



Legal Document Inventory for Individuals Engaged in Supported Decision-Making Arrangements

This issue of [The Voice](#)® was written by SNA member Richard Kroll with [Kroll Law Firm, LLP](#) in Rochester, NY. His firm focuses on trusts and estates, elder law, special needs planning and guardianships for greater Rochester, and seven county surrounding areas.

September 2022 - Vol. 16, Issue 7

In the last issue of [The Voice](#)®, Professor David English presented a history and legal background of supported decision-making in the US. This article suggests documents that an individual engaged in a supported decision-making arrangement will find useful.

Supported decision-making (SDM) is an alternate arrangement to guardianship, which allows an individual the ability to make one's own decisions with the help and support of others, rather than surrendering that right altogether to a guardian.

Suggested Document List

Power of Attorney – Everyone who is capable of executing a power of attorney should have one. It can be tailored for very broad or very narrow powers, and it can always be revoked by the principal granting the power. Care should be given when selecting an agent, who can exercise financial powers on behalf of the principal, and who is a fiduciary with respect to the principal, always owing the principal the highest degree of honesty and having the obligation to act in the principal's interest, not in the agent's interest.

Health Care Proxy – This can take a form of a health care proxy, living will, or a hybrid/combined form of this document. An agent is appointed to make health care decisions for a principal. Generally, it is not effective until a principal loses the capacity to personally make health care decisions, as determined by the principal's primary care physician. Like the power of attorney, the health care proxy is revocable. The health care proxy may contain provisions for present care and treatment, decisions for end-of-life, and delegation for decisions on a wide variety of care, therapy, and treatment.

HIPAA Authorization – This is an authorization allowing an individual to obtain confidential medical information. A HIPAA authorization can be limited in term (for example expiring after six months) or may be perpetual.

Joint Bank Account – One of the most useful tools is a joint bank account. This allows access to an account by a trusted individual who may live in close proximity to the

supported individual but may not necessarily be the same person as the agent appointed in a power of attorney.

Disposition of Remains – Many states allow an individual to delegate another person to handle arrangements after death. A disposition of remains may specify what services are requested, or it may simply delegate another to make those decisions. Many states have laws that prioritize who can make these decisions (usually the spouse, executor or the next of kin) but the individual in the supported decision-making arrangement may wish to delegate a different person, and not necessarily a family member.

True Link Card – True Link is a private company that issues a restricted credit card which can be controlled by a dashboard and can be set to allow or prohibit certain purchases. For example, it can limit access to liquor stores, casinos, grocery stores, restaurants, or other purchases which can jeopardize an individual's right to government benefits. Generally, the True Link Card is pre-funded and allows the supported decision-making individual the freedom and flexibility of having a card similar in appearance and function to a debit card.

ABLE Account – An ABLE Account is the ultimate vehicle to allow an individual access and control over funds without jeopardizing eligibility to means-tested government benefits. The ABLE Account has restrictions (such as the age of the onset of disability, and the amount of contribution), but it is a useful tool.

Geriatric Case Manager Engagement – A private geriatric case manager (often an RN, social worker or a combination of both) is a valuable ally who can be hired to perform a variety of services including visiting and monitoring an individual with special needs to assure a safe environment, proper nutrition, access to supportive programs, and medical services. The engagement can be for a certain task, a short period of time, or for recurring pattern of services.

Personal Service Contract – An individual or the trustee of a special needs trust (SNT) can engage another, possibly a family member or friend, to perform a variety of services. For example: bookkeeping, cleaning, driving, packing and moving, gardening, shopping, and virtually anything else for which a helper can be hired. Personal service contracts must meet three requirements: 1. they must be in writing; 2. they must pre-date the service rendered; and 3. they must be commensurate with what third parties would charge for the same service.

Room and Board Agreement – If the supported decision-making individual lives with family or friends, a room and board agreement is necessary to prevent the application of in-kind support and maintenance (ISM). This is a familiar concept to special needs planners.

Letter of Intent – A letter of intent is a document that supported decision-makers can execute in which they can set forth important information on a wide variety of subjects, including health, limitations, interests, challenges, special arrangements, friends and family, information about pets, and hobbies. It can be a guiding blueprint for those assisting an individual in a supported-decision arrangement.

Digital Assets Library – A digital assets library is a useful tool for managing the supported decision-making individual’s online information and profile. It should contain an itemized list of all devices which can be used to access digital information and should include passwords and usernames for all accounts. Although this information need not be disclosed during lifetime, a trusted individual should know where to locate this document in the event of illness or death.

Valuable Document Locator– Familiar to estate planners, this is an inventory of valuable documents, and where they are located. For example: Is there a safe deposit box? Where is the key? Is there an insurance policy? Where is the policy located?

While not exhaustive, the above list is a starting point to guide an individual in a supported decision-making arrangement, and the documents suggested will assure that the arrangement will operate smoothly, successfully, and long term.

Additional Resources:

- Preceding this article, [Supported Decision-Making in the US: History and Legal Background](#), also is available from the SNA.
- Readers may also benefit from this previous issue of *The Voice*® : [Finding a Balance of Autonomy, Support and Assistance: Using Supported Decision-Making Agreements and Powers of Attorney](#)

About this Article: *We hope you find this article informative, but it is not legal advice. You should consult your own attorney, who can review your specific situation and account for variations in state law and local practices. Laws and regulations are constantly changing, so the longer it has been since an article was written, the greater the likelihood that the article might be out of date. SNA members focus on this complex, evolving area of law. To locate a member in your state, visit [Find an Attorney](#).*

Requirements for Reproducing this Article: *The above article may be reprinted only if it appears unmodified, including both the author description above the title and the “About this Article” paragraph immediately following the article, accompanied by the following statement: “Reprinted with permission of the Special Needs Alliance*

– www.specialneedsalliance.org.” *The article may not be reproduced online. Instead, references to it should link to it on the SNA website.*