

# WHEN ADULTS NEED HELP MAKING DECISIONS

AND

# MANAGING DAILY AFFAIRS

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

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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.*

# The Legal Tools Available in the District of Columbia for Assisting Adults Who Need Help Making Decisions or Managing Their Affairs

## Supported Decision-Making

### What Is Supported Decision-Making?

Supported Decision-Making refers to a broad range of arrangements that help people make or communicate their own decisions. The support may come from close friends, family members, or other trusted associates. These supporters cannot make decisions on behalf of someone needing help. Instead, they provide the help needed to enable that person to make or communicate his or her own decisions. For example, supporters might:

- Explain issues in ways that the person being helped can understand;
- Ask questions on the person's behalf;
- Gather and present information for the person to consider when making decisions;
- Help the person understand and consider his or her options; or
- Communicate the person's own decisions to others.

Supported Decision-Making does not take away a person's legal decision-making rights or give someone else the right to overrule the decisions that person makes.

Supported Decision-Making helps people control and direct their own lives. Studies have shown that people with disabilities who have more “self-determination”—that is, more control over their lives—usually have better jobs and quality of life, are healthier, are better problem-solvers, and are better able to resist and avoid abuse. Older adults with more control over their lives usually have improved psychological health, including the ability to adjust to the need for increased care over time. By contrast, depriving people of the ability to control their lives can lead to feelings of helplessness or hopelessness and can harm mental and physical health.

### **Who Can Use Supported Decision-Making?**

Supported Decision-Making is something that everyone has participated in from time to time. Most people have asked a friend or family member to explain an unfamiliar word or concept to help them understand an issue and make a more informed decision about what to do. Some people may need extra help, or different kinds of help, to make or communicate their own decisions, but that does not necessarily mean they need someone else to make decisions for them.

Supported Decision-Making is particularly helpful to people who have the ability to make and communicate important decisions with some help from a trusted advisor. For some people with disabilities, Supported Decision-Making is all the help they will need. But some disabilities get worse over time. In those situations Supported Decision-Making can help with advance planning, such as creating a Durable Power of Attorney for Health Care, which must be finalized and signed while the person still has the capacity to make his or her own decisions. *Durable Power of Attorney for Health Care is explained in more detail on page 21.*

## What Is a Supported Decision-Making Agreement?

A Supported Decision-Making Agreement is a way of putting a Supported Decision-Making relationship in writing so that other people, organizations, and agencies know who a person's supporters are and what type of help the person wants in making his or her own decisions. In 2018, the District of Columbia enacted a new law, the "Disability Services Reform Amendment Act of 2018," that expressly recognizes the right of an adult with a disability to enter into one or more Supported Decision-Making Agreements. The law describes the basic format that such agreements should follow and the information that should be included. Although it may be possible to have an informal Supported Decision-Making relationship without putting anything in writing, a written Supported Decision-Making Agreement avoids confusion and uncertainty, makes others aware of the arrangement, and increases the likelihood that people will honor the agreement. As described below, forms are available for establishing written Supported Decision-Making Agreements under D.C. law. Supported Decision-Making Agreements are free to set up, and they can be made, changed, or canceled without any court involvement.

## Who Can Be a Supporter Under a Supported Decision-Making Agreement?

D.C. law has special rules about who can be a person's supporter under a written Supported Decision-Making Agreement for medical, financial, and other matters. These rules state:

- Unless he or she is a relative of the supported person, the supporter cannot: (1) provide physical, mental, or behavioral health care or disability services to the supported person; or (2) work for any governmental agencies that are responsible for paying for the supported person's care.
- Unless the Supported Decision-Making Agreement is limited solely to an adult student's educational decisions, the supporter cannot have been: (1) found by a government agency to have abused, neglected, or exploited the supported person or inflicted harm upon a child, elderly person, or someone with a disability; or (2) convicted, within the last seven years, of certain criminal offenses, including sex

offenses or aggravated assault against a child, elderly person, or someone with a disability; fraud; theft of \$1,000 or more; forgery; or extortion.

## How Do You Create a Supported Decision-Making Agreement?

Supported Decision-Making is a flexible tool that can address the needs of different people in different situations. To set it up, the person who needs help should determine what kind of decisions he or she needs help with and what kind of support would be useful. The person should ask people he or she trusts for help making these determinations. Then the person should consider who would be a good supporter and what the supporter or supporters would do. The person also should talk to the potential supporters to see if they will agree to serve in that role. After taking these initial steps, an adult with a disability who wants assistance should put the Supported Decision-Making agreement in writing by using the forms described below. Once that is done, sharing copies of the Supported Decision-Making Agreement will improve the likelihood that the person's wishes will be respected by others. The person who wants support should give copies of the Agreement to his or her doctors, hospitals, health care providers, lawyers, banks, and other similar people or organizations.

The forms and procedures for creating various types of Supported Decision-Making Agreements are:

- 1. Supported Decision-Making Agreement Form for Medical, Financial, and Other Decisions.** D.C. law describes the form to be used for Supported Decision-Making Agreements for different life decisions. You do not need a lawyer to fill out the Supported Decision-Making Agreement forms. *A link to the form and instructions for filling it out is in the Appendix.* The person who wants support must list the types of life decisions for which he or she needs help. For example, the person may want the supporter to help with decisions related to his or her physical health by getting information from doctors or being present when a health care decision is being discussed or made. The supporter must state in writing that he or she meets the background requirements discussed above to qualify as a supporter under D.C. law. Both people must sign the form in front of two adult witnesses or a notary public.

If the Supported Decision-Making Agreement covers health care decisions, the person seeking support also should sign a “Health Insurance Portability and Accountability Act” (HIPAA) release-of-information form, which allows health care providers to disclose otherwise confidential medical information to specified supporters. *There is a link to a sample HIPAA release in the Appendix.* Release-of-information forms should be attached to the Supported Decision-Making Agreement.

If the Supported Decision-Making Agreement covers adult educational decisions, the person seeking support should sign a “Family Educational Rights and Privacy Act” (FERPA) release-of-information form, which allows schools to disclose private educational information to specified supporters. Release-of-information forms should be attached to the Supported Decision-Making Agreement.

If you have more than one supporter, you need a Supported Decision-Making Agreement for each supporter.

Not all doctors, hospitals, banks, or other organizations know about Supported Decision-Making Agreements. If you encounter a problem, you may need to tell these people or institutions about the law. The law requires every person, institution, or D.C. agency to honor a Supported Decision-Making Agreement unless it has good reason to believe that the person needing support is being abused, neglected, or exploited. You can bring a copy of this Guide with you to help prove your point. You could keep it in the same folder as your Agreement and release-of-information forms.



Aisha has a severe learning disability and was recently diagnosed with diabetes. She is figuring out how to manage the new diagnosis and wants to make sure that she takes her medications properly and follows the diet recommended by her doctor. The medical jargon the doctor uses is confusing sometimes, and the doctor does not always know how to explain things. Aisha

wants help getting answers to her questions in ways she understands. She also wants someone to go with her to medical appointments so that she does not miss any important information they say while she is there. She has a trustworthy friend, Diana, who is willing to help. Aisha completes a Supported Decision-Making Agreement form, which states that Diana will help her when she makes health care decisions by going with her to medical appointments and getting information from her doctors. Both Aisha and Diana sign the Supported Decision-Making Agreement in front of a notary public. Aisha also signs a HIPAA release-of-information form, which allows her doctors to share her medical information with Diana. Aisha attaches the release form to the Supported Decision-Making Agreement and gives a copy to Diana and her primary care physician. Aisha keeps her copies in the same folder so that they are easy to find.

**2. Supported Decision-Making Agreement Forms for Special Education Decisions.** In D.C., students receiving special education services may stay in school until they turn 22. When students turn 18, however, their parents no longer have the legal right to make educational decisions for them. Adult students who want to make a Supported Decision-Making Agreement for educational decisions can use different Supported Decision-Making forms developed by the D.C. Office of State Superintendent of Education (OSSE) or D.C. Public Schools (DCPS). *Links to these forms are provided in the Appendix.* The OSSE and DCPS forms are shorter and easier to fill out, and they include a Family Educational Rights and Privacy Act release form. You do not need a lawyer to complete these forms. As described above, under D.C. law, supporters who help a special education student with only educational decisions do not have the same background requirements that apply to supporters for other types of decisions.



José just turned 18. He has intellectual disability and will receive special education services through his school until he turns 22. Although his parents want José to gain experience making decisions on his own, they also want to continue receiving information about his educational progress from the school. They are concerned that the school will stop sharing information with them because José is now 18. The information is important for helping José understand how he is doing in school and whether he needs additional educational services. José thinks his parents can help with school decisions, so he signs a D.C. Public Schools Supported Decision-Making form and gives it to his school.

**3. Other Supported Decision-Making Options for Financial Matters.** Other opportunities for Supported Decision-Making are available in D.C. An example is the City-Wide Money Management Program, which assists older D.C. residents who need help handling their money. This program is administered by Iona Senior Services. The D.C. Office on Aging and Legal Counsel for the Elderly, among other organizations, will help people apply to the program. You do not need a lawyer or social worker to sign up. To be eligible, you must be a D.C. resident, at least 60 years old, live alone, be affected by dementia or loss of memory, and have an annual income below \$29,425 and countable assets of \$4,000 or less (these amounts are subject to change). People in the program can receive money management services for free. Services can include help organizing finances, budgeting, and scheduling reminders for bills. Participants in D.C.'s City-Wide Money Management Program remain in control of their finances while receiving support to manage them effectively, and they may withdraw from the program at any time by notifying their case manager.



Jordan is 65 years old, lives in subsidized housing, has limited Social Security benefits, and is experiencing memory loss. Jordan is capable of paying his bills, but he gets help from a social worker at Legal Counsel for the Elderly because he knows he spends too much money shopping sometimes. His social worker connects him with Iona Senior Services so that he can join the City-Wide Money Management Program. Each month, Jordan meets with his money manager to review his budget and pay his bills.

### **How Do You Change or Cancel a Supported Decision-Making Agreement?**

The procedure for changing or ending a Supported Decision-Making Agreement depends on how the agreement was created. If the agreement is not written down and signed, you can cancel by telling the supporter and service providers that the agreement is over.

