

Legal Options Manual

For Families, Consumers
and Caregivers
when an Individual with
Developmental Disabilities
Reaches Age 18



**Governor's Council
on Developmental Disabilities**

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This manual was developed for the Arizona Governor's Council on Developmental Disabilities
by the Arizona Center for Disability Law

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I. Introduction

The purpose of this manual is to advise people with disabilities, their families and caregivers about different options available when an adult with a developmental disability needs the assistance of someone else in a legally recognized fashion in one or more facets of his or her life. It is not intended as a substitute for legal advice. Federal and state law can change at any time. The publication date of this edition of the manual is located on the cover.

This manual is a joint project of The Arizona Governor's Council on Developmental Disabilities and The Arizona Center for Disability Law. The Governor's 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 free advocacy, information and referral services, legal research, community legal education, and, in selected cases, legal representation to individuals with disabilities and advocacy organizations throughout Arizona. The Center is the designated protection and advocacy (P&A) system providing services for Arizonans with a wide range of physical and mental disabilities.

Please let us know if you have comments about the manual or suggestions for making it better!

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II. Legal Options for Adults with Developmental Disabilities

“My son just turned 18 and the school is telling me I’m no longer invited to his IEP meeting. What can I do?”

“I think my daughter can live on her own, but I worry that she’ll spend her SSI check and won’t have money to pay the bills.”

“My sister always took care of all the decisions for my nephew with DD. Now she’s too sick. Can I make the same decisions?”

“Now that I am 18 I want to be independent, but I still need help with some things.”

“I met Jeannie while working for a day program. She has no family and really needs someone to help manage her mental health care. How can I become that person?”

Questions like these are commonplace in the lives of people with developmental disabilities, their families, friends and caregivers. When an individual with a developmental disability reaches the age of 18, his or her parents (or court appointed guardian for a minor) are no longer the automatic decision maker. In the eyes of the law, an 18 year old is considered an adult with all the rights and responsibilities of any adult—the right to vote, to sign contracts, to make decisions on health care, to stay in school or not, to decide where to live, how to spend money—UNLESS a family member or caregiver has exercised one of many “legal options” described in this manual.

A legal option may range from your child signing approval for you to participate in the Vocational Rehabilitation (VR) planning process, to full guardianship/conservatorship of a person with developmental disabilities who is deemed incompetent by a court to make any of his own decisions. Once the legal option has been obtained, the family member or caregiver has the legal right and obligation to assist that person as a substitute decision maker for those areas in which he or she may need guidance.

People, whether developmentally disabled or not, will make mistakes sometimes. They will not make decisions in their best interest. That is a part of life. The purpose of this manual is not to prevent adults with developmental disabilities from life’s experiences—both good and bad—by having someone else make all their decisions for them. The intent is to recognize that all persons with developmental disabilities have the right to live as independently as possible and to make as many decisions for themselves as they can. This manual provides information about the different options available to persons with disabilities, their families and caregivers when an adult with a developmental disability needs the assistance of some one else in a legally recognized fashion in one or more facets of his or her life.

On the next page is a chart of different types of decisions that some adults with developmental disabilities may find difficult. The possible legal options are set out from least restrictive to most restrictive of a person’s rights. The following pages detail each legal option available to adults with developmental disabilities. This manual also provides information on how to determine if a particular legal option would apply to your situation and how to obtain that option. Some pages provide legal forms, perforated at the edge for easy removal.

We urge you in every case to consider the least restrictive option of an individual’s right to control his or her own life, while providing the assistance that the person with a developmental disability needs.

DECISION MAKING OPTIONS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

DECISION TO BE MADE	LEGAL OPTIONS FOR DECISION MAKING							
	LEAST RESTRICTIVE	→	→	→	→	MORE RESTRICTIVE	MOST RESTRICTIVE	
Where to live	Person makes decision by self or with assistance from family members, caregivers or friends					Durable power of attorney	Guardianship	
Social relationships								
Education		Delegation of right to make educational decisions					Durable power of attorney	
Job		Designated representative in Vocational Rehabilitation						
Programs and services								
Mental health care		Designated representative				Mental health care power of attorney	Temporary or limited guardianship	
Medical care						Health care power of attorney	Temporary or limited guardianship	
Future planning for health care needs		Advanced directives Living will						
Bringing a lawsuit or other legal claims						Guardian ad litem		
Managing finances (when Social Security is only source of income and person has no property)						Representative payee	Durable power of attorney	
Managing finances (when there is assets, income and/or property)						Durable power of attorney		Conservatorship
Future planning for financial needs						Trusts	Durable power of attorney	
Ensuring eligibility for public benefits, while making provisions for other financial needs						Special trusts		

Legal Options covered in this manual are shown in **boldface**. Refer to [Table of Contents](#).

III. Guardianship

What is a guardianship?

A guardian is a person appointed by a court to provide care and make decisions for an incapacitated person. An incapacitated person, often referred to as a *ward*, is someone who lacks the ability to make or communicate responsible decisions concerning life's most basic needs. A guardian may have power over all decisions regarding the ward or only certain decisions that the ward is unable to make independently. While a guardian may also be appointed for a minor child when the child's natural parents are unable to serve as natural guardians, this section will only cover guardianship for adults with developmental disabilities.

What is the difference between a guardianship and a conservatorship?

A guardian makes decisions about the *person* and a conservator makes decisions about the person's *assets or estate*. In other words, if an individual has money or property a conservator may need to be appointed. If the person only needs a "substitute" decision maker for personal living decisions such as where to live and whether to work, then a guardian would be appointed. (See [Section IV](#) beginning on page 13 for information about conservatorships.)

IMPORTANT NOTE: Guardianship requires court intervention, time and expense, and seriously curtails the independence of the person with developmental disabilities. It should only be considered as a last resort if other legal options—representative payee, conservatorship, power of attorney, health care power of attorney—are not enough to ensure the person with a disability will be safe and able to access the services he or she needs.

Are there different types of guardianships?

Different types of guardianships include:

- **Full Guardianship***: The guardian has all powers over the ward, including making decisions about the individual's living arrangements, education, social activities, medical care, right to marry and association with others. A ward cannot vote in elections.
- **Limited Guardianship***: The person filing for guardianship can request that the court only limit the ward's rights in certain areas, such as contracts or health care choices. In this situation, the ward would retain other rights. However, once found to be incapacitated for purposes of even a limited guardianship, the ward cannot vote.
- **Guardian Ad Litem**: The appointment of a guardian for a specified time period or a limited purpose. For example, the person with a developmental disability may need a guardian for purposes of filing a personal injury claim resulting from an automobile accident. The guardian would assist the person in filing, litigating and settling the claim and arranging for the proceeds to be protected and, at that point, the guardianship would terminate.
- **Temporary Guardian**: In emergency circumstances, a temporary guardian may be appointed immediately by a court. This process will require representation by an attorney who will be appointed for the person with a developmental disability.

***Limited Guardianship vs. Full Guardianship:** In all guardianship proceedings, the court must now consider limited guardianship as an option before granting full guardianship. A petition for full guardianship must explain that other, less restrictive legal options such as limited guardianship or power of attorney have been explored, and why they would not be appropriate for this particular individual with a developmental disability.

In addition, if a limited guardianship is sought, the petition must state the specific powers for care and supervision being requested by the petitioner (i.e., guardianship over health care decisions or entering contracts). The court order granting the limited guardianship must also specify what powers are granted to the guardian. Finally, before granting a guardianship, the court must now find that the person's needs cannot be met by less restrictive means, including the appropriate use of assistive technology.

This guide refers to forms that may be used when filing for a guardianship (see the Superior Court of Arizona in Maricopa County website at www.superiorcourt.maricopa.gov, and in Pima County the Pima County Bar Association site, www.pimacountybar.org). Due to recent changes in the guardianship statutes, these forms may be in need of revisions or additions of language clearly demonstrating that limited guardianship has been considered, and specifying what powers will be granted to the guardian. Below is the sample language reflecting the changes in law, to be included with the Petition for Permanent Guardianship.

<p>Sample Language Guardianship Petition Addendum</p> <p><i>To comply with changes in A.R.S. 14-5303 and 14-5304, Relating to Persons under Disability</i> <i>(Add to Petition for Permanent Appointment of Guardian)</i></p> <p>___ I am requesting a limited guardianship with the following powers for care and supervision of the protected person <i>(list only those decisions that you as the guardian will make)</i>:</p> <p>___ I am requesting a full guardianship. I have explored other alternatives and the protected person's needs cannot be met by a less restrictive means, including appropriate technological assistance. A limited guardianship is not appropriate because <i>(please describe the facts and circumstances which make a limited guardianship inadequate to protect and care for the individual)</i>:</p>
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When should a guardian be appointed?

