



# Legal Options Manual

*A guide to advise individuals, families and caregivers about different legal options for adults with a disability who need assistance—all with a goal of preserving as many rights as possible*



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**This is not intended as a substitute for legal advice.  
Federal and state law can change at any time.  
Please be sure to check current law for any changes.**



This manual was developed for the  
Arizona Developmental Disabilities Planning Council  
by the Arizona Center for Disability Law,  
the Native American Disability Law Center and  
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**T**his manual is the joint project of Arizona Developmental Disabilities Planning Council, the Arizona Center for Disability Law and the Native American Disability Law Center. The Council is federally funded and responsible for assuring that individuals with developmental disabilities and their families participate in the design of, and have access to, culturally competent services, supports and other assistance. The Council also supports opportunities that promote independence, productivity and inclusion into the community.

The Arizona Center for Disability Law is a non-profit, public interest law firm providing advocacy, information, referral services, community legal education and, in selected cases, legal representation to individuals with disabilities throughout Arizona. Its mission is to advocate for the legal rights of persons with disabilities to be free from abuse, neglect and discrimination and to gain access to services, maximizing independence and achieving equality. The Center's vision is a society that focuses on people's abilities rather than disabilities.

The Native American Disability Law Center is a non-profit public interest legal services organization that provides information, referrals, direct representation, systemic advocacy and community education services to Native Americans with disabilities. The purpose of the Native American Disability Law Center is to advocate with a generosity of spirit to ensure that Native Americans with disabilities have access to justice and are empowered and equal members of their communities and nations. The mission of the Native American Disability Law Center is to advocate on behalf of Native Americans with disabilities in the Four Corners area to ensure their rights are enforced, strengthened and brought in harmony with their communities.

Leigh Bernstein, Esq. provided pro bono legal service to assist in updating the 2016 version of the Legal Options Manual. Her contribution is greatly appreciated.

This guide is available in alternative formats upon request. This guide may be copied and distributed for private use but may not be sold or distributed for profit.



## INTRODUCTION

The purpose of this manual is to advise people with disabilities, their families and caregivers on different options available when an adult with a disability needs the assistance of someone else in a legally recognized fashion to help manage one or more facets of his or her life. **This is not intended as a substitute for legal advice. Federal and state law can change at any time. The publication and revision dates of the manual is located on the front cover; please be sure to check current law for any changes.**



*“I like living on my own, but I have some trouble with remembering to set aside money for all my bills. I have my own job and earn my own money, but I could use some help. How can I give someone the ability to help me with my finances without giving away my independence?”*



*“I think my daughter can live on her own, but I worry that she will spend her Social Security check and won’t have money for her bills. How can I help her manage her money without taking away her independence?”*



*“My son just turned 18 and his school is telling me that I am no longer invited to his Individualized Education Plan meeting, but my son still wants me to make decisions about his special education services. What can I do?”*



*“I disagree with the state vocational rehabilitation agency about my employment goal. I want to appeal their decision but do not believe I can advocate for myself during an appeal. Can I have someone help me in this process?”*

Questions like these are commonplace in the lives of people with disabilities and their families and caregivers. Legal options may range from a student authorizing someone to make decisions in his or her Individual Education Plan after the student turns 18 to a full guardianship, which completely restricts a person’s right to make any of his or her own personal decisions.

People, whether disabled or not, will make mistakes sometimes. That is a part of life. The purpose of this manual is not to keep individuals with disabilities from life experiences by taking away their rights to make decisions for themselves. Rather, the goal is to recognize the extent to which a person with a disability requires additional assistance, with the idea that the least restrictive option that preserves as many individual rights as appropriate is best.

# REPRESENTATIVE PAYEE



*“I think my daughter can live on her own, but I worry that she will spend her Social Security check and won’t have money for her bills. How can I help her manage her money without taking away her independence?”*

## Who needs a representative payee?

A person who is not capable of managing his or her finances and who only receives Social Security benefits (like SSI or SSDI) may benefit from a representative payee to help manage these benefits.

### IMPORTANT NOTE

**If a person only receives income from Social Security and he or she cannot manage his or her own benefits to pay monthly expenses, but is otherwise able to live independently in the community, a representative payee may be the only legal option necessary.**

**However, if the person has other assets that may need management, another legal option such as a conservatorship may be more appropriate.**

## Who can be appointed a representative payee?

A representative payee should be someone who can manage the Social Security income of another person with that person’s best interest and needs in mind. A representative payee can be a family member, caretaker or friend. If no such person is able to serve as a representative payee, a public or nonprofit agency may also serve as an organizational representative payee. If a person lives in a residential facility, that entity may be able to serve as a representative payee, or if the home belongs to the Division of Developmental Disabilities (DDD), the Arizona DES could be the representative payee. ***Please note that if you use one of these services, the Social Security Administration (“SSA”) may authorize the organization to collect a fee for managing the person’s Social Security benefits.***

## What does a representative payee do?

A representative payee receives Social Security benefits on behalf of a beneficiary for the purpose of managing these benefits. Specifically, the representative payee must:

- Use the payments only for the use and benefit of the beneficiary and for purposes determined to be in the best interest of the beneficiary (such as payment for rent, medical expenses, food, clothing, and savings);
- Notify SSA of any event that will affect the amount of benefits the person should receive (such as an inheritance or earnings);



- Submit to SSA, upon request, a written report accounting for the benefits and maintain good records of the moneys spent, saved or invested for the beneficiary;
- Notify SSA of any change in circumstances which would affect the representative payee's performance (such as payee's illness or a change in relationship to the beneficiary).

The SSA also publishes "A Guide for Representative Payees" (Pub No. 05-10076) and "When a Representative Payee Manages Your Money" (Pub No. 05-10097) available on the Internet at [www.ssa.gov/pubs](http://www.ssa.gov/pubs) or by calling toll free at 1-800-772-1213 (voice) or 1-800-325-0778 (TTY).

## **How is a representative payee appointed?**

To apply for appointment as a representative payee, you must complete Form SSA-11, available at your local SSA office, or by calling the numbers listed above. In most cases, the applicant must complete the form in a face-to-face interview at a local SSA office. The SSA will make a decision whether the beneficiary can manage his or her own benefits and whether the representative payee applicant is an appropriate person to handle the beneficiary's money.

In determining whether a person needs a representative payee, SSA will consider:

- A court determination of incompetency and the need for a guardian;
- Medical evidence of the beneficiary's need for a payee to manage benefits; and
- Statements of friends, relatives and caregivers which contain information on the beneficiary's ability to handle benefits.

The SSA also requires evidence of the applicant's relationship to the beneficiary and evidence substantiating that the applicant will handle the funds from SSA in a responsible manner, which benefits the Social Security recipient.

## **How is the representative payee terminated or changed?**

The SSA provides forms to change or terminate a representative payee appointment. A beneficiary may request a change in payee if he or she feels that person is not expending funds in his or her best interest, or if the relationship between the parties has changed or someone else would be a more appropriate representative payee. A beneficiary who is now able to handle his or her own benefits may also request that the representative payee status be terminated. Call your local SSA office for more information or visit SSA website, [www.ssa.gov/payee/](http://www.ssa.gov/payee/).

## **What happens if the representative payee becomes unavailable, unable or unwilling to serve as representative payee?**

If the representative payee is no longer available, able or willing to serve, the representative payee is obligated to notify the Social Security Administration.

# AUTHORIZED REPRESENTATIVE IN THE VOCATIONAL REHABILITATION PROGRAM



*“I disagree with the state vocational rehabilitation agency about my employment goal. I want to appeal the decision but do not feel I can advocate for myself in an appeal. Can I ask someone to help me in this process?”*

## Who needs an authorized representative in the Vocational Rehabilitation Program?

An authorized representative means an applicant or client gave another individual the authority to make decisions, on behalf of the client or applicant, about services from the Arizona Rehabilitation Administration Services (AzRSA). The representative does not have the authority to go against the decision making authority of the client or applicant, only to serve on their behalf. A person or client who believes that they cannot navigate the Vocational Rehabilitation (VR) Program on their own to get necessary services may benefit from an authorized representative. However, clients or applicants who can make their own decisions but need help during meetings, such as speaking up for themselves, asking questions, and taking notes may invite a family member or trusted friend to support them in the VR system. This does not require delegating a representative.

## Who can be appointed as an authorized representative?

An authorized representative can be a friend, parent, relative, advocate or other person chosen by the client or client’s guardian.

## What does an authorized representative do?

The job of an authorized representative is to assist the client in protecting his or her rights and voicing his or her service needs. The authorized representative acts as the client’s representative in the application process, during the development and implementation of an Individualized Plan for Employment (IPE), and during any appeal process.

Once a representative has been designated, the VR program must notify the representative of all the client’s meetings and include the designated representative in any meeting where the client or guardian wants the authorized representative to attend. The authorized representative must act on behalf of the client or guardian at such meetings, voicing service concerns or other issues. If a client and their approved representative have a disagreement on a decision or course of action, the AzRSA staff will follow the direction or desires of the client.

## How is an authorized representative appointed?

Clients, applicants or their guardians must put in writing that they would like to designate a representative and provide a form or letter to the VR counselor. Clients and applicants can designate a representative at any time. Clients who do not appoint a representative at the beginning may do so later if they need help for an appeal. *There is an example form designating a VR representative at the end of this section.*

## How is an authorized representative terminated or changed?

The client or client's guardian must inform the VR counselor in writing that they no longer wish for the authorized representative to be involved. If the client or guardian would like to change the authorized representative, a new designation form must be provided to the agency.

## What happens if the authorized representative for Vocational Rehabilitation becomes unavailable, unable or unwilling to serve as the representative?

A person who selects an authorized representative for Vocational Rehabilitation can choose a new representative or revoke the designation at any time. If the person selected as the representative becomes unavailable or unwilling to serve, the individual can appoint someone new.



# DECLARATION OF AUTHORIZED REPRESENTATIVE FOR VOCATIONAL REHABILITATION

I understand that I may delegate an authorized representative to help me protect my rights and assist me in voicing my service needs. I further understand the following:

1. AZRSA staff will not accept direction from an authorized representative that supersedes the direction or approval already given without a client's direct consent.
2. If a client and their approved representative have a disagreement on a decision or course of action, AZRSA staff will follow the direction or desires of the client.
3. All written documentation and notifications which are provided to clients will also be provided to their authorized representative.

I, \_\_\_\_\_, hereby designate the person or organization named below as my representative in the development and implementation of my Individualized Plan for Employment and in any appeals process with the Rehabilitation Services Administration Vocational Rehabilitation Program. This designation shall remain valid until such time I revoke it in writing.

My authorized representative is:

\_\_\_\_\_  
Authorized Representative's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
ZIP Code

\_\_\_\_\_  
Telephone Number

Invoked by my signature this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
Client Signature



# DESIGNATED REPRESENTATIVE IN MENTAL HEALTHCARE



*“My friend is receiving mental health services through the state, and she has said that she doesn’t feel that she can make reasonable decisions about her treatment and planning. How can I help her?”*

## Who needs to designate a mental health representative?

Any person who receives public mental health benefits from a Regional Behavioral Health Authority (RBHA) or a RBHA member is entitled to have a designated mental health representative to represent the RBHA members’ interests. Any RBHA members who want representatives to make mental health treatment and planning decisions can designate a mental health representative at anytime.

## Who can serve as a designated mental health representative?

Any person can serve as a mental health representative. If the RBHA member has a guardian, that person may be the representative, or the guardian may appoint someone else. The designated representative can be a friend, parent, relative, advocate, or other person chosen by the RBHA member or guardian to assist the client in protecting his or her rights and voicing his or her service needs.

