

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

This document contains information about:

1. Independent Decision Making,
2. Supported Decision-Making Agreements (SDMA),
3. Power of Attorney (POA),
4. Durable Power of Attorney (DPOA),
5. Legal Guardianship – Limited or Full
6. Conservatorship – Limited or Full,
7. Protective Arrangement, and
8. Guardianship for Native American adults.

Always keep in mind the rights and self-determination of the person in which support options are being considered. There are several options for families to meet the needs of your loved one while supporting their rights, promoting self-determination, and ensuring their health and safety. Guardianship should **ONLY** be considered if less restrictive options do not meet the individual's needs. Many parents are told by schools or other parents that they will need to apply for guardianship for their loved one. This is not always the case. Sometimes, to assure the well-being of a loved one with disabilities, well intentioned parents and caregivers may feel the need to have control of their loved one's decision making, to nurture and to protect them. However, it is likely the more parents and caregivers manage the person with disability's decision making, the less responsibility the person with disability and others will take on, and the more reliant they will become on parents and caregivers.



1. Independent Decision Making:

Independent Decision Making is the least restrictive option for legal decision making and naturally occurs at age 18 if another decision-making option has not been previously set up.

Independent Decision Makers can still informally communicate with others to help make legal decisions. Instead of seeking to manage every interaction and decision, parents and caregivers can act as supporters. Sometimes the shift from control to support can be as simple as some small adjustments to the language used: Instead of telling someone what to do, ask them what they want to do. Making this a gradual process will give you or your loved one a sense of security in the process of moving towards greater self-determination. The more parents, caregivers, and other support people can work together to adapt and understand each other the better independence skills will develop.



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2. Supported Decision-Making Agreement (SDMA):

Supported Decision-Making (SDM) is an alternative to guardianship. It allows people with disabilities to choose people close to them to help them gather and understand information, make decisions, and communicate those decisions to others. It ensures a person's right to make their own important life decisions and to have their decisions respected with the support of the people they choose.

In 2020, Washington State passed a law that formalizes Supported Decision-Making as an alternative to guardianship. The law gives adults with disabilities the right to enter into a Supported Decision-Making Agreement (SDMA) with other adult(s) of their choice* who will provide the person with the support they want.

What does an agreement include?

- The names of the adult who will be supported and the person(s) who will support them.* Both the adult with a disability and their supporter(s) must sign the agreement in front of two witnesses and/or a notary public.
- The kind of decisions the adult wants help with, including decisions about where they live, where they work, how they spend their time, or how they manage their health care and finances.
- The kind of help the adult wants when making a decision, including help with gathering information, understanding options, or communicating their own choices.
- (Optional) Limited decision-making power to their supporter by using other guardianship alternatives in addition to a supportive decision-making agreement, including a Power of Attorney for health care and/or financial decisions, as well as Representative Payee to manage Social Security benefits.

*In order to act as a supporter, people chosen must not fall into a category listed in [RCW 11.130.730](#).

A SDMA can be changed or ended by the adult with a disability at any time.

Step by Step

- Choose the supporter(s) you want to help you make decisions.
- Meet to talk about the kinds of decisions and help you want and need.
- Make an Agreement that spells out how you will be supported. Be sure to sign a release of information if you want your supporter(s) to communicate with others on your behalf.
- Sign the SDM Agreement. The agreement must be signed by both you and your supporter(s) in front of two witnesses and/or a notary public.
- Complete and sign: Motion and Order re: Supported Decision Making.
- File the 3 documents (SDMA, Motion to Order and Order) with the Court.

For a SDMA form, click [here](#); and for the **Motion (OPA 100)** and **Order re: Supported Decision Making (OPA 101)** forms, click [here](#)



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3. Power of Attorney (POA)

Power of Attorney (POA) is a legal document that gives an identified individual (the **agent**) the right to speak and/or make decisions on behalf of another individual (**principal**) if they are unable to do so for themselves (Click [here](#) for RCW 11.125).

An individual who has an intellectual or developmental disability may adopt a POA so that the agent can make legal decisions on their behalf, however, should the person with disability disagree with the agent or make a different decision than the agent, the person with disability's decision overrides that of the agent. A POA can be either temporary, or be put in place for routine, ongoing support.

