



# Less Restrictive Options in Virginia

## Guardianship and Conservatorship Are Not the Only Options

This document is written in plain language to ensure accessibility for all readers  
Developed in collaboration with the Virginia Center on Aging, Virginia Commonwealth University

# Virginia Decision-Making Options: Contents

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# Virginia Decision-Making Options: Introduction

## **Adults Have the Right to Make Their Own Decisions**

If someone needs help with making decisions, they can get informal help from trusted people, like family or friends, or set up formal legal help, for example by creating a power of attorney. This guide explains the roles of a wide range of such supporters, both informal and formal.

## **How Support Works**

Supporters can help by:

- Explaining the options available.
- Helping the person make informed decisions.
- Communicating those decisions to others.

Supporters should always respect the person's values, wishes, and preferences.

## **Support can cover:**

- Health and Personal Choices: Deciding where to live, whether to agree to medical treatments or surgery, and who is allowed to visit.
- Financial Choices: Deciding to sell property or a business, choosing investments, managing daily spending, and making big purchases.

Sometimes, support may be needed for both personal and financial decisions.

## **When Support Isn't Available**

If an adult needs help with decision-making, a court might appoint a guardian or conservator to make decisions for the person. However, this is usually the last option because it limits the person's ability to make their own choices.

# Virginia Decision-Making Options: Health Care and Personal Decision Supports

## Advance Medical Directives

An adult can create a legal document called an advance directive to plan for times when they are unable to make their own health care decisions. An advance directive can:

- Appoint someone to make health care decisions for them.
- Provide instructions for care, including end-of-life decisions and other medical situations.

Advance directives help doctors and family members understand and respect the person's wishes. They only take effect when the person is unable to make their own decisions.

An advance directive may also be called:

- Health Care Power of Attorney
- Durable Power of Attorney for Health Care
- Health Care Proxy

A living will is a type of advance directive that provides instructions for care but does not name someone to make decisions on the person's behalf.

### Staying in Charge

Even if someone appoints another person to make decisions for them in the future, they still have the right to make their own decisions as long as they are able. They can also cancel or update their advance directive at any time.

### What Happens Without an Advance Directive?

If someone cannot make or communicate their own medical decisions and does not have an advance directive, the law prioritizes certain people, such as family members, who may make decisions about the adult's health care. They must make decisions based on the adult's known preferences.

### Can My Advance Directive Include Specific Instructions About Mental Health Treatment?

Yes, Virginia law allows an adult to make an addendum to an advance directive setting out instructions on psychiatric treatment. This could include decisions to request or refuse certain medications or hospitalization. In the addendum the adult can, if they wish, allow the agent to authorize treatment over their objection during a period of mental illness when they are not thinking clearly. Such an addendum helps in planning for a crisis

# Virginia Decision-Making Options: Health Care and Personal Decision Supports

## Physician Orders for Life Sustaining Treatment (POLST)

### What Is a POLST?

A POLST is a Physician Orders for Life-Sustaining Treatment. It is different from an advance directive in that it is a medical order signed by a doctor; and it is for people who are seriously ill or very frail. It used as part of advance care planning.

### How Does It Work?

- The patient and doctor discuss the patient's wishes for end-of-life care.
- The doctor records the patient's decisions on a medical order form called a POLST.
- The form is signed by both the doctor and the patient.

### Why Is a POLST Important?

A POLST tells emergency medical providers what the patient wants during an emergency if the patient cannot communicate. This includes:

- Whether to perform CPR (resuscitation).
- Whether to be hospitalized.
- Specific treatment preferences.
- What matters most in the patient's care plan.

### POLST Follows the Patient

The POLST stays with the patient across different healthcare settings, such as hospitals, nursing homes, and rehabilitation facilities, to ensure their wishes are followed.

### Other Names for POLST

In some places, a POLST may be called a POST (Physician Orders for Scope of Treatment).

# Virginia Decision-Making Options: Health Care and Personal Decision Supports

## Durable Do Not Resuscitate (DDNR) Order

A Durable Do Not Resuscitate (DDNR) Order is a medical order that tells emergency responders and other healthcare providers not to perform CPR or other resuscitation if a person's heart or breathing stops outside of a hospital.

### How Is a DDNR Order Created?

- A doctor issues the order.
- The patient, or someone legally allowed to make decisions for the patient, must give consent and sign the order.

### DDNR Identification

Patients with a DDNR order may also wear an approved bracelet or necklace to ensure their wishes are followed in an emergency.

# Virginia Decision-Making Options: Health Care and Personal Decision Supports

## Guardianship: If There Are No Less Restrictive Options

### What Is a Guardian?

A guardian is a person appointed by the court to make healthcare and personal decisions for an adult who cannot make these decisions on their own.