## What does a mental health representative do?

A mental health representative is designated by a RBHA member to help protect the member’s rights and voice their service needs. The RBHA must provide the designated representative with written notice about the date, time, and location of meetings about inpatient treatment, discharge planning, and other service planning. The designated representative may go to service and discharge planning meetings, help fill out grievance and appeal forms, and attend meetings, which are informal conferences and administrative hearings related to the appeals process.

## How is a designated representative appointed?

The RBHA member or his or her guardian must let the RBHA know in writing who is designated to represent the individual. ***There is an example of a form designating a mental health representative at the end of this section.***

## **How is a designated representative terminated or changed?**

The RBHA member or guardian must inform the mental health agency or provider in writing that the designated representative will no longer be serving as the designated mental health representative or that a substitute will replace the former representative.

## **What happens if the designated mental health representative becomes unavailable, unable or unwilling to serve as the representative?**

A person who selects a designated mental health representative can choose a new representative or revoke the designation anytime. If the person selected as the representative becomes unavailable, unable or unwilling to serve, the individual can appoint someone new.



# DECLARATION OF DESIGNATED MENTAL HEALTH REPRESENTATIVE

I, \_\_\_\_\_, hereby designate the person or organization named below as my representative in the development of my Individual Service Plan, and the inpatient and discharge plan, and in any grievance process, pursuant to A.A.C. R9-21-202(A)(17)(c). This designation shall remain valid until such time I revoke it in writing.

My designated representative is:

\_\_\_\_\_  
Designated Representative's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
ZIP Code

\_\_\_\_\_  
Telephone Number

Invoked by my signature this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
Signature



## SPECIAL EDUCATION TRANSFER OF PARENTAL RIGHTS



*“My son just turned 18 and his school is telling me that I can no longer make decisions regarding his Individualized Education Plan meeting, but my son still wants me to make decisions about his special education services. What can I do?”*

### Who could benefit from delegating the right to make educational decisions?

When students become 18 years old, the right to make decision about their special education services is transferred to them because they are adults under the law. The exception to this rule is when students become 18 years old and a court has determined that they need a guardian because they do not have the capacity to make their own decisions. When there is no guardianship, high school students between the ages of 18 and 22 receiving special education services, but who want their parents to make educational decisions, may benefit from having a representative. The student must be able to give informed consent for the representative’s involvement. This form isn’t necessary when the student is under a guardianship.

#### IMPORTANT NOTE

**The Delegation of Right to Make Educational Decisions is only an option when the student reaching age 18 wants a designated individual to remain involved and can give informed consent for this involvement.**

**This legal option is not a mechanism to force a student who is age 18 to remain in school or in a particular program if he or she does not want to participate.**

### Who can be designated to make educational decisions on behalf of the student?

A student between the ages of 18 and 22 who is not under guardianship and wants a designee to help make educational decisions can designate any person to do so. The designee will be able to exercise the rights afforded to parents, guardians, and students under the Individuals with Disabilities Education Act. If a student is under a guardianship, those rights remain with the guardian even after the student turns 18.

## **What does a transfer of educational decision-making rights do?**

When a student with a disability reaches age 18—no longer a minor in the eyes of the law—all parental rights under special education laws become the rights of the student, unless he or she is under guardianship. Transferring these rights to someone else allows another person to make educational decisions on behalf of the student.

If a student wants his or her parent or another trusted adult to attend IEP meetings, take notes, and provide support to help the student to make his own decisions, he or she may invite the parent to the IEP meeting. Inviting parents to support students in their decision making does not require a transfer of educational rights.

## **How is a special education transfer of rights declaration made?**

A student transferring the right to make educational decisions completes a form like the one provided at the end of this section, which should be signed and notarized by both the student and the student's choice of representative. The student may also make his or her intentions known by audio, video, or any other means required because of the student's disability. The completed form or other means of expressed intent should be given to school personnel on the student's IEP team.

A Delegation of Right to Make Educational Decisions is only effective for one year from the date it is signed. It must be renewed in writing by the student each year if it is to remain in effect. The student may end the transfer of rights or select a different representative at any time. If, at any time, students wish to make their own educational decisions with support from a parent or trusted friend, the student may check "revoke" on the form and give it to the school district and let the school know he or she is inviting the parent to the IEP meetings. The transfer also terminates when the student graduates.

## **What happens if the person chosen to make educational decisions becomes unavailable, unable or unwilling to serve as the representative?**

If the person selected as the representative becomes unavailable, unable or unwilling to serve, the student can appoint someone new.

**DELEGATION OF THE RIGHT TO MAKE EDUCATIONAL DECISIONS**

I, \_\_\_\_\_, am eighteen (18) years of age or older but under twenty-two years of age and a pupil who has the right to make educational decisions for myself under state and federal law. I have not been declared legally incompetent, and as of the date of the execution of this document, I hereby delegate my right to give consent and to make decisions concerning educational matters to \_\_\_\_\_, who will be considered my “parent” for the purposes of 20 United States Code section 1401 and will exercise all the rights and responsibilities concerning my education that are conferred on a parent pursuant to state and federal law.

I understand and give my consent that \_\_\_\_\_ will make all decisions relating to my education on my behalf. I understand that I am entitled to be present during the development of any individualized education plan and that any issues or concerns I may have will be addressed.

This delegation will be in effect for one year from today’s date and may be renewed only by my written or formal authorization. I understand that I have the right to terminate this agreement at any time and resume the right to make decisions regarding my education. I understand that I must notify the school immediately if I revoke this Delegation of Rights prior to its annual expiration.

\_\_\_\_\_ **(OPTIONAL) - I have received this form and have chosen NOT to delegate my rights.**

\_\_\_\_\_ **(REQUIRED) – I have received this form and have CHOSEN to delegate my rights to the individual listed below.**

\_\_\_\_\_  
Student Name

\_\_\_\_\_  
“Parent” Representative Name

\_\_\_\_\_  
Student Signature

\_\_\_\_\_  
“Parent” Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Subscribed and sworn to before me in the county of \_\_\_\_\_ in the State of Arizona on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_.

Subscribed and sworn to before me in the county of \_\_\_\_\_ in the State of Arizona on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public

My Commission Expires:

My Commission Expires:

\_\_\_\_\_ **(REQUIRED, WHEN APPLICABLE) – I wish to TERMINATE the delegation of rights at this time and assume the right to make my own decisions regarding my education.**

\_\_\_\_\_  
Student Signature

\_\_\_\_\_  
Date

*Note: If not by writing, this delegation may be given by audio or video means, or in an alternative format necessitated by the pupil’s disability.*



# ADVANCED DIRECTIVES FOR HEALTH AND MENTAL HEALTH CARE, AND LIVING WILLS



*“I want to make sure that my wishes about my physical and mental health are honored even if I become unable to speak for myself in the future. What can I do to protect my interests?”*

## Who could benefit from designating another person to make health or mental health care decisions for them in the future?

Any person who is of sound mind (legally competent), and wants to make sure his or her decisions about health or mental health care treatment will be honored in the future, could benefit from an advanced health or mental health care directive or a living will appointing someone to carry out his or her wishes in the event he or she is unable to do so.

### IMPORTANT NOTE

**Advanced directives and living wills determine what future treatment will be, so it is critically important that the person who is making these future decisions has the capacity now to understand what the directive means.**

## Who can be appointed to carry out an advanced health care directive or living will?

Any person can be appointed to carry out an advanced health or mental health care directive or living will. Like many of the other options covered in this manual, the appointee should be someone who will ensure that the wishes of the individual preparing the directive or living will are honored.

## What does an advanced directive or living will do?

Advanced health care directives and living wills allow people to appoint someone else to make their health care or mental health care decisions in the event they become incompetent or unable to give consent in the future. Advanced directives and living wills allow an individual's wishes about health or mental health care to be followed when he or she becomes unable to express these wishes. For any of these options to be valid, a person must be able to understand and consent to the treatment choices he or she is making.

## What does a health care advanced directive do?

- **Health Care Advanced Directive/Durable Health Care Power of Attorney:** This option allows individuals to choose a representative to make decisions about health care and basic needs if they become unable to make or communicate those decisions for themselves. The representative who makes the decisions is known as the “agent” or “representative.” The individual who chooses an agent is the “principal.” Once appointed, the agent will make and communicate decisions about the principal’s health care or basic needs only if they become unable to make those decisions for themselves. The document can provide specific direction to the agent regarding the principal’s wishes for his or her future health care decisions.

The representative will have the authority to make health care decisions consistent with the principal’s wishes in the event the person signing the document becomes incompetent. The principal may revoke this document in full, and change agents and/or add other agents at any given time. *A sample form from the Attorney General’s Office website is available at the end of this section.*

## What does a mental health care advanced directive do?

- **Mental Health Care Advanced Directive/Durable Mental Health Care Power of Attorney:** This document allows an individual to appoint a representative who can admit the individual to a behavioral health facility in the event the individual needs such treatment. The directive may also include preferences for mental health medication and treatment. *A sample form from the Attorney General’s Office website is available at the end of this section.*

## What does a living will do?

- **Living Will:** A living will lists the treatments, procedures or interventions that a person wants as well as those he or she wishes to refuse. Living wills are often used at the end of life when that person can no longer state his or her preferences. The living will covers situations such as when to resuscitate and when to use a feeding tube, ventilator or other extraordinary measures to prolong a person’s life. *A sample form from the Attorney General’s Office website is available at the end of this section.*

## What happens if the individual appointed to make decisions under a durable health care power of attorney or durable mental health care power of attorney becomes unavailable, unwilling or unable to serve as the power of attorney?

When a person creates a power of attorney, he or she may designate a principal to make and communicate health care decisions and a second individual in case the first is unavailable, unwilling, or unable to do so. If the individual who created the power of attorney included an alternate agent, then the alternate agent takes over.



If there is no agent willing or able to act, the principal can appoint other agents at any time. Similarly, a person who appoints a durable health care power of attorney/durable mental health care power of attorney can choose a new power of attorney or remove an existing power of attorney at any time. If a power of attorney becomes unavailable, unwilling or unable to make decisions, the person who appointed the power of attorney can appoint a new one.

The power of attorney forms included in this manual provide space for an “alternative representative” to be listed who can step in as the decision maker when the POA is unavailable, unwilling, or unable to make the decisions.

## **How are advanced directives and living wills set up?**

An attorney who handles probate law can prepare advanced directive and living wills. Individuals may prepare their own by using advanced directive forms available at the end of this section. Additional forms can be obtained from the Office of the Attorney General’s website, [www.azag.gov](http://www.azag.gov) (click on “Life Care Planning” link), or by calling (602) 542-2123. Powers of Attorney/Advance Directives cannot be created on behalf of another adult. Only the person who wants to designate an agent to make decisions on her/his behalf in the future can execute a power of attorney.

Once you have filled out the form and signed it with a notary, it will be an effective document. Keep it in a safe place with important legal documents and consider registering it with the Arizona Advance Directive Registry through the Secretary of State (see Appendix C).

## **How is an advanced directive terminated or changed?**

An advanced directive can be changed or ended at any time—even when the principal appears to have become unable to make reasonable decisions. A mental health care advanced directive may be changed or ended at any time—except during times when a court has found the individual to be incapable. Incapable is defined by law and the court must use this legal definition.



OFFICE OF THE ARIZONA ATTORNEY GENERAL  
Mark Brnovich



STATE OF ARIZONA  
DURABLE HEALTH CARE POWER OF ATTORNEY

Instructions and Form

**GENERAL INSTRUCTIONS:** Use this Durable Health Care Power of Attorney form if you want to select a person to make future health care decisions for you so that if you become too ill or cannot make those decisions for yourself the person you choose and trust can make medical decisions for you. Talk to your family, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctor, clergyperson and a lawyer before you sign this form.

