

Alternatives to Full Guardianship for Adults

This project, funded by a Federal Mental Health Block Grant administered by the Michigan Department of Community Health, is designed to educate seniors about legal alternatives to a guardianship.

LEGAL DOCUMENTS

There are many different types of legal documents that can help you plan how your affairs will be handled in the future:

Wills and Trusts give you a way to say how you want the things you own given out after you die.

Advance Directives describe your health care wishes in case you can't speak for yourself.

Power of Attorney lets you give someone the authority to act on your behalf. There are different types of Powers of Attorney for specific situations.

A Durable Power of Attorney lets you name another person to make decisions for you if you become unable to make your own decisions.

DURABLE POWER OF ATTORNEY FOR FINANCES

This is an important legal document. By signing it, you are voluntarily giving another individual broad powers to handle your property and finances.

1. Warning! Do not sign this document unless you fully understand the consequences of having a durable power of attorney for finances.
2. There is no standard form for a durable power of attorney. If this form does not reflect your wishes or suit your needs in any way, seek advice from a lawyer.
3. In using this document, you must choose whether you want your agent to have powers now, or only if you become unable to handle your finances.
4. This document does not give your agent power to make medical decisions.
5. You can revoke this power of attorney by notifying your agent in writing.

DURABLE POWER OF ATTORNEY FOR FINANCES

I, _____, am of sound mind, and I
(Print or type your full name)
voluntarily make this designation. I revoke any financial powers of attorney I have signed in the past.

APPOINTMENT OF AGENT

I designate _____, my _____,
(Insert name of agent) (Spouse, child, friend ...)
living at _____,
to act for me as my agent, with the powers set forth in this document. If my first choice cannot serve or cannot continue to serve, I designate _____,
(Name of successor agent)
my _____, living at _____,
(Spouse, child, friend ...)
to act for me as my agent. I have discussed this appointment with the individual or individuals I have designated.

EFFECTIVE DATE

(You **must** choose one paragraph by writing your initials on the line)

_____ My agent has the powers set forth in this document immediately upon my signing it. These powers shall not be affected by any mental or physical disability I may have in the future.

or

_____ My agent shall only have the powers set forth in this document when it is determined I am unable to manage my property and financial affairs effectively. That determination shall be made by my attending physician, who shall put it in writing.

POWERS

My agent shall exercise powers in my best interests and for my welfare, as a fiduciary. My agent shall have the following powers:

1. **BANKING** - To receive funds, deposit funds in any financial institution, and make withdrawals by check or otherwise to pay for goods, services, and any other personal and business expenses for my benefit. To effect her or his powers, my agent has power to sign a power of attorney drafted by the institution, and shall have access to my safe deposit box.
2. **GOVERNMENT BENEFITS** - To apply for and receive any government benefits for which I may be eligible or become eligible, including but not limited to, Social Security, Medicare and Medicaid.
3. **INVESTMENTS** - To invest and reinvest my funds, and to withdraw funds to the extent needed to pay for my needs.
4. **RETIREMENT PLAN** - To contribute to, select payment option of, roll-over, and receive benefits of any retirement plan or IRA, except my agent shall not have power to change the beneficiary of any plan or IRA.
5. **TAXES** - To complete and sign any local, state and federal tax returns, pay any taxes and assessments due and receive credits and refunds, to sign any IRS documents necessary to effectuate these powers.
6. **INSURANCE** - To purchase, pay premiums and make claims on life, health, automobile and homeowners' insurance, except my agent shall not have the power to cash in or change the beneficiary of any life insurance policy.
7. **REAL ESTATE** - To purchase, sell, lease, repair, improve, mortgage, and make mortgage and utility payments upon real property. A legal description is attached.
8. **PERSONAL PROPERTY** - To hold personal property for safekeeping, and to buy and sell personal property, including motor vehicles.
9. **LEGAL ADVICE AND PROCEEDINGS** - To obtain and pay for legal advice, to initiate or defend legal and administrative proceedings on my behalf, including actions against third parties who refuse without cause to honor this document.
10. **ESTATE PLAN** - My agent has no authority to make or amend a will on my behalf, and has no power to make gifts on my behalf except to my spouse. My agent has access to my will; in exercising powers, my agent shall take into account my estate plan as known to the agent.

SPECIAL INSTRUCTIONS

On the following lines are any special instructions limiting or extending the powers I give to my agent. _____

OTHER PROVISIONS

No person in Michigan or in any other state who relies upon representations of my agent under this durable power of attorney shall be liable to me or my estate without actual knowledge my agent did not have power to act.