If the Supported Decision-Making Agreement is written down, you can still cancel it at any time, and so can the supporter. It is important to cancel in writing so that you have proof of the cancellation. You and your supporter should share the cancellation with each other and with anyone else who knew about or had a copy of the agreement. That way, other people know that the former supporter is no longer authorized to receive confidential information. If you only want to change or update an Agreement, you can cancel it and start over with a new form.

# Advance Instruction for Mental Health Treatment

## What Is an Advance Instruction for Mental Health Treatment?

If you have a mental health condition, you can use an Advance Instruction for Mental Health Treatment to plan for emergencies. An Advance Instruction lets you give instructions ahead of time for situations when you might not be able to communicate decisions about your mental health treatment preferences. The Advance Instruction applies only to mental health providers, not other types of doctors or medical staff. For help with finances, housing, or other matters, a different or additional tool should be used, such as a Financial Power of Attorney, discussed on pages 24–27.

An Advance Instruction document is easy to write and free to create. An Advance Instruction does not take away your decision-making power. It does not give someone else the right to overrule the choices you made in the document. You keep the power to make your own health care decisions unless two D.C.-licensed professionals—a physician and a psychiatrist or a psychologist—certify in writing that you do not have the mental capacity to make such choices, even with support.

## Who Can Use an Advance Instruction?

D.C. residents who receive public mental health services from a D.C.-licensed hospital or mental health provider can use Advance Instructions for Mental Health Treatment. Those who receive treatment at a facility that is located outside D.C. or that is not certified by the D.C. government may have difficulty enforcing the Advance Instruction for Mental Health Treatment. In those circumstances, someone who wants mental health decision-making support should consider creating a Durable Power of Attorney for Health Care, as discussed further on pages 21–22 of this guide.

## How Do You Create an Advance Instruction?

An Advance Instruction for Mental Health Treatment must:

- Be in writing;
- Be signed and dated by the person giving the treatment instruction;
- Be signed by at least one adult witness who is not related to the person by blood or marriage, is not the person's doctor, and is not an employee of the D.C. Department of Behavioral Health or a mental health provider; and
- Include a brief statement from the witness(es) that the person making the Advance Instruction appears to be capable of knowingly and voluntarily expressing the instructions included in the document.

An Advance Instruction should specify your choices for services and support, including:

- Who to call—or not to call—in an emergency;
- Which medications and types of treatment or provider interventions have been helpful—or not helpful—in the past;
- Which hospitals you prefer; and
- Who should make mental health care decisions for you if you are unable to do so.

A mental health care provider does not need to follow an Advance Instruction that requests services or treatments that are illegal, are prohibited by court order, or pose a serious health risk. Otherwise, if an Advance Instruction is not followed, the person who signed it may file a grievance with the D.C. Department of Behavioral Health. *A link to a sample Advance Instruction form is provided in the Appendix.*

## How Do You Change or Cancel an Advance Instruction?

There is no need to go to court to change or end an Advance Instruction. You can change or cancel an Advance Instruction by giving the mental health care provider an updated version or by telling the provider that the Advance Instruction is canceled. It is better to do so in writing to avoid confusion and to keep a record of the change or cancellation. The cancellation can be a one-sentence document that you and an appropriate witness

sign and date. You should tell anyone who may have copies of it about any changes or cancellation you made and give them copies of any document that changes or ends the Advance Instruction.



Daniel has been a patient on a psychiatric ward. When he has been hospitalized in the past, it has been important to him to participate fully in his treatment plan. With his wife's help, Daniel creates an Advance Instruction for Mental Health Treatment. He requests that, in an emergency, his wife be contacted, that he not be given the medication Haldol because of his past bad reactions to it, and that the staff help him call his wife if he is upset. Daniel gives a copy of the Advance Instruction to his wife, reviews the Advance Instruction with his treatment team, and asks that it be added to his medical record. When Daniel is hospitalized again, he has difficulty verbally expressing his treatment preferences. The treatment team reviews Daniel's Advance Instruction in his medical record, contacts his wife to let her know where he is, assists him in calling his wife, and offers him an alternative to Haldol.

# Power of Attorney

A person may wish to appoint a representative with the authority to act, now or in the future, on his or her behalf in personal, health, financial, or business dealings. That can be done through a legal document called a Power of Attorney. No one has to be an attorney to get or have a Power of Attorney; “power of attorney” mostly means “the legal power to decide.” You can give a Power of Attorney to a family member, close friend, professional or spiritual advisor, or another trusted adult of your choosing.

The person who gives someone the power to make decisions on his or her behalf is called the “Principal,” and the person or organization that gets authorized to make the decisions is called the “Agent”—or sometimes the “Attorney-in-Fact,” even though they do not have to actually be an attorney. For a Power of Attorney to be valid, you have to sign it while you still have the mental capacity to do so.

A Power of Attorney can say that the Agent’s powers start immediately, at a specified later date, or when a particular future event happens, such as the onset of an incapacitating medical condition. The type of Power of Attorney that does not start until a specific event happens is called a “Springing Power of Attorney” because the power “springs” into effect after something happens.

If the Principal becomes incapacitated (no longer has the mental ability to understand and evaluate information or to make or communicate decisions), the Agent’s authority ends automatically, unless the Power of Attorney has specific language saying the Agent can continue acting on behalf of a Principal who becomes incapacitated. This type of Power of Attorney is called a Durable Power of Attorney. It stays in effect after the Principal is incapacitated.

For purposes of this Guide, two types of Powers of Attorney are especially important: (1) a Durable Power of Attorney for Health Care and (2) a Financial Power of Attorney (formally known as a Uniform General Power of Attorney). Powers of Attorney give

authority to make important and sensitive health care and financial decisions to another person without any review or supervision by the courts. Trusting someone with that much power can have serious consequences. It is therefore critical that the person or organization that gets that power—whether a family member, close friend, professional or spiritual advisor, bank, or some other person or organization—has good judgment; is completely trustworthy and reliable; and has the time, availability, capability, and desire to carry out the responsibilities described in the Power of Attorney.

## Durable Power of Attorney for Health Care

### What Is a Durable Power of Attorney for Health Care?

In a Durable Power of Attorney for Health Care, the Principal gives the Agent the authority to make health care decisions if the Principal loses the mental capacity to decide. These decisions may involve medical treatment, health care delivery, or end-of-life choices. An Agent can only use the authority given by a Durable Power of Attorney for Health Care if two D.C.-licensed professionals—a physician and a psychiatrist or psychologist—certify in writing that the Principal no longer has the mental capacity to make his or her own health care decisions, even with support from others. The Durable Power of Attorney for Health Care may give the Agent the power to:

- Review medical records;
- Receive information necessary to make informed health care decisions;
- Make decisions involving medical treatment, health care delivery, and end-of-life choices;
- Grant, refuse, or withdraw consent to any treatment or procedure; and
- Make decisions about admission to, and discharge from, health care facilities.

A Power of Attorney may include limitations on the powers of the Agent and provide specific instructions for end-of-life treatment and care. The Agent has a duty to follow your wishes as written in the Durable Power of Attorney for Health Care. If your wishes are unknown and cannot be learned, the Agent must act in your best interests. It is

important for you and your Agent to discuss your preferences for care and treatment so that the Agent is familiar with them and can carry them out.

### **Who Can Use a Durable Power of Attorney for Health Care?**

Any adult with mental capacity can create a Durable Power of Attorney to appoint a family member, close friend, professional or spiritual advisor, or any other trusted adult to make important medical decisions on his or her behalf. A Durable Power of Attorney for Health Care makes sure that someone you choose can act if there is an emergency that deprives you of the mental capacity to make or communicate these decisions. This legal tool can be useful for a person whose mental or physical health is declining, who is facing major surgery, or who has developmental, mental health, or age-related disabilities—so long as he or she has the ability to enter into the arrangement knowingly.

It is critical that you appoint someone to make decisions on your behalf who has sound judgment and who is trustworthy, reliable, a good listener, knowledgeable about your wishes, and willing to follow those wishes. That person also should be someone with the time, availability, capability, and desire to carry out the responsibilities specified in the Power of Attorney.

### **How Do You Create a Durable Power of Attorney for Health Care?**

The D.C. Code includes a sample form for a Durable Power of Attorney for Health Care. A link to this form is provided in the Appendix. The document must communicate clearly that you want the Agent to be able to make health care decisions on your behalf and that the document is durable (meaning that the Power of Attorney will remain in effect even if you lose the mental capacity to make or communicate such decisions).

The Durable Power of Attorney for Health Care must be signed and dated by you and by two adult witnesses who state that you understand what you are signing and were not pressured or misled when signing the document. The Agent cannot be a witness, and neither can your health care provider. Only one witness can be related to you by blood,

marriage, or adoption. Although you do not need a lawyer to create a Durable Power of Attorney for Health Care, a lawyer's review can be helpful if the document includes complicated instructions.

You should give copies of the Durable Power of Attorney to the person you have appointed to make decisions on your behalf and to your health care providers, including primary physicians, mental health care providers, case managers, nursing homes or other long-term care providers, and hospitals. You should request that your Durable Power of Attorney for Health Care be added to your medical records.

### How Do You Change or Cancel a Durable Power of Attorney for Health Care?

So long as you have mental capacity, you can change or cancel a Durable Power of Attorney for Health Care at any time. You should contact both the person you have appointed to make decisions on your behalf and your health care providers to inform them of the change or cancellation. Although it may be possible to do so orally, you should make any change or cancellation in writing to avoid confusion and to create a record. You should send a written cancellation notice or revised Power of Attorney to your Agent and all your health care providers so that they can revise their records.



Anne has been diagnosed with early-stage Alzheimer's disease. Her memory loss is mild so far. She wants to continue making her own health care decisions as long as she can with the help of her daughter, Jalisa. When Anne can no longer make decisions even with support, she wants Jalisa to make them for her. Anne and Jalisa discuss what kind of help Anne needs and wants and how this support will change over time. Anne decides to meet with a lawyer to create a Durable Power of Attorney for Health Care, which states that, in the event that Anne is properly certified as unable to make

decisions for herself, Jalisa will act as her mother’s Agent. The Durable Power of Attorney for Health Care document includes a special provision authorizing medical providers to release health information about Anne to Jalisa immediately.