Be sure you understand the importance of this document. If you decide this is the form you want to use, complete the form. **Do not sign this form until** your witness or a Notary Public is present to witness the signing. There are further instructions for you about signing this form on page three.

**1. Information about me (the Principal):**

My Name: \_\_\_\_\_  
My Address: \_\_\_\_\_  
\_\_\_\_\_

My Age: \_\_\_\_\_  
My Date of Birth: \_\_\_\_\_  
My Telephone: \_\_\_\_\_

**2. Selection of my health care representative and alternate (“agent” or “surrogate”)**

I choose the following person to act as my representative to make health care decisions for me:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Home Phone: \_\_\_\_\_  
Work Phone: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_

I choose the following person to act as an alternate representative to make health care decisions on my behalf if the first representative is unavailable, unwilling, or unable to make decisions for me:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Home Phone: \_\_\_\_\_  
Work Phone: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_

**3. I AUTHORIZE if I am unable to make medical care decisions for myself:**

I authorize my health care representative to make health care decisions for me when I cannot make or communicate my own health care decisions due to mental or physical illness, injury, disability, or incapacity. I want my

representative to make all such decisions for me except those decisions that I have expressly stated in Part 4 below that I do not authorize him/her to make. If I am able to communicate in any manner, my representative should discuss my health care options with me. My representative should explain to me any choices he or she made if I am able to understand. I further authorize my representative to have all access to and copies of my “personal protected health care information and medical records”. This appointment is effective unless and until it is revoked by me or by an order of a court.

**The types of health care decisions I authorize to be made on my behalf include but are not limited to the following:**

- To consent or to refuse medical care, including diagnostic, surgical, or therapeutic procedures;
- To authorize the physicians, nurses, therapists, and other health care providers of his/her choice to provide care for me, and to obligate my resources or my estate to pay reasonable compensation for these services;
- To approve or deny my admittance to health care institutions, nursing homes, assisted living facilities, or other facilities or programs. By signing this form I understand that I allow my representative to make decisions about my mental health care except that he or she cannot have me admitted to a structured treatment setting with 24-hour-a-day supervision and an intensive treatment program – called a “level one” behavioral health facility – using just this grant of authority;
- To have access to and control over my medical records and to have the authority to discuss those records with health care providers.

**4. DECISIONS I EXPRESSLY DO NOT AUTHORIZE my Representative to make for me:**

I do not want my representative to make the following health care decisions for me (describe or write in “not applicable”):

**5. My specific desires about autopsy:**

**NOTE:** Under Arizona law, an autopsy is not required unless the county medical examiner, the county attorney, or a superior court judge orders it to be performed. See the General Information document for more information about this topic. Initial or put a check mark by one of the following choices.

- Upon my death I DO NOT consent to a voluntary autopsy.
- Upon my death I DO consent to a voluntary autopsy.
- My representative may give or refuse consent for an autopsy.

**6. My specific desires about organ donation (“anatomical gift”):**

**NOTE:** Under Arizona law, you may donate all or part of your body. If you do not make a choice, your representative or family can make the decision when you die. You may indicate which organs or tissues you want to donate and where you want them donated. Initial or put a check mark by A or B below. If you select B, continue with your choices.

- A.** I DO NOT WANT to make an organ or tissue donation, and I do not want this donation authorized on my behalf by my representative or my family.
- B.** I DO WANT to make an organ or tissue donation when I die. Here are my directions:

**1. What organs/tissues I choose to donate:** (Select a or b below)

- a. Whole body
- b. Any needed parts or organs:
- c. These parts or organs only:
- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

**2. What purposes I donate organs/tissue for:** (Select a, b, or c below)

- a. Any legally authorized purpose (transplantation, therapy, medical and dental evaluation, education or research, and/or advancement of medical and dental science).
- b. Transplant or therapeutic purposes only.
- c. Research Only
- d. Other: \_\_\_\_\_

**3. Which organization or person I want my parts or organs to go to:**

- a. I have already signed a written agreement or donor card regarding organ and tissue donation with the following individual or institution:(name) \_\_\_\_\_
- b. I would like my tissues or organs to go to the following individual or institution: \_\_\_\_\_
- c. I authorize my representative to make this decision. \_\_\_\_\_

**7. Funeral and Burial Disposition (Optional):**

My agent has authority to carry out all matters relating to my funeral and burial disposition wishes in accordance with this power of attorney, which is effective upon my death. My wishes are reflected below:

**NOTE:** If you choose whole body donation, cremation is the only burial disposition available.

**Place your initials by those choices you wish to select.**

- \_\_\_\_ Upon my death, I direct my body to be buried. (As opposed to cremated)
- \_\_\_\_ Upon my death, I direct my body to be buried in \_\_\_\_\_ (Optional directive)
- \_\_\_\_ Upon my death, I direct my body to be cremated.
- \_\_\_\_ Upon my death, I direct my body to be cremated with my ashes to be \_\_\_\_\_ (Optional directive)
- \_\_\_\_ My agent will make all funeral and burial disposition decisions. (Optional directive)

**8. About a Living Will**

**NOTE:** If you have a Living Will and a Durable Health Care Power of Attorney, **you must attach** the Living Will to this form. A Living Will form is available on the Attorney General (AG) web site. Initial or put a check mark by box A or B.

- \_\_\_\_ **A.** I have SIGNED AND ATTACHED a completed Living Will in addition to this Durable Health Care Power of Attorney to state decisions I have made about end of life health care if I am unable to communicate or make my own decisions at that time.
- \_\_\_\_ **B.** I have NOT SIGNED a Living Will.

**9. About a Prehospital Medical Care Directive or Do Not Resuscitate Directive:**

**NOTE:** A form for the Prehospital Medical Care Directive or Do Not Resuscitate Directive is available on the AG Web site. Initial or put a check mark by box A or B.

**A. I and my doctor or health care provider HAVE SIGNED a Prehospital Medical Care Directive or a Do Not Resuscitate Directive on Paper with ORANGE background in the event that 911 of Emergency Medical Technicians or hospital emergency personnel are called and my heart or breathing has stopped.**

**B. I have NOT SIGNED a Prehospital Medical Care Directive or Do Not Resuscitate Directive.**

**10. HIPAA WAIVER OF CONFIDENTIALITY FOR MY AGENT/REPRESENTATIVE**

**(Initial)** I intend for my agent to be treated as I would with respect to my rights regarding the use and disclosure of my individually identifiable health information or medical records. This release authority applies to information governed by the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 USC 1320d, 45 CFR 160-164.

**SIGNATURE OR VERIFICATION**

**A.** I am signing this Durable Health Care Power of Attorney as follows:

My Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**B.** I am physically unable to sign this document, so a witness is verifying my desires as follows:

Witness Verification: I believe that this Durable Health Care Power of Attorney accurately expresses the wishes communicated to me by the principal of this document. He/she intends to adopt this Durable Health Care Power of Attorney at this time. He/she is physically unable to sign or mark this document at this time, and I verify that he/she directly indicated to me that the Durable Health Care Power of Attorney expresses his/her wishes and that he/she intends to adopt the Durable Health Care Power of Attorney at this time.

Witness Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**SIGNATURE OF WITNESS OR NOTARY PUBLIC:**

**NOTE:** At least one adult witness OR a Notary Public must witness the signing of this document and then sign it. The witness or Notary Public CANNOT be anyone who is: (a) under the age of 18; (b) related to you by blood, adoption, or marriage; (c) entitled to any part of your estate; (d) appointed as your representative; or (e) involved in providing your health care at the time this form is signed.

- A. Witness:** I certify that I witnessed the signing of this document by the Principal. The person who signed this Durable Health Care Power of Attorney appeared to be of sound mind and under no pressure to make specific choices or sign the document. I understand the requirements of being a witness and I confirm the following:
- I am not currently designated to make medical decisions for this person.
  - I am not directly involved in administering health care to this person.
  - I am not entitled to any portion of this person's estate upon his or her death under a will or by operation of law.
  - I am not related to this person by blood, marriage or adoption.

Witness Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**Notary Public** (NOTE: If a witness signs your form, you DO NOT need a notary to sign):

STATE OF ARIZONA ) ss  
COUNTY OF \_\_\_\_\_)

The undersigned, being a Notary Public certified in Arizona, declares that the person making this Durable Health Care Power of Attorney has dated and signed or marked it in my presence and appears to me to be of sound mind and free from duress. I further declare I am not related to the person signing above by blood, marriage or adoption, or a person designated to make medical decisions on his/her behalf. I am not directly involved in providing health care to the person signing. I am not entitled to any part of his/her estate under a will now existing or by operation of law. In the event the person acknowledging this Durable Health Care Power of Attorney is physically unable to sign or mark this document, I verify that he/she directly indicated to me that this Durable Health Care Power of Attorney expresses his/her wishes and that he/she intends to adopt the Durable Health Care Power of Attorney at this time.

WITNESS MY HAND AND SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

**OPTIONAL:  
STATEMENT THAT YOU HAVE DISCUSSED YOUR  
HEALTH CARE CHOICES FOR THE FUTURE WITH YOUR  
PHYSICIAN**

**NOTE:** Before deciding what health care you want for yourself, you may wish to ask your physician questions regarding treatment alternatives. This statement from your physician is not required by Arizona law. If you do speak with your physician, it is a good idea to have him or her complete this section. Ask your doctor to keep a copy of this form with your medical records.

On this date I reviewed this document with the Principal and discussed any questions regarding the probable medical consequences of the treatment choices provided above. I agree to comply with the provisions of this directive, and I will comply with the health care decisions made by the representative unless a decision violates my conscience. In such case I will promptly disclose my unwillingness to comply and will transfer or try to transfer patient care to another provider who is willing to act in accordance with the representative's direction.

Doctor Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_





OFFICE OF THE ARIZONA ATTORNEY GENERAL  
Mark Brnovich



STATE OF ARIZONA  
DURABLE MENTAL HEALTH CARE POWER OF ATTORNEY

Instructions and Form

**GENERAL INSTRUCTIONS:** Use this Durable Mental Health Care Power of Attorney form if you want to appoint a person to make future mental health care decisions for you if you become incapable of making those decisions for yourself. The decision about whether you are incapable can only be made by an Arizona licensed psychiatrist or psychologist who will evaluate whether you can give informed consent. Be sure you understand the importance of this document. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctor, clergyperson, and a lawyer before you sign this form.

If you decide this is the form you want to use, complete the form. Do not sign this form until your witness or a Notary Public is present to witness the signing. There are more instructions about signing this form on page 3.

