

EDUCATOR GUIDE TO LEGAL RIGHTS

This *Guide* is intended to be used by educators to guide planning efforts for persons with disabilities and their families, such as IEP meetings or sessions with vocational counselors. The *Guide* is associated with two other documents: "Student Guide to Legal Rights" and "Parent Guide to Legal Rights." These two *Guides* can be found at supportingchoices.org or fddc.org.



Florida
Developmental
Disabilities
Council, Inc.



LEGAL RIGHTS

- Civil Rights:** Florida enumerates the civil rights afforded all its citizens in law. Some rights can never be removed by a Court; others may be removed by the Court due to a judgment of incapacity and delegated to a legal agent; and others may be removed by the Court but not delegable. The tables below organize the rights that can be removed by the Court by medical, financial and personal/social domains and specifies whether they are delegable.
- Decision-Making Options:** Options are available for adults who need assistance in making decisions or exercising their civil rights. Some of these, following the principle of self-determination, allow for maximum input from the person seeking support. These are called "less restrictive" options. Other options, such as legal guardianship, allow guardians to make decisions for the person unilaterally, although this is not considered good practice. Guardianship is considered the "most restrictive" option. The course, *Lighting the Way*, includes information about legal options associated with various civil rights. To access this course, go to fdcd.org, supportingchoices.org and guardiantrusts.org.
- Guardianship and Guardian Advocacy:** Guardian Advocacy is unique to Florida. This option is considered less restrictive than guardianship, and it is less expensive and time-consuming. Guardian Advocacy is available only to adults diagnosed with a developmental disability and who lack the decision-making ability to perform some, but not all of the tasks necessary to care for him or herself or property. There are only minor differences between Guardian Advocacy and Guardianship.

Guardianship is the most restrictive option for decision-making. When a person is assigned a legal guardian, some or all of the person's rights are removed by the Court and those functions are carried out by the guardian. The legal process begins with any adult petitioning the Court that the person in question does not have the capacity to exercise his or her rights. The Court process includes the appointment of an examining committee, attorneys, and a court hearing. If the Court rules that the person is unable to exercise some or all of his or her rights, the Court then decides if all the civil rights are assigned to a guardian (plenary guardianship) or only some of the rights are assigned (limited guardianship).

- Restoration of Capacity:** If a person has been assigned a guardian to execute some or all of his or her rights, there is a legal option for having some or all of the rights restored. This would become an option if the person under guardianship has developed capacity to exercise these rights since their guardianship proceedings. **Restoration of rights** is a process that must go through the Court.

Regardless of ability, every adult automatically acquires certain legal rights at the age of 18, which cannot be taken away except through legal guardianship proceedings. Even then, there is a constitutional guarantee of due process which requires a person be given notice and an opportunity to be heard before a court declares the person incapacitated and removes the person's legal rights.

The person being considered for guardianship is represented by an attorney regardless of the person's ability to pay. Guardianship and guardian advocacy can be expensive for families and is considered the most restrictive decision-making option.

Rights that May be Removed by a Court under Guardianship Proceedings *(Delegable rights are marked by an asterisk.)*

Right to apply for government benefits*

Right to manage money and property or make dispositions of property*

Right to determine residence*

Right to consent to medical and mental health treatments*

Right to make decisions about social environment or social aspects of the person's life*

Right to contract*

Right to sue and defend lawsuits*

Right to marry (if the right to enter into a contract has been removed, the right to marry is subject to court approval as marriage is a contractual right under Florida law)

Right to vote

Right to have a driver's license

Right to travel

Right to seek or retain employment

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