## Financial Power of Attorney

### What Is a Financial Power of Attorney?

A Financial Power of Attorney is formally known as a “Uniform General Power of Attorney.” It gives the Agent legal authority to act in financial and other matters but not to make medical or health care decisions for you. The Agent also may not vote on your behalf or create or change your will. A Financial Power of Attorney may give the Agent the legal authority to:

- Apply for health benefits for you, including Medicaid, Medicare, and Social Security;
- Manage your business;
- Collect debts for you;
- Buy or sell personal items for you;
- Engage in estate, trust, and other beneficiary transactions;
- Invest your money, including funds in your retirement accounts;
- Engage in banking transactions, including cashing checks, on your behalf;
- File, prosecute, and settle claims and lawsuits on your behalf;
- Complete and file your income tax returns; and
- Buy or sell real estate, including your residence, on your behalf.

In a Financial Power of Attorney, you may grant as many or as few of these powers as you wish. The person appointed must follow the instructions contained in the Power of Attorney. If the Power of Attorney does not address a particular subject, the person you have appointed should make decisions that you would have made, based on his or

her understanding of your wishes, values, and beliefs. If you can still communicate, the person you appointed should ask you about your wishes. The person you appointed can consider prior discussions with you and your past actions, decisions, and statements. If you can no longer communicate, the person you appointed can ask others who know and care about you for their thoughts on what you would have wanted.

### Who Can Use a Financial Power of Attorney?

A Financial Power of Attorney enables you to name a person or organization you trust that can step in and manage your financial and other (non-medical) affairs if you become unable, or need help, to do so. Such an arrangement ensures that a person or organization you trust can act on your behalf to pay bills and handle other financial matters. A Financial Power of Attorney is particularly advisable for someone who is in declining mental or physical health or who is facing major surgery.

### How Do You Create a Financial Power of Attorney?

D.C. law provides a form for creating a Financial Power of Attorney. *A link to this form is provided in the Appendix.* A Financial Power of Attorney needs to define the scope of the authority given to the person you have appointed (what he or she can and cannot decide). The document should include:

- The name, telephone number, and address of the person you have appointed to make financial decisions on your behalf;
- A description of the scope of the authority you are giving that person;
- A statement saying whether you want the Power of Attorney to start immediately or at a future time; and
- A statement saying whether you want the Power of Attorney to be durable (whether it will continue if you become mentally incapacitated).

D.C. law requires that you sign the Financial Power of Attorney and that it be notarized.

Because a Financial Power of Attorney gives the Agent a lot of authority that is not subject to court supervision, you should take great care in deciding whether to create one, who your Agent will be, and what powers to give the Agent. No one may be forced to sign a Power of Attorney; nor should anyone sign one without being completely comfortable with its terms and the scope of authority it gives to the Agent. It is essential that you pick a trustworthy and reliable Agent who can handle your finances and related matters with honesty and who will not attempt to influence you improperly. An Agent who misuses the authority that you gave in a Power of Attorney can cause enormous harm. You will be bound by, and responsible for, all actions of the Agent that are within the scope of authority described in the Power of Attorney. In addition, you should appoint someone who has the time, availability, knowledge, capability, and desire to carry out the responsibilities specified in the Financial Power of Attorney.

A lawyer should draft and review a Financial Power of Attorney to make sure that the document is clear, addresses all potential consequences, and complies with D.C. law. It is also important that the Principal read and understand the document before signing it. You should give a copy of the Financial Power of Attorney to the Agent and any organization, government agency, bank, credit card company, landlord, or business with which the Agent might use the document. If you change or cancel the Power of Attorney, you should notify anyone who has received the document of the change or cancellation.

### **How Do You Change or Cancel a Financial Power of Attorney?**

So long as you have the mental capacity to do so, you can cancel or change a Financial Power of Attorney at any time. Although it may be possible to cancel or change a Financial Power of Attorney orally, it is strongly recommended that any cancellation or change be in writing to avoid confusion and to create a record. You should send a copy of the written cancellation or change to the Agent and anyone who has a copy of the Financial Power of Attorney document so that they do not continue to rely on the old document. Although you may run into resistance from a bank official or other person, you have the right at any time to cancel, or to make any changes to, a Power of Attorney and to insist that the cancellation or changes be honored.



Mohammed was recently diagnosed with brain cancer and is scheduled for surgery. Mohammed creates a Uniform General Power of Attorney that grants his mother authority to make property, banking, and other financial decisions on his behalf if the operation leaves him unable to do so. Mohammed trusts his mother to take actions consistent with what he would do himself. He makes sure to keep the language in the D.C. form making the Power of Attorney durable so that it stays in force even if he becomes disabled, incapacitated, or incompetent. While recovering from surgery, Mohammed is unable to communicate or understand information. During this time, Mohammed's mother pays his rent by writing checks to his landlord from his checking account. When Mohammed has regained his ability to communicate and to understand information, he cancels the Power of Attorney.

# Substitute Health Care Decision-Maker

## What Is Substitute Health Care Decision-Making?

The “D.C. Health Care Decisions Act” allows a trusted family member, friend, or other adult—called a “Substitute Health Care Decision-Maker”—to make health care decisions on behalf of a person who has been certified as lacking the mental capacity needed to make those decisions on his or her own. Mental capacity means the ability, with or without the support of others, to understand the risks and benefits of a health care decision, choose among options, and communicate that choice clearly.

In general, appointing a Substitute Health Care Decision-Maker does not require court involvement. If someone is certified as unable to make medical decisions, doctors and health care providers can and should allow the Substitute Health Care Decision-Maker to make medical decisions on the person’s behalf without a court order. There are some exceptions, such as abortion, sterilization, psycho-surgery, electroconvulsive therapy, and certain behavioral modification programs. Otherwise, the designated decision-maker may give, refuse, or withdraw consent for any health care service, treatment, or procedure. A court order is required to override the exceptions.

The law requires a Substitute Health Care Decision-Maker to act based on the known wishes of the person who was determined to lack capacity. A Substitute Health Care Decision-Maker must make reasonable efforts to determine the wishes of the person. If the person’s wishes are not known and cannot be determined, the Substitute Health Care Decision-Maker must base decisions on the person’s best interests.

## Who Can Use Substitute Health Care Decision-Making?

Substitute health care decision-making may be appropriate when a person does not have a Durable Power of Attorney for Health Care and does not have the mental capacity

to sign one knowingly and voluntarily. The D.C. Health Care Decisions Act does not expressly authorize a person with a disability to choose who will be his or her Substitute Health Care Decision-Maker. It also does not expressly authorize the person to end the Substitute Health Care Decision-Maker's powers. If a person has been certified as lacking the mental capacity to make medical decisions, hospitals may automatically rely on the decisions of the Substitute Health Care Decision-Maker. For these reasons, this tool should be used only if less restrictive alternatives, such as creating a Durable Power of Attorney for Health Care, are not possible.

### **Who May Serve as a Substitute Health Care Decision-Maker?**

A Substitute Health Care Decision-Maker is usually a parent or sibling of a person with a disability, or the spouse or adult child of an older person. The Substitute Health Care Decision-Maker cannot be a health care provider (including a health care facility owner, administrator, or employee) currently treating or providing services to the person. Under D.C. law, people who can serve as a Substitute Health Care Decision-Maker, in order of priority from highest to lowest, include:

- A court-appointed Guardian or Conservator if the court has included such health care decisions within their scope of authority;
- A court-appointed intellectual disability advocate, if the appointment of the advocate includes the power to make such health care decisions;
- A spouse or domestic partner;
- An adult child;
- A parent;
- An adult sibling;
- A close friend; and
- The nearest living relative.



Maria, who just turned 18, has cerebral palsy and profound intellectual disability. She is not able to communicate with words, although she continues to work with her special education support team to learn sign language. Her dentist recommends oral surgery but does not believe that Maria can understand the risks and benefits of the procedure well enough to provide informed consent, even with the support of Esperanza, Maria's mother and primary caregiver.

Esperanza considers becoming Maria's health care agent through a Power of Attorney, but it does not seem like Mary understands the Power of Attorney form, which is one of the rules. Instead, Esperanza gets written certifications from Maria's physician and psychologist that at this time Maria cannot make her own health care decisions. Esperanza becomes Maria's Substitute Health Care Decision-Maker with authority to grant consent for the surgery.

### **How Does Someone Become or Get a Substitute Health Care Decision-Maker?**

The D.C. Health Care Decisions Act applies when a person does not have a Durable Power of Attorney for Health Care and has been certified in writing by two D.C.-licensed professionals—a physician and a psychiatrist or psychologist—as lacking the mental capacity to make medical decisions, even with support from others. The certifications must meet the following requirements:

- Both professionals must give an opinion about the cause, nature, and degree of the mental incapacity, as well as how long the incapacity will last. At least one of them must have examined the person no more than one day before making the certification.

- The two certifications establish only the incapacity of the person to make health care decisions. They may not be used for any other purpose.
- The certifications should be narrow in duration and scope because many people with disabilities may be able to develop or recover their mental capacity to make decisions over time.

Psychologists and physicians may charge fees for providing these certifications of incapacity. After the certifications are made, D.C. law says who should make health care decisions based on the ordered list of people in the last section. The D.C. Department on Disability Services has a “Substituted Consent for Health Care Decisions” form that it uses when someone receiving its services has a Substitute Health Care Decision-Maker. *A link to this form is provided in the Appendix.* While the form can be useful for documenting a Substitute Health Care Decision-Making arrangement, the form is not specifically required by D.C. law.

### **How Can Someone Change or Remove a Substitute Health Care Decision-Maker?**

Those who do not want a Substitute Health Care Decision-Maker may challenge the certifications of incapacity by getting a written statement from their psychologist, psychiatrist, or doctor that they have the mental capacity to make health care decisions for themselves. They should deliver copies of that written statement to their other health care providers.

Those who want to replace their current Substitute Health Care Decision-Maker with a Durable Power of Attorney for Health Care can do so by obtaining a written statement from two health care professionals that says they have the mental capacity to make their own decisions about health care. Such a statement would be evidence of their having the ability to sign, knowingly and willingly, a Durable Power of Attorney for Health Care (see the discussion of Powers of Attorney on pages 20–27 of this Guide).

Someone who wishes to be a person’s Substitute Health Care Decision-Maker, but who is lower on the priority list than the current decision-maker, may petition the D.C. Superior Court. They must persuade the court that he or she has better knowledge of the person’s wishes or, if those wishes are unknown and cannot be determined, that he or she is better able to make decisions in the person’s best interests.