**1. Information about me:** (I am called the "Principal")

My Name: \_\_\_\_\_  
My Address: \_\_\_\_\_  
\_\_\_\_\_

My Age: \_\_\_\_\_  
My Date of Birth: \_\_\_\_\_  
My Telephone: \_\_\_\_\_

**2. Selection of my health care representative and alternate:** (Also called an "agent" or "surrogate")

I choose the following person to act as my representative to make mental health care decisions for me:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Home Phone: \_\_\_\_\_  
Work Phone: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_

I choose the following person to act as an alternate representative to make mental health care decisions for me if my first representative is unavailable, unwilling, or unable to make decisions for me:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Home Phone: \_\_\_\_\_  
Work Phone: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_

**3. Mental health treatments that I AUTHORIZE if I am unable to make decisions for myself:**

Here are the mental health treatments I authorize my mental health care representative to make on my behalf if I become incapable of making my own mental health care decisions due to mental or physical illness, injury, disability, or incapacity. If my wishes are not clear from this Durable Mental Health Care Power of Attorney or are not otherwise known to my representative, my representative will, in good faith, act in accordance with my best interests. This appointment is effective unless and until it is revoked by me or by an order of a court. My representative is authorized to do the following which I have initialed or marked:

**DURABLE MENTAL HEALTH CARE POWER OF ATTORNEY (Cont'd)**

- A. About my records:** To receive information regarding mental health treatment that is proposed for me and to receive, review, and consent to disclosure of any of my medical records related to that treatment.
- B. About medications:** To consent to the administration of any medications recommended by my treating physician.
- C. About a structured treatment setting:** To admit me to a structured treatment setting with 24hour-a-day supervision and an intensive treatment program licensed by the Department of Health Services, which is called a "level one" behavioral health facility.
- D. Other:**

**4. Durable Mental health treatments that I expressly DO NOT AUTHORIZE if I am unable to make decisions for myself:** (Explain or write in "None") \_\_\_\_\_

**5. Revocability of this Durable Mental Health Care Power of Attorney:** This Durable Mental Health Care Power of Attorney is made under Arizona law and continues in effect for all who rely upon it except those who have received oral or written notice of its revocation. Further, I want to be able to revoke this Durable Mental Health Care Power of Attorney as follows: (Initial or mark A or B.)

- A.** This Durable Mental Health Care Power of Attorney is IRREVOCABLE if I am unable to give informed consent to mental health treatment.
- B.** This Durable Mental Health Care Power of Attorney is REVOCABLE at all times if I do any of the following:
  - 1.) Make a written revocation of the Durable Mental Health Care Power of Attorney or a written statement to disqualify my representative or agent.
  - 2.) Orally notify my representative or agent or a mental health care provider that I am revoking.
  - 3.) Make a new Durable Mental Health Care Power of Attorney.
  - 4.) Any other act that demonstrates my specific intent to revoke a Durable Mental Health Care Power of Attorney or to disqualify my agent.

**6. Additional information** about my mental health care treatment needs (consider including mental or physical health history, dietary requirements, religious concerns, people to notify and any other matters that you feel are important): \_\_\_\_\_

**HIPPA WAIVER OF CONFIDENTIALITY FOR MY AGENT/REPRESENTATIVE**

\_\_\_\_ (Initial) I intend for my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164.

**SIGNATURE OR VERIFICATION**

**A. I am signing this Durable Mental Health Care Power of Attorney as follows:**

My Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**DURABLE MENTAL HEALTH CARE POWER OF ATTORNEY (Last Page)**

**B. I am physically unable to sign this document, so a witness is verifying my desires as follows:**

**Witness Verification:** I believe that this Durable Mental Health Care Power of Attorney accurately expresses the wishes communicated to me by the Principal of this document. He/she intends to adopt this Durable Mental Health Care Power of Attorney at this time. He/she is physically unable to sign or mark this document at this time. I verify that he/she directly indicated to me that the Durable Mental Health Care Power of Attorney expresses his/her wishes and that he/she intends to adopt the Durable Mental Health Care Power of Attorney at this time.

Witness Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**SIGNATURE OF WITNESS OR NOTARY PUBLIC**

**NOTE:** At least one adult witness OR a Notary Public must witness the signing of this document and then sign it. The witness or Notary Public CANNOT be anyone who is: (a) under the age of 18; (b) related to you by blood, adoption, or marriage; (c) entitled to any part of your estate; (d) appointed as your representative; or (e) involved in providing your health care at the time this document is signed.

**A. Witness:** I affirm that I personally know the person signing this Durable Mental Health Care Power of Attorney and that I witnessed the person sign or acknowledge the person's signature on this document in my presence. I further affirm that he/she appears to be of sound mind and not under duress, fraud, or undue influence. He/she is not related to me by blood, marriage, or adoption and is not a person for whom I directly provide care in a professional capacity. I have not been appointed to make medical decisions on his/her behalf.

Witness Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

**B. Notary Public:** (NOTE: If a witness signs your form, you DO NOT need a notary to sign)

STATE OF ARIZONA ) ss  
COUNTY OF \_\_\_\_\_)

The undersigned, being a Notary Public certified in Arizona, declares that the person making this Durable Mental Health Care Power of Attorney has dated and signed or marked it in my presence and appears to me to be of sound mind and free from duress. I further declare I am not related to the person signing above, by blood, marriage or adoption, or a person designated to make medical decisions on his/her behalf. I am not directly involved in providing care as a professional to the person signing. I am not entitled to any part of his/her estate under a will now existing or by operation of law. In the event the person acknowledging this Durable Mental Health Care Power of Attorney is physically unable to sign or mark this document, I verify that he/she directly indicated to me that the Durable Mental Health Care Power of Attorney expresses his/her wishes and that he/she intends to adopt the Durable Mental Health Care Power of Attorney at this time

WITNESS MY HAND AND SEAL this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public: \_\_\_\_\_ My commission expires: \_\_\_\_\_

**OPTIONAL: REPRESENTATIVE'S ACCEPTANCE OF APPOINTMENT**

I accept this appointment and agree to serve as agent to make mental health treatment decisions for the Principal. I understand that I must act consistently with the wishes of the person I represent as expressed in this Durable Mental Health Care Power of Attorney or, if not expressed, as otherwise known by me. If I do not know the Principal's wishes, I have a duty to act in what I, in good faith, believe to be that person's best interests. I understand that this document gives me the authority to make decisions about mental health treatment only while that person has been determined to be incapacitated which means under Arizona law that a licensed psychiatrist or psychologist has the opinion that the Principal is unable to give informed consent.

Representative Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

OFFICE OF THE ARIZONA ATTORNEY GENERAL  
Mark Brnovich



**LIVING WILL (End of Life Care)  
Instructions and Form**

**GENERAL INSTRUCTIONS:** Use this Living Will form to make decisions now about your medical care if you are ever in a terminal condition, a persistent vegetative state or an irreversible coma. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. It is your written directions to your health care representative if you have one, your family, your physician, and any other person who might be in a position to make medical care decisions for you. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctor, clergy person and a lawyer before you complete and sign this Living Will.

If you decide this is the form you want to use, complete the form. **Do not sign the Living Will until** your witness or a Notary Public is present to watch you sign it. There are further instructions for you about signing on page 2.

**IMPORTANT: If you have a Living Will and a Durable Health Care Power of Attorney, you must attach the Living Will to the Durable Health Care Power of Attorney.**

1. **My information:** (the "Principal")

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Age: \_\_\_\_\_  
Date of birth: \_\_\_\_\_  
Phone: \_\_\_\_\_

2. **My decisions about end of life care:**

**NOTE:** Here are some general statements about choices you have as to health care you want at the end of your life. They are listed in the order provided by Arizona law. You can initial any combination of paragraphs A, B, C, and D. **If you initial Paragraph E, do not initial any other paragraphs.** Read all of the statements carefully before initialing to indicate your choice. You can also write your own statement concerning life-sustaining treatments and other matters relating to your health care at Heading 3 of this form.

\_\_\_\_\_ **A. Comfort Care Only:** If I have a terminal condition I do not want my life to be prolonged, and I do not want life- sustaining treatment, beyond comfort care, that would serve only to artificially delay the moment of my death. (NOTE: "Comfort care" means treatment in an attempt to protect and enhance the quality of life without artificially prolonging life.)

\_\_\_\_\_ **B. Specific Limitations on Medical Treatments I Want:** (NOTE: Initial or mark one or more choices, talk to your doctor about your choices.) If I have a terminal condition, or am in an irreversible coma or a persistent vegetative state that my doctors reasonably believe to be irreversible or incurable, I do want the medical treatment necessary to provide care that would keep me comfortable, but **I do not want the following:**

- \_\_\_\_\_ 1.) Cardiopulmonary resuscitation, for example, the use of drugs, electric shock, and artificial breathing.
- \_\_\_\_\_ 2.) Artificially administered food and fluids.
- \_\_\_\_\_ 3.) To be taken to a hospital if it is at all avoidable.

STATE OF ARIZONA LIVING WILL ("End of Life Care") (Cont'd)

C. Pregnancy: Regardless of any other directions I have given in this Living Will, if I am known to be pregnant I do not want life-sustaining treatment withheld or withdrawn if it is possible that the embryo/fetus will develop to the point of live birth with the continued application of life-sustaining treatment.

D. Treatment Until My Medical Condition is Reasonably Known: Regardless of the directions I have made in this Living Will, I do want the use of all medical care necessary to treat my condition until my doctors reasonably conclude that my condition is terminal or is irreversible and incurable, or I am in a persistent vegetative state.

E. Direction to Prolong My Life: I want my life to be prolonged to the greatest extent possible.

3. Other Statements Or Wishes I Want Followed For End of Life Care:

NOTE: You can attach additional provisions or limitations on medical care that have not been included in this Living Will form. Initial or put a check mark by box A or B below. Be sure to include the attachment if you check B.

- A. I have not attached additional special provisions or limitations about End of Life Care I want.
B. I have attached additional special provisions or limitations about End of Life Care I want.

SIGNATURE VERIFICATION

A. I am signing this Living Will as follows:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

B. I am physically unable to sign this Living Will, so a witness is verifying my desires as follows:

Witness Verification: I believe that this Living Will accurately expresses the wishes communicated to me by the principal of this document. He/she intends to adopt this Living Will at this time. He/she is physically unable to sign or mark this document at this time. I verify that he/she directly indicated to me that the Living Will expresses his/her wishes and that he/she intends to adopt the Living Will at this time.

Witness Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

SIGNATURE OF WITNESS OR NOTARY PUBLIC

NOTE: At least one adult witness OR a Notary Public must witness you signing this document. The witness or Notary Public CANNOT be anyone who is: (a) under the age of 18; (b) related to you by blood, adoption, or marriage; (c) entitled to any part of your estate; (d) appointed as your representative; or (e) involved in providing your health care at the time this document is signed.

A. Witness: I certify that I witnessed the signing of this document by the Principal. The person who signed this Living Will appeared to be of sound mind and under no pressure to make specific choices or sign the document. I understand the requirements of being a witness. I confirm the following:

- I am not currently designated to make medical decisions for this person.
I am not directly involved in administering health care to this person.
I am not entitled to any portion of this person's estate upon his or her death under a will or by operation of law.
I am not related to this person by blood, marriage, or adoption.

Witness Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

**STATE OF ARIZONA LIVING WILL ("End of Life Care") (Last Page)**

**B. Notary Public:** (NOTE: a Notary Public is only required if no witness signed above)

STATE OF ARIZONA ) ss  
COUNTY OF \_\_\_\_\_)

The undersigned, being a Notary Public certified in Arizona, declares that the person making this Living Will has dated and signed or marked it in my presence and appears to me to be of sound mind and free from duress. I further declare I am not related to the person signing above, by blood, marriage or adoption, or a person designated to make medical decisions on his/her behalf. I am not directly involved in providing care as a professional to the person signing. I am not entitled to any part of his/her estate under a will now existing or by operation of law. In the event the person acknowledging this Durable Mental Health Care Power of Attorney is physically unable to sign or mark this document, I verify that he/she directly indicated to me that the Durable Mental Health Care Power of Attorney expresses his/her wishes and that he/she intends to adopt the Durable Mental Health Care Power of Attorney at this time

WITNESS MY HAND AND SEAL this \_ day of \_\_\_\_\_, 20 \_

Notary Public: \_\_\_\_\_ My commission expires: \_\_\_\_\_





# DURABLE POWER OF ATTORNEY



*I like living on my own, but I have some trouble with remembering to set aside money for all my bills. I have my own job and earn my own money, but I could use some help. How can I give someone the ability to help me with my finances without giving away my independence?"*

## Who needs a durable power of attorney?

An individual who is of sound mind (legally competent) and who wants to designate someone else to act as his or her agent, to make financial decisions on behalf of the person, or principal, could benefit from a durable power of attorney.

