



Options in Oregon to Help Another Person Make Decisions

Guardianship, Conservatorship
and Other Options in Oregon

When a family member or friend needs help making decisions, it can be hard to know what to do. This booklet summarizes a few legal and other tools available in Oregon designed to help the person make decisions.





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Essential duties when representing another person's interests

A person who is legally responsible for helping someone make decisions is called a **"fiduciary."** A fiduciary can be a guardian, conservator, health care representative, power of attorney or other decision maker. A fiduciary has several essential duties:

- To act only in the best interest of the person you are chosen to help;
- To manage the person's money or property carefully if you are in charge of making financial decisions for the person;
- To keep any of the person's money and property separate from your money and property;
- To keep good records about the person's money or property and your decisions.

Some of the types of legal representation in this booklet require that the person needing help be incapacitated.



"Incapacitated" means that the person cannot make decisions about his or her own health and safety.

The person who needs help is referred to as the **"protected person."**

This booklet does not represent legal advice. You should consult an attorney if you have specific questions about your situation.

This booklet is a summary of the types of fiduciary relationships that exist in Oregon. Go to the sources referenced throughout the booklet for more information on the below types.

The fiduciary types summarized in this booklet include:

- Guardianship
- Conservatorship
- Power of Attorney
- Representative payee / VA fiduciary
- Advance Directive for Healthcare
- Appointed Health Care Representative for persons with intellectual or developmental disabilities
- Declaration for Mental Health Treatment (DMHT)
- Civil commitment
- Money management assistance
- Trusts
- Joint accounts
- Case management

Types of legal representation

Guardianship

Guardianship is the formal process where a judge appoints another person, called a guardian, to act on behalf of an incapacitated person. Under Oregon law, guardianships must encourage maximum independence for the person.

A judge orders a guardian for a protected person if evidence shows three things:

- The person is incapacitated;
- A guardian is necessary to oversee the care and supervision of the person; and
- The guardian is qualified, suitable and willing to serve.

For more
information about
guardianships

Go to the Department of Human Services State Unit on Aging at <http://tinyurl.com/oregon-guardianship-resources> for a link to Disability Rights Oregon's Guardianship Handbook and other guardianship resources.

Conservatorship

Conservatorship is similar to guardianship in Oregon, except that a conservator only makes decisions about the protected person's money or property.



A judge orders a conservator for a protected person if evidence shows two things:

- The protected person cannot manage his or her financial affairs; and
- The person has money or property that requires management or protection.

For more
information about
conservatorships

Go to <http://tinyurl.com/oregon-guardianship-resources> for a link to the Consumer Financial Protection Bureau’s conservator guide and other conservatorship resources.

Power of Attorney

A Power of Attorney is a legal document that allows a person to give another person (called an “agent”) the right to act on the person’s behalf. Powers of attorney in Oregon can only be used for financial decisions. The way a Power of Attorney is written is important. The authority given to the agent can be limited or broad. Powers of attorney can be written to go into effect immediately, even when the person giving the authority to the agent still has full capacity, or to go into effect only when the person becomes incapacitated.

A Power of Attorney can be revoked in writing if the person still has capacity. Because a Power of Attorney terminates once the person dies, it cannot be used for estate planning.



A Power of Attorney must be signed by the person giving power to the agent and two witnesses. The person must have capacity when signing the Power of Attorney.

For more information about a **power of attorney**

Go to <http://tinyurl.com/oregon-guardianship-resources> for a link to the Consumer Financial Protection Bureau's power of attorney guide and other resources for powers of attorney in Oregon.

Representative payees and VA fiduciaries

When a person gets benefits from the Social Security Administration, the Railroad Retirement Board or the Department of Veterans Affairs, these agencies have their own processes and rules for choosing a representative to help the person manage the benefits. For Social Security and Railroad Retirement benefits, the representative is called a "**representative payee.**" For veterans' benefits, the representative is called a "**VA fiduciary.**"

When someone is a representative payee or VA fiduciary, that individual can



only manage the person's government benefits for that specific agency. If the person needs help managing other parts of his or her life, he or she may need to have another decision-making fiduciary established; examples include a power of attorney, an advance directive for healthcare, a guardianship or a conservatorship.



Even when someone is a guardian or conservator, he or she will still have to go through the agency process to be chosen to represent the person and manage his or her government benefits.

For more information about **representative payees or VA fiduciaries**

Go to <http://tinyurl.com/oregon-guardianship-resources> for a link to the Consumer Financial Protection Bureau's guide for representative payees and VA fiduciaries, as well as contact information for these federal agencies.

