

WHEN ADULTS NEED HELP MAKING DECISIONS

AND

MANAGING DAILY AFFAIRS

A Non-Lawyer's Guide to D.C.'s
Legal Tools for Assisting Adults

 Council for
Court Excellence
Improving Justice for the Community

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Founded in 1982, the Council for Court Excellence (CCE) is a nonprofit, nonpartisan civic organization with the mission to improve the justice system in the District of Columbia to serve the public equitably. CCE identifies and proposes solutions by collaborating with diverse stakeholders to conduct research, advance policy, educate the public, and increase civic engagement.

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Introduction

Everyone needs help sometimes. It might be as simple as a few words of advice or a sympathetic ear from a caring family member or close friend. There may come a time, however, when we need more intense assistance. Whether because of illness, injury, intellectual or physical disability, dementia, or simply the effects of aging, many of us may need temporary or long-term help to make important decisions or manage our financial affairs or other matters.

In the District of Columbia, a wide range of legal tools are available to support adults who need this type of help. But understanding how the tools work and deciding which tool or combination of tools to use can be a challenge.

This Guide describes, in non-technical terms, the various options available under D.C. law and the different life circumstances that each option is designed to meet. This Guide does not describe options to help people under 18 years old; instead, it focuses solely on the legal supports for helping adults.

This Guide discusses issues affecting individual rights, personal dignity, safety, financial security, physical and mental well-being, and independence—important matters that

require the utmost care and sensitivity. When considering whether, and to what extent, to restrict a person's freedom to make decisions or to act independently, the following principles should be kept in mind:

- There is no one-size-fits-all model. Each person has different needs, capabilities, levels of mental and physical health, and family situations.
- Identifying the right level of support depends not only on the person's specific capabilities, but also on the availability and willingness of caring, trustworthy, and reliable family members, friends, and others to provide help.
- Choosing the level of support that least restricts personal freedom, while also providing adequate help and protections against potential abuse, requires careful balancing.
- Unnecessarily limiting personal freedom and independence can lead to feelings of loss of dignity and self-worth, which can be mentally and physically damaging.
- D.C. law requires that supportive arrangements allow the greatest degree of self-determination possible, consistent with the person's mental and physical limitations.

The next section of this Guide provides a brief overview of each of the legal tools available in the District of Columbia for supporting adults who need help making decisions or managing their daily affairs. Following the overview are longer sections that describe each legal tool in greater detail, explaining what each one does, who can benefit from or use it, how to set it up, and how to change or cancel it. These sections start with the least restrictive options and end with the most formal and restrictive tools.

While the discussion in this Guide tries to use clear, non-legal language as much as possible, some technical terms cannot be avoided. For that reason, a Glossary at the end of the Guide defines some of the technical or potentially unfamiliar terms that are used.

This Guide does not provide legal advice. It is for informational purposes only. People considering the issues and tools discussed in this Guide, particularly the more formal or restrictive options, should consult with a lawyer who has experience in these topics.

Please see the Appendix at the end of this Guide for information about organizations that can help people find experienced lawyers or can provide free or low-cost legal help. The Appendix also includes links to additional online resources, including helpful forms and publications.

An Overview of the Legal Tools Available in D.C.

This overview summarizes the legal tools available in the District of Columbia for helping adults who have difficulty making or communicating decisions or managing their financial affairs or other matters. The tools listed in this overview proceed from least to most formal and restrictive. The use of one tool does not necessarily mean that another tool may not also be helpful or necessary for a particular person. In fact, a combination of tools often works best, providing flexibility to deal with changing needs and circumstances.

Supported Decision-Making

Supported Decision-Making does not deprive people of the ability to make decisions, manage matters, or handle money on their own. Rather, it enables them to keep those abilities, but with additional support from someone they have chosen to give them help. Supported Decision-Making arrangements do not require court approval and can be set up without legal fees or other costs. D.C. law specifically recognizes the right of an adult with a disability to enter into one or more Supported Decision-Making Agreements for medical, financial, and other matters. The law defines who may or may not serve as a supporter, and it describes the form to be followed and the information to be included when

putting such an agreement in writing. In addition, students with disabilities who are 18 or older can enter into these types of agreements to get help in educational matters. *For more information about the various types of Supported Decision-Making available under D.C. law, see pages 9–16 of this Guide.*

Advance Instruction for Mental Health Treatment

An “Advance Instruction for Mental Health Treatment” is a document in which a person specifies the treatment decisions that they want caregivers to follow when mental health treatment is needed but the person is unable to make or communicate choices at that time. People receiving public mental health services in the District often use this tool. The document is easy to write and free to create. A person who has an Advance Instruction keeps the power to make health care decisions unless two D.C.-licensed professionals certify in writing that he or she lacks the mental capacity to do so, even with support. *For more information about Advance Instructions for Mental Health Treatment, see pages 17–19 of this Guide.*

