# Massachusetts Probate and Family Court

# Module 9: Alternatives to Guardianship and Conservatorship

## Welcome

Welcome to the Massachusetts Probate and Family Court's orientation program for guardians and conservators of adults.

In this training module you will learn:

* When alternatives to guardianship and conservatorship should be considered
* A brief summary of some of the alternatives available in Massachusetts; and
Resources for more information.

Guardianship and conservatorship arrangements are only two of the options that give you the authority to make important decisions for an adult who needs your help. When should alternatives to guardianship and conservatorship be considered? What are the alternatives?

Before you are appointed as guardian or conservator, you must consider whether there are less-restrictive alternatives to a guardianship or conservatorship.

After you are appointed, you must continue to consider less-restrictive alternatives.
You must inform the Court immediately if the adult’s condition has changed. A change in the adult’s condition may lead to the restoration of some of their rights, or to a less-restrictive alternative.

You must also answer questions on your annual Guardian’s Care Plan Report or your annual conservator’s Account about whether to end the guardianship or conservatorship or to restore some, or all, of the adult’s rights.

## Alternatives to Guardianship and Conservatorship

## Health Care Decision-Making Alternatives

### Health Care Proxy

A health care proxy is a legally enforceable document made by an adult. It designates another person, called the agent, to make health care decisions for the adult when a physician certifies that they are not capable of making them. Having a health care proxy means that an adult does not need a guardian to make health care decisions when they are not able to make them.

If a guardian is appointed, the agent still has the authority to make health care decisions for the adult unless the Court orders otherwise. The guardian does not have the authority to revoke the health care proxy unless the Court orders it.

### Medical Orders for Life-Sustaining Treatment (MOLST) or Portable Medical Orders (POLST)

MOLSTS or POLSTs are not Court orders. They are standardized medical order forms that are used to document decisions the adult makes for life sustaining treatment. They are completed by the adult’s medical provider and the adult together.

A MOLST or POLST is suitable for adults of any age with an advanced illness. A MOLST or POLST is voluntary and can be modified and revoked. Unlike with a health care proxy, an adult who has a MOLST or POLST does not have to become incapacitated for it to go into effect.

## Financial Decision-Making alternatives

### Social Security's Representative Payment Program

The Social Security Administration (SSA) may appoint a person to manage the Social Security Disability Insurance or Supplemental Security Income benefits for an adult who cannot manage their benefits on their own.

Representative payees are appointed by the local Social Security Administration office based on medical documentation that the adult is unable to manage their own funds. A representative payee is expected to assist the adult with money management, and to protect the person from financial abuse. The Social Security Administration monitors the representative payee’s activities.

### Veterans Administration's Fiduciary Program

If the adult is entitled to benefits through the U.S. Department of Veterans Affairs (VA) and is determined to be unable to manage their benefits, the VA may appoint a fiduciary.
The fiduciary manages the adult’s VA benefits. This is similar to Social Security's Representative Payment Program.

### Trust

A trust can be created to manage the adult’s finances.
A trust is a legal entity able to hold property and assets for the benefit of the adult. The trust is managed by a person or organization, called the trustee. The trustee must manage the trust property for the adult’s benefit, as instructed in the trust document.

### Power of Attorney

A Power of Attorney is a legal document in which an adult appoints a trusted person, called an “Attorney-in-Fact” or “Agent” to make decisions for them. The document details the types of decisions the agent is authorized to make. The decisions can be both personal and financial.

If the Power of Attorney is a Durable Power of Attorney, it allows the Agent to continue making decisions on behalf of the adult even if the adult has become incapacitated.

### Protective Arrangement, Single Transaction or Special Conservator

A narrowly tailored ‘protective arrangement’ may be enough to protect an adult’s assets/property without appointing a conservator.

The Court also may authorize a Single Transaction relating to the adult’s property and business affairs such as a one-time payment, deposit, contract, settlement of a claim, or establishing a trust without appointing a conservator.

The Court may appoint a Special Conservator for a limited period of time to assist in carrying out any approved protective arrangement or Single Transaction.

## Additional Alternatives

### Supported Decision-Making

Supported Decision-Making is a written agreement made for an adult who can make their own life choices with support from a team of supporters they trust. The agreement is usually created between the adult and their team and can be an alternative to guardianship or conservatorship.

Instead of having a guardian or conservator appointed by the Court to make decisions for the adult, a written Supported Decision-Making arrangement allows the adult to make their own decisions with the assistance of a team of trusted supporters.
Adults using Supported Decision-Making arrangements identify areas where they need assistance, like making education, employment, or housing choices, health care decisions, or managing their finances. The Adult’s Supported Decision-Making team help them make these decisions.

For example, when students turn 18, they gain the right to make their own educational decisions. An educational Supported Decision-Making arrangement is particularly important for students with an Individualized Education Programs (IEP) because It allows the student to share or delegate educational decisions with parents or other adults.

## Resources

Remember, there are resources available to help you in your role as guardian or conservator. Click on the icons to see the various resources available.

* Court: If you have questions, you may always ask the Court for direction.
* OAGCO: You may also reach out to the OAGCO, that is the Office of Adult Guardianship and Conservatorship Oversight in the Administrative Office of the Probate and Family Court.
* Email: We are here to help you. You can contact us by email at OAGCO@jud.state.ma.us
* Webpage: You can visit us on the Probate and Family Court webpage at mass.gov to learn more about the OAGCO and how it can assist you as a guardian or conservator.

*Chief Justice John D. Casey:*

*“Thank you for becoming a guardian or conservator for an adult who needs your help.”*

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