

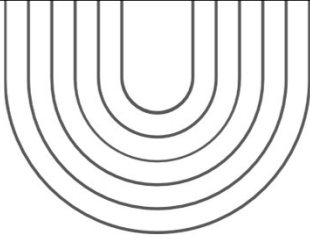


WHAT HELP DO YOU REALLY NEED?

By: Legal Aid Society of Hawai'i

- 01.** CAPACITY AND SUPPORTS
- 02.** POWERS OF ATTORNEY AND
ADVANCED HEALTH CARE
DIRECTIVE
- 03.** SURROGATE DECISION-
MAKING
- 04.** GUARDIANSHIP AND
CONSERVATORSHIP

TABLE OF CONTENT



HELLO!



- Largest and oldest public interest law firm
- 10 offices statewide (every island)
 - Oahu: Windward, Leeward, and downtown
- Self-help centers at each courthouse
- 100 advocates, attorneys, and paralegals



01.

CAPACITY AND SUPPORTS

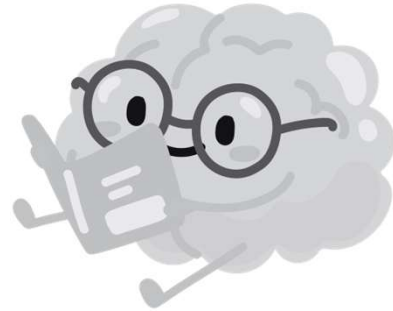


WHO NEEDS HELP MAKING DECISIONS?



CAPACITY FOR WHAT?

- Activity that involves a decision (contracts)
- Informed consent (medical decisions)
- Execute will, trust, or advanced health care directive



HOW TO ASSESS CAPACITY: STOP LIGHT TOOL

- Different areas of functioning
 - Daily life and employment
 - Healthy living
 - Social and spirituality
 - Safety and security
 - Community living
 - Citizenship and advocacy
- Frequency assistance is needed
- Good days vs. bad days



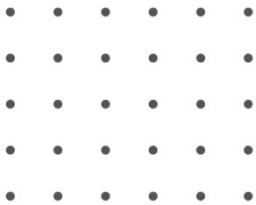
"Guardianship: Spectrum of Alternatives and Rights" by Maggie Scotece, Attorney at Disability Rights Ohio dated July 22, 2021

"Guardianship: Spectrum of Alternatives and Rights" by Maggie
Scotece, Attorney at Disability Rights Ohio dated July 22, 2021

HOW TO ASSESS CAPACITY: PRACTICAL TOOL



- **P**RESUME guardianship is not needed
- Clearly identify the **R**EASONS for concern
- **A**SK if condition may be temporary
- Determine if **C**OMMUNITY resource or accommodations can address concerns
- Consider whether a **T**EAM could help the person make decisions
- **I**DENTIFY abilities - strengths and limitations
- Address potential **C**HALLENGES for identified supports
- **A**PPOINT support/surrogate consistent with person's values
- **L**IMIT any necessary guardianship order



MEET CLARA

- 72-year-old widow
- Retired elementary school teacher
- Involved in automobile accident
- Wheel-chair bound
- Friends and neighbors help



FORGETS TO TAKE
MEDICATION ONCE IN
AWHILE

COOKS AND SHOPS OWN
GROCERIES

TRAVELS BY BUS EXCEPT GOT
LOST A FEW TIMES AND
ALMOST COULD NOT FIND
HER WAY HOME

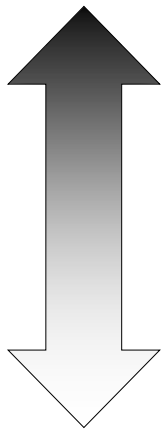
WHAT IS GOING ON WITH CLARA?

