

# Legal terms for caregivers

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It is becoming increasingly clear that elderly people have very specific legal needs. It is also clear that there are some special legal concerns for those who provide care (caregivers) for the elderly.

This is a brief list of some of the terms that elderly people and their caregivers might find useful in working through their special legal needs.

Aging Partners serves eight counties in southeast Nebraska:

- Butler
- Fillmore
- Lancaster
- Polk
- Saline
- Saunders
- Seward
- York

## Alternative Decision Making:

Elderly people are often in need of someone to assist them in making decisions. There are several ways to make someone else the “legal decision-maker” for oneself, including:

- Guardianship
- Conservatorship
- Representative payee
- Protective payee
- Durable power of attorney
- Trust agreements



## Guardianship:

This is the most restrictive form of alternative decision making, requiring a court order. The guardian must report annually to the court. The “ward” (person subject to the guardianship) loses all of his or her rights, and is not considered competent to make any decisions. The person requesting the guardianship must prove by clear and convincing evidence that the proposed ward is not competent.

## Conservatorship:

Much the same as guardianship, but restricted to financial decision making, i.e., the conservator has complete control over the ward’s finances. Not as restrictive as a guardianship, but almost.

## Representative Payee:

A representative payee is a person appointed by the Social Security Administration to handle all of the protected person’s Social Security affairs. In order to be appointed, a person must file an application with the Social Security office and have medical verification that the protected person is not capable of handling his or her own Social Security matters.

## Protective Payee:

Much the same as the representative payee. A protective payee is appointed by the Nebraska Department of Social Services to handle the protected person's state benefits such as Medicaid and Assistance to the Aged, Blind and Disabled.

## Durable Power of Attorney (POA):

A document signed by an individual in which he or she appoints another to serve as his or her agent. This lasts beyond disability or incapacity. A person does not forgo any of his or her legal rights by signing a durable power of attorney. The document can be modified or revoked at any time prior to disability or incapacity. It is a very useful document because it allows the "incapacitated" to make his or her own decisions to the extent possible. It also gives the "incapacitated" person a choice in who will serve as the alternate decision maker. A durable power of attorney can be signed only when one is "competent" to do so. It is very important to consider naming an alternate agent in the event that the first agent predeceases the protected person. The document must be notarized. Two witnesses are recommended as well.

## Springing Durable Power of Attorney:

Same as a durable power of attorney except that it becomes effective upon disability or incapacity. A definition of disability or incapacity must be included in the document.

## Trust:

A legal entity in itself, capable of owning property. A trust is managed by a trustee for the benefit of another (beneficiary). It is possible to be your own trustee. It is sometimes used by people who want to ensure that they will be cared for in later years. Can be a good estate planning tool; however, can be more costly than a will or probate, depending upon the size of the estate involved.

## Living Will:

A document signed by an individual in which he or she expresses what his or her desires are in the event of a terminal illness or irreversible coma. Living wills have no legal status in Nebraska. However, it is likely that a court would find a living will valid if challenged in a court. In a recent United States Supreme Court case, the court held that a person can refuse medical treatment and nourishment and hydration. The Living Will is very important in that regard because one cannot express his or her desires when in a vegetative state. It should be notarized and witnessed, and can be included in a durable power of attorney.

## Medical Durable Power of Attorney:

Same as a durable power of attorney except specifically designed for medical decision making.



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