### IMPORTANT NOTE

**The advantage of this legal option is that it does not require court intervention and is less expensive and less complicated than a conservatorship. However, because there is no court oversight it is extremely important that the *agent* be someone who can be trusted to care for the *principal's* needs and to manage the money and assets wisely.**

## Who may be designated as an “agent” under the durable power of attorney?

An agent should be someone who can make the important financial decisions that the principal gives the agent the authority to make. An agent could be a spouse, family member, friend, or any other person who will act in the principal's best interest.

## What does an agent under the durable power of attorney do?

A durable power of attorney document is a document that allows one person, the principal, to give someone else, the agent, the authority to handle his or her financial affairs now, or at some designated time in the future. For a durable power of attorney to be valid, the principal who designates the agent must be able to understand and give consent for another person to handle his or her financial affairs at the time the power of attorney is signed. The durable power of attorney may specify what financial decisions the principal wants the agent to make. For example, the power of attorney could be limited to paying bills, or could be permitted to handle all financial decisions for the principal. The power of attorney also indicates whether it is effective immediately or only upon incapacity of the principal.

Unlike a conservatorship, there is no court oversight of a durable power of attorney. This means the agent does not have to report expenditures to the court on a regular basis. However, an agent may be criminally prosecuted if he or she does not use the money or property for the benefit of the principal.

## **How is a durable power of attorney made?**

To be effective, a durable power of attorney form must be completed and signed by the principal, witnessed and notarized. If a power of attorney is only needed for a person's finances, the individual's bank or financial institution may have a durable power of attorney form available for clients. Be sure to check with your bank or financial institution for specific requirements for designating a power of attorney to be sure that you meet the bank requirements.

Durable powers of attorney can take many forms and can cover a variety of legal decision making powers; it may be worthwhile to consult an attorney to help make sure that whatever document you use meets all legal requirements for the purposes you intend.

## **How is a durable power of attorney changed or ended?**

The document that creates a power of attorney may specify when it ends. The principal may also end the power of attorney by tearing up the original document or by signing a document that ends it. This form is called a revocation document. The principal may end the power of attorney at any time so long as the individual is not incapacitated. If the principal becomes incapacitated, any interested person who believes the agent is not acting in the principal's best interest may contact the county attorney regarding the matter.

## **What happens if the person appointed to act as the durable power of attorney becomes unavailable, unwilling or unable to serve as the power of attorney?**

A person who appoints a durable power of attorney can choose a new power of attorney or revoke the power of attorney at any time. If a power of attorney becomes unavailable, unwilling or unable to make decisions, the person who appointed the power of attorney can appoint a new one.

Like the durable health care power of attorney and the durable mental health care power of attorney, a person who appoints this power of attorney can also designate an "alternative representative" who can step in as the decision maker when the POA is unavailable, unwilling, or unable to make the decisions. If you want to be sure that you have a back-up power of attorney, be sure to communicate that to any lawyer helping you prepare those documents or list them on any forms you prepare.

## CONSERVATORSHIP



*“My brother was involved in a car accident and sustained a serious brain injury that resulted in permanent disability. As a result of the accident, he received a large settlement, but because of his injury, I am concerned that he will not be able to manage this settlement, and I want to make sure that his needs are taken care of. What can I do to help?”*

### Who needs a conservatorship?

Individuals who are not capable of managing their finances and who own property or have income or other assets may benefit from a court-appointed conservator. A conservator acts as a person’s financial manager, appointed to oversee all the person’s assets and property. *If a person’s only income is from SSI or SSDI, a representative payee designation may be more appropriate than a conservatorship.*

#### IMPORTANT NOTE

**As stated in the introduction, this Manual is not intended as a substitute for legal advice. The laws regarding conservatorships are complex and it is recommended that for questions about this area of the law, you consult a private attorney.**

**More than one type of legal decision making authority can exist at a time. For example, a conservatorship may be obtained at the same time as a guardianship and the same person could act as both.**

**Having both a guardian and a conservator is only advised where the person is deemed incompetent and has significant assets.**

### Who can be appointed as a conservator?

Arizona law requires that a person appointed as a conservator meet certain standards. The standards include being free of any felony convictions or other convictions involving theft or other disqualifying convictions. Individuals to be appointed as conservators must have completed training required by the Arizona Supreme Court on handling the assets of another.

Arizona law gives priority to the following individuals or agencies when a conservator is appointed:

1. A conservator, guardian of property or other fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides.
2. An individual or corporation named by the protected person if the protected person is at least fourteen years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
3. The person named to make financial decisions in the protected person's most recent durable power of attorney.
4. The spouse of the protected person.
5. An adult child of the protected person.
6. A parent of the protected person or a person named in the parent's will, if deceased.
7. Any relative of the protected person with whom the protected person has resided for more than six months before filing paperwork with the court to ask that a conservator be appointed.
8. The nominee of a person who is caring for or paying benefits to the protected person.
9. The spouse of a veteran or the minor child of a veteran, or the department of veterans services.
10. A licensed fiduciary other than a public fiduciary.
11. A licensed public fiduciary.

NOTE - Unless the protected person's money will be in a "restricted" or "court-controlled" bank account, the conservator must obtain a bond. A court-controlled bank account is an account set up so that no funds can be released to anyone without a court order. A bond is like a special insurance policy if the conservator stole money or grossly mismanaged the protected person's money or property. Often, it is difficult for family members to obtain the required bond.

## **What does a conservator do?**

A conservator manages the protected person's money and property. A conservator must take responsibility for determining what money and property a protected person has, where the money and property is located, what measures are needed to preserve certain assets, and how long these assets can be expected to maintain the protected person. If the protected person owns a house, the conservator must be certain that the house is insured and property taxes are current, and that the protected person is able to afford upkeep on the house. The conservator pays the protected person's bills with the protected person's money. The conservator may need to make investment decisions on behalf of the protected person.

Unless the protected person's assets are in a "restricted" account, the conservator must file with the court, as well as share with all interested persons an accounting that reflects all transactions made on behalf of the protected person. The court accepts accountings only on certain approved forms, which are available on the probate court's website for the county where the conservatorship originated.

## How is a conservator appointed?

A petition is filed with the court requesting appointment of a conservator. Petition may be filed by the person to be protected or an interested person. Once a hearing is set a notice must be personally served to the person to be protected of the time and place of the hearing. An attorney will be appointed to represent the person to be protected, unless he or she already has one. If the individual to be protected has a mental illness or disability, the court will appoint an investigator to interview this person and request appropriate medical or psychological evaluations to make sure that a conservatorship is appropriate. Written reports will be submitted to the court and a hearing will be held. If the court finds the basis for a conservatorship or any other protective order has been established, the court will appoint a conservator or enter appropriate protective orders as necessary.

## How can a conservatorship be terminated or changed?

Because a conservatorship is a legal relationship, it must be managed through the court. A petition may be filed at any time by the protected person or other interested parties explaining why a termination or change in conservator is appropriate.

## What are the costs associated with conservatorship?

If the person requesting the conservatorship does not hire an attorney, the only costs are usually the court filing fee (as of October 2016, the base fee for the state of Arizona is \$153, but each county may assign additional fees for filing, which costs \$268 in Maricopa County and \$193 in Pima County) and service of process/delivery of the documents to the person with a disability (between \$30–\$100 depending on the location of the potential protected person). There is also an investigation fee. In Pima County, the fee varies based on the investigator; Maricopa County residents will pay a \$400 probate court investigation fee.

If the court finds that the person to be protected is not in need of conservatorship, the court can charge the individual bringing the conservatorship petition with any costs related to services of a court-appointed attorney for the person to be protected. Alternatively, if the court finds the person is in need of conservatorship, the costs associated with setting up the conservatorship, such as fees for the protected person's attorney or other persons appointed by the court to evaluate the protected person, will come out of the protected person's money or a court fund.

Attorney's fees will vary for performing a conservatorship and may depend on the nature and complexity of the issues. A conservatorship requires regular annual accountings to the court. If the accountings are complex, the assistance of an attorney or accountant may be necessary. Additionally, *Maricopa County charges a fee of \$300* for reviewing and approving the annual accounting.

## **What happens if the person appointed to act as the conservator becomes unavailable, unwilling or unable to serve as conservator?**

Because the appointment of a conservator is managed by the court, only the court can appoint a new conservator to serve in that position. When a conservatorship is initially set up, a back-up or alternative conservator can be requested, but ultimately that decision is up to the court.

## GUARDIANSHIP



*“My nephew is an adult with a developmental disability. He lives in a group home and does many things independently, but recently he has been taken advantage of, and he entered into a contract that was not in his best interest. I am worried that a power of attorney is not enough to protect him, and I feel helpless. What else can I do?”*

### Who needs guardianship?

Individuals who cannot make or communicate reasonable decisions about their basic needs and care and do not have a decision-maker appointed through a health care power of attorney who is able and willing to assist likely need a guardian. Minors who have no parents or other legal decision makers need a guardian. Adults with developmental disabilities that prevent them from living without the assistance of another to direct them to dress, eat meals, and walk to the right bus stop to school, work or day treatment may need a guardian. Guardians are frequently required for those who have been diagnosed with dementia, usually in old age, and cannot remember loved ones, where they live, or how to take their medication.

### Who decides whether a guardianship is needed?

When a person turns 18 years old, Arizona law assumes that they may make their own decisions and do not need a guardian. However, if a loved one believes that a guardianship is necessary, they may file paperwork called a petition. A petition asks the probate court to determine whether an individual needs a guardian. In order for a guardian to be appointed, the court must find that the person in question lacks capacity. The court relies upon the report of a medical examiner and an investigator who is appointed by the court in reaching its decision. A person determined to require the assistance of a guardian is called a “ward.” Legal guardians have legal authority to make decisions for a client regardless of the client’s wishes. Arizona Rehabilitation Services (AzRSA) follow directions and decisions provided by a legal guardian or court-appointed representative over those provided by a client when the two are in a conflict.

The court may appoint a limited guardian or a full guardian. In Arizona, before asking the court to appoint a guardian, individuals must explore alternatives to a full guardianship for the ward. These alternatives may include one or more of the alternatives listed in this guide, such as a power of attorney. If appointing a limited guardian is possible, wards can keep more of their decision-making rights.

- **Limited Guardian:** A guardian appointed to make decisions about an individual's basic care and needs in certain limited areas, such as health care, where she lives, or the ability to marry. If a guardian is appointed just to oversee a ward's medical care, the ward would still be able to make other decisions without obtaining the guardian's consent. A person under a limited guardianship may retain the right to vote and the privilege to drive.
- **Full Guardian:** A guardian authorized to make all life decisions for the ward, including making decisions about the individual's living arrangements, transportation, education or day programs, social activities, medical care, and right to marry and association with others.

A guardian must submit an annual written report to the court, including information on the ward's health and living conditions. The guardian must include in this report evidence of the ward's most recent contact with a physician within that year at a minimum. Such evidence might include a copy of a doctor's notes from a visit or a discharge summary of the ward if the person has been in the hospital.

