



# Options in Oregon to Help Another Person Make Decisions

Guardianship, Conservatorship and Other Options in Oregon

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





This booklet was made possible through a National Guardianship Network grant. The State Justice Institute and the Borchard Foundation Center on Law and Aging provided the grant funding.

The grant established the Oregon Interdisciplinary Network of Guardian Stakeholders (WINGS), members of which compiled the material in this brochure. Oregon WINGS is coordinated by the Department of Human Services, State Unit on Aging.

Funding for translations of this booklet into Spanish, Vietnamese, Russian, and Chinese was provided by a grant from the Administration for Community Living

# Contents

---

<b>Essential duties when representing another person's interests.....</b>	<b>1</b>
<b>Health/social decision making.....</b>	<b>3</b>
Guardianship.....	3
Advance Directive.....	3
Appointed Health Care Representative for persons with intellectual or developmental disabilities.....	4
Physician Orders for Life-Sustaining Treatment (POLST).....	5
Declaration for Mental Health Treatment (DMHT) .....	5
Civil commitment.....	6
Case management and similar help.....	7
<b>Financial decision making .....</b>	<b>8</b>
Conservatorship.....	8
Power of Attorney.....	8
Representative payees and VA fiduciaries .....	9
Money management assistance .....	10
Trusts .....	11
Banking options .....	11
<b>Additional resources .....</b>	<b>12</b>

# Essential duties when representing another person's interests

---

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

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

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



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

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

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

This booklet is a summary of the types of fiduciary relationships and substituted decision-making options that exist in Oregon. Go to the sources referenced throughout this booklet for more information on the options presented.



# Health/social decision making

---

## Guardianship

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

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

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

For more  
information about  
**guardianships**

Go to the Department of Human Services State Unit on Aging at <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/SUA/Pages/Guardianship-Resources.aspx> for a link to Disability Rights Oregon's guardianship handbook and other guardianship resources.

## Advance Directive

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



**An “Advance Directive” must be signed when the person is still able to make decisions.**

For more information about an Oregon **“Advance Directive”**

Go to <http://healthcare.oregon.gov/shiba/topics/Pages/advance-directives.aspx> for links to additional information on Advance Directives in Oregon, including the “Advance Directive” form.

### **Appointed Health Care Representative for persons with intellectual or developmental disabilities**

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

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

For more information about **Appointed Health Care Representatives for people with intellectual and developmental disabilities**

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

## Physician Orders for Life-Sustaining Treatment (POLST)

POLST is a medical order. It gives seriously ill or frail people control over the treatments they do or do not want to have during a medical crisis. You have the option of asking your health care professional to complete a POLST after you have discussed your current medical condition, treatment options and goals of care. You and your health care professional can easily change or void your POLST. The form follows you wherever you go – at home, in the hospital or in a long-term care facility.

A POLST is different than an “Advance Directive,” but they can work together when appropriate.

For more information  
about **POLST**

Visit <http://oregonpolst.org/>

## “Declaration for Mental Health Treatment” (DMHT)

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





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



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

For more information  
about a **DMHT**

See information about Oregon's Declaration for Mental Health Treatment at: <https://droregon.org/wp-content/uploads/declaration.pdf>.

## **Civil commitment**

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

For more information  
about **civil commitments**

See the information on civil commitments in chapter 6 of Mental Health Law in Oregon, 4<sup>th</sup> Edition, published by Disability Rights Oregon, available at: <http://droregon.org/wp-content/uploads/Mental-Health-Law-in-Oregon-Fourth-Edition.pdf>.

## Case management and similar help

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

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

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

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



# Financial decision making

---

## Conservatorship

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

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

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

For more  
information about  
**conservatorships**

Go to <https://s3.amazonaws.com/files.consumerfinance.gov/files/documents/help-for-court-appointed-guardians-oregon.pdf> for a link to the Consumer Financial Protection Bureau's conservator guide and other conservatorship resources.

## Power of Attorney

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

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



**A “Power of Attorney” in Oregon is limited to financial decisions and must be signed when the person giving power to an agent has capacity.**

For more information about a **“Power of Attorney”**

Go to <https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/help-for-agents-under-power-of-attorney-oregon.pdf> for a link to the Consumer Financial Protection Bureau’s power of attorney guide and other resources for powers of attorney in Oregon.

## **Representative payees and VA fiduciaries**

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

When someone is a representative payee or VA fiduciary, that individual can only manage the person’s government benefits for that specific agency. If the person needs help managing other parts of his or her life, he or she may need to have another decision-making fiduciary established; examples include a power

of attorney, an advance directive for healthcare, a guardianship or a conservatorship.



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

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

Go to <https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/help-for-representative-payees-and-va-fiduciaries-oregon.pdf> for a link to the Consumer Financial Protection Bureau's guide for representative payees and VA fiduciaries, as well as contact information for these federal agencies.

## Money management assistance

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

For more information about **money management**

Go to <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/PROVIDERS-PARTNERS/Pages/Money-Management.aspx> for a link to the Easter Seals of Oregon website and the Oregon Money Management Program.

## Trusts

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

For more information  
about **trusts**

Go to <https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/help-for-trustees-under-revocable-living-trust-oregon.pdf> for additional resources about trusts in Oregon.

## Banking options

Banks and other financial companies often have options that allow you to designate another person as a decision maker for your funds. For example, you may be able to fill out a form to designate a Power of Attorney just for a specific account at your bank. Adding another person as a joint account holder may be another option. However, a person should be cautious about adding someone as an equal owner of an account. An “equal owner” of an account means that both account holders may spend the money in the account as they wish. Eligibility for government programs like Medicaid and Social Security may be affected for each individual because both persons’ funds would be counted as assets.

Contact your bank or financial company for options.

For more  
information about  
**banking options**

Go to [www.osbar.org/public/legalissuesbook.html](http://www.osbar.org/public/legalissuesbook.html) for a link to the Oregon State Bar’s “Legal Issues for Older Adults” handbook, which includes information on banking options.

## Additional resources

---

For more information regarding any of the options described in this booklet, please visit the Department of Human Services State Unit on Aging's collection of resources for people who are helping others make decisions. It can be found at [www.oregon.gov/DHS/SENIORS-DISABILITIES/SUA/Pages/Guardianship-Resources.aspx](http://www.oregon.gov/DHS/SENIORS-DISABILITIES/SUA/Pages/Guardianship-Resources.aspx).





You can get this document in other languages, large print, braille or a format you prefer. Contact 1-800-282-8096 or email [ODDS.INFO@state.or.us](mailto:ODDS.INFO@state.or.us). We accept all relay calls or you can dial 711.