### Responsibilities of a Guardian

- Guardians may make decisions about the adult's support, care, health, safety, education, therapy, treatment, and about where the adult lives.
- Guardians must follow laws and court rules.
- Guardians must file an annual report with the local department of social services where the adult lives.
- Guardians should encourage the adult to make their own decisions whenever possible and consider the adult's wishes and values when making decisions.

### Impact of Guardianship

Guardianship often removes basic rights, including the right to:

- Vote (Some guardianship orders allow the adult to keep the right to vote).
- Choose where to live, including moving to another state.
- Make health care decisions.
- Sign legal documents

Because it limits personal rights, guardianship is only used as a last resort, when other less restrictive decision-making options or supports are not enough.

### Limited Guardianship

A court may decide that an adult is unable to make some, but not all, decisions needed to take care of themselves. In this case, the court can appoint a limited guardian to help with specific areas where support is needed.

### How Does Limited Guardianship Work?

- The court's order allows the person to keep certain rights while limiting the guardian's authority to only the areas where help is required.
- The court customizes the guardianship to meet the person's unique needs.

Limited guardianship ensures the individual retains as much independence as possible while still receiving the necessary protection and support.

# Virginia Decision-Making Options: Financial Decision Supports

## Be Careful When Giving Someone Control Over Your Money or Property

Allowing someone else to manage your money or property can increase the risk of misuse or theft. To protect yourself, it's a good idea to consult an attorney before making this decision.

## Informal Decision Supports

### What Are Informal Financial Supports?

Informal financial supports are simple tools and services that help an adult manage their own money and property.

### Examples of Helpful Tools:

- Direct Deposit: Automatically depositing benefits, pensions, or other income into a bank account.
- Automatic Bill Payments: Setting up payments for regular expenses like utilities or rent.
- Money Management Programs: Local programs that assist with tasks like paying bills or organizing financial documents, while the adult remains in control of their decisions.

These supports make financial management easier while allowing the adult to stay in charge of their money and choices.

## Authorized Signers

### What Is an Authorized Signer?

An adult can allow a trusted person, like a relative, to handle transactions on their financial accounts.

### What an Authorized Signer Can Do:

- Write and sign checks.
- Deposit or withdraw money.
- Handle other day-to-day transactions for the account owner.

### Important to Know:

- An authorized signer does not own the account and will not inherit the money in it when the account owner passes away.
- Make sure the financial institution clearly understands that the person is a authorized signer and not a joint owner.
- Usually adding an authorized signer is better and safer than adding a joint owner
- Be sure the bank knows the account is not to be jointly owned.

# Virginia Decision-Making Options: Financial Decision Supports

## Be Careful When Giving Someone Control Over Your Money or Property

Allowing someone else to manage your money or property can increase the risk of misuse or theft. To protect yourself, it's a good idea to consult an attorney before making this decision.

## Powers of Attorney

### What Is a Power of Attorney?

A power of attorney is a legal document that allows one adult (the “agent”) to make decisions about another adult’s money or property.

### Key Points:

- The adult giving the authority still keeps their decision-making power.
- The document must be signed while the adult is still able to make decisions.
- The agent’s authority can be anywhere from limited to broad:
  - Limited: Restricted to specific tasks or transactions.
  - Broad: Covering many or all financial matters.

A power of attorney is a flexible tool that can provide support while respecting the adult’s independence (For more on financial powers of attorney see pages 11 - 12).

## Living Trusts

### What Is a Living Trust?

A living trust is a legal document that lets someone (a trustee) manage money or property for someone else, called the beneficiary. This allows continued management of the money or property if the owner cannot make their own decisions.

### How It Works:

- Ownership of the money or property is transferred to the trust.
- The trustee manages the money or property based on instructions in the trust document.

### Important to Know:

There are many types of trusts, and each serves a different purpose. It’s important to consult an attorney to decide if a trust is the right option for your situation.

# Virginia Decision-Making Options: Financial Decision Supports

## Representative Payees and Veterans' Fiduciaries

When someone receives federal government benefits but cannot manage the funds themselves, the government may assign a representative to help.

### **Types of Representatives:**

- Representative Payee: Manages Social Security and Railroad Retirement benefits.
- VA Fiduciary: Manages Veterans' benefits.

### **What They Do:**

- Handle only the specific government benefits assigned to them.
- Make decisions in the best interest of the person receiving the benefits.

### **What They Cannot Do:**

- Control or manage the person's other money or property (unless they have a court order or a power of attorney).

These representatives ensure that federal benefits are used appropriately while protecting the rights of the individual.

# Virginia Decision-Making Options: Financial Decision Supports

## Conservatorship: If There Are No Less Restrictive Options

### What Is a Conservator?

A conservator is someone appointed by the court to manage money and property for an adult who cannot make these decisions on their own. A conservator may also be serving as guardian, or they may be two separate people.

### Responsibilities of a Conservator:

- Carefully manage the adult's money and property for the adult's benefit.
- Encourage the adult to participate in financial decisions whenever possible.
- Consider the person's wishes and values when making decisions.
- Follow legal and court rules, including submitting an annual financial report to the local Commissioner of Accounts.