## IMPORTANT NOTE

**As stated in the introduction, this Manual is not intended as a substitute for legal advice. The laws regarding guardianships are complex and it is recommended that for questions about this area of the law, you consult a private attorney.**

**Guardianship requires court intervention, time and expense, and seriously curtails a person's independence. Persons under a full guardianship cannot vote, drive a vehicle, or enter into a contract. Under a full guardianship, a person needs the guardian's consent to make many decisions, such as where to live, whether they can marry, and even when to seek medical help.**

**Guardianship should only be considered as a last resort when other legal options such as representative payee, power of attorney, or conservatorship are not enough to ensure the person with a disability will be safe and able to access the services he or she needs.**



## Who can be appointed as guardian?

Arizona law requires that a person appointed as a guardian must meet certain standards. The standards include being free of any felony convictions or other convictions, such as theft. The law also requires that, by the time of appointment, a guardian must have completed a certain minimum amount of training provided by the Arizona Supreme Court. The training covers information about looking after another person.

Arizona law creates a list of individuals or agencies who may be appointed as guardian:

1. A guardian or conservator of the person or a fiduciary who is appointed or recognized by the appropriate court of any jurisdiction in which the incapacitated person resides.
2. An individual or corporation nominated by the incapacitated person if the person has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
3. The person nominated to serve as guardian in the incapacitated person's most recent durable power of attorney or health care power of attorney.
4. The spouse of the incapacitated person.
5. An adult child of the incapacitated person.
6. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
7. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months before the filing of the petition.
8. The nominee of a person who is caring for or paying benefits to the incapacitated person.
9. The spouse of a veteran or the minor child of a veteran, or the department of veterans services.
10. A licensed fiduciary other than a public fiduciary.
11. A licensed public fiduciary.

Whenever possible, a guardian in Arizona should be someone who can make important life decisions for a ward using what courts call substituted judgment. Substituted judgment means that the guardian's decisions are guided by the ward's prior acts, writings, and statements. In other words, exercising substituted judgment means guardians do their best to step into the ward's shoes and attempt to make decisions as the ward would.

For example, a guardian is appointed for a young woman with an intellectual disability who has worked at a hotel as a housekeeping assistant for five years. She loves her job. Her supervisor and co-workers treat her fairly. She has earned raises each year. Her guardian wants to place her in a sheltered workshop because he believes she will be better protected from being fired or laid off in the future.

The ward does not want to quit her job and go to a sheltered workshop because she likes riding the bus to work and being in the community. Using substituted judgment, the guardian should permit the ward to continue working at the resort. She is being treated fairly and earning more than she could at the workshop. There is no reason to believe that she is being treated unfairly by her current employer.

If the ward's preferences cannot be determined, a guardian should be someone who can make important life decisions for a ward with the best interests of the ward in mind. Even when using the "best interest" standard, a guardian should strive to maximize the ward's ability to make choices whenever possible, and embrace the least restrictive options in the community for housing, social interaction and employment.

## **What does a guardian do?**

A guardian has duties and responsibilities similar to what would be expected of a parent. A guardian oversees a ward's living situation, medical care, recreation and social outlets in accord with the ward's wishes as often as possible. The guardian is responsible for ensuring the ward lives in the least restrictive appropriate environment.

## **Does a guardian have authority over those who are in contact with the ward?**

Yes. Beginning December 31, 2016, an Arizona law will go into effect that spells out the guardian's authority about with whom wards may have significant relationships or contact.

The new law addresses which factors the guardian should consider when deciding what kind of contact the ward can have with others. This law also includes how an interested party may go to court to compel the guardian to allow contact with a ward. The factors spelled out in this new statute are similar to factors considered in child custody matters.

When making a decision about the ward's contact with another individual, the guardian must consider, among other factors:

- the wishes of the ward if the ward has sufficient mental capacity to choose,
- the mental and physical health of the ward,
- the person with whom the ward wishes to have contact and whether the person with whom contact is requested has committed an act of domestic violence, child abuse, or abused drugs or alcohol.

This new law also requires that within 24 hours of learning of the ward's death or hospitalization, a guardian must notify all of the ward's family members of the death, including the ward's spouse, parents, adult siblings and adult children.

## How long does it take for a guardian to be appointed?

Usually a hearing is scheduled within four or five weeks of filing a complete petition to appoint a guardian. The guardian will be appointed at that hearing if all necessary paperwork is submitted, the medical examiner and investigator support the appointment of a guardian, and there is no objection.

- **A temporary or emergency guardian:** A guardian may be appointed immediately during a hearing scheduled very quickly, without the normal notice period, by a court in certain circumstances that present harm or imminent harm for the ward. An emergency guardian may be appointed in as few as 24 hours. An attorney will be appointed to represent the person for whom guardianship is being considered. In all but the most dire situations, the court will require a report from a medical professional (a physician, registered nurse or psychologist) that describes the medical reason that the ward is unable to make reasonable decisions for herself. Typically, a hearing for the appointment of a 'permanent' guardian will be scheduled within 30 to 90 days after the appointment of a temporary or emergency guardian.

## When should a guardian be appointed?

If you are trying to determine whether a guardianship might be appropriate for someone you know, think about the following:

- Has the individual demonstrated that he or she makes decisions that put him/her at imminent risk or harm? Has she/he been harmed by exercising poor judgment?
- Is the individual being denied health care or other services because providers are concerned about the individual's ability to understand his or her treatment?
- Even after getting advice or help from family members, friends or caregivers, is the individual unable to make important decisions about where to live, how to get a job, or other services?
- Have treatment providers suggested that the individual does not have the capacity to make decisions?

For individuals under 18 whose disabilities are so significant that they are unable to make reasonable decisions as they approach age 18 (the age of 'majority'), a guardianship petition may be filed when they reach 17 years and six months. The petitioner may ask that the guardianship order take effect on the minor's eighteenth birthday. Along with the petition, the petitioner may provide a report of an evaluation of the minor by a physician, psychologist or registered nurse that meets the court's requirements, and if the evaluation was conducted within six months after the date the petition is filed with the court, the petitioner may ask in the petition that the court accept this report rather than ordering any additional evaluations.

## How is a guardian appointed?

Because a guardianship significantly reduces a person's ability to make decisions for him or herself, the process to appoint a guardian requires a court determination that clear and convincing evidence shows that a guardianship relationship is appropriate. Any person may initiate the appointment of a guardian by filing a petition with the superior court in the county where the potential ward lives. After receiving the petition, the court will set a hearing date to make its determination about the guardianship. Unless the potential ward is already represented by an attorney, the court will appoint an attorney to represent the person at the hearing. The court will also appoint a court investigator to interview the potential ward and guardian, and to visit the place where the ward is living. In addition, a doctor, psychologist or registered nurse will be appointed by the court to examine the ward. These experts will submit written reports to the court, and a hearing will be conducted to determine whether a guardianship is appropriate. *See Arizona State Legislature's Home Page for a list of the guardianship state laws, available at <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=14>*

## How is guardianship terminated or changed?

A change or substitution of guardian requires that a petition be filed by the ward or any person interested in the ward's welfare, or on the court's own initiative, and must be found by the court to be in the ward's best interest. An acting guardian can be replaced even if she/he has done nothing wrong so long as the court deems the change to be in the ward's best interest. Just as the court considers input from the court-appointed investigator when initially appointing a guardian, the court may ask for the input of an investigator in determining what is in the ward's best interest when a change of guardian is sought.

NOTE – The ward or guardian must be careful about asking for a change of guardian sooner than one year after the ward was found to be incapacitated. The court prohibits an “early” petition for change of guardian “unless the court permits it to be made on the basis of affidavits there is reason to believe the current guardian will endanger the ward's physical, mental or emotional health if not substituted.” *See Arizona State Legislature's Home Page for a list of the guardianship state laws, available at <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=14>*

A ward may also petition the court at any time for termination of the guardianship. A guardian is obligated to promote the least restrictive alternative for a ward whose capacity has been restored, and should therefore seek to terminate guardianship if the ward can again make reasonable decisions about her/his person. While the guardianship statutes give little guidance, it is wise to assume the court would require a recent medical report regarding the ward's improved ability to make decisions about her or his person before terminating a guardianship.

NOTE – The guardianship statute tells us that “an interested person, other than the guardian or ward, shall not file a petition for adjudication that the ward is no longer incapacitated earlier than one year after the order adjudicating incapacity was entered unless the court permits it to be made on the basis of affidavits that there is reason to believe that the ward is no longer incapacitated.” *See Arizona State Legislature's Home Page for a list of the guardianship state laws, available at <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=14>*

## **What are the costs associated with guardianship?**

If the person requests the guardianship without an attorney, the out-of-pocket costs include the court filing fee (as of October 2016, the base fee for the state of Arizona is \$153, but each county may assign additional fees for filing, which costs \$268 in Maricopa County, and \$193 in Pima County) and the service of process/delivery of documents to the person who will be under guardianship (between \$30–\$100 depending on the location of the potential protected person). Maricopa County residents will also pay a \$400 probate court investigation fee. If the court finds that the person with a disability is not in need of a guardian, it may assess the costs of the court-appointed attorney for the person with the disability to the individual bringing the guardianship petition.

If the court finds the person is in need of guardianship, the costs associated with the guardianship, such as fees for the ward's attorney or other persons appointed by the court to evaluate the ward, will come out of the ward's money or a court fund. Attorney's fees for performing a guardianship will vary depending on the nature and complexity of the issues. For example, if the guardianship petition is contested, a trial may result in considerable cost to all parties. In many cases, a less restrictive, less costly, and less complicated option is available.

## **What if the person who needs a guardianship is not a U.S. citizen?**

Arizona permits a person to become a guardian of a foreign citizen if the person who requires guardianship is under 21 years old and has either a temporary visa or is a legal permanent resident of the United States.

## **What happens if the person appointed to act as the guardian becomes unavailable, unwilling or unable to serve as guardian?**

Because guardianship requires court intervention, only the court would be able to appoint a new guardian for a person. When a guardianship is initially set up, a back-up or alternative guardian can be requested, but ultimately that decision is up to the court.

## GUARDIANSHIP IN INDIAN COUNTRY



*“I believe that a guardianship is the most appropriate legal option for my son, but I live on a reservation. How do I go about initiating a guardianship that will be effective on the reservation?”*

This section will focus on guardianships only. Most of the other legal options described in this manual work the same way on tribal lands. If a less restrictive option is available and appropriate for your situation, it is worthwhile to consider that first.

### Where do I go to get a guardianship?

In order for a court to issue an enforceable order, it must have jurisdiction or authority over the people involved in the case and the subject of the case. Typically, when a person lives on a reservation, the tribe’s courts will have jurisdiction over the issues that arise in that area. Because of the tribe’s sovereignty, these tribal courts have jurisdiction over family matters, including guardianships. Even if a state court will issue an order of guardianship, it may be considered unenforceable since the state court may not have proper jurisdiction.

#### IMPORTANT NOTE

**It is important to respect the sovereignty of individual tribal communities. If an individual with a disability lives on a reservation, the state court does not have jurisdiction and cannot issue a valid order of guardianship. If a tribe does not have statute or code, then families should consider the alternatives outlined in other parts of this manual, such as representative payee or power of attorney.**

### How do I get a guardianship in tribal court?

Every tribe in Arizona has sovereign authority over its internal affairs. The tribe has the authority to make decisions about how its community is governed and how it decides the issues facing tribal members. Arizona has 21 federally recognized tribes and each has its own court system and laws. How a person obtains a guardianship depends on where the person lives. Although each tribe may have different laws, there are some common aspects to the guardianship process.

Generally, the tribe will require that a petition be filed with the court. The person filing the petition must be a legal adult—at least 18 years old. Some tribes, like the Fort McDowell Yavapai community, require that the individual filing the petition be a member of the tribe. Most of the tribes that have a guardianship code include requirements similar to those outlined in this manual’s section on guardianship.

Many tribes have similar standards for determining whether an individual needs a guardian. Typically, the threshold is whether or not an individual is unable to care for him or herself and his or her property.