A guardianship is the most restrictive legal option for a person with a developmental disability. Persons under a full guardianship may not vote or drive a vehicle, cannot enter a contract and need a guardian's consent for activities ranging from going to a party to decisions on where to live, what to eat or even when to seek medical help. The guardian has all the same powers, rights and duties that a parent has with respect to a minor child. Only where an individual is very limited in his or her ability to make even the most basic decisions should guardianship be considered. A guardianship should not be considered if the person's needs are primarily for financial oversight. A *conservatorship*, *power of attorney*, or *representative payee* may be able to address financial issues. (See Sections [IV](#), [V](#), and [VI](#) for more information about these options.)

Here are some questions to ask when considering guardianship as a legal option:

- Is the developmentally disabled individual likely to make decisions which will place him or her in danger (as opposed to making decisions family members think are "misguided" or not in the individual's "best interest")?
- Is the individual being denied health care or other services because providers are concerned about the individual's ability to give informed consent? (Informed consent means the person understands the nature of the treatment, risks, benefits and alternatives.)

- Even after getting advice or help from family members, friends or caregivers, is the individual with a developmental disability unable to make important decisions about where to live, how to get a job or other services?
- Are medical personnel, counselors or other developmental disability (DD) providers telling you that the individual does not have the capacity to make decisions?

Examples:

- *Juan’s family and friends have shown him apartments he can afford to live in and where the services he needs are available. They have introduced him to the staff, other people living in the apartments and have encouraged him to make a choice on where to live. Juan insists he will only live with his grandmother, who has recently entered a nursing home and is no longer able to care for him. He refuses to consider any other option. He vows to run away from any apartment and go back to Grandma’s. A **guardianship** may be necessary to ensure Juan has a safe place to live. A guardian can authorize Juan’s placement at a group home.*
- *Marcy has learned to ride the bus to her job, clean her apartment with help and reminders, and to cook with the microwave. Marcy cannot balance a checkbook or remember to pay bills, and often spends all her money on knick-knacks. Marcy does not need a guardian, but may need a **conservator** (see [Section IV](#) for more information) or to give a family member a **power of attorney** (see [Section V](#) for more information) to take care of her financial needs.*
- *Tyrone has a serious heart problem requiring surgery. Dr. Dreyfus is concerned Tyrone does not understand the operation and does not want to treat Tyrone without a guardian’s consent. A **temporary guardianship or guardian ad litem** may be appropriate for the purposes of consenting to the surgery.*

Who may be appointed as guardian?

Any qualified person can be appointed guardian of an incapacitated person. A guardian may be the spouse, parent or adult child of the incapacitated person, or any other relative with whom the ward has resided for more than 6 months. If no family member is able to serve, a private fiduciary or professional guardian may also be appointed. Each county also has a public fiduciary, required by law to serve as guardian for those incapacitated persons in need of a guardian when there is no person or corporation qualified or willing to act in that capacity. The public fiduciary will be appointed by the court in a guardianship proceeding. Contact information for public fiduciaries in Arizona can be found on [page 8](#).

How is a guardian appointed?

The incapacitated person, the person who wishes to become guardian, or any other person interested in the incapacitated person’s welfare may initiate the appointment of a guardian by filing a petition with the Superior Court in the county where the ward resides. The court will set a hearing date. Unless the person with a disability 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 to live. 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. At the hearing, the court will hear witnesses. The court must be satisfied by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment of a guardian is necessary to provide for that person’s needs. The court may also specify time limits on the guardianship, or limit powers of the guardian.

Beginning on [page 9](#) is a list of resources in each county and many of the Native American tribes in Arizona that may be of help in guardianship proceedings. These include agencies that assist with paperwork, act as guardians and provide other services. In addition, both Maricopa and Pima counties provide forms to obtain a guardianship. (Note: Changes in guardianship laws effective September, 2003 may change some information to be included with guardianship petitions. See “**Limited Guardianship vs. Full Guardianship**” beginning on [page 4](#) for more on these changes.) These forms are available in Maricopa County through the Superior Court’s website, www.superiorcourt.maricopa.gov, or by visiting the Self- Service Legal Center at 101 W. Jefferson St., in Phoenix. In Pima County, they are available through the Pima County Bar Association, 177 N. Church Ave., Ste. 101, Tucson, AZ 85701, or through their website, www.pimacountybar.org. Other counties will accept the Maricopa County forms with changes to indicate the county in which the paper work is being filed. Forms issued by a tribal government are for use within that tribe’s jurisdiction.

Beginning on [page 11](#) is a list of the forms used by each county and tribe, as well as where you can obtain the forms and receive assistance in completing them. Most guardianships can be handled by families with the assistance of the resources in this guide. Hiring a private attorney may be necessary if the guardianship is likely to be contested (for example, family members disagree on who should be guardian, or the potential ward does not believe a guardianship is warranted). An attorney may also be helpful if a limited guardianship with complicated provisions is anticipated, or if the persons applying for the guardianship cannot appear at court hearings without assistance.

What are the responsibilities and duties of the guardian?

As indicated above, the guardian has duties and responsibilities similar to a parent. The guardian must make sure that the ward’s basic needs are met and that decisions are made with the ward’s desires and choices taken into account. Guardianship statutes specifically state that the guardian of an incapacitated adult who has a developmental disability shall seek services that are in the best interest of the ward, taking into consideration:

- The age of the ward
- The degree or type of disability
- The presence of other disabling conditions
- Developing the ward’s maximum potential
- Ensuring the least restrictive programs and environment
- Providing a safe, secure, and dependable residential and program environment
- The particular desires of the ward

The court will request the guardian to submit an annual written report to the court, including information on the ward’s health and living conditions. It is very important that the guardian complete this report in a timely manner. If a guardian has not also been appointed as conservator, he or she generally will not manage the finances or property of the ward. A guardian can act as *representative payee* for purposes of managing Social Security benefits. (See [Section VI](#) beginning on page 20 for more information about representative payees.)

How is guardianship terminated or changed?

Guardianship terminates upon the death of the guardian or ward, resignation of the guardian, determination that the ward no longer needs a guardian, or determination that the guardian has become unable to serve. A ward or other interested person may also petition the court at any time for a change of guardian or termination of guardianship. A guardianship may be changed at any time it is shown that a change would be in the best interest of a protected person.

What are the costs associated with guardianship?

If the person requesting the guardianship files without an attorney, the out-of-pocket costs would be the court filing fee (as of the publication date shown on front cover, \$166 in Maricopa County; \$146 in Pima County) and the service of process/delivery of documents to the person with a disability (between \$30 - \$100 depending on the location of the potential protected person). Maricopa County residents will also pay a \$350 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 attorney's fees for the ward 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 at considerable cost to all parties. A chart with information on low cost help with guardianships begins on [page 9](#).

Public Fiduciaries

The public fiduciary is a county agency that serves as guardian or conservator for people who have no one qualified or willing to act in that capacity. The public fiduciary may bring an action in court for a guardianship or conservatorship. Below is a list of public fiduciaries for Arizona counties.