# Educational Representative for an Adult Student

## What Is an Educational Representative?

An Educational Representative is someone—usually a parent—appointed by the D.C. Office of State Superintendent of Education (OSSE) to make educational decisions for an adult student with a disability who is receiving public special education and who: (1) cannot make his or her own educational decisions, even with Supported Decision-Making, or (2) lacks the capacity to sign a Power of Attorney to appoint a person to make educational decisions on his or her behalf.

In general, appointing an Educational Representative does not require court involvement. Instead, a parent or other interested adult may submit a request to be appointed, along with two signed professional certifications of the student's incapacity to make educational decisions, to OSSE. OSSE will respond by appointing the Educational Representative if all of its rules are met.

## Who May Serve as an Educational Representative?

OSSE will first look to a parent—or the person who has acted like a parent for the student—to be appointed as the Educational Representative for the student. If a parent is unavailable or does not wish to serve as the Educational Representative, OSSE will appoint another adult relative who is willing to act. If no adult relative is available, OSSE will appoint a trained volunteer to serve as the student's Educational Representative.

## How Does Someone Become or Get an Educational Representative?

To be appointed as an Educational Representative, a parent or another interested adult

must submit a written request to OSSE using its required form. The student must have reached age 18 or turn 18 within 90 calendar days. Along with the request, the parent or interested adult must submit two professional certifications that meet the requirements of OSSE's model certification form. These requirements include:

- One certification must be from a licensed medical doctor, a qualifying physician assistant, or a certified nurse practitioner.
- The other certification must be from a licensed medical doctor, psychiatrist, clinical psychologist, or independent clinical social worker.
- The professionals cannot be employed by the student's public school or public charter school.
- Each of the professionals must have personally examined or interviewed the student within one calendar year of the certification and found that he or she cannot provide informed consent for educational decisions. The professionals may not base their finding solely on the student's having been hospitalized for mental illness or diagnosed with intellectual disability.
- The professionals must inform the student in writing of their finding.

The professionals may charge fees for providing these certifications. An attorney is not needed to complete these forms. *Links to the required Appointment form and model certification form are provided in the Appendix.*

After OSSE receives the request and proper certifications, it will appoint the Educational Representative and provide notice of the appointment to the parents, student, and school. That notice will describe the steps that the student may take to challenge the appointment, and the school is required to give a copy of the notice and explain it to the student.

### **How Can a Student Change or Remove an Educational Representative?**

A student may challenge the appointment of an Educational Representative at any time. To do so, the student should contact OSSE, preferably in writing. If the student challenges the appointment, OSSE will help with documenting the challenge. As soon as a student makes a challenge, the existing certifications and Educational Representative

appointment are canceled, and all educational rights transfer back to the student. Just by making a challenge, a student can successfully undo the appointment of an Educational Representative. If the student wishes to have a different Educational Representative, he or she can cancel the existing appointment by challenging it and then by asking the preferred representative to submit a new request for appointment along with the required professional certifications.

The Educational Representative's authority will end automatically when the student is no longer eligible for special education services or graduates with a high school diploma or certificate, whichever happens first.



Michael just turned 18 and will be receiving special education services until he turns 22. Although he attends his Individualized Education Program meetings each year, his father, Kevin, and the special education multi-disciplinary team believe that Michael is unable to understand fully, even with help, the educational decisions that he is expected to make. Kevin considers becoming Michael's agent through an Educational Power of Attorney, but it does not seem like Michael understands the Power of Attorney form, which is one of the rules. Instead, Kevin needs to use the process for becoming an Educational Representative. Kevin gets written certifications from Michael's doctor and psychologist that Michael lacks the mental capacity at this time to make his own educational decisions. Kevin submits these certifications and a request form to OSSE and is appointed as Michael's Educational Representative. As a result, Kevin can continue to make Michael's educational decisions for him until he turns 22.

# Managing Federal Benefits

A “Representative Payee” or “Fiduciary” is a person or organization approved to manage the government benefits of another person (called a “Beneficiary”). Representative Payees or Fiduciaries may be authorized to manage three types of federal payments: (1) Social Security benefits; (2) retirement benefits for federal employees; and (3) veterans’ benefits. Having a Financial Power of Attorney does not automatically allow a person or organization to act as a Representative Payee. Rather, the relevant federal agency must approve the particular person or organization to serve as the Representative Payee or Fiduciary for the specific benefit type.

## Social Security Benefits

### What Is a Representative Payee for Social Security Benefits?

A Representative Payee for Social Security Benefits is a person or organization approved by the Social Security Administration to receive and manage Social Security retirement benefits, Supplemental Security Income (SSI), or Social Security Disability Insurance (SSDI) for someone who gets payments from one or more of those programs. The Representative Payee manages that money to meet the Beneficiary’s current or future needs (such as housing, utilities, food, medical expenses, personal care, and clothing). The Representative Payee must keep records of the amounts spent and must submit a report every year to the Social Security Administration. Local D.C. organizations, including Bread for the City, Iona Senior Services, Community Connections, and Pathways to Housing, may act as Representative Payees for Social Security Benefits for qualified D.C. residents.<sup>1</sup>

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<sup>1</sup> Some of these organizations may be able to take new Representative Payee cases only when referred to them directly by D.C. government agencies, not cases that are based on individual requests.

## **How Is a Social Security Representative Payee Appointed?**

An individual or organization may apply to be a Social Security Representative Payee by submitting a form, proof of the Payee's identification, and the Payee's Social Security number or organization's Employee Identification Number. The person or organization also must submit either: (1) a medical certification by a physician stating that the Beneficiary is unable to manage his or her finances or (2) a proof of appointment by a court as Guardian of the Beneficiary. These documents must be submitted in person at a Social Security Administration field office.

When appointing a suitable Representative Payee, the Social Security Administration generally relies on family members or friends to serve. When no family members or friends can serve, the Social Security Administration will rely on qualified organizations.

If a person has been convicted of violating the Social Security Act or any statute punishable by a sentence greater than one year of prison, has a Representative Payee of his or her own, or has been found by a court to have misused the Payee role, he or she cannot serve as a Representative Payee. Creditors of the Beneficiary usually cannot be Payees, with some limited, case-by-case exceptions.

## **How Does a Beneficiary Change or Cancel a Social Security Representative Payee Arrangement?**

To cancel a Social Security Representative Payee arrangement, a Beneficiary must show the Social Security Administration that he or she now has the mental and physical capacity to handle money independently. A certification by a physician or other evidence such as a court order must be submitted. To request a new Social Security Representative Payee, the Beneficiary should contact the local Social Security Administration field office and request an application.

Suspected fraud by a Social Security Representative Payee can be reported online or by calling the Social Security Administration's fraud hotline at 1-800-269-0271. Fraud by a payee is a federal crime that is subject to serious penalties.



Li Na, who receives Supplemental Security Income (SSI), has dementia and might get evicted from her apartment for not paying rent. She does not have anyone to handle her finances, and she says that she no longer understands her financial situation. Li Na goes to Iona Senior Services and fills out the papers to make it her Representative Payee. After that, Iona Senior Services helps Li Na pay her rent every month so she can stay in her apartment.

## Federal Employment Retirement Benefits

### What Is a Representative Payee for Federal Employment Retirement Benefits?

The federal Office of Personnel Management (OPM) administers federal workers' retirement benefits and has the authority to make payments to a Representative Payee for the Beneficiary (called an "Annuitant" by OPM). In addition to receiving the payments for the Beneficiary/Annuitant, the Representative Payee is responsible for acting in the Beneficiary/Annuitant's best interests, including making decisions about withholding federal income tax and selecting federally sponsored health benefit coverage for the Beneficiary/Annuitant when applicable.

### How Is a Representative Payee for Federal Employment Retirement Benefits Appointed?

Only a court-ordered Guardian or Conservator, or an approved Representative Payee, is allowed to handle a Beneficiary/Annuitant's benefits. Family members or friends who wish to act as a Representative Payee must complete an application form for OPM's approval. A link to this form is provided in the Appendix. Applicants must (1) show proof that they are already serving as Conservator or Guardian for the Beneficiary/Annuitant

or (2) provide medical documentation of the Beneficiary/Annuitant's physical or mental disability, including how long the disability is expected to last. This documentation should show clearly that the Beneficiary/Annuitant is unable to manage his or her benefits. Applicants also must provide notarized statements about their relationship to the Beneficiary/Annuitant and information about who currently handles his or her affairs.

### **How Does a Beneficiary/Annuitant Change or Cancel a Representative Payee Relationship?**

To change a Representative Payee for federal retirement benefits, the Beneficiary/Annuitant should give OPM an updated application form and a letter signed by the earlier Representative Payee confirming the end of the representation. If you think a Representative Payee has not been acting in a Beneficiary/Annuitant's best interests, you should contact OPM right away. *A link for the OPM online complaint form is provided in the Appendix.*

## **Veterans' Benefits**

### **What Is the Veterans Administration Fiduciary Program?**

The U.S. Department of Veterans Affairs (VA) Fiduciary Program helps people who get veterans' benefits who cannot manage their own financial affairs because of injury, illness, or age. The VA will appoint a Fiduciary after it gets medical documentation or a court order that the Beneficiary can no longer handle his or her financial affairs.

### **How Is a Fiduciary for Veterans' Benefits Appointed?**

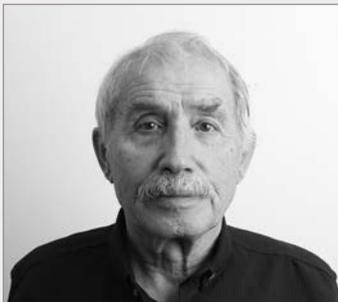
To become a Fiduciary under VA programs, a family member, friend, or organization must give the local VA Regional Office the Beneficiary's name and VA file number, the Fiduciary's name and contact information, and a Fiduciary Statement in Support of Appointment. *A link to this form is provided in the Appendix.*

After the VA agrees that a Beneficiary cannot handle his or her financial affairs, the Fiduciary must be investigated with a criminal background check, review of credit reports, personal interview, and review of recommendations from character references. When friends and family are not available to serve as a Fiduciary, the VA looks for other qualified individuals or organizations to do so.

### How Does a Beneficiary Change or Cancel the Fiduciary Appointed by the VA?

A Beneficiary has the right to appeal the VA's decisions about whether the Beneficiary needs a Fiduciary and who the Fiduciary will be. To appeal, the Beneficiary must give the VA a Notice of Disagreement letter and any evidence that shows the Beneficiary does not need a Fiduciary or should have a different Fiduciary.

