

DECISION-MAKING AS WE AGE

Idaho Legal Aid Services, Inc.



web: idaholegalaid.org

phone: 208-746-7541



As we age, there may come a time when we feel unable to make financial, health care, or other decisions without some help. There are different tools you can use to have others help you. Some tools impact your legal rights while other tools keep you more in control. This booklet will help you understand these options so you can plan and make the best decision for you.

Powers of Attorney

A power of attorney (POA) is a legal document that allows you to pick someone else to help you make decisions.

There are several types of POAs: **parental POA** (for parenting and caring for children); **financial POA** (for handling finances, property, and legal matters); and **health care POA** (for medical decisions).

In a POA, you name a person you trust to make decisions for you. You are the **principal**, and the person you name to make decisions on your behalf is your **agent**. You can also name a back-up person, called your **successor agent**.

You get to decide the types of decisions you want your agent to be able to make for you and you list those decisions in the POA. You can also explain when you want your agent to make decisions for you and when the POA will become active; for example, a POA can become active if you become medically incapacitated.

There are advantages and disadvantages to POAs. One advantage is that a POA **does not limit your legal rights**. This means that you still have the same right to make decisions for yourself as you did before you created a POA.

However, once your POA becomes active, the agent has equal authority as you to exercise any powers you grant them, without needing your express permission.

For that reason, it is very important to:

- Only name an agent you trust; and
- Only grant your agent the powers you really may need help managing.

To create a POA, you must understand the document you are signing and what legal effect it has. This means that if you have a loved one who needs help with decision-making but is not able to sign a POA, you may need to consider other options. Some of those other options are explored later in this pamphlet.

If you are interested in creating a POA, Idaho Legal Aid may be able to help. You can call us at: 208-746-7541 or view the POA forms available at: <https://www.idaholegalaid.org>. This website also has a form you can use to revoke (cancel) a POA that you no longer want.




Supported Decision-Making

Supported Decision-Making is a process where you have help from a group of supporters when making decisions. The point is to **help you make your own decisions** rather than having someone else make decisions for you. Supported Decision-Making can be an alternative to guardianship, which is discussed later in this booklet.

You can use Supported Decision-Making as long as you are able to communicate and still have the mental ability to make choices. Even if you are not able to sign a POA, you may be able to use Supported Decision-Making.

In Supported Decision-Making, you select individuals you trust to support you. These individuals can be referred to as supporters, advisors, partners, or agents. Their role is to **help you with options and offer advice**, then allow you to make your own choice. Supporters help you **understand an issue, explain the risks and benefits of options you need to choose between, and answer questions you may have. However, the ultimate decision will be up to you.**

A **Supported Decision-Making Agreement** can help establish guidelines or rules for how the supporters will help you make decisions. If possible, it may be a good idea to make your supporters your **powers of attorney** (see above). That way, they can help you act on your decisions, rather than just helping you make your decisions.





Supported Decision-Making has many benefits. It can **empower** you to keep making choices about your life, even if you have limited mental capacity, and it can help **protect your independence and constitutional rights** by avoiding a guardianship or conservatorship (described below).

You can learn more about Supported Decision-Making by visiting <https://supporteddecisions.org/>. A how to guide on creating a supported decision making plan is available at www.supportmydecision.org/assets/tools/ACLU-how-to-make-a-SDM-Agreement.pdf.

A lawyer can help you plan for Supported Decision-Making. To see if you qualify for free legal advice or assistance, call:

- DisAbility Rights Idaho at 866-262-3462
- Idaho Legal Aid Services at 208-746-7541



Guardianship & Conservatorship

A **guardianship** is a legal process to allow someone else to make decisions for you, when you no longer have the ability to make decisions for yourself. Guardianships can be used to help protect minor children, adults with developmental disabilities, or seniors who can no longer make their own decisions. A **conservatorship** is similar to a guardianship, but allows someone to manage your finances when you can no longer manage your finances on your own.

Idaho law requires that you are “incapacitated” in order for someone to be appointed your guardian or conservator. Incapacity means that you cannot provide for your personal needs - such as food, clothing, shelter, healthcare, or safety - cannot manage your own property, or cannot handle your own financial affairs, and that you may be suffer substantial harm as a result.

A guardianship or conservatorship case is started by filing a **petition**. The petition must include all of the facts that would show a court that you are incapacitated and need protection. The court will: require a physician’s exam; appoint a court visitor to interview the person who is incapacitated; and appoint a **guardian ad litem**, an attorney who will represent you and make sure that your rights are protected in the process.

If the court determines a guardian is needed, the court will then decide if the guardianship will be **general** or **limited**. In Idaho, the starting point is that a guardianship is limited, meaning it should only cover the things you need help with. That way, you keep as many rights as possible, while still getting the help you need.

A guardianship or conservatorship limits your rights, such as the right to decide how you spend your money, what medical care you want, if you want to get married, and many other decisions. manage your own finances, buy or sell property, make medical decisions for themselves, get married, vote in elections, and enter into contracts. That is why guardianships and conservatorships should be a last resort option, and should be limited rather than general.

Guardians and conservators are required to **file annual reports** with the court that should include any relevant information about the protected person's health, well-being, and finances from the prior year.

If you or anyone else has a concern about a guardian or conservator, like that they are not taking care of the protected person properly, are taking advantage of or abusing the protected person, or are mishandling the protected person's money, then a **Guardianship Complaint** can be filed with the court. The court reviews these complaints and can hold a hearing to determine what action needs to be taken. The Guardianship Complaint form is available at: idaholegalaid.org.



IDAHO LEGAL AID SERVICES, INC
Advocacy. Education. Representation.

Contact us at:

208-746-7541

idaholegalaid.org

This document was supported, in part, by a grant No. 90LAEP0001-01-00 from the Administration for Community Living, U.S. Department of Health and Human Services (DHHS). Grantees carrying out projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration for Community Living or DHHS policy.