Public Fiduciaries in Arizona

Apache County

Laura Simms
P.O. Box 699
St. Johns, AZ 85936
(928) 337-7605

Coconino County

Dorothy Staskey
2625 N. King St.
Flagstaff, AZ 86004
(928) 522-7997

Cochise County

Carol Park
P.O. Box 4279
Bisbee, AZ 85603
(520) 432-9407

Gila County

Tiffany Wager
P.O. Box 693
Globe, AZ 85502
(928) 425-3149

Graham County

Donna Dauenhauer
820 W. Main St.
Safford, AZ 85546
(928) 428-4441

Greenlee County

Nora Garza
P.O. Box 1146
Clifton, AZ 85533
(928) 865-2323

La Paz County

Linda Bochtel
1316 Kofa, Ste. 160
Parker, AZ 85344
(928) 669-6163

Maricopa County

Richard Vanderheiden
111 W. Monroe, Ste. 500
Phoenix, AZ 85003
(602) 506-5801

Mohave County

Catherine Robbins
P.O. Box 7000
Kingman, AZ 86402
(928) 718-5510

Navajo County

Charles Tomlinson
P.O. Box 668, NC #9
Holbrook, AZ 86025
(928) 524-4353

Pima County

Anita Royal
10 E. Pennington
Tucson, AZ 85701
(520) 740-5454

Pinal County

Mary Espinoza
P.O. Box 808
Florence, AZ 85232
(520) 866-7258

Santa Cruz County

Rita Ashford
2150 N. Congress
Nogales, AZ 85621
(520) 375-7970

Yavapai County

Patricia Ian
500 S. Marina, Rm. 14
Prescott, AZ 86303
(928) 771-3153

Yuma County

Candy Wheeler
2200 W. 28th St., Ste. 137
Yuma, AZ 85364
(928) 317-4590

GUARDIANSHIP RESOURCES

Organization	Area Served	Provides Forms?	Assistance with Filling Out Forms?	Attorney Representation	Acts as Guardian, or Finds a Guardian?	Cost/Other Information F = Free, L = Low cost/sliding fee scale
The ARC of Arizona (800) 252-9054	Statewide	Yes	No	No	Yes	L Provides forms and list of attorneys.
Arizona Department of Veteran Services (602) 248-1554 (800) 248-1554	Statewide	Yes	Yes	Yes	Yes	L Must be a veteran, spouse or dependent child under 18.
Arizona Senior Citizens Law Project (602) 252-6710	Maricopa County	Yes	Yes	Yes	Yes	F Must be over 60 years of age.
Beacon Foundation (520) 623-3454	Pima County	Yes	Yes	Yes	No	L Set fee determined by court fees.
Central Arizona Council on Developmental Disabilities (480) 982-5015	Gila and Pinal counties	No	No	No	Yes, for persons with developmental disabilities, in limited cases	L
City of Scottsdale Civic Center Senior Center (480) 312-7702	Maricopa County	No	No	No	Provides volunteers who monitor guardianships	F All ages.
Community Legal Services (800) 852-9075	Maricopa County	Yes	Yes	No	No	F Must be low income to qualify.
DNA People's Legal Services (928) 774-0653 (800) 789-5781	Apache, Coconino and Navajo counties	Yes	Yes	Yes, in limited cases	No	F
Elder Rights Unit, Area Agency on Aging - Northern Arizona Council of Governments (NACOG) (928) 774-1895	Apache, Coconino, Navajo and Yavapai counties	Yes	Yes	Provides a list of 40 attorneys who may take pro-bono cases	No	F Donations accepted. Must be over 60 years of age.
Guardianships of Southern Arizona (520) 620-6170	Pima County	No	No	No	Actual guardians	L

GUARDIANSHIP RESOURCES

Organization	Area Served	Provides Forms?	Assistance with Filling Out Forms?	Attorney Representation	Acts as Guardian, or Finds a Guardian?	Cost/Other Information F = Free, L = Low cost/sliding fee scale
Handmaker Jewish Services (520) 547-6009	Pima County	Yes	Yes	No	Acts as guardian/conservator for elderly and persons with developmental disabilities	Charges an hourly rate as a certified private fiduciary.
Maricopa County Superior Court Self Service Center (602) 506-7353	Maricopa County	Yes	No	No	No	F Provides a list of attorneys who will review your paperwork, and legal resources.
Mohave County Community Legal Services (928) 753-1177 (800) 255-9031	Mohave County	Yes	Yes	Yes	Yes	L Must be low income to qualify.
Pima Council on Aging (520) 790-7262	Pima County	No	No	No	Provides a case manager to review case	F Case must involve an individual over 60 years of age.
Volunteers Lawyers Program of Southern Arizona Legal Aid (520) 623-9465, ext. 134	Apache, Cochise, Gila, Graham, Greenlee, Navajo, Pima, Pinal and Santa Cruz counties.	Yes	Yes	Yes	No	F Must be low income to qualify.
White Mountain Legal Aid (928) 537-8383 (800) 658-7958	Apache County	Yes	Yes	Yes	No	F Must be low income to qualify.
Yavapai County Community Legal Services (928) 445-9240 (800) 233-5114	Yavapai County	No	Yes	No	No	F Must be low income to qualify.
Yuma and La Paz Counties Community Legal Services (928) 782-7511 (800) 424-7962	Yuma and La Paz counties	Yes	Yes	No	No	F Must be low income to qualify.

GUARDIANSHIP FORMS - COUNTY RESOURCES

County	Forms Used	Assistance with Filling Out Forms, Where Available
Apache	Modified Maricopa County and stationery store forms	White Mountain Legal Aid, 116 E. Oak St., Whiteriver, AZ 85941 (928) 338-4845 ext. 101.
Cochise	Modified Maricopa County and stationery store forms	Volunteers Lawyers Program, 64 E. Broadway Blvd., Tucson, AZ 85701 (520) 623-9465 ext. 134.
Coconino	Stationery store forms	DNA People's Legal Services, 222 E. Birch Street, Flagstaff, AZ 86001 (928) 774-0653, toll free (800)789-5781.
Gila	Stationery store forms	Volunteers Lawyers Program, 64 E. Broadway Blvd., Tucson, AZ 85701 (520) 623-9465 ext. 134. Gila County Southern Arizona Legal Aid, (520) 425-3281 or toll free at (800) 276-4452.
Graham	Modified Maricopa County and stationery store forms	Volunteers Lawyers Program, 64 E. Broadway Blvd., Tucson, AZ 85701 (520) 623-9465 ext. 134.
Greenlee	Modified Maricopa County and stationery store forms	Volunteers Lawyers Program, 64 E. Broadway Blvd., Tucson, AZ 85701 (520) 623-9465 ext. 134.
La Paz	Stationery store forms	Yuma and La Paz Community Legal Services, 51 W. 2nd St., Yuma, AZ 85364-2250 (928) 782-7511, toll free (800) 424-7962.
Maricopa	Maricopa County forms	Community Legal Services, toll free (800) 852-9075. Maricopa County Superior Court Self Service Center, (602) 506-7353, www.superiorcourt.maricopa.gov
Mohave	Stationery store forms	Mohave County Community Legal Services, 519 Hall St., 1st Floor, Kingman, AZ 86401 (928) 753-1177, toll free (800) 255-9031.
Navajo	Stationery store forms	Volunteers Lawyers Program, 64 E. Broadway Blvd., Tucson, AZ 85701 (520) 623-9465 ext. 134.
Pima	Pima County forms	Forms are available at Pima County Bar Association, 177 N. Church Ave., (520) 623-8258 Volunteers Lawyers Program, 64 E. Broadway Blvd., Tucson, AZ 85701, (520) 623-9465 ext. 134.
Pinal	Stationery store forms	Volunteers Lawyers Program, 64 E. Broadway Blvd., Tucson, AZ 85701 (520) 623-9465 ext. 134.
Santa Cruz	Stationery store forms	Volunteers Lawyers Program, 64 E. Broadway Blvd., Tucson, AZ 85701 (520) 623-9465 ext. 134.
Yavapai	Stationery store forms	Yavapai County Community Legal Services, 401 N. Mount Vernon, Prescott, AZ 86301 (928) 445-9240, (800) 233-5114.
Yuma	Stationery store forms	Yuma and La Paz Community Legal Services, 51 W. 2nd St., Yuma, AZ 85364-2250 (928) 782-7511, toll free (800) 424-7962.