Beneficiaries can always ask for reevaluation of their ability to manage VA benefits or the appointment of a Fiduciary. Beneficiaries should submit such requests in writing, along with any supporting medical evidence, to their local VA office.



Floyd gets veterans' benefits. The government has sued him because he has not paid the taxes on his home. He also is late with his mortgage payments. Floyd has post-traumatic stress disorder because of his military service, and he has depression that is often severe and makes it hard to manage his financial obligations. Floyd's daughter successfully applies to the VA to be named as Floyd's Fiduciary for Veterans' Benefits. She now monitors Floyd's VA benefits payments and pays his mortgage and taxes on time.

## How to Determine Whether a Fiduciary for Veterans' Benefits Is Fulfilling His or Her Duties?

The primary measure of whether a Fiduciary is fulfilling his or her duties is whether the Beneficiary's basic needs are being met. The key questions are: Is the rent or mortgage being paid on time? Does the Beneficiary have adequate food, medical care, and personal care items? The following are signs that the Fiduciary may not be fulfilling these duties:

- The Beneficiary's funds are not accounted for properly;
- The Beneficiary is sued for failing to pay rent, mortgage, or medical expenses, or is not being protected from creditors by the Representative Payee or Fiduciary (by law, SSA, OPM, and VA benefits cannot be attached to pay creditors); or
- The Fiduciary is not providing vital information about changes in the Beneficiary's circumstances (such as changes in resources, assets, disability, work status, or marital status) to the Social Security Administration, Office of Personal Management, or Department of Veterans Affairs.

Representative Payees must annually submit SSA forms 623, 6230, or 6233. These forms are not available online. People should call 1-800-772-1213 or their local Social Security Office to receive the forms. VA fiduciaries must submit periodic accountings, and the VA engages in periodic on-site reviews of fiduciaries who are managing more than 20 beneficiaries and more than \$50,000 in funds.

If you believe a Fiduciary is engaging in improper or fraudulent activities, contact the Office of the Inspector General of the Social Security Administration by mail at P.O. Box 17785, Baltimore, MD 21235 or by telephone at 1-800-269-0271 on weekdays between 10 am and 4 pm Eastern Standard Time, or online.

### **A Note About Special Needs Trusts and ABLE Accounts**

A Special Needs Trust is designed for someone with a disability who receives government benefits (such as Medicaid or Supplemental Security Income) but who may receive additional funds or assets that could disqualify him or her from eligibility for government benefits. Special Needs Trusts hold funds intended to assist the Beneficiary, but these funds cannot be given to the Beneficiary directly. Instead, a Trustee appointed by the court decides how to use the money to pay the Beneficiary's expenses that are not covered by government benefits.

The rules and tax implications for Special Needs Trusts are highly technical. Anyone considering creating such a Trust should consult an attorney who has experience with Special Needs Trusts. An improperly drafted Trust could accidentally disqualify the Beneficiary from receiving government benefits.

Some nonprofit organizations manage the assets of numerous people through a pooled Special Needs Trust. Each person has a separate account, but the funds are managed together to maximize their investment potential and to achieve lower management fees than would result from managing each trust account individually. Contact information for organizations that manage Special Needs Pooled Trusts can be found at <http://specialneedsanswers.com/pooled-trust>.

For example, the Wesley Vinner Memorial Trust is a pooled Special Needs Trust operated by Shared Horizons, Inc., a not-for-profit corporation that serves the District of Columbia. The Vinner Trust enables families and people with disabilities to establish relatively inexpensive trust accounts

that provide supplemental funds for people while protecting them against the loss of their government benefits. For more information, visit <https://www.shared-horizons.org>.

The Achieving a Better Life Experience (“ABLE”) Act of 2014 authorized the establishment of “ABLE accounts,” which are tax-advantaged savings accounts for individuals who acquired a significant disability before turning 26 and who are eligible for or already receive Social Security benefits. To learn more about ABLE accounts, visit <http://www.ablenrc.org>. It is strongly recommended that anyone considering establishing an ABLE account consult with an attorney with experience in the area.

# Conservatorship

## What Is a Conservatorship?

As a result of intellectual disability, serious illness, injury, medical condition, or the effects of aging, an adult may lack or lose the mental capacity to manage his or her financial resources. If the adult does not have a Durable Financial Power of Attorney authorizing someone to act on his or her behalf in the event of incapacity, the adult's family or any other interested person may ask the Probate Division of the D.C. Superior Court to establish a Conservatorship. If the court determines that the adult lacks the necessary mental capacity, it will appoint an individual or organization to serve as a "Conservator," with responsibility for managing the adult's income, financial assets, and other property. In some cases, the court may grant a limited Conservatorship, authorizing the Conservator to manage only specifically identified income, types of financial assets, or financial activities.

Conservatorships include a number of significant safeguards designed to protect the financial resources of the incapacitated person against fraud and mismanagement. For example, before appointing a Conservator, the court carefully reviews the background and qualifications of the candidates for that position. The court requires the Conservator to submit an inventory of the Conservatorship's income and assets and a plan for prudently managing them. In addition, the court requires the Conservator to post a bond and file periodic reports and annual accountings. Based on that and other information, the court reviews and evaluates the Conservator's performance on an ongoing basis.

The benefits and safeguards of a Conservatorship, however, come with costs and restrictions. For example, Conservators are entitled to be paid for their services from the property of the person under Conservatorship (although family members sometimes serve as Conservators at no charge). In addition, modifying the Conservatorship plan ordinarily requires court proceedings and the services of a lawyer. Depending on the

circumstances, the expense and formality of a Conservatorship may not be necessary, particularly if a Durable Financial Power of Attorney is in place. Finally, removing or restricting a person's ability to control his or her financial resources can do damage to the person's sense of security, independence, and self-worth, so it should be done only when absolutely necessary.

### **What Does a Conservator Do?**

A Conservator manages the income and assets of another person and makes financial decisions for them. The Conservator does not make health care or quality-of-life decisions. The person under Conservatorship keeps the ability to make those decisions, or they are made by a Guardian if one has been appointed.

In the Conservatorship Plan to be filed with the court and sent to interested parties, the Conservator must, among other things, explain:

- Which services are necessary to manage some or all of the person's property (such as collecting assets, depositing and investing them, and continuing or participating in the operations of a business) and how those services will be provided;
- How the Conservator will share decision-making duties with the person or the Guardian (if one has been appointed); and
- How the person's funds will be spent.

In developing the Conservatorship Plan, the Conservator is supposed to consult with the person's Guardian, if one has been appointed, and with the person himself or herself to the maximum extent possible. In the periodic reports and accountings filed with the court, the Conservator must identify all transactions involving the Conservatorship's income and assets.

The typical obligations of a Conservator involve paying bills (including taxes) owed by the incapacitated person as well as collecting any money owed to them. The Conservator is expected to manage the Conservatorship assets with the same prudent care that he or she would manage his or her own assets and to use and preserve those assets to serve the best interests of the incapacitated person.

### How Is a Conservator Appointed?

The potential Conservator must file a Petition for Appointment of a Conservator in the Probate Division of the D.C. Superior Court. The court will schedule a hearing on the Petition approximately 35 days after it is filed. At the hearing, the Petitioner must prove, through medical evidence or testimony, that the person for whom the Conservatorship is sought does not have the mental capacity to manage his or her financial affairs.

If the person for whom the Conservatorship is being sought does not have a lawyer, the court will appoint one to represent his or her interests. The court, at its discretion, also may appoint someone to serve as a “Guardian ad Litem” (which is a different type of Guardian from the Guardian described in the next section), whose job is to determine the person’s views on the proposed Conservatorship, gather relevant information, and make recommendations to the court about whether a Conservator should be appointed and who the Conservator should be. The court will direct an “Examiner” (a qualified professional, typically a doctor, trained in the diagnosis, care, and treatment of the person’s alleged incapacity) to examine the person and submit a report. The court may have a “Visitor” (a court-appointed professional, usually a social worker) interview the person.

### How Does Someone Change or End a Conservatorship?

The Conservator, the person under Conservatorship, or any other interested person may file a petition asking the court to change or end the Conservatorship. The court may terminate the arrangement if it determines that the person under Conservatorship has recovered decision-making capacity or that the need for the Conservatorship has ended (for example, the person now has other supportive services that are providing adequate help). If a Conservator resigns or is removed by the court, but the Conservatorship itself has not been terminated, the court will appoint a Successor Conservator.

When Conservators ignore, neglect, or abuse (physically or emotionally) the person under Conservatorship, anyone may submit a written statement of complaint to the Probate Division of the D.C. Superior Court and seek changes in the arrangement. The

Probate Division can assist in preparing a statement of complaint.

Sometimes conflicts arise between a Conservator and the person the Conservator is assisting or that person's friends and family. The D.C. Superior Court offers a confidential Elder Mediation Program through which professional mediators help to resolve conflicts or other issues related to the Conservatorship of a person who is 50 or older or a person of any age with disabilities. Examples of issues addressed through this program include whether a particular person should serve as a Conservator and whether limitations should be placed on the Conservator's powers. Any concerned person can request mediation through this program by filling out a Petition for Referral to Mediation and submitting it to the D.C. Superior Court's Probate Division. *Information about the Program and a link to the Petition are provided in the Appendix.*



Alice is an 85-year-old widow who lives alone in the house that she and her husband bought. For many years, she worked for the government, and she now receives a monthly \$5,000 retirement annuity. Alice always has been fiercely independent and never discussed her financial affairs with anyone or trusted anyone to help her manage them. In recent months, she has been showing signs of increasing dementia. She has not deposited her retirement checks or paid her electric bill or property taxes, and she has been found walking around her neighborhood lost and confused. Alice's daughter, Janeene, is concerned but has no authority to act on her mother's behalf to pay the delinquent bills or to make appropriate financial arrangements for her care and well-being.

Alice does not have the mental capacity to sign a Financial Power of Attorney. Instead, Janeene petitions the D.C. Superior Court to be appointed Conservator of her mother's property and financial resources. The court determines that Alice lacks the ability to make decisions about those matters on her own and appoints Janeene as her Conservator. The court requires Janeene to (1) obtain a bond in an amount appropriate to protect Alice's assets and (2) submit for its review and approval a formal Conservatorship Plan. Upon the completion of that process, Janeene has the authority as Conservator to manage her mother's property and pay her bills. Janeene must submit to the court an annual accounting of Alice's income, expenses, and assets.