My agent shall not incur any liability to me under this power except for a breach of fiduciary duty.

My agent is entitled to reimbursement for reasonable expenses incurred in exercising powers, and to reasonable compensation for services as agent.

I can amend or revoke this power of attorney through a writing delivered to my agent. Revocation is not effective as to a third party until the third party learns of it. Photocopies of this document can be relied upon as though they were originals.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

A Durable Power of Attorney for Health Care lets you name another person to make medical decision for you if you are unable to make them yourself.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I, _____, am of sound mind and I
(Print or type your full name)
voluntarily make this designation.

APPOINTMENT OF PATIENT ADVOCATE

I designate _____, my _____
(Insert name of patient advocate) (Spouse, child, friend ...)
living at _____ as my patient advocate.
(Address of patient advocate)

If my first choice cannot serve, I designate _____,
(Name of successor patient advocate)
my _____, living at _____
(Spouse, child, friend ...) (Address of successor patient advocate)
to serve as patient advocate.

My patient advocate or successor patient advocate shall have power to make care, custody and medical treatment decisions for me in the event I become unable to participate in medical treatment decisions. I understand my patient advocate must sign an acceptance before he or she can act. I have discussed this appointment with the individual or individuals I have designated.

DIRECTIONS

The determination of when I am unable to participate in medical treatment decisions shall be made by my attending physician and another physician or licensed psychologist.

In making decisions, my patient advocate shall endeavor to follow my previously expressed wishes, whether I have stated them orally, in a living will, or in this designation.

My patient advocate has authority to consent to or refuse treatment on my behalf, to arrange medical and personal services for me, including admission to a hospital or nursing care facility, and to pay for such services with my funds. My patient advocate shall have access to any of my medical records to which I have a right.

POWER REGARDING LIFE-SUSTAINING TREATMENT

(OPTIONAL)

I expressly authorize my patient advocate to make decisions to withhold or withdraw treatment which would allow me to die, and I acknowledge such decisions could or would allow my death.

(Sign your name if you wish to give your patient advocate this authority)

STATEMENT OF WISHES

My patient advocate has authority to make decisions in a wide variety of circumstances. In this document, I can express general wishes regarding conditions such as terminal illness, permanent unconsciousness, or other disability; specify particular types of treatment I do or not want in such circumstances; or I may state no wishes at all.

A. My wishes are as follows (you may attach additional sheets of paper):

or

B. I choose not to express any wishes in this document. This choice shall not be interpreted as limiting the power of my patient advocate to make any particular decision in any particular circumstance.

I may change my mind at any time by communicating in any manner that this designation does not reflect my wishes.

It is my intent no one involved in my care shall be liable for honoring my wishes as expressed in this designation or for following the directions of my patient advocate.

Photocopies of this document can be relied upon as though they were originals.

SIGNATURE

I sign this document voluntarily, and I understand its purpose.

Dated: _____ Signed: _____

(Your signature)

(Address)

STATEMENT REGARDING WITNESSES

I have chosen two adult witnesses who are not named in my will, who are not my spouse, child, grandchild, brother or sister, my physician, my patient advocate, an employee of my life or health insurance company, or an employee at the health care facility where I am now.

STATEMENT AND SIGNATURE OF WITNESSES

We sign below as witnesses. This declaration was signed in our presence. The declarant appears to be of sound mind, and to be making this designation voluntarily, without duress, fraud or undue influence.

(Print name)

(Signature of witness)

(Address)

(Print name)

(Signature of witness)

(Address)

ACCEPTANCE BY PATIENT ADVOCATE

(A) This designation shall not become effective unless the patient is unable to participate in treatment decisions.

(B) A patient advocate shall not exercise powers concerning the patient's care, custody and medical treatment that the patient, if the patient were able to participate in the decision, could not have exercised in his or her own behalf.

(C) This designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.

(D) A patient advocate may make a decision to withhold or withdraw treatment which would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

(E) A patient advocate shall not receive compensation for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.

(F) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient's best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical treatment decisions are presumed to be in the patient's best interests.

(G) A patient may revoke his or her designation at any time or in any manner sufficient to communicate an intent to revoke.

(H) A patient advocate may revoke his or her acceptance to the designation at any time and in any manner sufficient to communicate an intent to revoke.

(I) A patient admitted to a health facility or agency has the rights enumerated in Section 20201 of the Public Health Code, Act No. 368 of the Public Acts of 1978, Being Section 333.20201 of the Michigan Compiled Laws.