GUARDIANSHIP FORMS - TRIBAL RESOURCES

Tribe	Forms Used	Assistance With Filling Out Forms, Where Available
Ak-Chin	Stationery store forms	Tribal Court, 47314 W. Farrell Rd., Maricopa, AZ 85239, (520) 568-9481. Provides a list of attorneys who help with the paperwork; attorneys may charge a fee for services.
Cocopah	Tribal forms	Tribal Court, County 15, Ave. G, Somerton, AZ 85350, (928) 627-2550. Provides a list of attorneys who help with the paperwork; attorneys may charge a fee for services.
Colorado River	Stationery store forms	Colorado River Indian Tribe Legal Aid, (928) 669-1268. Services are free to all tribal members; no services to non-tribal members.
Ft. McDowell Yavapai	Stationery store forms	Ft. McDowell Yavapai Nation Legal Aid, P.O. Box 17779, Fountain Hills, AZ 85269, (480) 816-7189. Services are free to all tribal members; no services to non-tribal members.
Ft. Mojave	Tribal forms	Tribal Court, 350 W. Picacho Rd., Yuma, AZ 85366, (928) 346-5293. Tribal advocate, Samson Evanston at (520) 768-9466. Court provides list of people who are licensed to practice in tribal courts; attorneys may charge a fee.
Ft. Yuma-Quechan	Tribal forms	Tribal Court, 350 W. Picacho Rd., Yuma, AZ 85366, (928) 572-0213.
Gila River	Stationery store forms	Four Rivers Legal Office, 403 Seed Farm Rd., Sacaton, AZ 85247, (520) 562-3369.
Havasupai	Tribal forms	Havasupai Social Services, P.O. Box 10, Supai, AZ 86435, (928) 448-2731 ext. 330. The village cannot be accessed by car.
Hopi	Stationery store forms	Hopi Legal Services, Highway 264, Mile Post 397, Hopi Police Department Complex, Kings Canyon, AZ 86034; (928) 738-5231.
Hualapai	Tribal forms	960 Rodeo Way, Peach Springs, AZ 86434; (928) 769-2358. Tribal Court will answer questions regarding paperwork.
Kaibab Paiute	Tribal forms	Tribal Court, 8C65, Box 328, Pipe Springs, AZ 86022, (928) 643-7214. This service is for tribal members only.
Navajo		DNA People's Legal Services, State Highway 264, Navajo Route 12, P.O. Box 306, Window Rock, AZ 86515, (928) 871-4151.
Pascua Yaqui	Tribal forms	4701 S. Tetakusim, Tucson, AZ 85746; (520) 879-6276. Tribal Court will answer questions regarding paperwork.
Salt River Pima-Maricopa	Tribal forms	Tribal Court, 10005 E. Osborn Rd., Scottsdale, AZ 85256, (480) 850-8115.
San Carlos Apache	Tribal forms	Southern Arizona Legal Aid, 3599 Highway 60, Miami, AZ 85539, (928) 473-2548.
San Juan Southern Paiute	None. Utilizes Navajo Tribal Court System	DNA People's Legal Services, State Highway 264, Navajo Route 12, P.O. Box 306, Window Rock, AZ 86515, (928) 871-4151.
Tohono O'odham	Tribal advocate forms	P.O. Box 890, S. Main, Sells, AZ 85634, (520) 383-3905. Tribal Advocate provides the paperwork and notarization.
Tonto Apache	Tribal forms	Tribal Court will only provide a list of who is licensed in its courts. (928) 474-9125.
White Mountain Apache	Tribal forms	Tribal Court, P.O. Box 598, E. Oak St., Highway 73, White River, AZ 85941, (928) 338-4720. Will help prepare paperwork for both tribal and non-tribal members.
Yavapai Apache	Stationery store forms	Tribal Court will only provide a list of who is licensed in its courts. 2400 W. Datsi St., Camp Verde, AZ 86322, (928) 567-1033.
Yavapai Prescott	Stationery store forms	No help provided through the Tribal Court. Judge will review the qualifications of individuals who wish to appear as advocates in the Tribal Court. (928) 445-8790.

IV. Conservatorship

What is a conservatorship?

When a person with a developmental disability has property, income or other assets that may be wasted or dissipated because the individual is unable to manage these assets due to mental or physical illness or disability, the court may appoint a *conservator* to manage that persons's assets. A conservator may also be appointed to oversee funds needed for the care and support of the protected person.

What is the difference between a guardianship and a conservatorship?

A guardian makes decisions about the *person* and a conservator makes decisions about the person's assets or *estate*. In other words, if the incapacitated person has money or property a conservator may need to be appointed. If the person only needs a "substitute" decision maker for personal living decisions, then a guardian would be appointed. When someone is under *guardianship* they lose the right to vote, and must have permission to marry, to travel and to make many other decisions. (See [Section III](#) for more about guardianships.) A conservatorship does not impact the person's right to make these decisions. The conservator only maintains control over the protected person's money, property and other assets.

IMPORTANT NOTE: A conservatorship may be obtained at the same time as a guardianship with the same person acting as both. This is only advised where the person with a developmental disability is deemed incompetent and has significant assets.

When should a conservator be appointed?

When a person with a developmental disability has property, money and other assets that he or she is unable to manage because of mental or physical disability, a conservatorship may be considered depending on the nature and extent of the assets. If the only money the person has comes from Social Security, the appointment of a *representative payee* would be sufficient. (See [Section VI](#) for more information about representative payees.) If the individual has only a small amount of money or property to manage, a family member or friend may be given *power of attorney* instead of going through court proceedings to appoint a conservator. (See [Section V](#) beginning on page 15 for more about powers of attorney.)

A person with a developmental disability must be competent to give consent to power of attorney. A conservatorship is appropriate when the person to be protected cannot give consent to power of attorney, or when the amount of property and other assets is so large as to warrant court oversight of expenditures and investments.

Who may be appointed as conservator?

The court will appoint a conservator according to a priority list. The priorities are:

- 1) A conservator, guardian of property or other person already appointed by a court in another jurisdiction. (For example, if you moved from another state and had a conservator appointed for you there.)
- 2) An individual or corporation nominated by a protected person at least 14 years of age who has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
- 3) The person nominated is the protected person's most recent durable power of attorney. (Please refer to [Section V](#), Durable Power of Attorney for more information).
- 4) The spouse of the protected person.
- 5) The adult child of the protected person.
- 6) A parent of the protected person, or a person nominated by the will of a deceased parent.
- 7) Any relative of the protected person with whom the protected person has resided for more than six months prior to the filing of petition.

- 8) Any nominee of a person who is caring for, or paying benefits to, the protected person.
- 9) A private fiduciary, professional guardian or conservator or the department of veteran's services.

When persons have equal priority, the court shall select the one it determines is the best one to serve. The court can also pass over, for good cause, a person having priority and appoint a person having a lower priority or no priority. After the court has selected the appropriate conservator, the conservator must accept the appointment.

If the person has no family or friends who are able to serve as conservator, the public fiduciary's office in each county is required by statute to serve as conservator. See [page 8](#) for a list of public fiduciaries in Arizona.

How is a conservator appointed?

A petition is filed with the court requesting appointment of a conservator. As in guardianship proceedings, an attorney will be appointed for the person to be protected, unless he or she is already represented. 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. 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. A conservator may be appointed for a single transaction or on a continuing basis.

What are the responsibilities of the conservator?

In exercising his or her management and control of the protected person's money and property, the conservator acts in a *fiduciary* capacity. This means the conservator must observe the standard of care of a trustee, that of a prudent person dealing with the property of another. The conservator must account to the court for the administration of the estate, including filing an inventory within 90 days and reporting annually. The conservator must invest sums prudently and distribute necessary amounts for the care, support and education of the protected person.

How can a conservatorship be terminated or changed?

A conservatorship may be removed upon the death of the protected person or the conservator, or if the conservator becomes unable to serve. A petition may be filed at any time by the protected person or other interested parties claiming that the protected person is no longer in need of a conservator, or that the conservator is not adequately managing the protected person's funds.

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 the publication date shown on the front cover, the fees are \$166 in Maricopa County; \$146 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). Maricopa County residents will also pay a \$350 probate court investigation fee. If the court finds that the person with a disability is not in need of a conservatorship, the court can assess the costs of the court-appointed attorney for the person with the disability to the individual bringing the conservatorship petition. If the court finds the person is in need of conservatorship, the costs associated with the conservatorship, such as attorney's fees for the protected person 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 \$250.00 for reviewing and approving the annual accounting.

V. Durable General Power of Attorney

What is a durable general power of attorney?

A durable power of attorney document signed by a person with a developmental disability gives someone else the authority to handle his or her financial affairs now or in the future. For a durable general power of attorney to be valid, the person with a developmental disability 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.

When would a durable general power of attorney be used?

When the person with a developmental disability is unable to handle his or her own financial affairs, such as paying bills, balancing a checkbook, signing legal or government documents and managing property or investments. The person with a developmental disability must have the capacity to consent to someone else handling their financial affairs. If the person does not have the capacity to consent and has property, money or assets which need managing, a *conservatorship* should be considered. (See [Section IV](#) for more information about conservatorships.)

IMPORTANT NOTE: The advantage of this legal option is that it does not require court intervention and is less expensive and 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 use the money and assets wisely.

Who may be designated under the durable general power of attorney to handle a person's financial affairs?

The person appointed as *agent* under a durable general power of attorney should be someone well known to the person with a disability (the *principal*), who will act in that person's best interests and consider his or her desires in carrying out the duties. Unlike the 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 person with a disability.

How is a durable general power of attorney made?