Advance Directive for Healthcare

An Advance Directive is a document of health care instructions explaining what treatments a person would want. This tool can be useful when the person becomes too sick or hurt to give instructions to doctors. With an Advance Directive, the person can also choose a health care representative to make health care decisions for him or her.



Advance Directives must be signed when the person is still able to make decisions.

For more information about **Advanced Directives**

Go to <http://tinyurl.com/oregon-guardianship-resources> for links to additional information on Advance Directives in Oregon, including the Advance Directive form.



Appointed Health Care Representative for persons with intellectual or developmental disabilities

The Oregon Department of Human Services has a process to appoint a health care representative for some people with intellectual and developmental disabilities. To use this process, the person must:

- Have an intellectual or developmental disability;
- Need help making health care decisions; and
- Live in a licensed and certified 24-hour residential facility, supported living or foster home.

For more information about
**appointed health care
representatives for
people with intellectual
and developmental
disabilities**

Call 503-945-5811
or 1-800-282-8096 to
be directed to the
appropriate local
Community Developmental
Disability Program.

Declaration for Mental Health Treatment (DMHT)

People can complete a Declaration for Mental Health Treatment form to tell doctors what kind of mental health treatment they would like if they have a mental health crisis and cannot make treatment decisions. The DMHT covers certain mental health medications, treatments and admissions to a health care facility for up to 17 days of mental health treatment.

The DMHT form also allows the person to appoint a representative to make treatment decisions on his or her behalf in a mental health crisis.



A person must sign the DMHT when he or she has capacity and before a mental health crisis. A DMHT form must be renewed every three years.

For more information
about a **DMHT**

See the Oregon Health Authority's "A Guide to Mental Health Treatment" at www.oregon.gov/oha/amh/forms/declaration.pdf.

Civil commitment

A civil commitment is a process used in Oregon to protect individuals' civil rights when they will not or cannot consent to hospitalization but need psychiatric hospitalization. They can be civilly court committed when a judge decides that they are a danger to themselves or others or are unable to care for themselves due to an alleged mental disease or defect. A civil commitment lasts no more than 180 days unless a judge orders re-commitment.

For more information
about **civil
commitments**

Go to <http://tinyurl.com/oregon-guardianship-resources> for a link to the Disability Rights Oregon's Mental Health Law in Oregon Handbook.

Money management assistance

A local money management program may be able to help people age 60 or older manage their money. Oregon has a Money Management Program administered by local service providers and coordinated by Easter Seals of Oregon. The Money Management Program can help people by organizing financial papers, paying bills or banking.

For more information
about **money**
management

Go to <http://tinyurl.com/oregon-guardianship-resources> for a link to the Easter Seals of Oregon website and the Oregon Money Management Program.

Trusts

A trust holds money or property for the benefit of the person or organization. The trust can benefit the person who made the trust, or it can benefit someone else. There are many different kinds of trusts. People should work with an attorney to decide if a trust is right for them and, if so, which trust works best for their interests.

For more information
about **trusts**

Go to <http://tinyurl.com/oregon-guardianship-resources> for additional resources about trusts in Oregon.

Joint accounts

Adding another person as a joint account holder on a bank account can help the person manage that money. However, a

person should be cautious about adding someone as an equal owner of an account. An “equal owner” of an account means that both account holders may spend the money in the account as they wish. Eligibility for government programs like Medicaid and Social Security may be affected for each individual because both persons’ funds would be counted as assets.

For more
information about
joint accounts

Go to <http://tinyurl.com/oregon-guardianship-resources> for a link to the Oregon State Bar’s “Legal Issues for Older Adults” handbook.

Case management and similar help

Case management and service coordination connect people to community programs and services that can help them meet their goals, obtain needed services and prevent crisis. Case management is usually a Medicaid service through the Department of Human Services; however, people who are not eligible for Medicaid can purchase private case management services.

Other social services may be ideal alternatives to guardianship or other legally created representation. Such social services are often referred to in Oregon as long-term services and supports. These services may include supports for:

- Family members as caregivers;
- Personal care assistants;
- Home health services; and
- Home-delivered meals.

Additional resources

To speak with someone or connect directly to the appropriate Oregon entity for case management, long term services and supports or any of the above options, please call the Aging and Disability Resource Connection (ADRC) of Oregon at 1-855-ORE-ADRC (1-855-673-2372).

For more information regarding any of the options described in this booklet, please visit the Department of Human Services State Unit on Aging's collection of resources for people who are helping others make decisions. It can be found at <http://tinyurl.com/oregon-guardianship-resources>.





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