I, _____, understand the above
(Name of patient advocate)
conditions and I accept the designation as patient advocate for

_____, who signed a durable power of
(Name of patient)
attorney for health care on the following date _____.

Dated: _____ Signed: _____
(Signature of patient advocate)

DO-NOT-RESUSCITATE ORDER

I have discussed my health status with my physician,

_____.

I request that in the event my heart and breathing should stop, no person shall attempt to resuscitate me.

This order is effective until it is revoked by me.

Being of sound mind, I voluntarily execute this order, and I understand its full import.

(Declarant's signature)

(Date)

(Type or print declarant's full name)

(Signature of person who signed for declarant, if applicable)

(Date)

(Type or print full name)

(Physician's signature)

(Date)

(Type or print physician's full name)

ATTESTATION OF WITNESSES

The individual who has executed this order appears to be of sound mind, and under no duress, fraud, or undue influence. Upon executing this order, the individual has (has not) received an identification bracelet.

(Witness signature) (Date) (Witness signature) (Date)

(Type or print witness's name)

(Type or print witness's name)

THIS FORM WAS PREPARED PURSUANT TO, AND IN COMPLIANCE WITH, THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT

DO-NOT-RESUSCITATE ORDER

I request that in the event my heart and breathing should stop, no person shall attempt to resuscitate me.

This order is effective until it is revoked by me.

Being of sound mind, I voluntarily execute this order, and I understand its full import.

(Declarant's signature)

(Date)

(Type or print declarant's full name)

(Signature of person who signed for declarant, if applicable)

(Date)

(Type or print full name)

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The individual who has executed this order appears to be of sound mind, and under no duress, fraud, or undue influence. Upon executing this order, the individual has (has not) received an identification bracelet.

(Witness signature)

(Date)

(Witness signature)

(Date)

(Type or print witness's name)

(Type or print witness's name)

THIS FORM WAS PREPARED PURSUANT TO, AND IN COMPLIANCE WITH, THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT

Living Will

A Living Will says how you want your health care handled if you are in a life threatening situation and cannot make medical decisions for yourself.

STATEMENT OF WITNESSES

We sign below as witnesses. This declaration was signed in our presence. The declarant appears to be of sound mind, and to be making this designation voluntarily, without duress, fraud or undue influence.

(Print Name)

(Signature of Witness)

(Address)

(Print Name)

(Signature of Witness)

(Address)

ALTERNATIVES TO
FULL
GUARDIANSHIP
FOR ADULTS

Copper Country Mental Health Institute
Houghton, MI 49931 (906-482-4880)
Institute@theinst.org

December, 2001

WHAT IS GUARDIANSHIP?

Guardianship is a court procedure through which a person or organization is given the responsibility to make decisions about the care of another individual.

WHAT POWERS CAN A COURT GRANT A GUARDIAN?

The court can grant a guardian power to make health care decisions, to determine the appropriate residence of the individual, to arrange for services, to receive money belonging to the individual and to use it for the individual's care.

A guardian does not have total control over an individual; the individual ordinarily retains rights to communicate, to associate with friends and relatives, and to practice his or her religion.

HOW DOES A GUARDIAN DIFFER FROM A CONSERVATOR?

A conservator is appointed by the court to handle investments and other assets of an individual who cannot effectively manage them. Unlike a guardian, a conservator does not have the right to make medical decisions or determine where the individual lives.

An individual can have both a guardian and a conservator, the same or different persons.

WHAT ARE REQUIREMENTS FOR A COURT TO APPOINT A GUARDIAN?

The judge must make two findings. First, the individual must be unable to make informed decisions independently, which may be due to a stroke, dementia, a closed head injury or other condition. Second, and equally important, guardianship must be necessary to provide continuing care and supervision of the individual.

Guardianship is not a planning tool. If an individual can make informed decisions now, guardianship is not appropriate now.

WHAT IS AN INFORMED DECISION?

An individual can make an informed decision if he or she is aware of choices he or she faces, understands risks and benefits of each option, and is able to communicate his or her wishes. An informed decision is not necessarily one which family or physician believe is the best choice.

WHEN MIGHT GUARDIANSHIP BE UNNECESSARY?

- 1. When the individual has signed a patient advocate designation.**

State law provides a court cannot grant a guardian any powers held by a patient advocate, unless the patient advocate is not fulfilling his or her duties. A patient advocate designation, also known as a durable power of attorney for health care or a health care proxy, is discussed on page 9.

2. When an individual is enrolled in Medicaid.

State law provides the individual's nearest relative may consent to medical treatment when an individual who is enrolled in Medicaid is not in a condition to make decisions for him or herself. Many hospitals have a similar policy for all patients.