A durable power of attorney form is completed, signed, witnessed and notarized. Durable power of attorney forms are provided on [pages 16 through 19](#). The 3-page form is perforated for easy removal from this manual. The Office of the Attorney General may have more up-to-date forms. The website for the Attorney General's Life Care Planning Information and Documents is www.ag.state.az.us (click on the button labeled "Seniors"), or you may call (602) 542-2124. These forms are valid with most banks and financial institutions, although some may require that the durable power of attorney be executed on their forms. Be sure to check with your bank or financial institution for individual requirements.

The durable general 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 may handle all financial decisions. The power of attorney also indicates whether it is effective immediately, or only upon incapacity of the principal.

How is a durable general power of attorney changed or terminated?

The document establishing a power of attorney may specify when it expires. The principal may terminate the power of attorney at any time, if the individual is not incapacitated. The principal may revoke the power of attorney by tearing up the original document or by executing a revocation document. Once incapacitated, the principal cannot cancel the power of attorney. Cancellation would require court intervention if the agent does not agree voluntarily to end the power of attorney. Any interested person who believes the agent is not acting in the principal's best interest may contact the county attorney regarding the matter.



OFFICE OF THE ARIZONA ATTORNEY GENERAL
JANET NAPOLITANO

**IMPORTANT INFORMATION
ABOUT THE
“DURABLE” GENERAL POWER OF ATTORNEY**

GENERAL INFORMATION ABOUT A DURABLE GENERAL POWER OF ATTORNEY

This is a very powerful document that allows you to appoint someone to handle your financial affairs and make legally binding decisions about your money, property, or other assets (checking and savings accounts, certificates of deposit, title to your home or car, location or ownership of your jewelry and other personal possessions, etc.). This person is called your representative or agent. Choose as your representative only someone you know and in whom you have a great deal of trust. It is usually difficult or even impossible to retrieve your assets if your representative is unscrupulous or uses bad judgment.

The authority of your agent continues to be legally valid even if you become unable or incapable of making financial decisions for yourself in the future. That is why this document is called a “Durable” General Power of Attorney – your agent’s authority lasts even if you become so ill or incapacitated that you can no longer make financial decisions. The Durable General Power of Attorney has no legal effect after your death.

DIFFERENCES BETWEEN A DURABLE GENERAL POWER OF ATTORNEY AND JOINT OWNERSHIP

Under a Durable General Power of Attorney your agent is not a joint owner or a co-owner of your property. Unlike joint ownership, your agent does not have legal title to your property, so your agent’s creditors generally cannot claim your property to pay the debts of your agent. Also, when you die, your property and assets remain in your estate for disposition under your will or other distribution method, but in a joint tenancy, title to property immediately goes to a surviving joint tenant upon the death of the other tenant.

REASONS TO HAVE A DURABLE GENERAL POWER OF ATTORNEY

A Durable General Power of Attorney can help you because if you become disabled or lack capacity to handle your own financial decisions, your agent can continue to do so on your behalf. If you do not have a Durable General Power of Attorney and do not have your property in joint ownership or other similar means, then upon your death no one can access your property or assets without starting court proceedings and getting an order from the court, which can take time and effort.

RISKS OF HAVING A DURABLE GENERAL POWER OF ATTORNEY

Under a Durable General Power of Attorney your agent is obligated by law to use your property or assets only for your best interests – not for his/her own benefit. Your agent is required to act solely for your benefit, and is subject to both criminal and civil penalties if he/she fails to do so, including possible forfeiture of inheritance rights. However, it might be difficult or impossible to retrieve your assets or property if your agent has illegally disposed of them under a Durable General Power of Attorney. This is why it is so important to select your agent carefully and to be sure you trust your agent to use your assets solely for your best interests.

WHEN A DURABLE GENERAL POWER OF ATTORNEY BECOMES EFFECTIVE

You can choose whether you want to make this power effective now, or only if you become incapacitated in the future:

- A. Not Effective Yet:** You can make a Durable General Power of Attorney effective *only if and when you are disabled or incapacitated* and can no longer make your own financial decisions. This is sometimes called a “springing” power of attorney because it is not effective until the future if you become disabled or incapacitated, when it “springs” into effect. “Incapacitated” means mentally or physically impaired so that you lack sufficient understanding or capacity to make or communicate responsible decisions about yourself. Talk to a lawyer who can help you phrase how and by whom your incapacity or disability can be determined.
- B. Effective Immediately:** You can also make the Durable General Power of Attorney *effective immediately*. This means that you want to allow your agent to make financial decisions for you right away, although you can also continue to make these decisions for yourself.

STATE OF ARIZONA
“DURABLE” GENERAL POWER OF ATTORNEY
Instructions and Form

GENERAL INSTRUCTIONS: Use this Durable General Power of Attorney form if you want to authorize someone to handle your financial affairs if you become unable to do so in the future, or if you simply want someone to handle these things for you. A “Durable” General Power of Attorney allows you to name a representative to make legally binding decisions regarding your money, property, and other assets. Read the “General Information” to learn more about this important document. **Also, you should check with your bank and other financial institutions to determine if they will accept this form of Durable General Power of Attorney or if they require you to sign their own form.**

Be sure you understand the importance of this document before you sign it. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with a lawyer before you sign any important legal document, including this form. If you decide this is the form you want to use, complete the form. **Do not sign this form until your witness and a Notary Public are present to witness the signing.** There are further instructions for you about signing this form on page 2.

NOTICE: Before you sign a Durable General Power of Attorney, you should consult a lawyer. It is important for you to be aware of not only the benefits but also the possible disadvantages of signing this document. Be sure you understand the extent of the power you are giving your representative over your business and financial affairs and the harm your representative could cause you if he/she uses bad judgment or is unscrupulous about protecting your property.

1. Information about me: (I am called the “Principal”)

My Name: _____ My Age: _____
My Address: _____ My Date of Birth: _____
_____ My Telephone: _____

2. Selection of my Representative: (Also called an “agent”)

I choose the following person to act as my representative AND to use my money, property, or assets as identified below only in my best interests, which means solely for my benefit and not for my representative’s benefit. I do not authorize my representative to receive a commission, compensation, or fees for this service unless and until I have specifically authorized and identified such matters in detail in a written contract in which I separately initial such authorization, sign the document, and have the document witnessed or notarized.

Name: _____ Home Telephone: _____
Street Address: _____ Work Telephone: _____
City, State, Zip: _____ Cell Telephone: _____

3. When I want this Durable General Power of Attorney to become effective:

NOTE: Initial or mark A or B below. You can make a Durable General Power of Attorney effective immediately, or only if and when you are disabled or incapacitated and can no longer make your own financial decisions. “Incapacitated” means mentally or physically impaired so that you lack sufficient understanding or capacity to make or communicate responsible decisions about yourself. This decision might be made by a physician, psychologist, or another health care professional who can evaluate if you are incapacitated. Talk to a lawyer who can advise you how and by whom your incapacity or disability can be determined.

_____ **A. I DO NOT WANT This Power to be Effective Unless and Until I Become Unable or Lack Capacity to Make My Own Financial and Business Decisions:** I want to allow my representative to act for me only if and when I become disabled or lack capacity to handle my own decisions.

_____ **B. I DO WANT This Power to be Effective Immediately and to Last Even if I Become Disabled.** I expressly want to allow my representative to act for me from this point on regardless of how much time passes. If I later suffer a sudden disability or incapacity, I still want this Power to be effective.

DURABLE GENERAL POWER OF ATTORNEY (Cont'd)

4. What I AUTHORIZE my Representative to do:

My representative is authorized to make day-to-day financial and business decisions for me to ensure that my daily quality of living continues in a manner to which I have been accustomed and/or which I am able to afford. My representative should discuss my choices with me if I am able to communicate in any manner and should explain to me any choices he/she makes, if I am able to understand.

I want my representative to complete and sign any legal, financial, or business documents that require my authorization, and to transact business and/or carry out my financial affairs on my behalf. This authority includes but is not limited to the following powers:

- ✓ To issue and/or endorse any checks on my behalf, and to open or close accounts of any nature in my name or his/her name, and to make deposits to and withdrawals from my checking and savings accounts, and to have access to any safe deposit boxes that I might have.
- ✓ To complete and sign any business, financial, or legal documents, including those related to Social Security benefits, government bonds, mutual funds, certificates of deposit, annuities, and retirement benefits, and to file on my behalf federal and state tax returns, and documents related to Social Security, Medicare, Medicaid, and any insurance.
- ✓ To make any and all investments on my behalf.
- ✓ To borrow against or request the cash surrender value of any of my life insurance policies and to transfer ownership of any such policies to the named beneficiaries, and to borrow money in my name and provide any documents necessary to give any lender a security interest.
- ✓ To sell, lease, or mortgage any real or personal property that I own.
- ✓ To authorize any persons to provide assistance to me with the matters listed above or other matters. These include, but are not limited to, attorneys, financial advisors, real estate agents, and health care professionals.

