

# Alternatives to Guardianship

## GENERAL SUPPORTS:

### Family/Friends

**Advocacy Organizations & Community Supports** (see Resource Folder)

## DECISION-MAKING

**Personal Contract/Agency Agreement:** An agency agreement is a legal contract creating a fiduciary relationship whereby one party (the “principal”) agrees that the actions of another party (“the agent”) binds the principal to agreements made by the agent as if the principal had himself personally made the agreement. A formal agreement is usually signed setting out the commission/pay the agent will receive, the duration, and other terms on which the principal and agent will do business together.

- **Power of Attorney:** Power of Attorney is a written legal document that lets a competent individual designate another person to act on his/her behalf, as stated in the document. Often, this is used to give authority to act for another person in specified or all legal or financial matters.
- **Durable Power of Attorney for Health Care:** A health care power of attorney (HCPOA) is a legally enforceable document in which you to authorize another person to make health care decisions when you cannot do so. The document must be prepared and signed while you are competent, and is not affected by your later disability or incapacity. You may state in the document both the types of treatment you do not want as well as any treatment that you want to be sure that you receive. The document can give your attorney-in-fact authority to make specific health care decisions or the authority to make any and all health-care decisions you could make, if you were able. However, as long as you can make your own decisions, you, and not your attorney-in-fact, have the authority to make your own treatment decisions.
- **Living Will:** A living will (treatment directive) is a written declaration directing your doctor to withhold or withdraw death-prolonging procedures should you lack the capacity to make the decisions. It does not apply to any other health-care decisions. A living will directs your doctor’s actions when the use of death-prolonging procedures would serve only to postpone the moment of death, but would not provide a cure for the condition.

## MONEY MANAGEMENT

### Limited and/or Joint Bank Accounts, Direct Deposit, and Automatic Bill Pay

**Representative Payee:** A representative payee is an individual or organization designated by you, a government agency, or the court to receive your money to use on your behalf. A Representative Payee is available for Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), Veteran’s Affairs (VA) benefits, Railroad Retirement Benefits, and Black Lung benefits.

**Living Trust:** A living trust is a trust created while you are still alive. A living trust is a legal entity completely separate from you. If you establish a trust, you are a **grantor** or **trustor**. If you are managing a trust, you are a **trustee**. You can be both a grantor and a trustee. If another individual established a trust for you, you are the **beneficiary**. A living trust will continue after the death of the grantor, and does not require involvement of the Probate Court. Because the trust is recognized as a separate entity, the trustee can continue to make distributions to the beneficiary without any involvement from the court.

**Special Needs Trust:** A special needs trust or supplemental benefits trust is a trust established to provide benefits for a beneficiary without causing the beneficiary to lose public benefits such as Supplemental Security Income (SSI) and Medicaid. A special needs trust can be established by you, as a grandparent, parent, sibling, son or daughter, or a friend. Additionally, the court can establish a special needs trust. However, the special needs trust cannot be established by the intended beneficiary, the individual with special needs. There are three different types of special needs trusts: A special needs trust can be used for the following purposes:

- Purchase, rent, or repair a home
- Vacations
- Medical costs not covered by Medicaid
- Pay utilities and taxes
- Equipment (including recreational)
- Attorney and/or advocate fees.

## PERSONAL SAFETY

**Adult Protective Services:** If you are an adult with a developmental disability, a Court may order a County Board of Mental Retardation and Developmental Disabilities to provide protective services if you are being abused and/or neglected. However, you must lack the capacity to make decisions to protect yourself.

**Protection Orders (TRO):** You may ask a Court to order an individual who is hurting you, or threatening to hurt you, to stay away from you.

**You do *not* automatically require a guardian because you have a mental or physical disability. Since guardianship involves the loss of fundamental rights, it should be considered only when a person cannot make informed decisions on their own or when accommodated or supported in their decision making.**

**All adults are presumed competent to make choices about their lives. Sometimes, because of limited cognitive or communication skills, a person may need help making decisions, and an advocate or guardian may be beneficial. If you do not have the capacity to make decisions for yourself, and are adjudged to be incapacitated, a guardian will be appointed to make decisions for you. The court must be satisfied that your disability will result in serious physical injury, illness, or disease if guardianship is not granted.**

**Limited Guardianship\*:** If you are incompetent in a limited area, you will be placed under a limited guardianship. For instance, if you do not have the capacity to understand the implications of your health care decisions, the court may appoint a guardian for medical purposes only. The guardian would then make all of your health care decisions, including which doctor to see, which treatments to follow, and whether or not to accept life-sustaining treatment. Limited guardianships may also be appointed for: placement, medication, behavior plans, and paying bills

**Plenary or Full Guardianship\*:** If you are under a full guardianship, your guardian will make all of your personal and financial decisions for you. A Plenary or “Full” Guardianship creates a substitute decision-maker who makes decisions for you which may include, but is not limited to, the following:

- where to live
- whether or not to marry
- whether or not to work
- how to spend income
- who to associate with
- whether or not to seek medical care
- whether or not to vote
- whether or not to enter into a contract

\*For more detailed information, see Missouri Revised Statutes, Chapter 475, Probate Code –Guardianship  
<http://www.moga.mo.gov/STATUTES/C475.HTM>

## **IMPORTANT NOTE:**

This handout is designed to assist with identifying guardianship options and alternatives, and is to be used *only* for the purposes of the training program

### **MO Guardianship: Understanding Your Options & Alternatives**

The above listed guardianship options and alternatives are not exhaustive and are not intended to provide a final determination of what a person should (*or should not*) do in their unique circumstances. They are intended to assist self-advocates, their families, and key supporters toward making informed decisions as they consider options for achieving an appropriate level of support and/or protection.