

This document is intended for educational and training purposes and is not legal advice.

The Powers of Guardianships and Powers of Attorney

TOPICS TO COVER

POWER OF ATTORNEY

GUARDIANSHIP

ADVANCE DIRECTIVES

DNR ORDERS

POWER OF ATTORNEY

A power of attorney (POA) is a legal document giving a person (the agent or attorney-in-fact) the power to act for another person (the principal)

The person (principal) granting authority to the other individual(s)(agent) must fully understand what she/he is authorizing – must be competent at the time of signing.

POWER OF ATTORNEY

Although they must be competent when the POA is signed, it can continue to have effect even if the person later becomes incompetent.

Until determination of lack of competency by a professional (doctor, therapist), THE WISHES OF THE RESIDENT PREVAIL.

The individual retains control over the powers granted and, so long as they remain competent, can make changes as they see fit at any given time.

POWER OF ATTORNEY

Authority to act as the agent/Attorney-in-Fact must be granted in a written, notarized document before someone should act on it.

To revoke, must also be in a written, notarized document.

EXAMPLE

Laura is eighty-four years of age and lives in a nursing facility. Upon entering the facility, she appointed her daughter, Janice, as her POA. Laura has severe diabetes and other medical problems that require her stay in the medical facility and difficulty hearing; sometimes she can forget things, but she typically knows what she does and doesn't want/like POA/daughter Janice has told the staff at the medical facility that her mother is not allowed to have certain foods because of her diabetes. Her mother asked for a special dessert on her birthday and the dietician unsure what to do because of Janice's directive. Should Laura get her cake?

POWER OF ATTORNEY



If POA is rescinded or changed, everyone that had a copy needs to be informed and given the new document that says it was revoked.



Filing POA with County Clerk is not required, but does place some burden of knowing about the document on others.

Randy appoints his daughter to be his POA, just in case 'something happens'. He has a steady job and is fully competent. A few years later, the daughter has a wreck and subsequently develops an opioid addiction and has various run ins with the law. Randy decides he doesn't want her to have that much control. What can he do?

EXAMPLE

GUARDIANSHIPS

A guardianship is a legal relationship between a capable adult (a guardian) and a ward, either a minor (a person under the age of eighteen) or a legally disabled person

GUARDIANSHIPS LEGALLY DISABLED PERSON DEFINED

A legally disabled person is a person who has been found by a court to be unable to care for his/her personal needs and/or unable to manage his/her financial resources.

GUARDIANSHIPS

It is state LAW for a guardian:

“To act with respect to the ward in a manner which limits the deprivation of civil rights and restricts his personal freedom only to the extent necessary to provide needed care and services to him”



In other words, the guardian must take into account the wishes of the ward to the extent that they can.

A GUARDIANSHIP IS NECESSARY

When an individual is not capable of exercising all the rights of an adult.



Friends and relatives are not able to provide informal assistance

Cannot sign documents if not power of attorney

Cannot give permission for medical care

Cannot institute court actions on behalf of the person

Cannot apply for government assistance

QUESTIONS TO ASK TO DETERMINE IF A GUARDIANSHIP IS NECESSARY

Is the disabled person able to adequately provide for personal needs for physical health, food, clothing, or shelter?

Is the disabled person able to manage personal financial resources effectively?

Is the disabled person going to be taken advantage of if no one is appointed to act as guardian?

Is assistance available through means other than guardianship or conservatorship?

SEEKING GUARDIANSHIP

An emergency guardian is appointed by a judge and can be a complete or limited guardianship.

A final hearing will be set and an order will be issued for 3 professionals to evaluate the individual before the final hearing. These three professionals are: a Family Physician, Psychologist, and Social Worker.

An emergency guardianship is temporary. If one has been issued for longer than three (3) months the ward and/or temporary guardian can check with the court.

SEEKING GUARDIANSHIP



The individual will be appointed an attorney.

The attorney's purpose is to defend the resident in the case if the resident wishes.



The attorney is called a Guardian ad Litem.

A guardian ad litem's purpose is to lookout for the best interest of the ward.



After 2018, KY no longer requires a jury trial for competency unless requested. The trial can now be a bench trial.