NO LONGER ABLE TO COUNT
MONEY AT THE STORE

SOMETIMES CANNOT GET
OUT OF BED



LEAST RESTRICTIVE



MOST RESTRICTIVE

CONTINUUM OF SUPPORT

- Informal support/assistance
- Supported decision-making
- Release of information
- Authorized representatives
- Representative payee
- Powers of attorney
- Conservatorship and guardianships



"Guardianship: Spectrum of Alternatives and Rights" by Maggie Scotece, Attorney at Disability Rights Ohio dated July 22, 2021

INFORMAL SUPPORT

- Direct deposits
- Schedule payments
- Reminders



"Guardianship: Spectrum of Alternatives and Rights" by Maggie Scotece, Attorney at Disability Rights Ohio dated July 22, 2021

SUPPORTED DECISION-MAKING

- Formalized plan for support
- Identify supporters and areas of need
- Give plan to supporters and others who interact with supporters
- Can evolve over time
- Note: Signed into law in Hawai'i (July 7, 2025)



"Guardianship: Spectrum of Alternatives and Rights" by Maggie Scotece, Attorney at Disability Rights Ohio dated July 22, 2021

RELEASE OF INFORMATION

- One time or multiple times?
- Specific programs
 - HIPAA - medical
 - Consent for release of information (Social Security 3288)
 - Med-QUEST authorization to disclose confidential information (DHS 1123)
- Three-way call with agency



AUTHORIZED REPRESENTATIVE AND REPRESENTATIVE PAYEES

- Specific to agencies
- Receive money and conduct action on behalf of principal
- Social Security payments
 - Authorized representatives - action on case
 - Representative payees
 - Use money for day-to-day living of principal
 - Best interest of principal
 - Separate bank accounts for representative payee and principal
 - Accounting
 - Taxes



QUIZ

- What is the least restrictive support?
- What is the most restrictive support?



02.

POWERS OF ATTORNEY



POWERS OF ATTORNEY

- Capacity
- Two types
 - Financial Power of Attorney
 - Health Care Power of Attorney
- Effective date: now or later (springing)
 - Springing - lose capacity
- Durable - effective now and continuing despite loss of capacity



POWERS OF ATTORNEY: PEOPLE INVOLVED

- Principal
- Agent
 - Needs POA to complete action
 - Selling automobile - need to show motor vehicle department the document
 - Co-agents
 - Availability
 - Agreement
 - Successor agents
 - Someone you trust



POWERS OF ATTORNEY: SCOPE

- Specific
 - Real estate
 - Stocks and bonds
 - Commodities
 - Insurance
 - Taxes
- General
- Reason for difference
 - Depends on need
 - Convenience
 - Length of time needed – temporary



ADVANCE DESIGNATION OF REPRESENTATIVE PAYEE - SOCIAL SECURITY BENEFITS

- NOT a financial power of attorney
- Social Security Administration does NOT recognize financial power of attorney
- Designate up to 3 people to be your representative payee if need arises
- Apply on mySocialSecurity, phone, or local office.
- Hierarchy of preferred representative payees



ADVANCED HEALTH CARE DIRECTIVE: SCOPE

- Instructions about future medical care usually upon incapacity
 - Agent can have access to medical information to determine if principal is incapacitated
 - Prolong or not prolong life
 - Artificial nutrition and hydration
 - Relief from pain
 - Remain in home as long as reasonable
 - Nomination of guardian
 - Organ donation
- Designate someone to make decisions about health



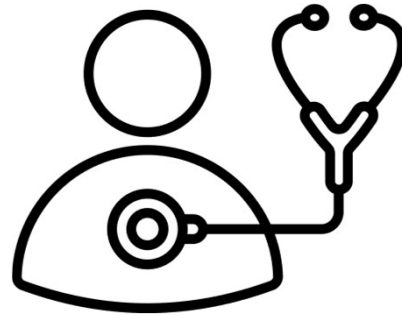
ADVANCED HEALTH CARE DIRECTIVE: FORMS

Any template form
EXCEPT FOR KAISER.
Kaiser has their own specific form.



