



OPTIONS IN VIRGINIA TO HELP ANOTHER PERSON MAKE DECISIONS: CHOICES LESS RESTRICTIVE THAN GUARDIANSHIP AND CONSERVATORSHIP

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Table of Contents

ABOUT DECISION-MAKING	2
HEALTH/PERSONAL DECISION-MAKING	2
Health Care and Personal Decision Supports	2
Advance Directives.....	3
When There is No Advance Directive	3
Physician Orders for Scope of Treatment (POST)	3
Guardianship.....	4
Limited Guardianship.....	4
FINANCIAL DECISION-MAKING	4
Informal Financial Decision Supports	4
Authorized Signers on Financial Accounts.....	5
Joint Accounts.....	5
Powers of Attorney.....	5
Trusts.....	5
Representative Payees and VA Fiduciaries.....	6
Conservatorship	6
Limited Conservatorship.....	7
ADDITIONAL RESOURCES	7

ABOUT DECISION-MAKING

All adults have a right to make choices about their lives. Adults who need help with making health or personal decisions, or with managing their money and property, should have the support they need.

Supporters may be trusted family, friends, professionals or other people or organizations that help the adult to understand the choices and make and communicate decisions to others. Supporters show respect for the person's values, wishes and preference.

Supporters could be informal, such as family members who help with decision-making, or could be formalized through legal tools such as a power of attorney document. Decision-making support could apply to health and personal decisions such where to live, whether to consent to medications or surgery, and who may visit -- or to financial decisions such as whether to sell a home or business, what investments to make, what to buy, and how to spend money on a daily basis.

Supports could also be services or technology that enable the person to live as independently as possible and exercise self-determination.

Sometimes if an adult needs help with managing his or her own life decisions and there are no supports, a court may appoint a guardian (or a conservator, as explained below) to make the decisions on the person's behalf. The guardian or conservator can protect the person from harm and find needed supports.

However, guardianship and conservatorship take away basic human decision-making rights, and therefore, according to the law, these court appointments are to be a last resort. Other less restrictive ways of decision-making help must be considered first. This guide sets out ways to avoid guardianship and conservatorship -- options to help adults make their own life choices.

HEALTH/PERSONAL DECISION-MAKING

Health Care and Personal Decision Supports

Family supporters and community supports may help an adult to live as independently as possible, and to make personal and health choices. Family and friends may informally assist with activities of daily living and with tasks such as finding affordable housing, managing medication, and locating community resources. Local and state care management programs can assess needs and connect adults to needed services, according to their wishes and preferences.

Technology supports can help adults to communicate their needs and wishes, manage medications, reduce isolation, and alert responders to crises.

For more information about community supports, see the [DARS Office for Aging Services](#), including local Area Agencies on Aging, ; local [Community Services Boards](#); and the [DARS Office for Disability Programs](#), including Centers for Independent Living.

Advance Directives

An adult may use a legal document called an advance directive to appoint someone (an “agent”) to make health care decisions when he or she is not able to do so. The advance directive may also give health care instructions. An advance directive helps doctors and family members to know and respect the person’s wishes.

Virginia law has a form for advance directives showing information that could be included, but the form is not required. An advance directive must be signed while the person is still able to make decisions. Conversations between person and the agent before a crisis occurs will guide the agent in understanding and supporting the person’s wishes.

For more information about advance directives, see [Your Right to Decide](#), Virginia Hospital and Healthcare Association.

When There is No Advance Directive

If an adult can no longer make health care decisions and has no advance directive, Virginia law lists in priority order people such as family members who may make decisions about the adult’s health care, according to the adult’s known preferences.

Physician Orders for Scope of Treatment (POST)

A POST is part of advance care planning for patients who are seriously ill or very frail. A patient and physician talk about treatment options for end-of-life care, and the physician records the patient’s wishes on a medical order form called a POST, signed by the physician and the patient.