# Guardianship

## What Is a Guardianship?

The Probate Division of the D.C. Superior Court may establish a Guardianship if it has determined that a person lacks or has lost the mental capacity to make important decisions or manage his or her affairs. The incapacity may be the result of serious disability, illness, injury, or medical or age-related condition. In these circumstances, the court may authorize a person or organization to be a “Guardian,” with the responsibility of helping and protecting the person and making decisions for them. A relative, friend, or organization can serve as a Guardian, although the court’s preference is to appoint a family member when possible. If the court is unable to identify a good candidate to serve as Guardian, it can appoint an attorney from the court’s Probate Fiduciary Panel.

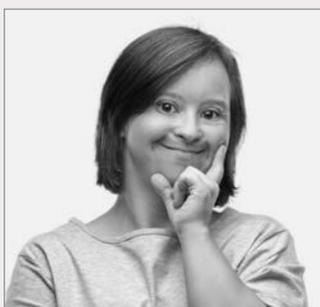
Guardians can provide critical help to people in need. Guardians can offer advocacy, protection, and support. They can make sure that the people they are appointed to protect receive needed services, are not taken advantage of, and have their best interests served. Guardians must periodically report to the court on the status and condition of the people for whom they have responsibility, and they are subject to the court’s ongoing supervision.

As in the case of Conservatorship, however, the benefits and safeguards of Guardianship come with costs and restrictions. Establishing a Guardianship is a formal process that can be expensive. It involves hiring a lawyer, participating in a court proceeding, obtaining a court order approving the Guardianship and its terms, and being subject to ongoing court involvement and oversight. Money belonging to the person who is the subject of the Guardianship action can be used to pay for court-approved fees or costs, including the Guardian’s own fees. Once established, a Guardianship can be altered or terminated with the court’s approval, but that involves additional time and expense, including the need to obtain the services of a lawyer. Depending on its form and terms, a Guardianship can greatly limit a person’s personal freedom and ability to exercise self-determination,

## Guardianship

which could potentially have adverse effects on his or her psychological state and mental and physical health.

Establishing a Guardianship is a serious step that should be taken only after careful consideration, including an assessment of whether less restrictive alternatives would provide adequate support and protection.



Edith, who has intellectual disability, lives alone in an apartment and receives assistance from the D.C. Department on Disability Services. She does not have any family members involved in her life. Although Edith works and manages her money, she has trouble understanding medical information and making health care decisions. Given her limitations, the Department on Disability Services requests that the Probate Division of the D.C. Superior Court appoint a Limited Guardian for health care. The court appoints a Limited Guardian for Edith from its list of professionals who are experienced in providing such services. Edith retains all other decision-making rights other than those related to health care.

### What Does a Guardian Do?

A court order approving the creation of a Guardianship will list the powers and duties of the Guardian. In general, a Guardian is responsible for carrying out the responsibilities established by the court. These responsibilities may be broad, covering many or virtually all aspects of a person's life, or they may be limited in scope or duration. The different types of Guardianship are:

- 1. Temporary Guardianship.** Temporary Guardians are appointed for a set period of time. Examples are Emergency Guardians (up to 21 days), Health Care Guardians

(up to 90 days, with the potential for an additional 90-day renewal), and Provisional Guardians (to take over from a permanent Guardian who is failing to perform his or her required duties effectively, for up to six months).

- 2. Limited Guardianship.** Limited Guardians are appointed to make decisions only in specifically identified areas in which a person needs assistance. For example, the court will consider whether the person needs help with daily living, health care, and finances, and it may limit the Guardianship to only those areas in which the person needs support. Thus, a court may appoint a Limited Guardian for health care decisions only, with the person keeping decision-making power in all other aspects of his or her life. Limited Guardianships are less restrictive than General Guardianships.
- 3. General Guardianship.** General Guardians have authority to make decisions in all areas of a person's life, including, among other things, health care, finances, contracts, living arrangements, and relationships (including intimate relationships such as marriage). There are some situations in which a General Guardian's decision-making power is limited. For instance, D.C. Guardians cannot make end-of-life decisions without a court's approval. Typically, if the person has assets exceeding \$5,000 or a significant stream of income, the court is likely to establish a Conservatorship as well. Read more about Conservatorships on pages 43–47 of this Guide.

Any decisions by the Guardian must be as close as possible to what the person under Guardianship would have decided, based on the Guardian's knowledge of his or her beliefs, values, and preferences. If the Guardian, after reasonable efforts, cannot determine what that decision would have been, the Guardian should do what is in the best interests of the person.

Guardians have various reporting obligations. Within 90 days of being appointed, a Guardian must file with the court a Guardianship Plan. Every six months after that, the Guardian must file with the court a report on the condition of the person who is the subject of the Guardianship. These reports allow the court to monitor whether the Guardian is performing his or her duties satisfactorily and is following the Guardianship Plan. Any Guardianship established in the D.C. Superior Court on or after January 1, 2015, must

## Guardianship

undergo a case review (and potentially a court hearing) every three years to determine whether it should be terminated, modified, or continued.

### How Is a Guardian Appointed?

A court can appoint a Guardian for people with severe dementia, mental illness, long-standing drug addictions, traumatic brain injuries, or intellectual and developmental disabilities, among other conditions. Before appointing a Guardian, however, the court must find that the person is “incapacitated,” which means that the ability to receive and evaluate information effectively, or to communicate decisions clearly, is so impaired that the person lacks the ability to manage his or her health, safety, finances, or other needs without court-ordered assistance or the appointment of a Conservator or Guardian. The court also must find that a Guardianship is “necessary,” meaning that less restrictive options are not available or appropriate.

A person or organization seeking to establish a Guardianship arrangement must file a petition requesting the appointment of a Limited, Temporary, or General Guardian in the D.C. Superior Court Probate Division. Notice of the petition must be given to the person who is the subject of the request. That person is entitled to a lawyer to represent his or her interests; if the person does not have a lawyer, the court will appoint one.

The court also may appoint: (1) a “Guardian ad Litem” to help determine and advocate for the person’s best interests during the legal proceedings; (2) an Examiner (a qualified professional, typically a doctor, who makes a clinical assessment for the court of whether the person is legally incapacitated); and (3) a Visitor (an independent professional, usually a social worker, who investigates the circumstances of the case and reports to the court).

The court will schedule a hearing, at which the person or organization seeking to establish the Guardianship must prove that the person is incapacitated under D.C. law. If the court approves the Guardianship, it will issue a written order setting out the specific powers that the Guardian may exercise and any limitations on those powers.



Kendrick, age 68, has schizophrenia and is committed to St. Elizabeths Hospital, D.C.'s inpatient psychiatric institution. Over time, Kendrick has experienced a severe decline in his cognitive abilities, he has become extremely confused and anxious, and he can no longer communicate decisions about his health and personal daily needs. Kendrick's sister Taunya petitions the court to appoint her as Kendrick's General Guardian, and Kendrick supports this petition and would like Taunya to act as his Guardian. The court finds that Kendrick is sufficiently incapacitated to justify a General Guardianship and grants Taunya's request. As Kendrick's General Guardian, Taunya makes all health and personal needs decisions based on what she believes Kendrick would decide if he could make and communicate his own decisions, and she includes Kendrick in the decision-making process to the maximum extent of his ability.

### **How Does Someone Change or End a Guardianship?**

If the person under Guardianship has regained mental capacity, no longer resides in D.C., has obtained needed supports, or otherwise no longer needs assistance, he or she may file a petition in the Probate Division of D.C. Superior Court to terminate the Guardianship. The court may remove a Guardian for a number of reasons, including the failure to perform the relevant duties or to act in the best interests of the person who is the subject of the Guardianship. The court will replace a removed Guardian with a different Guardian if it determines that the person still needs Guardianship support and protection.

Sometimes conflicts arise between a Guardian and the person subject to the Guardianship or that person's friends and family. The D.C. Superior Court offers a confidential Elder Mediation Program, in which professional mediators help resolve conflicts related to the

## Guardianship

Guardianship of a person who is age 50 or older or who is disabled. Examples of issues addressed through this program include:

- Whether a particular person should serve as a Guardian;
- Whether limitations should be placed on the Guardian's powers;
- Whether certain people should be allowed to visit the person under Guardianship; and
- Where the person should live.

Any concerned person can request mediation services through this program by filling out a Petition for Referral to Mediation and submitting it to the D.C. Superior Court's Probate Division. Information about the Program and a link to the Petition are provided in the Appendix.

If a Guardian ignores, neglects, or abuses (physically or emotionally) the person under Guardianship, anyone may submit a written statement of complaint to the Probate Division of D.C. Superior Court asking for changes in the arrangement. *Information about filing a grievance is provided in the Appendix.* The Probate Division's Guardianship Assistance Program can assist in preparing the statement of complaint.

## Conclusion

Choosing a legal tool described in this Guide is a highly personal decision unique to the different needs of each person. In the District of Columbia, help is available to people who are trying to make these decisions. This Guide's Appendix provides information about contacting D.C. courts, government agencies, and other organizations that can assist with these issues. The Appendix also includes links to additional resources available on the Internet related to the legal tools discussed in this Guide. When considering which support tool or combination of tools is best for the circumstances, it is important to follow the D.C. legal requirement that adults needing help making decisions or managing their affairs be given the greatest possible degree of freedom, consistent with their physical and mental abilities.

# Glossary

This glossary defines words used in this Guide that may be technical, complex, or unfamiliar. It is not intended to be used as a legal dictionary or to provide legal advice. If you need further legal help or clarification, you should consult a lawyer. Most of these definitions are from Merriam-Webster (M-W), Merriam-Webster Learners' Dictionary (M-W, LD), or the Oxford English Dictionary (OED). Some of the dictionary definitions have been re-worded for clarity, but many have been copied word-for-word. A few definitions have been drawn directly from this Guide; in these cases, the relevant page number is provided (example: Guide, pg. 23). Definitions that have been taken word-for-word from a dictionary or the Guide are indicated with quotation marks; the absence of quotation marks indicates that the definitions have been paraphrased for the sake of clarity or relevance. In one instance, the Americans with Disabilities Act (ADA) provided the most relevant definition.