5. What I DO NOT AUTHORIZE my Representative to do: Here is what I do not authorize my representative to do with my money, property or other assets. (Write in any restrictions you want, or write in "not applicable.")

PRINCIPAL'S STATEMENTS AND OATH

Instructions: This Durable General Power of Attorney must be signed and sworn to by you and your witness before a Notary Public and must show the Notary Public's certificate and official seal. Your witness CANNOT be the person you have chosen as your representative, your representative's spouse or child, or the Notary Public. If you are unable to sign, someone can sign on your behalf, but it must be done in your conscious presence and with your consent.

I am under oath and I sign my name to this Durable General Power of Attorney. I declare to the Notary Public that I sign this document as my power of attorney. I sign it willingly, or I willingly directed someone else to sign it for me. I sign it as my free and voluntary act for the purposes as stated in this Durable General Power of Attorney. I am eighteen years of age or older, of sound mind and I am under no constraint or undue influence.

Name: _____ Date: _____

DURABLE GENERAL POWER OF ATTORNEY (Last Page)

WITNESSES' STATEMENTS AND OATH

I am under oath and I sign my name to this Durable General Power of Attorney as the witness. I declare to the Notary Public that the person whose Durable General Power of Attorney this is (Principal) signed this document as his/her power of attorney. He/she signed it willingly, or willingly directed another to sign for him/her. I, in the presence and hearing of the Principal, sign this Durable General Power of Attorney as witness to the Principal's signing. To the best of my knowledge the Principal is eighteen years of age or older, of sound mind, and under no constraint or undue influence. I further swear that I am not a child or spouse of the representative selected by the Principal.

Name: _____ Date: _____

NOTARY PUBLIC

STATE OF ARIZONA)ss
COUNTY OF _____)

The undersigned, being a Notary Public certified in Arizona, declares that this Durable General Power of Attorney was subscribed, sworn to and acknowledged before me by _____, the Principal, and subscribed and sworn to before me by _____, the Witness, this ____ day of _____, 20___. The person making this Durable General Power of Attorney (the Principal) appears to me to be of sound mind and free from duress.

WITNESS MY HAND AND SEAL this _____ day of _____, 20 ____.

Notary Public: _____ My commission expires: _____

VI. Representative Payee

What is a representative payee?

A representative payee can be a person or organization who receives Social Security benefits (SSI or SSDI) on behalf of a beneficiary for use in paying bills, giving the person spending money and otherwise making expenditures in the best interest of the beneficiary.

When is a representative payee appointed?

A representative payee may be appointed when a person with a disability receiving Social Security benefits is unable to manage or direct the management of those benefits in his or her own best interest. The Social Security Administration (SSA) assumes every adult beneficiary is capable of managing his or her own benefits. If a beneficiary is found to be legally incompetent, mentally or physically incapable of managing benefit payments, or of directing someone else to manage his or her benefits, the SSA appoints a representative payee.

IMPORTANT NOTE: If an adult with a developmental disability 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.

Who may be appointed as representative payee?

The SSA has established an order of preference for selecting a representative payee:

- 1) The legal guardian, spouse (or other relative) who has custody of or lives with the beneficiary and demonstrates a strong concern for the personal welfare of the beneficiary;
- 2) A friend who lives with the beneficiary or demonstrates strong concern for the beneficiary's personal welfare;
- 3) A public or nonprofit agency or institution where the beneficiary lives, or that has a legal relationship to the beneficiary (such as a public fiduciary);
- 4) A private institution operated for profit and licensed under state law, which has custody of the beneficiary; or
- 5) Other persons or organizations qualified to carry out the responsibilities of a payee. Examples of community organizations that may serve as representative payees include Project HOME, SCOPE Inc., and Advocates for the Disabled.

How is a representative payee appointed?

Form SSA-11, available from the Social Security Administration, is used to apply for appointment as a representative payee. This form is available from your local SSA office, or by calling 1-800-772-1213 (voice), 1-800-325-0778 (TTY). In most cases, the applicant must complete the form in a face-to-face interview at a local SSA office. The administration will make a decision whether the person can manage his or her own benefits, and if the 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 administration 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 for the benefit of the person with a disability.

What are the responsibilities of the representative payee?

The representative payee must:

- Use the payments he or she receives only for the use and benefit of the beneficiary and for purposes he or she determines to be in the best interests of the beneficiary (such as payment for rent, medical expenses, food, clothing, 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;
- Notify SSA of any change in circumstances which would affect the payee's performance (such as payee's illness, or a change in relationship to beneficiary).

The Social Security Administration also publishes *A Guide for Representative Payees* (Pub. No. 05-10076) available on the Internet at www.ssa.gov/pubs, or by calling toll free at 1-800-772-1213 (voice), 1-800-325-0778 (TTY).

How is the representative payee terminated or changed?

The Social Security Administration 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 and 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.

VII. Advanced Directives for Health and Mental Health Care, Prehospital Medical Care Directive, and Living Will

What are advanced directives for health and mental health care?

These are documents appointing someone else to make health care or mental health care decisions for a person with a disability, or specifying what treatment may be given in the event he or she becomes incompetent or unable to give consent at a later time. One or more of these directives can be used when an individual wants to make sure his or her wishes are followed regarding health or mental health care at a time when he or she cannot express these wishes. For any of these options to be valid, a person must be able to understand and consent to the choices he or she is making.

All of these documents are for *future* use, should the person making the advanced directive be unable to express his or her wishes. Each document requires that the person signing it fully understands the treatment options he or she is choosing, and is able to give consent for another person to make these decisions. Particular care should be taken with people with cognitive impairments when executing advanced directives. It is *critically important* that the person signing the directive understands what it means.

IMPORTANT NOTE: These are good tools for making future life decisions for people who have the capacity now to understand what the directive means.

The different directives are:

- **Durable Health Care Power of Attorney:** This option allows the selection of a representative to make health care decisions according to the directives given, should the person become incompetent. Usually the *health care power of attorney* will spell out directions to the representative regarding health care decisions. It becomes effective when the person executing the document becomes incompetent.
- **Living Will:** A living will indicates what treatments, procedures or interventions a person either wants or wishes to refuse, typically 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.
- **Prehospital Medical Care Directive:** This is used to advise hospital or emergency personnel of a *Do Not Resuscitate* (DNR) order. To be valid, this form must be printed on paper with an orange background and signed by a doctor or other health care provider.
- **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.

Who can be appointed in an advanced directive?

A parent, relative, friend, or anyone else who knows the person and is acquainted with, and will act in accordance with the person's wishes.

How can I obtain advanced directive forms?

Advanced directive forms are available in this manual starting on [page 23](#). Additional forms can be obtained from the Office of the Attorney General's website, www.ag.state.az.us (click on the button labeled "Seniors"), or by calling (602) 542-2124.

How is an advanced directive terminated or changed?

An advanced directive can be terminated at any time until the person executing it becomes incompetent. A durable mental health care power of attorney or advanced directive may be terminated at any time—even if the person making the directive is incompetent.

**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: (I am called the "Principal")

My Name: _____ My Age: _____
My Address: _____ 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 health care decisions for me:

Name: _____ Home Telephone: _____
Street Address: _____ Work Telephone: _____
City, State, Zip: _____ Cell Telephone: _____

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

Name: _____ Home Telephone: _____
Street Address: _____ Work Telephone: _____
City, State, Zip: _____ Cell Telephone: _____

3. What 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. 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 generally speaking 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 form;

DURABLE HEALTH CARE POWER OF ATTORNEY (Cont'd)

- 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 (want) an autopsy.
- _____ Upon my death I DO consent to (want) an 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.** Any needed organ or parts.
- _____ **b.** These parts or organs:
 - 1.) _____
 - 2.) _____
 - 3.) _____

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

- _____ **a.** Any legally authorized purpose (transplantation, therapy, medical and dental evaluation and research, and/or advancement of medical and dental science).
- _____ **b.** Transplant or therapeutic purposes only.
- _____ **c.** Other: _____

3. What 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: (Name) _____
- _____ **c.** I authorize my representative to make this decision.