SIDE NOTE: POLST (PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT)

- Physician's orders
- Immediately actionable – EMS will act on it (not on an advanced health care directive)
- Agent on advanced health care directive can change the POLST



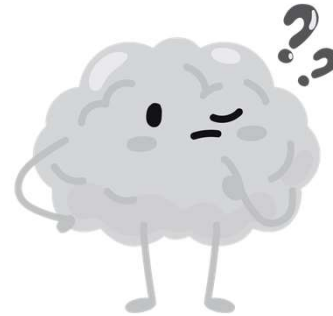
POWERS OF ATTORNEY: AMENDING OR REVOKING

- Letter to agent revoking power of attorney
- Revoked with agent gets notice
- Suggested: inform banks, doctors, or whoever may have relied on the power of attorney
- Create new power of attorney
- Death terminates power of attorney



POWERS OF ATTORNEY: THINGS TO CONSIDER

- Who do you want as an agent?
- When do you want it to start?
- When do you want it to end?
- What do you want the agent to do?
- Will the bank/financial entity/etc. accept your power of attorney?
- How many copies do you need?
- Where will you keep your power of attorney?
- When will I regularly review my power of attorney to make sure it still suits my needs?
- Note: Alternate option to joint bank account



QUIZ

- What are the two types of powers of attorney?
- What is the person giving the power of attorney called?
- What is the person acting with the power called?



03.

SURROGATE DECISION- MAKING

BACKGROUND

- HRS 327E
- No agent on advance health care directive
- No guardian
- No capacity
 - Physician needs to make reasonable efforts to notify patient of lack of capacity
- Health care decisions only



HOW TO GET SURROGATE

- Person informs supervision health care provider OR
- Consensus of interested persons
 - Spouse
 - Reciprocal beneficiary
 - Civil union partner
 - Adult child
 - Parent of the patient
 - Adult sibling
 - Adult grandchild
 - Any other adult who exhibited special care
 - Note: Patient can cancel chosen surrogate



TYPES OF SURROGATE

- Designated surrogate by patient (all health decisions) vs.
- Non-designated surrogate (all health decisions, except
 - Withdrawal of artificial hydration and nutrition requires
 - Primary physician AND
 - Second independent physician certifying that likely no neurological response in the future



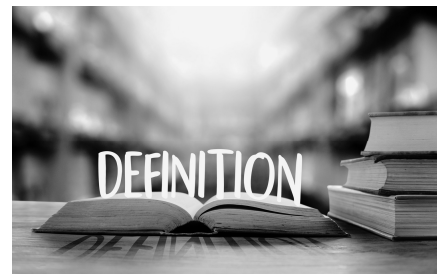
04.

GUARDIANSHIP AND CONSERVATORSHIP



STANDARD OF INCAPACITY

- Unable to
 - Receive and evaluate information, or
 - Make or communicate decision
- Lacks ability to meet the essential requirements for physical health, safety or self-care
- Even with appropriate and reasonably available technological assistance (HRS Section 560:5-102)



RE-VISIT CLARA: 5 YEARS LATER

- 77-year-old widow
- Retired elementary school teacher
- Involved in automobile accident
- Wheel-chair bound
- Friends and neighbors help



NEEDS SOMEONE TO SIT
WITH HER AT ALL DOCTOR
APPOINTMENTS - CANNOT
DECIDE WHAT TO DO

MEALS ON WHEELS BRING
FOOD TO HER

CANNOT TRAVEL OUTSIDE OF
HER HOME BY HERSELF

NO LONGER UNDERSTANDS
HOW TO PAY BILLS

WHAT IS GOING ON WITH CLARA?

