



Alternatives to Guardianship and Legal Matters

The Arc of the Triangle knows that our participants and families are very busy and talking about guardianship and future planning – well there never seems to be the time.

We hope that this booklet provides you a quick overview and enough information to get the conversation started in your home. The Arc has always been an advocate for people's rights, freedom of choice and planning their own futures with just the right amount of support.

If after reading this booklet, you have any questions, you can call our office or seek advice from one of the North Carolina resources we have links we have provided within the text of the booklet.

ALTERNATIVES TO GUARDIANSHIP

When there is a vulnerable person in your family the first thing that comes to mind is guardianship. We want to protect them, their property and make sure they have proper healthcare. Below we want to give you the tools so you can make an informed decision about what is best for your family member.

Guardianship is often used to make decisions for a person, which only takes a person's rights away or allows the guardian to override a choice he/she may not agree with. The intent of guardianship is to educate and support a person make decisions for themselves.

North Carolina House Bill 821 "Guardianship Bill of Rights" "§ 35A 1247
<https://www4.ncleg.net/sessions/2017/bills/house/html/h821v1.html>

In this bill, it states that even when a person has been adjudicated to be incompetent they still have the right to exercise their ability to make their own decisions. Their guardian should support the person to make choices based on their preferences and desires. They should be a guide but allow the person to make decisions about where they live, relationships, social activities, and religion and so on.

So if a guardian's role is education and guidance then becoming a court appointed "general (full) guardian" does not seem as necessary. Let us look at some alternatives on the next page.

Supported Decision Making - The least restrictive alternative is family and natural supports. This allows the person to maximize their ability to exercise their rights and allows them to make mistakes, which we learn from.

Watch this informative video to learn more about Supported Decision Making

<https://www.arcnc.org/69-policy-videos/370-guardianship-alternatives-supported-decision-making>

Power of Attorney (POA) – a method by which an individual can legally appoint another to act on their behalf. This can be done free through a bank or using on-line forms with a notary

Durable Power of Attorney – Used when you want to appoint a trustworthy friend or relative to handle your financial affairs. It is often used in long-term planning situations as it continues to be effective even after the person creating the POA becomes incapacitated.

General Power of Attorney – Similar to the durable in that it is for general financial affairs, however, this automatically terminates upon the principal's incapacity, so depending on your situation and your needs, you would need to decide which type is best for you.

Health Care Power of Attorney – For use in health care situations where you are unable to communicate your wishes to your health care providers. This allows you to appoint someone you know and who knows you to handle those decisions. You will want to make sure the person you appoint is aware of your treatment preferences.

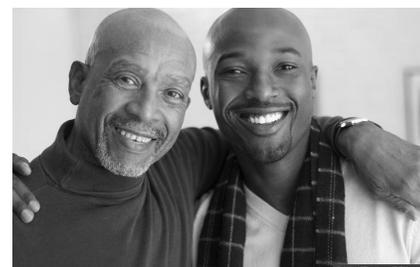
Limited Power of Attorney – Used typically in discreet transactions. For instance, you may anticipate being away when the closing of your new home is supposed to take place. This form allows you to appoint someone to handle that transaction while you are away.

Minor Power of Attorney – Form is for use by parents of minor children who, on occasion, may need someone to take care of their kids while they are away. This gives the caretaker the ability to act on the children's behalf in the event of an emergency or school issue when the parents can't be reached.

Real Estate Power of Attorney – Allows an individual to have the ability from the landlord to sell negotiate, and close on a piece of real property to their benefit.

Tax Power of Attorney (Form GEN-58) – Type of limited POA which allows you to appoint another, usually a tax professional, to represent your interests in front of the tax authority in North Carolina. The form allows the person to make filings and obtain information on your behalf.

Motor Vehicle Power of Attorney (Form MVR-63) – This is also a limited type of POA that allows you to appoint someone to act for you with the division of motor vehicles in North Carolina.



GUARDIANSHIP

When the Guardian (parent, sibling ,etc.) passes away if there are no legal instructions for a new guardian left in their Will, North Carolina will appoint a state guardian to take over. This person may know very little about your family member. The appointed guardian is generally hesitant to make major decisions. Future planning is very important to identify either a family member or corporate guardian to become guardian for your loved one so there is little disruption to their daily life upon the death of their current guardian.