DURABLE HEALTH CARE POWER OF ATTORNEY (Cont'd)

7. 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.

8. 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 Do Not Resuscitate Directive on paper with ORANGE background in the event that 911 or 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.

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.

DURABLE HEALTH CARE POWER OF ATTORNEY (Last Page)

- 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: 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 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: _____

STATE OF ARIZONA
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. Information about me: (I am called the "Principal")

My Name: _____ My Age: _____
My Address: _____ My Date of Birth: _____
My Telephone: _____

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 Section 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.
- _____ **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.

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

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 OR VERIFICATION

A. I am signing this Living Will as follows:
My 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 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 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: _____

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 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 Living Will is physically unable to sign or mark this document, 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 MY HAND AND SEAL this _____ day of _____, 20_____.

Notary Public: _____ My commission expires: _____

STATE OF ARIZONA
PREHOSPITAL MEDICAL CARE DIRECTIVE (DO NOT RESUSCITATE)
(IMPORTANT—THIS DOCUMENT MUST BE ON PAPER WITH ORANGE BACKGROUND)

GENERAL INFORMATION AND INSTRUCTIONS: A Prehospital Medical Care Directive is a document signed by you and your doctor that informs emergency medical technicians (EMTs) or hospital emergency personnel not to resuscitate you. Sometimes this is called a DNR – Do Not Resuscitate. If you have this form, EMTs and other emergency personnel will not use equipment, drugs, or devices to restart your heart or breathing, but they will not withhold medical interventions that are necessary to provide comfort care or to alleviate pain. **IMPORTANT:** Under Arizona law a Prehospital Medical Care Directive or DNR must be on letter sized paper or wallet sized paper on an orange background to be valid.

You can either attach a picture to this form, or complete the personal information. You must also complete the form and sign it in front of a witness. Your health care provider and your witness must sign this form. If you have a valid Prehospital Medical Care Directive, you may also wear an identifying bracelet on either your arm or your ankle -- the bracelet must be on orange background with your name, your physician's name, and "Do Not Resuscitate."

1. My Directive and My Signature:

In the event of cardiac or respiratory arrest, I refuse any resuscitation measures including cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation, administration of advanced cardiac life support drugs and related emergency medical procedures.

Patient (Signature or Mark): _____ Date: _____

PROVIDE THE FOLLOWING INFORMATION:

OR

ATTACH RECENT PHOTOGRAPH HERE:

My Date of Birth _____
My Sex _____
My Race _____
My Eye Color _____
My Hair Color _____

HERE

2. Information About My Doctor and Hospice (if I am in Hospice):

Physician: _____ Telephone: _____

Hospice Program, if applicable (name): _____

3. Signature of Doctor or Other Health Care Provider:

I have explained this form and its consequences to the signer and obtained assurance that the signer understands that death may result from any refused care listed above.

Signature of Licensed Health Care Provider: _____ Date: _____

4. Signature of Witness to My Directive:

I was present when this form was signed (or marked). The patient then appeared to be of sound mind and free from duress.

Signature: _____ Date: _____

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 Age: _____
My Address: _____ My Date of Birth: _____
_____ My Telephone: _____

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

I choose the following person to act as my representative to make mental health care decisions for me when I am incapable of making them for myself.

Name: _____ Home Telephone: _____
Street Address: _____ Work Telephone: _____
City, State, Zip: _____ Cell Telephone: _____

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: _____ Home Telephone: _____
Street Address: _____ Work Telephone: _____
City, State, Zip: _____ Cell Telephone: _____

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:**

- _____ **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 24-hour-a-day supervision and an intensive treatment program licensed by the Department of Health Services, which is called a "level one" behavioral health facility.

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

 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):

SIGNATURE OR VERIFICATION

A. I am signing this Durable Mental 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 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: _____

DURABLE MENTAL HEALTH CARE POWER OF ATTORNEY (Last Page)

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 as the representative to make medical decisions on his/her behalf.

Witness Name (printed): _____
Signature: _____ Date and time: _____
Address: _____

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 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: _____

VIII. Designated Representative in Mental Health Care

What is a designated representative in the mental health care system?

Individuals who receive public mental health services from the Regional Behavioral Health Authority have the right to designate persons to act as their representatives in staffings, planning meetings, and during the grievance and appeal process. In the case of a guardianship, the guardian may be the representative or may appoint someone else to represent the ward's interests.

IMPORTANT NOTE: Persons who, because of their disability, shyness or lack of formal education, have difficulty speaking up for themselves in treatment planning meetings, may benefit from having a designated representative.

When is a designated representative appointed?

When the individual receiving mental health services, or *consumer*, believes it would be helpful to have representation in addressing issues regarding his or her mental health care.

Who may be appointed designated representative?

The designated representative can be a friend, parent, relative, advocate, or other person chosen by the client or client's guardian to assist the client in protecting his or her rights and voicing his or her service needs. It is not necessary for this person to be an attorney.

How is a designated representative appointed?

The consumer or guardian must let the mental health system know in writing who is designated. A suggested form for designating a representative is available on [page 34](#). You may photocopy this form.

What are the responsibilities of the designated representative?

When a representative has been designated, the mental health agency or provider must notify the representative of all staffings or meetings involving the consumer, and include the representative in any staffing or meeting in which the client or guardian wants the involvement of the designated representative. The representative must act on behalf of the client or guardian at such staffings or meetings, voicing service concerns or other treatment issues.

How is a designated representative terminated or changed?

The consumer or guardian must inform the mental health agency or provider in writing that they no longer wish for the designated representative to be involved. If the consumer or guardian would like to change the designated representative, they must provide a new form to the agency.

Declaration of Designated 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 ZIPCode

Telephone Number

Invoked by my signature this _____ day of _____, _____.

Signature

Date

IX. Designated Representative in the Vocational Rehabilitation Program

What is a Designated Representative in the Vocational Rehabilitation Program?

Individuals who receive services from the Rehabilitation Services Administration (RSA) or Vocational Rehabilitation (VR) have the right to designate persons to act as their representatives in the application process, the development and implementation of an Individualized Plan for Employment (IPE), and during any appeals process.

IMPORTANT NOTE: Persons who, because of their disability, shyness or lack of formal education, have difficulty speaking up for themselves in meetings may benefit from having a designated representative.

When is a designated representative appointed?

When the person receiving VR services, or *client*, believes it would be helpful to have representation in addressing issues regarding his or her vocational rehabilitation services. When the person applying for VR services is under guardianship, this may be the guardian or someone appointed by the guardian.

Who may be appointed designated representative?

The designated representative can be a friend, parent, relative, advocate, or other person chosen by the client or client's guardian to assist the client in protecting his or her rights and voicing his or her service needs.

How is a designated representative appointed?

The client or guardian must notify the VR Counselor in writing whom he or she would like to designate. A suggested form for designating a representative for VR services is available on [page 36](#). You may photocopy this form.

What are the responsibilities of the designated representative?

When a representative has been designated, the VR program must notify the representative of all meetings involving the client and include the representative in any meeting where the client or guardian wants the involvement of the designated representative. The representative must act on behalf of the client or guardian at such meetings, voicing service concerns or other treatment issues.

How is a designated representative terminated or changed?

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

Declaration of Designated Representative for Vocational Rehabilitation

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 designated representative is:

Designated Representative's Name

Address

City

State

ZIPCode

Telephone Number

Invoked by my signature this _____ day of _____, _____.

Signature

Date

X. Special Education Transfer of Rights to Parent

What is the special education transfer of parental rights at age of majority?

When a student with a disability reaches age 18—no longer a minor in the eyes of the law—all rights previously accorded to the parents under special education laws revert to the student, unless he or she is under guardianship.

A student with a disability between the ages of 18 and 22, who is not under guardianship, may consent to his or her parents or another person acting as the decision making party regarding his or her education. The student can transfer the right to make educational decisions back to his or her parents or other designated individual by completing the Delegation of Right to Make Educational Decisions form.

IMPORTANT NOTE: The Delegation of Right to Make Educational Decisions is only an option if the pupil reaching age 18 wants his or her parents or other designated individual to remain involved and can give informed consent. 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.

When is a Delegation of Right to Make Educational Decisions necessary?