The Fort McDowell Yavapai community also requires a finding that the individual have an “unsound mind.” The White Mountain Apache Tribe adds that the individual may also be “likely to be deceived by artful and designing persons if a guardian were not appointed.” The Colorado River Indian Tribe specifies that the inability to manage property or care for him or herself is caused “by the reason of infirmities of aging, developmental disabilities, or other like incapacities.” Because different tribes have written the code in different ways, it is important to look at the specific code governing the specific tribe involved.

## **Which tribes have guardianship codes?**

- Ak-Chin Indian Community
- Colorado River Indian Tribes of the Colorado River Indian Reservation
- Fort McDowell Yavapai Nation
- Havasupai Tribe of the Havasupai Reservation
- Hopi Tribe of Arizona
- Pascua Yaqui Tribe of Arizona
- Fort Yuma Quechan Tribe
- Salt River Pima-Maricopa Indian Community
- Tohono O’odham Nation of Arizona
- White Mountain Apache Tribe of the Fort Apache Reservation
- Navajo Nation

Some tribes have elected to follow state law if they do not have a tribal law to address a specific issue or if it does not conflict with any other tribal law.

- Fort Mojave Indian Tribe
- Gila River Indian Community
- Hualapai Indian Tribe of the Hualapai Indian Tribe Reservation
- Yavapai Prescott Tribe of the Yavapai Reservation

Although the tribe allows the use of the state law, the tribal court still has jurisdiction. An individual seeking a guardianship in these communities uses the process outlined in the guardianship section of this manual, but files the papers in the community's tribal court.

### **What resources are available?**

If a person lives in a tribal community and is a member of that community, consult with the local legal services office or tribal court to see if they have a copy of the law and any forms that can be used. The person should also consider the other options outlined in this manual.



## TRUSTS



*“Our son loves going to Diamondback games and I want to make sure that he is always able to attend the games in the Southwest. If we give the money for the games and travel directly to our son, he will become ineligible for his Social Security benefits. Is there anything we can do to protect his benefits and still send him to see his favorite team?”*

### Who needs a specialized trust?

A person who wants to maintain financial eligibility for government programs such as Social Security and who also has funds available from some other source may benefit from a specialized trust. Because eligibility for certain government programs depends on a person's income, a trust allows for certain monies to be set aside for a person, or the beneficiary of the trust, to be used for certain purposes. The money that goes into the trust could be from an inheritance, settlement or money that a beneficiary's friend or family member wants to set aside on his or her behalf.

#### IMPORTANT NOTE

**As stated in the introduction, this Manual is not intended as a substitute for legal advice. The laws regarding trusts are complex and it is recommended that for questions about this area of the law, you consult a private attorney.**

**Unlike the other legal options discussed, a trust is not something that families can create by following instructions in a self-help manual like this. Establishing a special needs trust requires the expertise of an attorney who specializes in this area of the law because creating a trust that works for an individual's specific circumstances requires a professional who understands the trust options that are available.**

### What does a specialized trust do?

A specialized trust includes parameters about what the trust money can and cannot be spent on. By including these limitations, the trust allows for the beneficiary of the trust to receive disbursements from the trust for certain purposes without jeopardizing a beneficiary's eligibility for certain government programs.

## **How is a special needs trust established?**

There are a wide variety of options available for persons who want to create a trust that preserves a beneficiary's ability to maintain eligibility for certain programs. It is important to seek the expertise of a specialized attorney. Along with the Arizona Center for Disability Law, some of the resources listed in Appendix C may be able to provide referrals to attorneys who are experienced in preparing this type of specialized trust.

## ABLE ACCOUNTS



*“I would like to save some money for the future, but I’m afraid to lose my benefits. I can’t hold more than \$2,000 right now without a penalty. What options do I have?”*

### What is an ABLE account and when can I open one?

The ABLE (Achieving Better Life Experience) Act is federal legislation that allows persons with disabilities (recognized by age 26) and their family members to create tax-free savings accounts called ABLE accounts. The Act came into existence in 2014 and several states immediately established programs to administer ABLE accounts. Arizona’s version of the ABLE Act was signed into law in May 2016 and should become effective no later than July 2017.

ABLE accounts, unlike regular bank accounts, may hold more than \$2,000 and will not disrupt eligibility for public benefits for persons with disabilities. In addition, it appears that ABLE accounts for persons with disabilities, even those who receive ‘need-based’ benefits such as SSI and ALTCS, may be used for such things as housing, personal support services, medical care, assistive technology, and transportation. So ABLE accounts offer greater flexibility than Special Needs Trusts. ABLE accounts should be less expensive to establish and easier to manage than Special Needs Trusts.

However, ABLE accounts have limitations, particularly for those catastrophically injured who receive large personal injury settlements or those who may inherit a large sum. For example, an ABLE account may be funded at a rate of \$14,000 per year. So, one receiving settlement proceeds or an inheritance in excess of \$14,000 will likely still need to consider creating a Special Needs Trust to hold the excess funds. Also, persons with disabilities receiving SSI and Medicaid may have no more than \$100,000 in an ABLE account without experiencing a reduction in the need-based benefits received. In addition, there can be only one ABLE account for any given individual with a disability. And, as in the case of self-settled special needs trusts, any ABLE account balance left upon the account beneficiary’s death will likely go the state Medicaid agency—the Arizona Health Care Cost Containment System in Arizona.

Once ABLE accounts are available in Arizona, persons with disabilities who receive need-based benefits will have a valuable resource never before available—the ability to have a bank account with a balance over \$2,000 that can be used relatively freely. ABLE accounts are an important addition to Special Needs Trusts for persons with disabilities and their families.

An ABLE account may be established for an Arizona resident in another state so long as that state accepts ‘foreign’ accounts. A caution: As with many decisions related to how the funds of persons with disabilities may be used, it is always wise to first check with AHCCCS before opening an ABLE account out of state for an Arizona resident.

# APPENDIX A

## ARIZONA PUBLIC FIDUCIARIES

<p><b>Apache County</b>            Patricia Hall            75 W. Cleveland, 2nd Floor            St. Johns, AZ 85936            (928) 337-7627</p>	<p><b>Pinal County</b>            Joan Sacramento            971 N. Jason Lopez Cir.            Florence, AZ 85132            (520) 866-7252</p>	<p><b>Mohave County</b>            Rashida Suminski            700 W. Beale St.            Kingman, AZ 86402            (928) 718-4959</p>
<p><b>Greenlee County</b>            Nora Garza            223 Fifth St.            Clifton, AZ 85533            (928) 865-2323</p>	<p><b>Coconino County</b>            J.R. Rittenhouse            2625 N. King St., 2nd Fl.            Flagstaff, AZ 86004            (928) 679-7441</p>	<p><b>Yavapai County</b>            Pamela E. Bensmiller            1015 Fair St. Rm.326            Prescott, AZ 86303            (928) 771-3153</p>
<p><b>Pima County</b>            Philip H. Grant            32 N. Stone Ave., 4th Floor            Tucson, AZ 85701            (520) 724-5454</p>	<p><b>Maricopa County</b>            Catherine Robbins            222 N. Central Ave., Ste 4100            Phoenix, AZ 85004            (602) 506-5801</p>	<p><b>Graham County</b>            Sherrie Lines            820 W. Main St.            Safford, AZ 85546            (928) 428-4441</p>
<p><b>Cochise County</b>            Vicki Haviland            4 Ledge Ave.            Bisbee, AZ 85603            (520) 432-9660</p>	<p><b>Santa Cruz County</b>            Rita Luz Ashford            2150 N. Congress Dr.            Nogales, AZ 85621            (520) 375-7892</p>	<p><b>Navajo County</b>            Sherry Reed            100 E. Code Talkers Dr.            Holbrook, AZ 86025            (928) 524-4353</p>
<p><b>La Paz County</b>            Vivian Hartless            1105 W. 14th St.            Parker, AZ 85344            (928) 669-6163</p>	<p><b>Gila County</b>            Tiffany Poarch            5515 S. Apache Ave., Ste. 800            Globe, AZ 85501            (928) 425-3149</p>	<p><b>Yuma County</b>            Candy Wheeler-Ruby            3007 S. Pacific Ave.            Yuma, AZ 85365            (928) 373-1145</p>

## APPENDIX B

### COUNTY RESOURCES FOR GUARDIANSHIP FORM

County	What form is used?	Where do I find forms?
<b>Apache</b>	Modified* Maricopa County forms	<a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a> <a href="http://www.superiorcourt.maricopa.gov">www.superiorcourt.maricopa.gov</a> Apache County Clerk of Court: (928) 337-7550
<b>Cochise</b>	Modified* Maricopa or other Arizona county forms	<a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a> <a href="http://www.superiorcourt.maricopa.gov">www.superiorcourt.maricopa.gov</a> Cochise County Clerk of Court: (520) 432-8601
<b>Coconino</b>	Coconino County forms	<a href="http://www.coconino.az.gov">www.coconino.az.gov</a> <a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a> Coconino County Clerk of Court: (928) 679-7600
<b>Gila</b>	Modified* Maricopa County forms	<a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a> Gila County Clerk of Court: (928) 402-8866
<b>Graham</b>	Graham County forms	<a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a> Graham County Clerk of Court: (928) 428-3100
<b>Greenlee</b>	Modified* Maricopa or other Arizona county forms, modified to “Greenlee County”	<a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a> <a href="http://www.superiorcourt.maricopa.gov">www.superiorcourt.maricopa.gov</a> Greenlee County Clerk of Court: (928) 865-4242
<b>La Paz</b>	Modified* Maricopa County forms	<a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a> <a href="http://www.superiorcourt.maricopa.gov">www.superiorcourt.maricopa.gov</a> La Paz County Clerk of Court: (928) 669-6131
<b>Maricopa</b>	Maricopa County forms	<a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a> <a href="http://www.superiorcourt.maricopa.gov">www.superiorcourt.maricopa.gov</a> (court forms) Maricopa County Clerk of Court: (602) 372-5375 Maricopa County Bar Association: (602) 257-4200
<b>Mohave</b>	Mohave County forms	<a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a> <a href="http://www.mohavecourts.com">www.mohavecourts.com</a> Mohave County Clerk of Court: (928) 753-0713

County	What form is used?	Where do I find forms?
<b>Navajo</b>	Modified* Pima or Maricopa County forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx www.superiorcourt.maricopa.gov Navajo County Clerk of Court: (928) 524-4188
<b>Pima</b>	Pima County forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx http://www.sc.pima.gov Pima County Clerk of Court: (520) 724-3201 Pima County Bar Association: 177 N. Church Ave., Tucson (520) 623-8258
<b>Pinal</b>	Pinal County forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx http://www.coscpinalcountyaz.gov/forms.html Pinal County Clerk of Court: (520) 866-5300
<b>Santa Cruz</b>	Modified* Pima or Maricopa County forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx www.superiorcourt.maricopa.gov Santa Cruz County Clerk of Court: (520) 375-7700
<b>Yavapai</b>	Yavapai County forms	http://courts.yavapai.us/selfservicecenter/ Yavapai County Clerk of Court: (928) 771-3312 Verde Valley Office: (928) 567-7741
<b>Yuma</b>	Modified* Maricopa County form	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx www.superiorcourt.maricopa.gov Yuma County Clerk of Court: (928) 817-4222

Forms can also be obtained at your Clerk of Superior Court's office, and may be available at your area's legal aid office (CLS, SALA, or DNA People's Legal Services).  
See Resource List for contact information.