Guardian of the Estate - The guardian is responsible for the person's income and property and be responsible to manage and report income and expenses.

Guardian of the Person - The guardian is responsible for the care, custody, and control of the person, and helps make decisions for matters of daily living such as medical, educational/vocational, general care and supervision.

General Guardian - Combines both guardian of the person and the estate. This is the most restrictive type of guardianship.

Corporate Guardianship - is a way for families to plan for guardianship after they are gone when there is not a family member or other natural support. Plans can be made to contract with The Arc of the Triangle for this private pay service, giving families more control over their loved ones future.

**<https://www.nccourts.gov/help-topics/guardianship/guardianship#about-6152>
Restoring Competency / Guardianship Removal**

If you feel, there is no longer a need for guardianship you can petition the court to have the appointment reversed. A third party or the guardian can also seek to the appointment reversed if the guardian is unable or unwilling to perform all the duties required.

<https://www.disabilityrightsn.org/wp-content/uploads/2018/05/Restoration-Packet.pdf>

Other ways to support someone with their finances:

- A person can be added a second owner on a bank account (joint bank account), or
- A person can apply with Social Security to become a Representative Payee or ask an agency to fill this role. **<https://www.ssa.gov/pubs/EN-05-10076.pdf>**



LEGAL – FINANCES

Life Insurance

When you are a rep-payee we are sometimes required to spend-down a person's bank account so resources do not exceed limits and interfere with benefits <https://www.ssa.gov/ssi/spotlights/spot-resources.htm> or we would like peace of mind knowing that burial planning is complete and we no longer have to worry cost and arrangements. This is where an "irrevocable life insurance" policy can be helpful. The term "irrevocable" only means it cannot be cashed out and therefore will not count as a resource.

Special Needs Trusts

This is a legal tool used for families to "hold" assets without putting it in the beneficiary's name. Special Needs Trusts should be set up 1) when families want to leave a large part of their estate to a beneficiary, or 2) as a way to designate life insurance and retirement account to the beneficiary outside of the will. SNTs are put in place instead of leaving money directly to the beneficiary, which will be counted as an available resource for SSI and Medicaid purposes. SNTs can be used, as needed, without effecting Social Security or Medicaid benefits. Consult an attorney that specializes in these trusts to get more details.

ABLE Accounts

The ABLE account is not taxed and allows a person with a disability to save money for expenses. The annual contribution is up to \$15,000 with an account limit of \$100,000. The newest update to the law (Dec 2017) allows funds from the parent savings trust fund or a 529 plan to rollover in the ABLE account without be considered income.

<https://www.nctreasurer.com/able/Pages/default.aspx>



LEGAL – MEDICAL

As we discussed earlier you can have a power of attorney (POA) or limited guardian that can speak on your behalf in regards to making medical decisions if the person is unable or cannot process the information. Other options may include;

Advanced Directives or a Living Will

North Carolina has an Advance Directive form that can complete so his or her wishes will be followed. This includes appointing a health care agent, what your wishes are for life sustaining nutrition, organ donation, etc. This document is made legal with a witness and a notary. <https://medicaid.ncdhhs.gov/documents/advanced-directives>

HIPAA Release/Waiver

Federal law allows an adult individual to allow other third-parties to have access to their private medical information through what is called a HIPAA Release or Waiver. This is a form that allows specifically named individuals like parents or siblings to have access to medical records, speak with physicians and providers, and “be in on the conversation” but does not allow decisions to be made.

Do Not Resituate Order (DNR)

North Carolina’s Right to a Natural Death Act recognizes a patient’s right to a peaceful and natural death. A DNR alerts medical personal that the patient/guardian does not wish for CPR in a medical emergency and to only make the person comfortable if the end of life is near. A DNR can be requested and signed by a doctor to have on file in case of an emergency or a doctor may add a DNR to a person’s chart when admitted to a hospital. Wishes can also be on a medical alert (bracelet, anklet or necklace).

The Arc of the Triangle recognizes that making decisions about guardianship or creating a living will can be difficult. We often put off these important decisions because we don’t know how to talk to our loved ones about these topics because they seem too complicated. The Arc can help if needed – just ask.

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