The order tells emergency medical providers what the patient wants in an emergency, when the patient cannot speak for him or herself – for example, whether to be resuscitated if breathing or heartbeat stops, whether to be hospitalized, what specific treatment preferences the patient has, and what is important in a care plan.

For more information about Physician Orders for Scope of Treatment (POST), see [Virginia POST](#).

Guardianship

A guardian is someone appointed by the court to make health care and other personal decisions for an adult whom the court determines is unable to make these decisions for him or herself. Guardians may make decisions concerning a person's support, care, health, safety, residence and other personal matters.

A guardian is often a family member or friend but may be a professional. Guardians must meet standards set out in law and by the court and must report annually to the local department of social services where the person lives.

A guardian must, to the extent possible, encourage the adult to act for him or herself, and must consider the adult's wishes and values when making decisions.

While guardians can and should be supportive, at the same time guardianship takes away basic rights such as the right to vote, to get married, to make medical decisions, and to sign legal documents. Because guardianship removes basic rights, it is considered a *last resort*, only when other less restrictive means of decision-making or supports have been tried and cannot be used.

If an individual with a guardian regains the ability to make decisions, a court may end the guardianship and restore the person's rights.

For more information about adult guardianship, see: Information About Guardianship and Conservatorship, on the Virginia Judicial System Access to Justice Self-Help website, [Guardianship and Conservatorship](#) .

Limited Guardianship

The court may find that an adult is able to make some but not all of the decisions necessary to care for him or herself. A court's order appointing a limited guardian may preserve certain rights for the individual and limit the guardian's authority to only those areas in which a guardian's protection is needed.

In a limited guardianship, the court can write an order meeting the specific needs of the person. For example, the person may be able to make decisions about where he or she will live, but not sign legal contracts; or may be able to make decisions about daily life but not be able to live independently in the community.

FINANCIAL DECISION-MAKING

Informal Financial Decision Supports

Informal financial supports can help an adult to manage his or her own money and property. For example, direct deposit of benefits, pensions or other funds -- as well as automatic payment of certain bills -- can make financial management easier. Local money management programs can help an adult with bill paying and organizing financial papers.

Authorized Signers on Financial Accounts

An adult can authorize another person such as a trusted relative to make transactions on financial accounts. An authorized signer can conduct day-to-day transactions like writing and signing checks, and withdrawing or depositing funds, on behalf of the owner of the account. The authorized signer has no ownership of the account and will not inherit on the adult's death. These accounts may be called "convenience" accounts.

Joint Accounts

A joint account allows more than one person to own and manage it. Anyone named on the account can withdraw the funds, no matter which owner deposited the money. While joint accounts are easy to use, an adult who creates a joint account must be cautious. Another person on the account may use the money for him or herself, or to pay debts. Some joint accounts give a right to the other owner(s) on the adult's death. Trusted professionals or other supporters can advise on the pros and cons of joint accounts.

Powers of Attorney

A financial power of attorney is a legal document that allows an adult to give another person (called an "agent") the authority to make decisions about his or her money or property, in case the adult is unable to make such decisions. The authority given to the agent may be limited to only certain transactions or may be broad. A power of attorney must be signed while the person is still able to make decisions.

An agent under a power of attorney should be someone the adult trusts. An agent is a "fiduciary" – the agent must manage the money and property for the benefit of the adult, not for the agent's own benefit. The agent must manage the money and property carefully, keep it separate from the agent's own funds, and keep good records.

For more information about financial powers of attorney in Virginia, see Consumer Financial Protection Bureau, "Managing Someone Else's Money," [Help for Agents Under a Power of Attorney in Virginia](#) .

Trusts

A trust is a legal document that holds property and manages funds for a named person. The document transfers ownership of money or property to the trust, giving a trustee the authority to make decisions about the money and property in the trust.

A trustee is a "fiduciary" – the trustee must manage the money and property for the benefit of the adult, not for the trustee's own benefit. The trustee must manage the money and property carefully, keep it separate from the agent's own funds, and keep good records.