For students with disabilities between the ages of 18 and 22, still attending high school and receiving parental or other assistance in the Individualized Education Plan (IEP) process, transferring the right to make educational decisions may be beneficial. The student must be able to give informed consent for the parent's or other person's involvement. If the student is under guardianship, the declaration is not necessary.

How is a special education transfer of rights declaration made?

The person transferring the right to make educational decisions completes a form like the one provided on [page 37](#), and has the signature notarized. The student may also make his or her intentions known by audio, video or any other means necessitated by the student's disability. The completed form or other means of expressed intent should be given to school personnel on the person's IEP team.

A Delegation of Right to Make Educational Decisions is only effective for one year from the date of execution. It must be renewed in writing by the student for each year it is to remain in effect. The student may terminate the transfer of rights to the parent at any time. The transfer also terminates when the pupil graduates.

Delegation of Right to Make Educational Decisions

I, _____, am eighteen (18) years of age but under twenty-two (22) 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 execution of this document, I delegate my right to give consent and to make decisions concerning educational matters to the person named below, who will be considered my "Parent" for purposes of 20 USC §§ 1401 and will exercise all the rights and responsibilities concerning my education that are conferred on a parent pursuant to state and federal law.

My designated Parent is:

Name (Please Print)

Address

City

State

ZIP Code

Telephone Number

I understand and give my consent that my Parent makes 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 remains in effect for one year from the date of the execution of this document, and may be renewed only by my written or formal authorization. I understand that I may terminate this agreement at any time and resume to right to make my own decisions regarding my education.

Invoked by my notarized signature this _____ day of _____, _____.

Signature of Pupil

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

_____ County, Arizona

My commission expires: _____

XI. Trusts

What is a trust?

A trust is a special kind of legal arrangement that enables money, property, and other assets to be managed for the benefit of another person. The purpose of these trusts is to provide for the needs of a person with a disability, while trying to ensure that the person remains eligible for public benefits and programs. There are many different kinds of trusts, with different effects on taxes, public benefits, and control of property. This section briefly describes three kinds of trusts that may be helpful to people with disabilities who depend on public benefits.

IMPORTANT NOTE: 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. Creating a trust that works for an individual's circumstances requires a professional experienced in trusts. Resources to assist you are at the end of this section.

When should a trust be considered?

A trust should be considered when the person with a disability is or could become ineligible for public benefits or services because of income or property. Some examples:

- A person with a disability receives a large sum of money in a settlement or by inheritance, which is enough to make that person ineligible for public assistance or benefits but not enough to cover the total cost of the person's care during his or her lifetime.
- A person who receives a pension or payments from an annuity that are just enough to bring that person's income over the limit for public assistance.
- Family members want to provide additional supports to an individual, but do not want the money to be considered as income to the person.

In these situations, a trust may be helpful to ensure that the person is eligible for public benefits such as the Arizona Long Term Care System (ALTCs), while remaining able to use some of the trust money for additional needs.

What types of trusts are there?

The three types of trusts briefly described here can be particularly helpful to people with disabilities who receive public assistance.

Special Needs Trust

This trust allows family or friends to set aside funds to be used for extras (such as vacations) for an individual with a disability who is receiving public benefits. The problem that a special needs trust addresses is possible disqualification of the individual from eligibility for public benefits if the funds were otherwise considered countable income and or resources of the individual.

Special needs trusts must be carefully drafted so that trust property will not be considered countable in determining eligibility. The property placed in trust must not be owned by the beneficiary, nor can he or she have any control over it. Trust payments are not made directly to Supplemental Security Income (SSI) and Arizona Health Care Cost Containment System (AHCCCS) recipients. The trust property is restricted to the purpose of "special needs" and cannot be used for basic necessities like food, clothing or shelter.

A special needs trust can be established during the lifetime of the person giving the property (grantor), or it can be created at the death of the grantor through provisions included in his or her will. There is no limit on the

amount of assets that can be placed in the trust. A trustee is named in the trust document or will to manage the funds on behalf of the beneficiary. The grantor can designate how the remainder of the trust funds will be disposed after the trust is no longer used to benefit the individual with special needs.

Example: Brian loves baseball. Brian's parents want him to be able to go to all the Diamondbacks games every summer and to away games in the West. The cost of season tickets is over \$1,000 and the trips to California and Colorado will cost an additional \$4,000. If Brian's parents give that money directly to Brian, he will become ineligible for ALTCS. If they set up a special needs trust, he can enjoy baseball all summer.

Special Treatment Trust

A special treatment trust allows an individual to receive certain extra items or services from the trust while still qualifying for health care services under AHCCCS/ALTCS. This kind of trust can be set up using funds that are the property of the beneficiary himself, as well as funds of a third party.

It is authorized by the federal Medicaid statute, 42 U.S.C. § 1396p(d)(4), to be used in three situations:

1. For the benefit of an individual who is under 65 years of age and has a disability.
2. For an individual who has received a lump sum back payment of SSI or SSDI benefits that accrued while he or she successfully appealed an initial denial of the benefits.
3. For a group of individuals with disabilities whose funds are combined into a *pooled trust* managed by a non-profit organization.

The usual rules restricting transfers of assets before qualifying for AHCCCS benefits do not apply to special treatment trusts. Payments from the trust for extra items or services should be made directly to vendors rather than to the beneficiary. At the conclusion of the beneficiary's participation, the remaining trust funds must go to the state Medicaid program or, in the case of the pooled trust, to the non-profit organization.

Example: Marta received a \$10,000 back payment from Social Security when she was finally determined eligible for SSI. That amount may be placed in a Special Treatment Trust and used for extra hours of attendant care not covered by ALTCS if the money is paid directly from the trust to the attendant care workers or company.

Income Cap (Miller) Trust

The income cap trust or Miller trust serves the very narrow purpose of allowing an individual who has slightly more income than is permitted to still qualify for long term care benefits under the ALTCS program. The individual must assign all of his or her income to the income cap trust; it no longer belongs to him or her. The terms of the trust provide that after using a certain amount each month to pay for the beneficiary's personal needs, the trustee will use the remaining income to pay for the beneficiary's long term care, with the state ALTCS program paying the balance of the cost of the care. The trust must state that if any unspent income remains in the trust at the time of the beneficiary's death, it will also be paid to the state to the extent of the cost of ALTCS services provided to the beneficiary.

Example: Leroy receives SSDI and a small pension each month. The total amount puts him \$150 per month over the ALTCS eligibility limit. Leroy may assign his SSDI and pension payments to the trust to become eligible for ALTCS. However, the amounts received for SSDI and the pension will go to pay for ALTCS covered services with ALTCS picking up the remainder of the costs.

How to obtain special trust documents for persons with disabilities

Special trusts for persons with disabilities must be drafted with particular language. An ordinary trust may not be effective in preserving eligibility for public benefits. These trusts should be prepared by an attorney knowledgeable about special trusts. When hiring an attorney to draft trust documents, you should ask if they have experience in drafting trusts for individuals with disabilities, how many of these trusts have they done, and if they are knowledgeable about the requirements of the state ALTCS program.

The following is a partial list of organizations that can be contacted for referrals to attorneys who are experienced in preparing trusts for people with disabilities.

The ARC of Arizona

5610 S. Central Ave.
Phoenix, AZ 85040-3053
(602) 243-1787 or (800) 252-9054

Community Legal Services, Inc.

305 S. 2nd Ave.
Phoenix, AZ 85036-1538
(602) 258-3434 or (800) 852-9075

Mental Health and Elder Law Section State Bar of Arizona

111 W. Monroe St., Suite 1800
Phoenix, AZ 85003-1742
(602) 252-4804

National Academy of Elder Lawyers

1604 N. Country Club Rd.
Tucson, AZ 85716-3102
(520) 881-4005

Pima Council on Aging

5055 E. Broadway Blvd., #C-104
Tucson, AZ 85711-3809
(520) 790-7262

Southern Arizona Legal Aid Society, Inc.

64 E. Broadway Blvd.
Tucson, AZ 85701-1720
(520) 623-9465



Governor's Council on Developmental Disabilities

Site Code 074Z • 1717 W. Jefferson St.
Phoenix, AZ 85007

Phone: 602-542-4049
Toll Free: 1-800-889-5893
Fax: 602-542-5320
TTY: 602-542-8920
E-mail: gcdd@azdes.gov

Equal Opportunity Employer/Program • Under the Americans with Disabilities Act (ADA), the Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. For example, this means that if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. This document is available in alternative formats by contacting the Governor's Council on Developmental Disabilities at 602-542-4049.