Power of Attorney

A “Power of Attorney” is a document in which a person gives someone else the legal authority to act on his or her behalf. This Guide discusses two types of Powers of Attorney: (1) Financial Power of Attorney, which gives legal authority to act for another person in financial and other non-medical matters, and (2) Durable Power of Attorney for Health Care, which gives legal authority to make decisions for another person in health care matters only. Having a Power of Attorney in place may be of great help if someone becomes permanently or temporarily unable to make or communicate his or her own decisions as a result of disability, declining mental or physical health, or major surgery. Because a Power of Attorney authorizes one person to act on behalf of another without court supervision, no one should sign a Power of Attorney without having carefully reviewed, and being completely comfortable with, its content. This important authority should be given only to someone who the person setting up the Power of Attorney believes is honest,

reliable, and willing to listen to and follow his or her wishes and instructions. *For more information about Powers of Attorney, see pages 20–27 of this Guide.*

D.C. Substitute Health Care Decision-Maker

When there is no Durable Power of Attorney for Health Care in place, D.C. law authorizes a family member, friend, or other adult—called a “Substitute Health Care Decision-Maker”—to make health care decisions on behalf of a person who lacks the mental capacity to do so on his or her own. Two medical professionals must certify that the person lacks that mental capacity. Substitute Health Care Decision-Makers must act consistently with the known wishes of the people for whom they are making decisions. Court involvement is usually not required. Except for the professional fees that may be charged for the required medical certifications, this is a free tool. *For more information about D.C. Substitute Health Care Decision-Makers, see pages 28–31 of this Guide.*

Educational Representative for an Adult Student

An “Educational Representative” is someone (usually a parent) who is appointed by the D.C. Office of State Superintendent of Education (OSSE) to make educational decisions for an adult student in public special education who is unable to make their own decisions and cannot use an educational power of attorney. Getting an Educational Representative appointed does not typically require an attorney or court involvement. Instead, a parent, family member, or other interested adult may submit a request to OSSE, along with two professional certifications of the student’s incapacity to make educational decisions. The professionals must follow certain rules in making the certifications, including first personally examining or interviewing the adult student within the last year. If no adult relative is available, OSSE can appoint a trained volunteer to serve as the student’s Educational Representative. An Educational Representative’s authority automatically ends when the student is no longer eligible for special education services or graduates with a high school diploma or certificate. *For more information about Educational Representatives for Adult Students, see pages 32–34 of this Guide.*

Representative Payee or Fiduciary for Federal Benefits

If a recipient of Social Security, federal employee retirement, or veterans' benefits has difficulty handling those benefits, the relevant government agency can approve the appointment of a person or an organization—referred to as a “Representative Payee” or “Fiduciary”—to manage the assets for the recipient, usually at no cost. Holding a Durable Financial Power of Attorney does not automatically entitle that person or organization to also act as the recipient's Representative Payee or Fiduciary. Rather, the government agency must approve the appointment. *For more information about Representative Payees and Fiduciaries for federal benefits, see pages 35–42 of this Guide.*

Conservatorship

The Probate Division of the D.C. Superior Court can appoint a person or an organization—referred to as a “Conservator”—to manage some or all of the income, financial assets, and property of someone who the court has determined lacks the mental capacity to do so on their own, even with support from others. Depending on the capabilities and needs of the person who needs protection, the court can specify the scope of the Conservator's powers and the specific income and assets the Conservator can manage. The court typically requires the Conservator to post a bond to protect the Conservatorship property, and is subject to the court's ongoing supervision. The person whose income, assets, and property are subject to Conservatorship cannot change or terminate the arrangement without the court's approval. Conservatorships are typically more formal and more costly than Financial Powers of Attorney, but they also are subject to greater review and protection by the courts. For their services, Conservators are entitled to compensation from the Conservatorship property. Conservatorships are most often established when the person needing help has significant financial assets or receives a stream of income that needs management or protection. Because a Conservatorship takes away a person's ability to control his or her property independently, less restrictive alternatives should be considered before seeking a court-appointed Conservator. *For more information about Conservatorships, see pages 43–47 of this Guide.*

Guardianship

The Probate Division of the D.C. Superior Court can appoint a person or an organization—referred to as a “Guardian”—to make some or all of the personal, medical, and everyday financial decisions of someone who the court has determined lacks the capacity to do so on his or her own, even with support from others. Depending on the capabilities and needs of the person who needs help, the court can establish general Guardianships or ones limited to specific types of decisions or time periods. A Guardianship can limit a person’s basic freedoms, so less restrictive alternatives should be considered before seeking a court-appointed Guardian. If the less formal and restrictive options would not provide adequate help or protection against potential abuse, a Guardianship can provide critical assistance to an otherwise vulnerable person. *For more information about Guardianships, see pages 48–53 of this Guide.*