GUARDIANSHIPS

TYPES OF GUARDIANSHIPS



COMPLETE
GUARDIANSHIP

LIMITED
GUARDIANSHIP

CONSERVATOR

TYPES OF GUARDIANSHIP

COMPLETE GUARDIANSHIP

COMPLETE GUARDIANSHIP

A guardian is given complete responsibility for the ward if the disabled person is unable to take care of his/her personal needs or financial needs.

TYPES OF GUARDIANSHIP LIMITED GUARDIAN

A limited guardian may be appointed if the disabled person is declared partially disabled in managing personal affairs but not partially disabled or disabled in managing financial affairs.

TYPES OF GUARDIANSHIP CONSERVATOR

A conservator is appointed if a disabled person only needs help managing financial affairs.

Appointed on the same form as guardians and will often be referred to as limited/financial guardians.

EXAMPLE

Steve is twenty-seven and lives in a Personal Care Home. He has mild mental deficiency and suffers from bi-polar disorder. Most of the time, he does fine managing his personal affairs—except for his money. He cannot remember to pay his bills. He often spends his money on other things and then has no money left for rent to the PCH. Does he need a guardian?

Mrs. Smith's dementia has gotten worse and she sometimes wanders out of her nursing home. Her guardian/daughter has made clear to the facility that her mother should be restrained at all times. During care plans, she insists that the facility use bed rails and wheelchair belts to make sure her mother cannot get up to get out of the building. What rights does Mrs. Smith have?

EXAMPLE

EXAMPLE

Rhonda is in end stage COPD and has very poor health after nearly a decade of severe drug use. She is competent and hasn't had any behavioral issues since admission 6 weeks ago. She is only 46. Her daughter was granted full emergency guardianship two months ago. The hearing to determine competency is not set yet. Rhonda has been wanting to go outside and sit on sunny days, but her daughter has told the facility her mother is not permitted to go outside. She has also told the facility that her mother is not permitted to speak to anyone on the phone, because she's afraid her mother will try to get drugs.

What are Rhonda's rights? Suggestions for the facility and family?

GUARDIANS CANNOT

prevent relatives from visiting a resident unless court ordered.



prevent resident from voting unless right is removed by courts and cannot vote on behalf of the ward, or dictate for whom the ward votes.



consent to an abortion, sterilization, psychosurgery, removal of a bodily organ, or amputation of a limb unless court ordered or a life threatening emergency.

ADVANCE DIRECTIVES

Adults with the ability to make and communicate health care decisions can execute a document that provides directions about their health care that are to be followed when they are not able to make and communicate health care decisions.

An advance directive is sometimes referred to as a “Living Will”.

ADVANCE DIRECTIVE FORM

The Advance Directive form can indicate the following desires:	Whether or not to authorize life-prolonging treatment
	Withholding or withdrawing of artificially provided food or water
	Designation of health care surrogate to make decisions
	Whether to donate body to science

ADVANCE DIRECTIVE VS POA

Making a designation of a Health Care Surrogate is preferable to making a designation through a Power of Attorney document because it is generally not overridden by later appointment of a guardian.

ADVANCE DIRECTIVE

For the document to be valid, it must be signed by the person making the decision and either two witnesses or a notary



Witnesses cannot be:

Blood relatives who might be a beneficiary

Beneficiaries under the laws of decent and distribution

Employees of any health care facility where the person is a resident or patient

An attending physician

Anyone having a personal financial responsibility for the person's health care

HEALTH CARE SURROGATE PRIORITY

If there is no Advance Directive in place, the following priority in acting as a Health Care Surrogate is given to:

- Judicially appointed guardian

- Spouse

- Adult children

- Parents

- Nearest relative

DUTIES OF HEALTH CARE SURROGATES

A health care surrogate should act in accordance with any express wishes of the patient and must consider doctor's recommendations

A health care surrogate cannot make decisions regarding psychosurgery, removal of organs, amputation of limbs without court approval unless there is an emergency where action is necessary to prevent death or serious injury.

DO NOT RESUSCITATE ORDER (DNR)

Covers person in cardiac/respiratory arrest; applies to resuscitative measures, artificial respiration, cardiac mediations, etc.

Does not apply to other emergency care such as bleeding control and comfort care

Applies only to pre-hospital setting- EMTs in the home and long term care facilities

Must have bracelet or original document readily available to have honored

Presentation
developed by Legal
Aid of the Bluegrass

*This information is
for educational
purposes only, and
not intended to be
legal advice.