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

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

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

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

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4. Durable Power of Attorney (DPOA):

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

The language used in the DPOA document determines the extent of the agent's powers. The document may give powers over financial affairs, healthcare, or both. Financial powers may be



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narrow or broad. A DPOA may be written to take effect immediately or to take effect only when the person becomes incapacitated. DPOAs should include language describing how incapacity will be determined.

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

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

5. Legal Guardianship:

Guardianship is a legal proceeding that removes some, or all, of an individual's decision-making rights about where to live and work, her health care decisions, and whether they can marry.

Guardianship can be **LIMITED** (limited authority under the law) or **FULL** (full authority under the law).

If the guardianship is **LIMITED**, it means that the Court grants the authority to make specific decisions identified in a Court order and may be limited in duration.

If the guardianship is **FULL**, it means that the Court authorizes someone to make **ALL** decisions regarding the care, medical decisions and living arrangements of the person with a disability.

A guardian can be a parent, sibling, family member, friend, or professional agency.

Because guardianship places significant restrictions on a person's fundamental rights, there is a rigorous process in place to assess whether guardianship is needed.

What must be shown to establish legal guardianship?

- a. Lack of capacity of the person with disability to make essential health, safety, and self-care decisions.
- b. It is necessary to prevent harm to the disabled person; and
- c. The needs of the disabled person cannot be met by a less restrictive option or protection agreement.

6. Conservatorship:

Conservatorship is a legal proceeding that removes some, or all, of an individual's decision-making rights to manage their financial affairs and estate.

Conservatorship can be **LIMITED** (limited authority under the law) or **FULL** (full authority under the law).



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If the conservatorship is **LIMITED**, it means that the Court grants the authority to make specific decisions identified in a Court order and may be limited in duration.

If **FULL** conservatorship, it means that the Court authorizes someone to make **ALL** decisions regarding financial and estate matters.

What must be shown to establish conservatorship?

- a. Lack of capacity of the person with disability to manage their assets and financial affairs.
- b. It is necessary to prevent harm to the disabled person; and
- c. The needs of the disabled person cannot be met by a less restrictive option or protection agreement.

7. Protective Arrangement:

In this option, the Court appoints a person to help with specific tasks, such as approving medical treatment, limiting visits from someone who might harm you, selling property, signing a contract, etc.

It is a less restrictive alternative to guardianship or conservatorship. However, the legal process is practically the same.

For Legal Guardianship/Conservatorship/Protective Arrangement in King County:

- The petition must be filed in the Superior Court of the county where the person with disability resides.
- The Court schedules the hearing (within 60 days).
- The Court appoints a Court Visitor.
- The Court appoints an attorney (for the person with disability).
- If the person's assets are less than \$3,000, the county will pay for the costs of the process, the Court Visitor, and the attorney.
- Lay guardians must complete an online training and then complete the declaration of completion form. The training module and the **Declaration of Completion** form are [here](#)

After guardianship is established, guardians will be required to report to the court every 12, 24, or 36 months.

8. Legal Guardianship for Native American Adults:

For Native American adults, a guardianship proceeding is often brought into tribal court instead of state court. Many Indian Tribes have their own guardianship codes and court requirements. Before deciding whether to file a guardianship involving a Native American person in tribal court or state court, contact the tribe or a lawyer who regularly appears in the tribal court.

Tribal courts may provide a less formal and more culturally sensitive forum for decisions regarding incapacitated tribal members. Tribal court may be the only available forum with a working relationship with the Bureau of Indian Affairs (BIA) or tribal programs delivering BIA services.



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King County Superior Court

- King County Courthouse:** 516 3rd Ave, Room W-382, Seattle, WA 98104, (206) 296-9092
King County Courthouse districts are: All of King County north of I90 and including Mercer Island, Bellevue, Issaquah, North Bend, Vashon, and Maury Islands
- Maleng Regional Justice Center:** 401 4th Ave, Room 3-D, Kent, WA 98032, (206) 205-2526
The Maleng Regional Justice Center districts are: All of King County south of I90, excluding those assigned to the King County Courthouse area.

Additional Resources:

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

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

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

For more information on Guardianship/Conservatorship/Protective Arrangement:

<https://informingfamilies.org/new-washington-adult-guardianship-law/>

Resources to Establish/Maintain Guardianship/Conservatorship/Protective Arrangement:

- Guardianship/Conservatorship/Protective Arrangement Forms: <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=139>
- Or contact the **Family Law Facilitator**: <https://kingcounty.gov/courts/superior-court/family/facilitator.aspx>

Legal Resources:

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