**Affair**

“A matter that is a particular person’s concern or responsibility” (OED)

**Agent (see also: Attorney-in-Fact)**

The person given authority in a Power of Attorney document to make decisions on behalf of the individual for whom the Power of Attorney was created; this person need not be a lawyer; indeed, an Agent may be a family member, close friend, professional or spiritual advisor, or any other trusted adult of the Principal’s choosing (Guide, pg. 20)

**Annuitant**

A former federal worker who receives retirement benefits from the Office of Personnel Management (OPM). If an annuitant lacks the capacity to handle the benefit payments, OPM can make the payments to a “Representative Payee,” who has the responsibility of managing the funds for the annuitant’s benefit (Guide, pg. 37)

**Appeal**

*Noun* – “An application to a higher court for a decision to be reversed” (OED)

*Verb* – “To take a lower court’s decision to a higher court for review” (M-W)

**Appoint**

“To choose (someone) to have a particular job; to give (someone) a position or duty” (M-W, LD)

**Assets**

“Property owned by a person or company, regarded as having value and available to meet debts, commitments, or legacies” (OED).

**Attorney-in-Fact**

See Agent

**Beneficiary (See also: Annuitant)**

An individual who receives government benefits (Guide, pg. 37)

**Bond**

“The amount of the money guarantee” [the court requires] “to protect the Conservatorship property” (M-W, Guide, pg. 7)

**Certification**

“The action or process of providing someone or something with an official document attesting to a status or level of achievement” (OED)

Can also be “an official document attesting to a status or level of achievement” (OED)

**Certify**

“Confirm” (M-W)

**Comply**

“To do what you have been asked or ordered to do” (M-W, LD)

**Confidential**

“private, secret” (M-W); usually confidentiality can be broken when someone’s safety is at risk

**Consent**

*Verb* – “To agree to do or allow something” (M-W, LD)

*Noun* – “Permission for something to happen or agreement to do something” (OED)

**Court Order**

“A direction issued by a court or a judge requiring a person to do or not do something” (OED)

**Disability**

The Americans with Disabilities Act defines someone as having a disability if he or she is a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual, a person who has a record

of such an impairment, or a person who is regarded by others as having such an impairment (ADA)

**Entitle**

“To give someone a legal right... to receive or do something” (OED)

**Examiner**

Qualified professional, typically a doctor, who makes a clinical assessment for the court of whether someone for whom a Conservatorship or Guardianship is being sought is legally incapacitated (Guide, pgs. 45, 51)

**Federal**

Relating to or involved with the U.S. national government rather than the state or local government

**Fiduciary**

Fiduciary (see also: Representative Payee)  
A person or organization approved to manage the government benefits of another person (Guide, pg. 35)

A fiduciary is held to a standard of conduct and trust above that of a stranger or of a casual business person. A fiduciary is expected to manage the assets of another fairly and prudently, as if the assets were the fiduciary’s own.

**Fraud**

“The use of dishonest methods to acquire something of value” (M-W)

**Grievance**

“An official statement of a complaint over something believed to be wrong or unfair” (OED)

**Guardian ad Litem**

A person, typically a lawyer, appointed by the court, whose job is to determine the views of the person for whom a Conservatorship or Guardianship is proposed, gather relevant information, and make recommendations to the court about whether a Conservator or Guardian should be appointed and who the Conservator or Guardian should be (Guide, pgs. 45)

**Hearing:**

“Opportunity to be heard, to present one’s side of a case,” often occurs in a courtroom with a judge (M-W)

**Incapacitated (see also: Mental Capacity)**

“No longer capable of understanding and evaluating information or making or communicating decisions” (Guide, pg. 20); inability to receive and evaluate

information effectively or to communicate decisions is impaired to such an extent that the person lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator (Guide, pg. 51)

**Mental Capacity (see also: Incapacitated)**

“The ability, with or without the support of others, to understand the risks and benefits of a ... decision, to choose among options, and to communicate that choice clearly” (Guide, pg. 28)

**Petition**

*Noun* – “a formal written request made to an official person or organized body (such as a court)” (M-W)

*Verb* – “to make a request; especially to make a formal written request” (M-W)

**Principal**

The person who gives authority to make decisions on his or her behalf to someone else (called the Agent) through a Power of Attorney (Guide, pg. 20)

**Probate Division**

The section of the D.C. Superior Court that, among other things, handles petitions for appointment of a Conservator or Guardian and similar matters.

**Self-Determination**

“The freedom to make your own choices”  
(M-W)

**Statement of Complaint**

A written document submitted to the Probate Division of the D.C. Superior Court that is used to report cases of abandonment, neglect, mismanagement, or abuse by a Conservator or Guardian and to seek changes in the arrangement.

**Terminate**

“Bring to an end” (OED)

**Visitor**

An independent professional, often a social worker, appointed by the court to investigate the circumstances of, and to interview, a person who is the subject of a Petition for Conservatorship or Guardianship (Guide, pgs. 45, 51)

# Appendix

## Resources and Forms

(All hyperlinks are accurate as of January 1, 2019, but are subject to change or removal by the hosts of each site.)

<b>Supported Decision-Making</b>	<b>General Information</b> D.C. Supported Decision-Making Agreement: Information, Instructions, and form <a href="https://dds.dc.gov/node/1353106">https://dds.dc.gov/node/1353106</a>
	<b>Health Care</b> <ol style="list-style-type: none"><li>1. Sample HIPAA form <a href="https://www.americanbar.org/content/dam/aba/administrative/law_aging/samplehipaaauthorizationformforfamilymembers.auth-checkdam.pdf">https://www.americanbar.org/content/dam/aba/administrative/law_aging/samplehipaaauthorizationformforfamilymembers.auth-checkdam.pdf</a></li><li>2. D.C. Durable Power of Attorney (health care) sample <a href="http://www.bit.ly/2vMqVDI">www.bit.ly/2vMqVDI</a></li></ol>

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## Resources and Forms

<p><b>Supported Decision-Making (continued)</b></p>	<p><b>Education</b></p> <ol style="list-style-type: none"> <li>1. Information on FERPA for D.C. parents and students <a href="https://osse.dc.gov/publication/accessing-student-education-records">https://osse.dc.gov/publication/accessing-student-education-records</a></li> <li>2. DCPS Notification of Rights under FERPA <a href="http://www.bit.ly/2eHqKDx">www.bit.ly/2eHqKDx</a></li> <li>3. Sample OSSE Supported Decision Making form <a href="https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Supported%20Decision%20Making%20Model%20Form%20%2812-11-18%29.pdf">https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Supported%20Decision%20Making%20Model%20Form%20%2812-11-18%29.pdf</a></li> <li>4. Sample DCPS Supported Decision Making form <a href="https://dcps.dc.gov/node/1138951">https://dcps.dc.gov/node/1138951</a></li> </ol>
	<p><b>Finances</b></p> <p>Information on D.C.'s City-Wide Money Management Program <a href="https://dcoa.dc.gov/sites/default/files/dc/sites/dcoa/service_content/attachments/CityWide-Money-Management-Program-2016.pdf">https://dcoa.dc.gov/sites/default/files/dc/sites/dcoa/service_content/attachments/CityWide-Money-Management-Program-2016.pdf</a></p>
<p><b>Advance Instruction for Mental Health Instruction</b></p>	<ol style="list-style-type: none"> <li>1. D.C. Code on Advance Instruction for Mental Health Treatment <a href="https://code.dccouncil.us/dc/council/code/sections/7-1231.06.html">https://code.dccouncil.us/dc/council/code/sections/7-1231.06.html</a></li> <li>2. D.C. Department of Behavioral Health Policy on Advance Directives and a Sample Declaration of Advance Instructions (pg. 15 of PDF) <a href="https://dbh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/515.1%20TL-282.PDF">https://dbh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/515.1%20TL-282.PDF</a></li> <li>3. D.C. Department of Behavioral Health's grievance process <a href="http://dbh.dc.gov/service/consumer-rights">http://dbh.dc.gov/service/consumer-rights</a></li> </ol>
<p><b>Power of Attorney</b></p>	<ol style="list-style-type: none"> <li>1. D.C. Uniform General Power of Attorney form <a href="https://code.dccouncil.us/dc/council/code/sections/21-2101.html">https://code.dccouncil.us/dc/council/code/sections/21-2101.html</a></li> <li>2. D.C. Durable Health Care Power of Attorney form <a href="https://code.dccouncil.us/dc/council/code/sections/21-2207.html">https://code.dccouncil.us/dc/council/code/sections/21-2207.html</a></li> <li>3. IRS Form 2848 (used to submit federal tax returns on behalf of the Principal) <a href="https://www.irs.gov/pub/irs-pdf/f2848.pdf">https://www.irs.gov/pub/irs-pdf/f2848.pdf</a></li> </ol>

table continued →

## Resources and Forms

<p><b>Substitute Health Care Decision-Maker under D.C. Law</b></p>	<p>D.C. Department on Disability Services Substituted Consent for Health Care Decisions form  <a href="https://dds.dc.gov/publication/substitute-consent-health-care-decisions-form-non-emergency-0">https://dds.dc.gov/publication/substitute-consent-health-care-decisions-form-non-emergency-0</a></p>
<p><b>Educational Representative</b></p>	<ol style="list-style-type: none"> <li>1. OSSE Request for Appointment of an Educational Representative form  <a href="https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Request%20for%20Educational%20Representative%20Appointment%20%287-14-16%29.pdf">https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Request%20for%20Educational%20Representative%20Appointment%20%287-14-16%29.pdf</a></li> <li>2. OSSE Certification of Inability to Make Educational Decisions model form  <a href="https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Professional%20Certification%20Model%20Form%20%287-14-16%29.pdf">https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Professional%20Certification%20Model%20Form%20%287-14-16%29.pdf</a></li> </ol>

