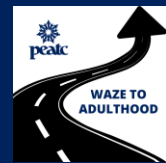


Important Legal Terms to Know and Understand

A Resource Document



There are many legal terms and definitions you will encounter as you navigate the system of disability services and supports, particularly as your child enters adulthood. This resource document reviews some key terms related to decision-making and estate planning.

DECISION-MAKING. Many individuals with disabilities can make decisions independently once they reach the age of majority at 18. Other individuals may need varying degrees of support to make decisions regarding their health, safety, living arrangements, finances, etc. Listed below are some legal terms and tools, from least restrictive to most restrictive, that may be considered as the child becomes an adult.

Supported Decision-Making (SDM): SDM allows individuals with disabilities to make choices about their own lives with support from people they know and trust to be part of a support network to help with decision-making. Supported decision-making is an alternative to guardianship. Guardians make decisions for the person with a disability and the person loses all or many of their rights. However, supported decision-making allows the person with the disability to make their own decisions instead of having someone else make them for them.

Power of Attorney (POA): a legal document by which one person gives another person the power to act on their behalf. A power of attorney can be revoked at any time. Someone can appoint a POA (or any legal document) ONLY if they are legally competent to do so – otherwise, it is invalid.

Durable Power of Attorney: a power of attorney that remains valid even if the person becomes incapacitated. A durable power of attorney will remain in effect until death unless the person rescinds it while not incapacitated.

Limited Power of Attorney: gives another person the power to perform specific actions or handle a specific incident; it usually ends at a time specified in the document.

Advanced Directive: document where the person can state their wishes for health care and appoint someone to make decisions for them if they become unable to do so.

Living Will: a type of advanced medical directive that states medical treatments a person would and would not want to be used to keep them alive, as well as their preferences for other medical decisions, such as pain management or organ donation.

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Representative Payee: appointed by the Social Security Administration (SSA) to manage or direct the money a person receives from Supplemental Security Income (SSI) or Social Security Disability Income (SSDI); a representative payee can be a person or organization and the person receiving SSI/SSDI has the right to tell SSA whom they want to be their representative payee.

Conservator: a person appointed by the court who is responsible for managing the estate and financial affairs of a person the court deems incapacitated.

Guardian: a person appointed by the court who is responsible for the personal decisions of a person the court deems incapacitated, including decisions about personal care, health care, education, and residence.

Guardian Ad Litem (GAL): an attorney appointed by the judge to gather information and make a recommendation to the court about whether the person needs a guardian and if the person asking to be the guardian is a good choice.

Incapacitated Person: an adult determined by a judge to not be capable of understanding information or making informed decisions about their own health, care, safety, or health care needs.

Ward: legal title given to an individual determined to be incapacitated and who has a court-appointed guardian.

Types of Guardianship

Full Guardian: a guardian makes all decisions for the ward with no limitations other than those listed in the law. Also called plenary guardianship.

Limited Guardian: a guardian makes decisions for certain matters (such as health care) but not others. This leaves the person free to make all other decisions.

Public Guardian: guardian for individuals who are incapacitated, indigent, and have no one to serve as their guardian.

Standby Guardian: someone appointed by the court who will become the guardian when the current guardian dies or can no longer act as guardian.

Temporary Guardian: guardian appointed by the court for a short period of time, usually to handle a current emergency situation.

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ESTATE PLANNING. Estate planning is important for everyone but even more so for families who have children with disabilities. Here are some key terms.

Trust: A trust is an arrangement under which one person, called a trustee, holds legal title to property for another person, called a beneficiary. *It is helpful to remember that every Trust is simply a set of the person's instructions.*

Revocable Trust (also known as a Living Trust): trust that gives one the ability to pass trust assets to named beneficiaries without the delay or expense of probate; the trust owner can change or terminate this trust during their lifetime.

Irrevocable Trust: a trust that cannot be revoked, modified, or amended (except to a very limited extent) once it has been established.

Special Needs Trust: a trust established for a disabled person to provide supplemental support without disqualifying them from eligibility for governmental assistance programs such as SSI and Medicaid which are programs that have income and resource restrictions.

Pooled Special Needs Trust: a trust established and administered by a non-profit organization set up to administer a combined special needs trust on behalf of individual beneficiaries with disabilities. Assets are pooled and invested together; funds are spent on beneficiaries in proportion to their share of the total amount.

Trustee: an individual or corporation, appointed by the person who established the trust, who manages the trust as provided by the terms of the trust document.

Will: a legal document that defines how a person wants their assets distributed at death; a will may name an executor for the estate and guardianship for MINOR children. A person cannot “will” guardianship of adults.

ABLEnow Accounts: accounts that help individuals with disabilities save money to pay for qualified expenses, without being taxed on the earnings and in most cases, without losing eligibility for means-tested benefit programs like SSI and Medicaid.

PEATC's mission focuses on building positive futures for Virginia's children by working collaboratively with families, schools, and communities to improve opportunities for excellence in education and success in school and community life.



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