Guardianships, because they are so powerful, should be used sparingly. Other less restrictive forms of assistance may be more appropriate. This NebGuide, sixth in a series of seven, discusses legal Guardianship.

Sometimes obtaining a Guardian for a person who is having difficulty making decisions in one or more areas of his/her life is an appropriate solution. Guardianship allows a responsible person to substitute judgment for someone who cannot make or communicate decisions. Without Guardianship the person may be unprotected and lack the ability to find and use services. Even so, Guardianship should be used sparingly, precisely because Guardians have so much power.

Guardianship is one form of surrogate decision making—a term used to describe situations in which one makes decisions on behalf of someone else. It is the most restrictive choice when decision making assistance is needed. There are many more ways help can be given before proceeding to Guardianship. The following is a description of less restrictive forms of assistance listed in order of degree of restriction from the least to the most restrictive.

**Non Durable Power of Attorney** is a document that authorizes one to act on another’s behalf. It is the delegation from the person creating the document (the principal) to the person to whom he/she is granting the power to act (the agent). A limited power of attorney gives authority to act only with regard to very specific matters. A general power of attorney authorizes the agent to act on behalf of the principal in a wide variety of actions. A power of attorney is also terminated by the principal’s death, disability, or incompetence.

**Durable Power of Attorney** is a power of attorney that lasts beyond the disability or incapacity of the principal. It can be revoked or modified at any time as long as the principal is competent. By assigning a power of attorney to someone else, a principal legally authorizes another person to act on his or her behalf. The agent should be selected very carefully. Characteristics a principal should look for in an agent include competence and experience in managing the type of actions assigned to him or her, reliability and trustworthiness.

**Advance Directives** inform others of what choices for medical treatment were made prior to the need for treatment. The most common types of advance directives are living wills, health care power of attorney, and medical directives.

- **A Living Will** is a written statement that describes the type of care a person wishes to receive in the event he/she is suffering from a terminal illness or is in a persistent vegetative state. You can change your mind and revoke your living will at any time, regardless of mental or physical condition.

- **Health Care Power of Attorney** is, quite simply, a durable power of attorney through which a principal authorizes an agent to make health care decisions on his/her behalf. If you are
Guardianship provides for the care of someone who is not able to care for himself/herself. The court may appoint a Guardian if there is clear and convincing evidence that he/she requires continuing care or supervision. Nebraska law allows for, and favors, the appointment of a limited Guardian. This is a Guardian who looks after a limited number of the person’s personal needs. The court is required to look at 10 items listed in the Guardianship law and state with which of the individual items the person needs assistance. A limited Guardianship is less restrictive than a full Guardianship. A full Guardianship is established when it is determined that surrogate decision making is needed in all of the areas the court is required to review.

If you want to explore any of these options you may contact an attorney.

Resources


UNL Guardianship website at [http://www.extension.unl.edu/guardianship/](http://www.extension.unl.edu/guardianship/) includes information, helpful links, and a calendar of educational workshops and programs.

This publication has been peer reviewed.

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