### Impact of Conservatorship:

Conservatorship can take away basic rights, such as the ability to:

- Sign contracts.
- Buy or sell property.
- Manage personal financial affairs.

This arrangement provides necessary financial management but limits the person's independence, so it is typically only used when absolutely necessary.

### What is Limited Conservatorship?

Limited conservatorship is a court-appointed arrangement for adults who need help managing some, but not all, financial decisions.

### How It Works:

- The court appoints a limited conservator to assist with specific financial matters where support is needed.
- The court's order preserves the adult's rights in areas where they can still manage their own affairs.
- The order is tailored to address the person's unique needs.

This approach provides the necessary protection while allowing the adult to maintain as much independence as possible.

# Virginia Decision-Making Options: Financial Powers of Attorney

## Be Careful When Giving Someone Control Over Your Money or Property

Allowing someone else to manage your money or property can increase the risk of misuse or theft. To protect yourself, it's a good idea to consult an attorney before making this decision.

## What is a Financial Power of Attorney?

A financial power of attorney is a legal document that lets someone (called the agent) act on behalf of another person (called the principal) to manage money and property.

### Key Points:

- The principal is the person giving the authority. The agent is the person receiving the authority.
- The agent should be someone the principal trusts completely.
- The principal must understand how a power of attorney works and be able to make their own decisions when they sign the document.
- A financial power of attorney does not take away the principal's ability to act. It simply adds another person who can make financial decisions on their behalf.

### What Can the Agent Do?

- The agent may have broad authority to handle all money and property matters or may be limited to specific actions, such as paying bills or selling property.

### Why Is It Useful?

Having a financial power of attorney can help avoid the need for a court to appoint a conservator if the principal is unable to manage their finances in the future.

## When is a Financial Power of Attorney Effective?

A financial power of attorney becomes effective as soon as it is signed.

- It stays in effect until it is revoked (canceled by the principal) or the principal passes away.

This ensures the agent can act on the principal's behalf for as long as needed, unless the principal decides to end it.

# Virginia Decision-Making Options: Financial Powers of Attorney

## Be Careful When Giving Someone Control Over Your Money or Property

Allowing someone else to manage your money or property can increase the risk of misuse or theft. To protect yourself, it's a good idea to consult an attorney before making this decision.

## What is a Durable Financial Power of Attorney?

In Virginia, most financial powers of attorney are durable. This means they stay in effect even if the person who created it (the principal) later becomes unable to manage their own finances.

A durable financial power of attorney ensures that the agent can continue to handle financial matters if the principal is no longer able to do so.

## How to Create a Financial Power of Attorney

To create a financial power of attorney, it's important to work with an attorney. The attorney will:

- Make sure the document meets Virginia's legal requirements.
- Include the correct wording.
- Ensure the agent is given the proper authority to act on behalf of the principal.

This ensures the document is valid and works as intended.

Avoid using power of attorney forms from the Internet. They may not comply with state law or meet the specific needs of the adult.

# Virginia Decision-Making Options: Supported Decision-Making

## What is Supported Decision-Making?

Supported decision-making is a newer concept in Virginia that helps adults who need assistance with decision-making. It allows them to:

- Choose trusted supporters to help them understand their options, make decisions, and communicate those decisions. Supporters assist and advise but are **not** actual decision-makers. Decisions remain with the adult.
- Keep control over their own choices, as there is no substitute decision-maker involved.

Supported decision-making empowers individuals to stay in charge while receiving the help they need.

## How Does Supported Decision-Making Work?

In supported decision-making:

- The adult chooses one or more trusted supporters.
- Different supporters can help with different types of decisions (e.g., healthcare, finances, or daily life).
- Supporters work together with the adult and with each other to provide assistance.

A written agreement can outline:

- The types of help the adult wants.
- Who the supporters are.

The adult can change or cancel the agreement at any time, keeping full control over their decisions. A supported-decision making agreement is very different from a power of attorney. The adult makes their own decision with the help of supporters.

## Who Should Use Supported Decision-Making?

Supported decision-making is a good option for adults who need help making decisions but still want to stay in control of their own lives.

- **How It Works:** Trusted supporters help the adult think through options, weigh the pros and cons, and make informed choices.
- **Who Decides:** The adult makes the final decisions, not the supporters.

With supported decision-making, the adult keeps all their legal rights and gains more independence with the right support.

# Virginia Decision-Making Options: Supported Decision-Making

## How to Create a Supported Decision- Making Agreement

An adult and their supporters can create a written agreement in two ways:

- Write their own agreement that outlines the support they need.
- Use Virginia's Supported Decision-Making Agreement form.

Virginia provides resources on supported decision making and a form to help you create a supported decision-making agreement. These are available at: <https://dbhds.virginia.gov/supported-decision-making-supported-decision-making-agreements/>