

# Arc Guide to Decision Making

There are many options for how to support someone in making decisions. It is important to figure out what works best for each person. Often, this conversation happens when someone turns 18 and becomes a legal adult.

Learning how to make decisions helps people develop better choices over time. People make different decisions over the course of their life. What a person chooses at 18 is different from age 28, or age 38. People learn how to make decisions by taking risks. Mistakes can help them learn and grow.

This Arc Guide will share decision making options, to help you make an informed choice.

## What type of supports are available?

The Arc Minnesota believes everyone can make decisions. We encourage you to determine what decisions a person needs help with, and build supports around that. Consider low cost decision making options that give the person choice. Having a disability does not mean a person needs a guardian.

When you are deciding which type of decision making support is best, consider what kinds of decisions the person needs help with:

- Where to live?
- Special education services and education options into adulthood?
- Health care—long-term or immediate?
- Relationships?

As you consider these questions, think about what kind of help the person needs:

- Do they want to talk things over with someone?
- Is it best to explain things in a few different ways, so they can better understand?

- Do they appreciate having someone explain all the options individually before moving forward?
- Would they like extra time to consider choices?

Having the opportunity to talk through options, and make decisions on their own, teaches decision making skills over time. Think about how a person can be supported through the options listed below. They are in order from least to most restrictive:

**Circle of Support** – These are people the person trusts. They help them think about decisions. They include family, friends, doctors, support professionals, teachers, and others. The individual can process with these people, think about their options, and make a decision that is best for them.

**Supported Decision Making Agreement** – This document is a series of practices and agreements created to help someone make their own decisions. Supported Decision Making acknowledges relationships in a person's life. These people can help make important decisions.

**Authorized Representative** – This person can make decisions on behalf of an individual, and support them in making decisions of their own. Example: a person on Medical Assistance can have an Authorized Representative. The Authorized Representative has the same responsibilities and rights as applicants or enrollees.

**Power of Attorney (POA)** – This document allows someone to appoint a person or organization to manage their property, financial, or medical affairs if they become unable. POAs are adaptable, and can allow more or less support. Attorneys can create a POA.

**Guardianship** – Guardianship is a legal court process that takes away certain rights. It is the most restrictive decision making option; limiting an individual's personal rights, civil liberties, and self-determination. Before courts approve a guardianship, petitioners must prove why less restrictive options are not enough to support a person. They must share what options have been tried. If a person can make decisions with these supports, the court will not approve a guardianship. Guardianships are for people who are legally adults,

age 18 or older. Custody and guardianship are often confused. Custody is for children under age 18. Guardianships require annual paperwork. A link to the form can be found in the “Resources” section. When completing this paperwork, consider if the guardianship is still needed, or if there is a different decision-making option that is a better fit.

**Time limited Guardianship** – People with disabilities under guardianship who are 30 years old or younger must have time limited guardianships of no more than 72 months. Time limits allow for customization in guardianships, room to explore less restrictive alternatives, termination of guardianship, or a limited guardianship.

**Power limited Guardianship** – A judge can issue a guardianship that is limited in powers. An individual keeps some of their decision-making rights, while the guardian controls other areas of decision-making. One can pick and choose only the powers of guardianship that are needed. With limited guardianship, all decisions in the other areas are the individual’s choice. Guardianship and non-legal decision making supports can be paired with selected powers to ensure a person has all the support they need.

A person’s guardianship can be limited in both time and powers.

**Full Guardianship** – Full guardianship includes all seven decision making powers:

- Determining place of abode (where the person lives)
- Care, comfort and maintenance (needs for shelter, nutrition and access to service – including academic and vocational services)
- Reasonable care for personal effects (clothing and furniture)
- Medical or other professional care
- Approval or withholding of contracts
- Supervisory authority
- Accessing government benefits

## **Does a person keep any decision making rights if they have a guardian?**

- It depends on the type of guardianship.
- Everyone under guardianship has civil and constitutional rights. These rights are found in the Bill of Rights (see resources section below).
- All people under guardianship have the right to make decisions about their life and have choice whenever possible.
- It is important to understand all of the powers a guardian has in decision making, as well as what they do not have power over.

## **Does a guardian have control over finances?**

No. Guardians have control over personal life choices, but not over financial decision-making. Different types of financial decision-making support include:

**Joint Bank Account** – A joint bank account can be a way for a person to still get support with managing their money after they are 18. A caregiver can manage the account with the person.

**ABLE Account** – This is an account that encourages and allows people with disabilities to save more of their own money. An ABLE account can hold up to \$15,000 a year (\$100,000 over a lifetime) without it affecting a person's Supplemental Security Income (SSI) or MA benefits. A guardian can establish the account, but not manage the funds.

**Representative Payee** – When a person gets Social Security benefits, a representative payee can help them manage this money. This person manages the account where the Social Security money is deposited, receives the benefits on behalf of the person, and reports annually to the Social Security Administration. The representative payee is expected to assist the person with protection from financial abuse and victimization.

**Supplemental, Pooled, or Special Needs Trust** – A trust is a future planning tool. It is a way for a person to have a large amount of money in their name, managed by a trustee, without it affecting their eligibility for government benefits, like MA or SSI.

**Conservatorship** – A conservatorship is a legal process. It removes a person's ability to manage their money and estate. A conservator has control over one's financial affairs, and is required to report spending and financial decisions to the court.

## **Is there a fee for decision making supports?**

- Decision making options vary in cost. Many options, such as Circle of Support and Supported Decision Making, come at little to no cost.
- The guardianship process can be expensive. Some people may be eligible for financial support, such as In Forma Pauperis (see resources section below).

## **Do I need an attorney?**

- For many decision making options, an attorney or legal process is not necessary.
- If guardianship is chosen, The Arc Minnesota recommends using an attorney who specializes in it.

## **The Arc Minnesota believes less restrictive options should always be considered before guardianship.**

At one point, guardianship was the only option—or the only option that was presented. We used to rely on formal, legal options that restricted a person's rights. Now, we have more options available. There are many options and no one 'right answer'. Each person's supports will look different, and should be customized.

## Resources

- Resources from The Arc Minnesota:
  - [Guardianship Reform Fact Sheet](#)
  - [Decision Making Webinar](#)
  - [Health Care Directives](#)
  - [Focus on the Future Podcast](#)
  - [Power of Attorney Arc Guide](#)
  - [ABLE Account Arc Guide](#)
  - [Arc Guide to Decision Making PDF](#)
- [Minnesota Court Information on Guardianship/Conservatorship](#)
- [Minnesota Association of Guardianship and Conservatorship \(MAGIC\)](#)
- [Working Interdisciplinary Networks of Guardianship Stakeholders](#)
- [In Forma Pauperis](#)
- MN Bill of Rights for People Under Guardianship: [STATUTE: Minn. Statute Section 524.5-120](#)
- [Supported Decision Making](#)

If you have any further questions or concerns, call The Arc Minnesota at 952-920-0855 or email us at [info@arcminnesota.org](mailto:info@arcminnesota.org).

**For further information or advocacy services, contact The Arc Minnesota at 952-920-0855 or toll-free at 833-450-1494 or visit [www.arcminnesota.org](http://www.arcminnesota.org).** (Please note: This document is not legal advice, and should not be construed as such. Thus, no information herein should replace the sound advice of an attorney.)

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