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## Resources and Forms

<p><b>Tools for Managing Federal Benefits</b></p>	<p><b>Social Security Benefits</b></p> <ol style="list-style-type: none"> <li>1. Information on Social Security Representative Payee Program <a href="http://www.bit.ly/2vww5sh">www.bit.ly/2vww5sh</a></li> <li>2. Application/Request to be Selected as Representative Payee (Form SSA-11) <a href="https://www.disabilityadvisor.com/forms/ssa-11.pdf">https://www.disabilityadvisor.com/forms/ssa-11.pdf</a></li> <li>3. Information on the SSA-11 form and representative payee preferences <a href="https://secure.ssa.gov/poms.nsf/lnx/0200502105">https://secure.ssa.gov/poms.nsf/lnx/0200502105</a></li> <li>4. Reporting Fraud to the Social Security Administration <a href="https://www.ssa.gov/fraudreport/oig/public_fraud_reporting/form.htm">https://www.ssa.gov/fraudreport/oig/public_fraud_reporting/form.htm</a></li> </ol> <p><b>Federal Employment Retirement Benefits</b></p> <ol style="list-style-type: none"> <li>5. Representative Payee Application form <a href="https://archive.opm.gov/forms/pdf_fill/ri20-7.pdf">https://archive.opm.gov/forms/pdf_fill/ri20-7.pdf</a></li> <li>6. Reporting Fraud to the Office of Personnel Management <a href="https://www.opm.gov/our-inspector-general/hotline-to-report-fraud-waste-or-abuse/complaint-form/">https://www.opm.gov/our-inspector-general/hotline-to-report-fraud-waste-or-abuse/complaint-form/</a></li> </ol> <p><b>Veterans' Benefits</b></p> <ol style="list-style-type: none"> <li>1. Information on the VA Fiduciary Program <a href="https://benefits.va.gov/fiduciary">https://benefits.va.gov/fiduciary</a></li> <li>2. Help for Representative Payees and VA Fiduciaries <a href="https://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_representative.pdf">https://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_representative.pdf</a></li> <li>3. Fiduciary Statement in Support of Appointment form <a href="http://www2.erie.gov/veterans/sites/www2.erie.gov.veterans/files/uploads/pdfs/VBA-21-0792_Fiduciary_Statement.pdf">http://www2.erie.gov/veterans/sites/www2.erie.gov.veterans/files/uploads/pdfs/VBA-21-0792_Fiduciary_Statement.pdf</a></li> <li>4. Information about Filing a VA Appeal <a href="https://www.bva.va.gov/How_Do_I_Appeal.asp">https://www.bva.va.gov/How_Do_I_Appeal.asp</a></li> </ol>
<p><b>Special Needs Trusts</b></p>	<p>Directory of Pooled Trusts <a href="https://specialneedsanswers.com/pooled-trust">https://specialneedsanswers.com/pooled-trust</a></p>

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## Resources and Forms

<p><b>Conservatorship</b></p>	<ol style="list-style-type: none"> <li>1. Information about filing for a Conservatorship in D.C. <a href="https://www.dccourts.gov/services/probate-matters/conservatorship-con">https://www.dccourts.gov/services/probate-matters/conservatorship-con</a></li> <li>2. Petition to Terminate Conservatorship form <a href="https://www.dccourts.gov/services/forms/forms-by-location?location[0]=int-iddlegal&amp;location[1]=intervention">https://www.dccourts.gov/services/forms/forms-by-location?location[0]=int-iddlegal&amp;location[1]=intervention</a></li> <li>3. Making a Complaint in a D.C. Adult Guardianship [or Conservatorship] Proceeding <a href="https://www.dccourts.gov/sites/default/files/Making-a-Complaint-in-an-Adult-Guardianship-Proceeding_0.pdf">https://www.dccourts.gov/sites/default/files/Making-a-Complaint-in-an-Adult-Guardianship-Proceeding_0.pdf</a></li> <li>4. Elder Mediation Program Information <a href="https://www.dccourts.gov/sites/default/files/matters-docs/Elder-mediationbrochure.pdf">https://www.dccourts.gov/sites/default/files/matters-docs/Elder-mediationbrochure.pdf</a></li> </ol>
<p><b>Guardianship</b></p>	<ol style="list-style-type: none"> <li>1. Standards for Agencies and Programs Providing Guardianship Services <a href="https://www.guardianship.org/wp-content/uploads/2017/07/Agency_Standards_2017.pdf">https://www.guardianship.org/wp-content/uploads/2017/07/Agency_Standards_2017.pdf</a></li> <li>2. Making a Complaint in a D.C. Adult Guardianship Proceeding <a href="https://www.dccourts.gov/sites/default/files/Making-a-Complaint-in-an-Adult-Guardianship-Proceeding_0.pdf">https://www.dccourts.gov/sites/default/files/Making-a-Complaint-in-an-Adult-Guardianship-Proceeding_0.pdf</a></li> <li>3. Information for guardians on end-of-life decisions for individuals with severe intellectual disabilities <a href="https://ucedd.georgetown.edu/complex/index.html">https://ucedd.georgetown.edu/complex/index.html</a></li> </ol>

## Helpful Agencies and Organizations

Organization	Why Contact?
<p><b>Community Connections</b> 801 Pennsylvania Ave SE #201 Washington, DC 20003 <a href="http://www.communityconnectionsdc.org">http://www.communityconnectionsdc.org</a> (202) 546-1512</p>	<p>Community Connections is a nonprofit mental health agency that can act as a representative payee for Social Security benefits.</p>
<p><b>Department of Veterans Affairs</b> 810 Vermont Avenue, NW Washington, DC 20420 <a href="http://www.benefits.va.gov/fiduciary">http://www.benefits.va.gov/fiduciary</a> (800) 827-1000</p>	<p>The VA Fiduciary Program assists veterans with managing their VA benefits.</p>
<p><b>D.C. Department on Disability Services</b> 250 E Street, SW Washington, DC 20024 <a href="http://dds.dc.gov">http://dds.dc.gov</a> (202) 730-1700</p>	<p>This government agency provides and coordinates a variety of support services for people with intellectual and developmental disabilities.</p>
<p><b>D.C. Office on Aging</b> 500 K Street, NE Washington, DC 20002 <a href="http://dcoa.dc.gov">http://dcoa.dc.gov</a> (202) 724-5622</p>	<p>This government agency provides services for D.C. senior citizens and makes referrals for D.C.'s City-Wide Money Management Program.</p>
<p><b>D.C. Superior Court - Probate Division</b> 500 Indiana Ave NW #6000 Washington, DC 20001 <a href="https://www.dccourts.gov/superior-court/probate-division">https://www.dccourts.gov/superior-court/probate-division</a> (202) 879-9460 – Probate Division (202) 879-9407 – Guardianship Assistance Program (202) 879-0678 – Elder Mediation Program</p>	<p>The Probate Division hears cases related to conservatorships and guardianships. The Probate Division operates the Guardianship Assistance Program, which provides information about guardianships and how to establish them. The Probate Division also operates the Elder Mediation Program, which helps families discuss and resolve issues related to the guardianship and/or conservatorship cases of elderly people.</p>

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## Helpful Agencies and Organizations

Organization	Why Contact?
<p><b>Disability Rights DC at University Legal Services</b>  <a href="http://www.uls-dc.org/protection-and-advocacy-program/disability-rights-dc">http://www.uls-dc.org/protection-and-advocacy-program/disability-rights-dc</a>                      220 I Street, NE, Suite 130                      Washington, DC 20002                      (202) 547-0198</p>	<p>This nonprofit organization acts as the federally-mandated protection and advocacy program for individuals with disabilities in the District of Columbia. DRDC works to protect the legal rights of D.C. residents with disabilities, including the right to be free from harm, the right to individual choice, and the right to full inclusion in the community. DRDC provides free legal services to District residents with disabilities and assists with supported decision-making issues.</p>
<p><b>Disability Rights Law Clinic</b>                      American University,                      Washington College of Law                      4300 Nebraska Avenue, NW                      Washington, DC 20016  <a href="https://www.wcl.american.edu/academics/experientialedu/clinical/theclinics/disability">https://www.wcl.american.edu/academics/experientialedu/clinical/theclinics/disability</a>                      (202) 274-4148</p>	<p>The Disability Rights Law Clinic emphasizes autonomy and capacity of persons with disabilities. The clinic represents clients who are interested in exploring supported decision-making arrangements, or people who are respondents in guardianship proceedings who wish to assert supported decision-making as an alternative.</p>
<p><b>Iona Senior Services</b>                      4125 Albemarle St, NW                      Washington, DC 20016  <a href="https://www.iona.org">https://www.iona.org</a>                      (202) 895-9448</p>	<p>This nonprofit organization administers the D.C. City-Wide Money Management Program.</p>

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## Helpful Agencies and Organizations

Organization	Why Contact?
<p><b>Legal Counsel for the Elderly</b>            601 E St., NW            Washington, DC 20049  <a href="https://www.aarp.org/LCE">https://www.aarp.org/LCE</a>            (202) 434-2120 (Legal Hotline)</p>	<p>This nonprofit organization provides legal and social work services to Washington, D.C. residents age 60 and older, and helps with Social Security and Supplemental Security Income disability cases for D.C. residents age 55 and older. LCE handles most types of civil (not criminal) legal matters, including consumer, landlord/tenant, public and veterans' benefits and probate law. LCE also houses the Office of the District of Columbia Long-Term Care Ombudsman.</p>
<p><b>National Guardianship Association</b>  <a href="http://guardianship.org">http://guardianship.org</a>            (877) 326-5992</p>	<p>This nonprofit organization helps people to learn about guardianship.</p>
<p><b>National Resource Center for Supported Decision Making</b>  <a href="http://supporteddecisionmaking.org">http://supporteddecisionmaking.org</a>            (202) 448-1448</p>	<p>The National Resource Center for Supported Decision-Making provides information about supported decision-making.</p>
<p><b>Quality Trust for Individuals with Disabilities</b>            4301 Connecticut Ave., NW Suite 310            Washington, DC 20008  <a href="http://www.dcqualitytrust.org">http://www.dcqualitytrust.org</a>            (202) 448-1450</p>	<p>This nonprofit organization has been advancing the interests of people with developmental disabilities since 2001. It helps people with disabilities and their families learn more about and access alternatives to guardianship. It is also the leads the National Resource Center for Supported Decision-Making.</p>

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## Helpful Agencies and Organizations

Organization	Why Contact?
<p><b>Shared Horizons</b> 4301 Connecticut Ave., NW, Suite 310 Washington, D.C 20008 <a href="http://www.shared-horizons.org">http://www.shared-horizons.org</a> (202)448-1460</p>	<p>Shared Horizons administers pooled special needs trusts.</p>
<p><b>The Arc of Northern Virginia</b> 2755 Hartland Road, Suite 200 Falls Church, VA 22043 <a href="https://thearcofnova.org/programs-services/">https://thearcofnova.org/programs-services/</a> (703)208-1119</p>	<p>The Arc of Northern Virginia provides many programs and services to help people with intellectual and developmental disabilities and their families, including programs related to guardianship and special needs trusts.</p>

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