3. When the petitioner is seeking a power a guardian cannot have.

An example is when the petitioner is seeking to arrange for in-patient mental health treatment if the individual objects.

4. When there is no need for legal authority to make decisions.

There are no decisions pending, or the petitioner is already making decisions informally and no one objects.

5. When a petitioner doesn't recognize practical limits in exercising a guardian's powers.

Even if the guardian makes the appointment, an individual may still not willingly go to the doctor.

WHEN MIGHT CONSERVATORSHIP BE UNNECESSARY?

1. When the individual does not own a home and other **assets are of quite modest value.**
2. When the individual has a **representative payee** appointed by the Social Security Administration or a custodian by the Veterans Administration.
3. When there already exists a plan for incapacity through a **durable power of attorney for finances, a living trust or joint bank accounts.**
4. When services such as **money management or automatic bill paying** are available.
5. When a **protective order** through the court can rearrange assets.

WHAT IS A LIMITED GUARDIAN?

The law requires a court grant a guardian only those powers and only for that period of time necessary to provide for the specific needs of that individual. A guardian granted less than full powers is a limited guardian.

Only if the court finds an individual is totally without capacity to care for himself or herself can the court appoint a full guardian.

WHAT ARE THE DUTIES OF A GUARDIAN AND A CONSERVATOR?

Duties of a guardian include arranging for the individual's care and comfort, protecting his or her possessions, and securing services to help the individual return to self-care. It is a position of great responsibility.

Detailed information on duties owed the court and the individual is available in *Handbook for Guardians of Adults* and *Handbook for Conservators of Adults*. These publications are available for free on the Internet at; www.michbar.org/sections/elderlaw

WHAT IS A PATIENT ADVOCATE DESIGNATION?

A patient advocate designation is a voluntary, private agreement by which an individual of sound mind chooses another individual to make care, custody and medical treatment decisions for the individual making the designation.

The document must be signed and witnessed to be legally binding. The individual can revoke the agreement at any time. The document is not filed with the court; the court is not involved unless a dispute arises.

CAN AN INDIVIDUAL INCLUDE A STATEMENT OF WISHES ABOUT MEDICAL TREATMENT IN THE DOCUMENT?

Yes.

DOES A PATIENT ADVOCATE HAVE THE SAME POWERS OF A GUARDIAN?

An individual may give a patient advocate at least the powers over care, custody and medical decisions a full guardian has.

WHEN CAN A PATIENT ADVOCATE MAKE DECISIONS FOR THE INDIVIDUAL?

Before a patient advocate can act, two events must occur. The patient advocate must have signed an "acceptance." Then two doctors, or one doctor and one psychologist, must examine the individual and determine he or she is unable to participate in treatment decisions.

An individual whose religious beliefs preclude an examination can set forth in the document a different means to determine inability to participate.

WHAT IS A DURABLE POWER OF ATTORNEY FOR FINANCES?

A durable power of attorney for finances is a voluntary, private agreement by which a competent individual gives another person (known as an agent) power to handle financial matters for the individual.

The agreement should be signed, witnessed by at least two individuals, and notarized.

ARE ALL-DURABLE POWERS OF ATTORNEY FOR FINANCES THE SAME?

No.

An individual may choose to give an agent power over some but not all assets. The individual may direct the agent how to handle the property. One can choose to give an agent immediate power, or power to act only upon one's disability. Finally, some banks have their own forms.

An individual can require in the document that the agent send quarterly or annual accounts to the individual and to another trusted person.

WHERE CAN I GET MORE INFORMATION ABOUT THESE LEGAL DOCUMENTS?

A number of organizations and state legislators provide free information and fill-in-the-blanks forms for some of these documents. Or at the Internet site

www.michbar.org/sections/elderlaw

Click on *Advance Directives* for the health care documents, or on *Durable Power of Attorney for Finances*.

ARE THERE OTHER USEFUL INTERNET SITES?

Yes. The full text of Michigan laws is available at

www.michiganlegislature.org/law/isearch.asp

Information on representative payees is available at the Social Security Administration site,

www.ssa.gov/payee

Additional Legal Resources for Seniors:

Seniors age 60 or older: For legal assistance in preparing a Will or Power of Attorney:

Houghton, Keweenaw, Baraga County residents: 906-482-3908

Ontonagon County residents: Call 1-888-347-5220 for a referral in your area.

Michigan Senior Legal Hotline:

(9:00 am- 5:00 pm, Monday-Friday)

1-800-347-5297

For More Information or To Request a Group Presentation:

Call (906) 482-4880

or

E-Mail Institute@theinst.org