***\*Modified: If online form allows, replace "Maricopa" or "Pima" with your county, and modify otherwise as appropriate. If you are not able to modify form online, print the form, cross out the county, and write in the proper county for your document.***

# APPENDIX C

## Additional Resources

The following sources may be useful regarding various options covered in this manual. You may wish to explore these resources for additional information about your specific needs. This information is current as of the publication date of this manual. The agencies are listed for information and reference purposes, and are not specifically endorsed by the publishers of this manual.

Resource	Website/Contact Information
<b>Above and Beyond Representative Payee Service (Tucson)</b>	Phone: (520) 903-1733
<b>Area Agency on Aging (Region 1) (Phoenix)*</b> Information and referral services for issues on guardianship call Senior HELP LINE (602) 264-HELP (4357). Check website for other information or services available. *Area Agencies on Aging have offices throughout the state, as well. Visit the “Disability Resources” link at <a href="http://www.azdes.gov">www.azdes.gov</a> for further information on your area’s office.	<a href="http://www.aaaphx.org">www.aaaphx.org</a> Phone: (602) 264-2255 Toll Free: (888) 783-7500
<b>ARC of Arizona</b> Advocates for the rights and full community participation for all individuals with developmental and intellectual disabilities.	<a href="http://www.arcarizona.org">www.arcarizona.org</a> Phone: (602) 234-2721 <a href="mailto:arc@arcarizona.org">arc@arcarizona.org</a> (voice message system)
<b>Arizona Advance Directive Registry</b> This website, provided by the Arizona Secretary of State, is designed to provide information, registration and free secure storage of a person’s advance directives, i.e., living will, medical power of attorney or mental health power of attorney.	<a href="http://www.azsos.gov/services/advanced-directives">www.azsos.gov/services/advanced-directives</a> Phone: (602) 542-6187 Toll free: (800) 458-5842
<b>Arizona Attorney General’s Office</b> This website provides valuable information concerning life planning—explanations, videos, FAQs and documents that can be viewed, downloaded, or requested. The forms are identical to those provided as examples in this manual.	<a href="http://www.azag.gov/seniors/life-care-planning">www.azag.gov/seniors/life-care-planning</a> Phone: (602) 542-2123 Toll Free: (800) 352-8431 <a href="mailto:resourcecenter@az.gov">resourcecenter@az.gov</a>
<b>Ability360 (Phoenix area)</b> Center focused on programs that empower individuals with disabilities in achieving independent living skills. See website for all services provided.	<a href="http://www.ability360.org">www.ability360.org</a> Phone: (602) 256-2245 Arizona Relay 711

<b>Resource</b>	<b>Website/Contact Information</b>
<p><b>Arizona Center for Disability Law</b></p> <p>Non-profit public interest law firm and protection and advocacy agency protecting the rights of persons with disabilities. Does not provide services regarding options mentioned in this manual—information and referral only. Check website for other services provided.</p>	<p><a href="http://azdisabilitylaw.org">http://azdisabilitylaw.org</a>            Phone: (602) 274-6287            (Voice/TTY)            Toll Free: (800) 927-2260            (Voice/TTY)</p>
<p><b>Arizona Commission for the Deaf and Hard of Hearing</b></p> <p>Statewide center offering services and referral information for persons with hearing loss.</p>	<p><a href="http://www.acdhh.org">www.acdhh.org</a>            Phone: (602) 542-3323            TTY: (602) 364-0990            Toll Free Voice/TTY:            (800) 352-8161            VP - (480) 559-9441</p>
<p><b>Arizona Department of Economic Security</b></p> <p>Division of Developmental Disabilities</p>	<p><a href="http://www.azdes.gov/developmental_disabilities/">www.azdes.gov/developmental_disabilities/</a>            Phone: (602) 542-0419            Toll Free: (866) 229-5553</p>
<p><b>Arizona Department of Veterans’ Services</b></p> <p>For information regarding fiduciary (conservatorship and guardianship) services. Phone numbers for other offices on the website.</p>	<p><a href="http://www.dvs.az.gov">www.dvs.az.gov</a>            Phone: (602) 627-3261</p>
<p><b>Arizona Developmental Disabilities Planning Council</b></p> <p>Provides original research and support to projects that serve the developmental disability community in Arizona. See website for digital version of this Legal Options Manual.</p>	<p><a href="http://addpc.az.gov">addpc.az.gov</a>            Phone: (602) 542-8970            Toll Free: (877) 665-3176</p>
<p><b>Arizona Governor’s Council on Spinal and Head Injuries</b></p> <p>Resource for information, services and support for persons with traumatic brain or spinal cord injuries, and those who support them.</p>	<p><a href="http://www.azheadspine.org">www.azheadspine.org</a>            Phone: (602) 774-9148</p>
<p><b>Arizona Judicial Courts</b></p> <p>Self-service forms relating to guardianship or conservatorship are provided for use in some Arizona counties listed on this website.</p>	<p><a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a>            Phone: (602) 452-3460</p>
<p><b>Arizona Secretary of State</b></p> <p>Provides secure storage of advance directives; link to Attorney General’s Life Planning Documents.</p>	<p><a href="http://www.azsos.gov">www.azsos.gov</a>            Phone: (602) 542-4285</p>
<p><b>Arizona Senior Citizens Law Project</b></p> <p>Offers information and legal assistance to seniors over 60 in Maricopa County.</p>	<p>Phone: (602) 252-6710</p>



Resource	Website/Contact Information
<p><b>AZ Law Help</b></p> <p>Website providing a wide array of information and links, including resources for finding legal help.</p>	<p><a href="http://www.azlawhelp.org">www.azlawhelp.org</a>            Maricopa Referral Line:            (602) 257-4434            Pima County Referral Line:            (520) 623-4625</p>
<p><b>Community Legal Services, Inc. (Central Phoenix area)</b></p> <p>May provide some guardianship services; must qualify for services. CLS has multiple offices in Phoenix area and western counties of Arizona, including Mohave, Yavapai and Yuma. Check website for listings, and contact for information on guardianship.</p>	<p><a href="http://www.clsaz.org">www.clsaz.org</a>            Phone: (602) 258-3434            Toll Free: (800) 852-9075            TTY: (602) 254-9852  <a href="mailto:infocpo@clsaz.org">infocpo@clsaz.org</a></p>
<p><b>DNA People’s Legal Services</b></p> <p>May provide some guardianship services; 10 locations serving both off-reservation and tribal land communities of Northeastern Arizona. Low Income—must qualify for services. See website for office locations and information.</p>	<p><a href="http://www.dnalegalservices.org">www.dnalegalservices.org</a>            Phone: (928) 871-4151</p>
<p><b>Guardianship or Conservatorship forms, instructions</b></p> <p>County Court forms and some information can be found on your County Clerk of Court’s website, or at the Arizona Judicial Branch website. Not every county has its own form at this time, but you may modify another county’s form as needed. You can also obtain the forms from your local Clerk’s office.</p> <p>Although an attorney is not required to file for guardianship, it is still a good idea to consult a professional to ensure that you are submitting paperwork appropriate for your needs.</p>	<p><a href="http://www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx">www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx</a></p>
<p><b>Lawyer Referral Service (Maricopa County Bar Association)</b></p> <p>30 minute consultation for \$40; check website for information regarding this service.</p>	<p><a href="http://maricopalawyers.org">http://maricopalawyers.org</a>            Phone: (602) 257-4434</p>
<p><b>Lawyer Referral Service (Pima County Bar Association)</b></p> <p>30-minute consultation for \$35; and QUILT program for persons who are low income, but don’t qualify for legal aid; check website or call for information regarding these services. Guardianship forms available.</p>	<p><a href="http://www.tucsonlawyers.org">www.tucsonlawyers.org</a>            Phone: (520) 623-4625</p>

<b>Resource</b>	<b>Website/Contact Information</b>
<p><b>Maricopa County Superior Court, Clerk's Office</b></p> <p>Provides general court information, some self-service forms and filing fee information. The website provides phone numbers for specific departments.</p>	<p><a href="http://www.clerkofcourt.maricopa.gov/">www.clerkofcourt.maricopa.gov/</a> Phone: (602) 372-5375</p>
<p><b>NAELA (National Academy of Elder Law Attorneys)</b></p> <p>Information about special needs trusts, and finding an attorney experienced in preparing special trusts.</p>	<p><a href="http://www.naela.org">www.naela.org</a> Phone: (703) 942-5711</p>
<p><b>Native American Disability Law Center</b></p> <p>Agency serving and protecting the legal rights of Native Americans with disabilities in the four corners area of Arizona, Colorado, New Mexico and Utah. Check website for services provided.</p>	<p><a href="http://www.nativedisabilitylaw.org">www.nativedisabilitylaw.org</a> Phone: (800) 862-7271</p>
<p><b>Northern Arizona Council of Governments (NACOG) — Elder Rights Unit, Area Agency on Aging</b></p> <p>Serving Apache, Coconino, Navajo and Yavapai Counties, may provide some information concerning guardianships or referral to attorneys. Must be 60 years of age.</p>	<p><a href="http://www.nacog.org">www.nacog.org</a> Phone: (928) 774-1895 <a href="mailto:nacog@nacog.org">nacog@nacog.org</a></p>
<p><b>Pima Council on Aging (PCOA) (Pima County)</b></p> <p>Designated Agency on Aging. No direct assistance regarding options in this book, but may provide referrals to attorneys. Must be age 60 or over.</p>	<p><a href="http://www.pcoa.org">www.pcoa.org</a> PCOA HELPLINE: (520) 790-7262</p>
<p><b>Pima County Superior Court, Clerk's Office</b></p> <p>Provides general court information, some self-service forms, including guardianship and conservatorship, and filing fee information.</p>	<p><a href="http://www.sc.pima.gov">www.sc.pima.gov</a> Phone: (520) 724-3200</p>
<p><b>Social Security Administration</b></p> <p>Check this website for information about representative payee issues.</p>	<p><a href="http://www.ssa.gov/payee/">www.ssa.gov/payee/</a> Toll Free: (800) 772-1213 TTY: (800) 325-0778</p>

Resource	Website/Contact Information
<p><b>Southern Arizona Legal Aid</b></p> <p>May provide some assistance with guardianship; must qualify for services. SALA has offices serving Apache, Gila and Navajo Counties, Cochise, Graham/Greenlee Counties, Pima County, Pinal County and Santa Cruz County. Check website for specific office locations and numbers, and service availability.</p>	<p><a href="http://www.sazlegalaid.org">www.sazlegalaid.org</a>            Phone: (520) 620-0443            Toll Free: (800) 640-9465            Applying for New Services:            Phone: (520) 620-0443            Toll Free: (800) 248-6789</p>
<p><b>Special Needs Alliance (SNA)</b></p> <p>Website provides information about special needs trusts, guardianship, conservatorship, and other associated issues. Resource for locating attorney experienced in public entitlements and special needs planning.</p>	<p><a href="http://www.specialneedsalliance.org">www.specialneedsalliance.org</a>            Phone: (877) 572-8472  <a href="mailto:info@specialneedsalliance.org">info@specialneedsalliance.org</a></p>
<p><b>Special Needs Answers</b></p> <p>Website provided by Academy of Special Needs Planners, information about special needs trusts and related matters; finding an attorney.</p>	<p><a href="http://www.specialneedsanswers.com">www.specialneedsanswers.com</a>            Phone: (866) 296-5509</p>
<p><b>State Bar of Arizona</b></p> <p>Provides information about finding an attorney—no direct referrals.</p>	<p><a href="http://www.azbar.org">www.azbar.org</a>            Phone: (602) 252-4804            Toll Free from outside Maricopa County:            (866) 482-9227</p>



(602) 542-8970 | Toll Free: (877) 665-3176

[addpc.az.gov](http://addpc.az.gov)

3839 N. 3rd Street, Suite 306, Phoenix, AZ 85012