservator only has certain powers granted by the court. The person retains any powers not in mentioned in the court order. For example, a limited guardian may only have the power to make medical decisions for someone. Or, a limited conservator may only have the power to manage a person's property, but the person pays their own rent.
Living Will		A document that usually applies to end of life decisions, such as when you no longer want life sustaining treatment.
Neglect and Abandonment		Intentional or unintentional failure or refusal to provide care or help to an older adult - an extreme form of neglect
Person who has a guardian or conservator	Ward -Protected Person -Person under guardianship -Conservatee	A person who has been appointed a guardian or a conservator by a judge. Different states use different terms including: Ward -Protected Person -Person under guardianship

Term	Similar terms	Use this definition
	-Disabled person -Incapacitated person -Person/ individual subject to guardianship Person under guardianship	-Conservatee -Disabled person -Incapacitated person -Person/ individual subject to guardianship Person under guardianship
Petition	Motion	This document asks the judge or court to appoint a guardian, and should explain why a guardian is necessary.
Petitioner		The person or agency that asks the court to appoint a guardian.
Physical abuse		An act, rough treatment or punishment that may result in injury, pain, or impairment.
Power of Attorney		A legal document that gives someone the authority to make decisions for another person.
Psychological Abuse		Psychological, verbal or emotional abuse causing suffering, emotional pain, or distress
Representative Payee		When the Social Security Administration (SSA) decides someone is unable to manage their own benefits, SSA can appoint a representative payee to receive, manage and spend SSA benefits for the benefit of the person.
Substituted Judgment		Making a decision on behalf of another that is what that person would have done or wanted if they were able to make their own decision.
Surrogate Decision Making		A provision in law that allows the appointment of a person, referred to as a surrogate, to make decisions on behalf of another, usually someone with an intellectual or cognitive disability.
Trust		Someone (the trustee) manages money or property for the benefit of the owner. There are many different kinds of trusts.

Sources for definitions:

Fund: Fundamentals of Guardianship

UG: from UGCOPPA

AARP - refers to the material from AARP

B: Black's - refers to Black's Law Dictionary 8th Edition

E & S - refers to the NGA Ethics and Standards for Guardians

FDC: Florida Disability Council

Select: refers to the Report from the Subcommittee on Housing and Consumer Interests of the Select Committee on Aging House of Representatives