

Decision Making Options



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Supported Decision Making



What Is It?



Guardianship = incapacity.
SDM is a model for persons not served today.

How Does Supported Decision Making Work and Does It Work?



Status in Arizona?



Least restrictive and easiest option

- Health Care
 - Agent to make health care decisions and communicate with medical professionals.
- Mental Health Care
 - Agent may admit person for in-patient psychiatric care
- Financial or Durable
 - Agent to make financial decisions such as, contracts, account management, buying real estate, investing.
 - ✓ Person must have capacity
 - ✓ POA can be revoked at any time.
 - ✓ Can be abused especially Financial POA



Healthcare POA Free at azag.gov



Most restrictive option

Guardianship

- A court action to protect an incapacitated adult who needs help making important life decisions
- The protected adult's right to make their own choices is taken away
- The guardian makes decisions for that adult like a parent does for a minor child.

- Terminate right to vote.
- Terminate driving privileges.

Unless Court orders person can retain them

- *Generally*, a person under cannot contract

Contracts = purchases/ house/ car/ credit

Guardian makes medical decisions.

Guardian decides where the person lives.

Basically everything it means to be an adult.

Incapacity



Significant
impairment in
adult's decision
making

Ex. Dementia, Brain Injury

Getting Started

- File Guardianship Petition
- *AND* the related “pleadings”
at the same time
- MUST BRING! 1
Original & 3 Copies for
filing

Call (602) 506-5510
for hearing

THE BEGINNING

- Probate Cover Sheet
- Court Investigator Sheet
- Guardianship Petition
- Affidavit of Appointee
- Order Appointing
Attorney, Investigator and
Physician
- Fee Waiver

THE MIDDLE

- Physician's Report
- Notice of Hearing
- Proof of Notice
- Waiver of Notice

THE END

- Order To Guardian
- Order of Appt
- Letter's of Appt
- Acceptance of Letters

Priorities

- Spouse
- Adult Children
- Relative care giver
- Person's nominee

MUST file Affidavit of Appointee

Appointment not likely if

- Criminal history --violent crimes or drugs
- CPS/Elder Abuse history

Court Investigator

Mandatory
investigation
& Report

- Is a Guardianship needed?
- Should Petitioner be Guardian?
- Other issues



Court Appointed Attorney

Alleged incapacitated
person has right
to counsel

- ❖ Interview (alone)
- ❖ Explain rights
- ❖ Present position

Petitioner must call for attorney
Maricopa- (602) 506-7228



Physician Report

- ✓ Sign by nurse except
- ✓ Physician only
- ✓ for mental health
- ✓ May be a fee
- ✓ File original
- ✓ Incapacity evidence



Notice of the Guardianship

Alleged
Incapacitated
Person **MUST** be
personally served

Others may be
served by mail



Case will be set for
Permanent Hearing.
No emergency?
About 45 days from
filing.
5 days before, send the
Judge two copies
Guardianship & Waiver
Orders



The Hearing

No objection or paperwork problem = 15 minutes

BE WARNED the Proposed Guardian must testify



Mandatory Training

Petitioner must review the training modules
and file original of signed Certification of
Completion

www.azcourts.gov/probate

Trainings: Non licensed Fiduciary AND
Welcome to Guardianship

Tips

1. Request for Waiver of Fees when Petition is filed
2. Physician Report file as confidential document
3. Alleged incapacitated person must attend hearing, unless attorney agrees not in best interest
4. Guardianship is ordered by the court at the hearing, ***not effective until letters issued by clerk***
5. Send Orders 5 days prior to hearing, still bring extra copy of everything and 3 extra orders

Mental Health Powers

- Greater constitutional impact
- Needed for admission to inpatient psychiatric facility
- Must be renewed every year

TIP: Physician's Report **MUST** state person likely need hospitalization within 12 months.

Limited Guardianship



Right to vote? Ask

Driver's license?

MUST be in *Physician's Report*.

Guardian must always consider Ward's wishes



On-
going
Duties
to
the
Court

A Guardian does not...

Manage the Ward's money

Guardian may be Representative Payee for Social Security payments outside of the \$10,000 limit.

Guardian may also be Trustee for the Ward.

Warning- don't request to become the
Conservator "just in case"

Conservatorship

Court procedure to appoint someone to manage money.
Not required if the person has assets of less than \$10,000
or the funds are titled to a Trust.

Not required (or suggested) if the person has only Social
Security Income.

Some assets may be restricted.

Thank You!!!



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