There are many different kinds of trusts, and it is important to work with an attorney to decide if a trust is needed, and which kind of trust works best.

For more information about trusts, see Consumer Financial Protection Bureau, "Managing Someone Else's Money" [Help for Trustees Under a Revocable Living Trust in Virginia](#)

Representative Payees and VA Fiduciaries

When a person gets government benefits, the federal agency has processes for selecting a representative to help manage the benefits if needed. For Social Security, the representative is called a "representative payee." For Veterans' benefits, the representative is called a "VA fiduciary." Such representatives can only manage the government benefits, not the person's other money or property.

A representative managing government benefits is a "fiduciary" – the representative must manage the money and property for the benefit of the person, not for the representative's own benefit. The representative must manage the money and property carefully, keep it separate from the agent's own funds, and keep good records.

For more information about representatives that manage government benefits on behalf of another person, see Consumer Financial Protection Bureau, "Managing Someone Else's Money," : [Help for Representative Payees and VA Fiduciaries in Virginia](#), " [Help for Representative Payees and VA Fiduciaries in Virginia](#) .

Conservatorship

A conservator is someone appointed by the court to make decisions about money and property for an adult whom the court determines is unable to make these decisions for him or herself.

A conservator is often a family member or friend, but may be a professional. The conservator may also be named by the court as the person's guardian to make health care and other personal decisions.

A conservator is a "fiduciary" – the conservator must manage the money and property for the benefit of the adult, not for the conservator's own benefit. The conservator must manage the money and property carefully, keep it separate from the conservator's own funds, and keep good records. The conservator must take care of and preserve the adult's money and property to the person's advantage.

The conservator must encourage the adult to participate in decisions and to the extent possible act on his or her own behalf and must consider the person's wishes and values in making decisions.

Conservators must meet standards set out in law and by the court and must submit an annual accounting to the local Commissioner of Accounts, an attorney appointed by the judge to supervise fiduciaries.

While a conservator can and should be supportive, conservatorship can take away basic rights such as the right to contract, make financial decisions and manage one's own affairs. Because conservatorship removes basic rights, it is considered a last resort, only when other less restrictive means of decision-making cannot be used.

If an individual with a conservator regains the ability to make financial decisions, a court may end the conservatorship and restore the person's rights.

For more information about conservatorship, see Information About Guardianship and Conservatorship, on the Virginia Judicial System Access to Justice Self-Help website, [Guardianship and Conservatorship](#). Also see Consumer Financial Protection Bureau, "Managing Someone Else's Money," [Help for Court-Appointed Conservators in Virginia](#).

Limited Conservatorship

The court may find that an adult is able to make some but not all the decisions necessary to manage his or her money and property. A court's order appointing a conservator may preserve certain rights for the individual and limit the conservator's authority to only those areas in which a conservator's protection is needed. In a limited conservatorship, the court's order may specifically designate what financial decisions the conservator may make and what decisions the individual can continue to make on his or her own. For example, the person may be able to make decisions about money for daily transactions but not manage complex business decisions or investments.

ADDITIONAL RESOURCES

- 211 Virginia, Call 211 or link to www.211virginia.org
- Honoring Choices Virginia (Advance Care Planning), www.honoringchoices-va.org
- Senior Legal Helpline, 844 802 5910
- Virginia Academy of Elder Law Attorneys, <https://www.vaela.org/>
- Virginia Association of Area Agencies on Aging (VAAAA-individual agencies), www.vaaaa.org
- Virginia Board for People with Disabilities, <https://www.vaboard.org/>
- Virginia Department for Aging and Rehabilitative Services, (DARS) www.vdars.org
- Virginia Easy Access (Aging and Disabilities Services), www.easyaccess.virginia.gov
- Virginia Legal Aid, <https://www.valegalaid.org/>
- Virginia Navigator (Human Services), www.virginiannavigator.org