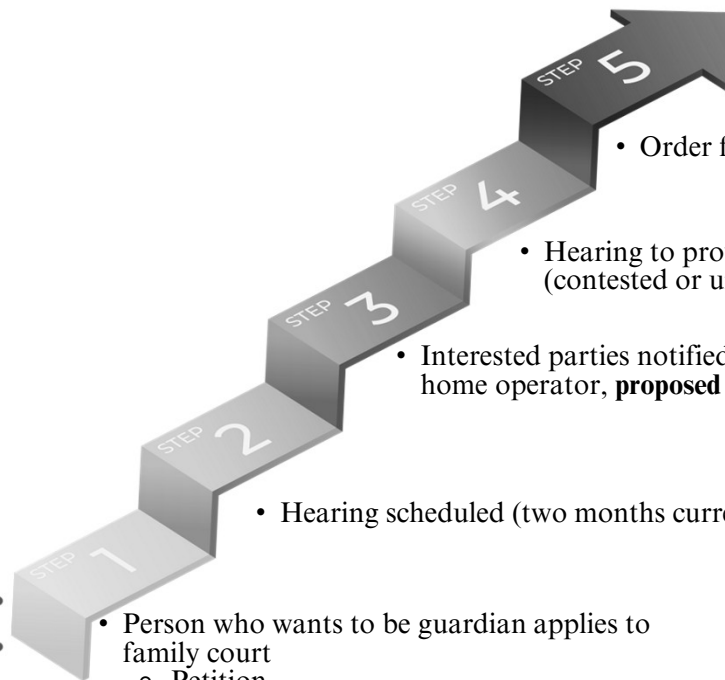
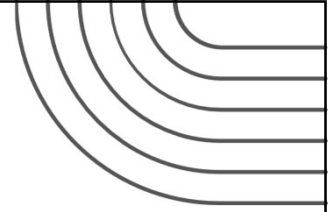
FORGETS TO SHOWER
OCCASIONALLY



TYPES OF GUARDIANS



- Guardian of the property - conservator
- Guardian of the person
- Emergency guardian
- Co-guardians
- Successor guardians
- Public guardians



- Person who wants to be guardian applies to family court
 - Petition
 - Court fee (\$215) unless waived

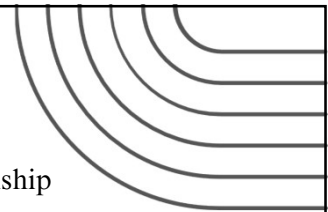
- Hearing scheduled (two months currently)

- Interested parties notified (family, children, care home operator, **proposed ward**)

- Hearing to prove incapacity and fit guardians (contested or uncontested)

- Order for guardianship

STEPS TO GUARDIANSHIP



GUARDIAN DUTIES AND RESPONSIBILITIES - PERSON



- Medical decisions
- Care for the ward
- Legal/other important decisions in the ward's best interest
- Caring for personal property of ward
- Annual report about the ward's condition, place of residence, and other information.

GUARDIAN DUTIES AND RESPONSIBILITIES - PROPERTY (CONSERVATOR)*



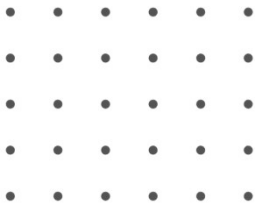
- Handle money issues
- Collect, hold, and retain assets of the estate
- Receive additions to the estate
- Operate business on behalf of ward
- Invest
- Make ordinary or extraordinary repairs or alterations to buildings
- Vote in a security

*Protected person

GUARDIAN RIGHTS - PERSON



- Not required to
 - Use personal funds for ward's expenses
- Not liable for
 - Contract when acting for the ward
 - Acts of the ward on third person
 - Injury to the ward by wrongful conduct of third party

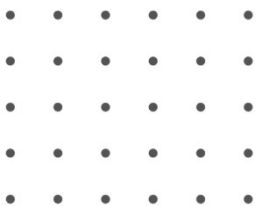


GUARDIAN'S JOB: BEST INTEREST OF THE WARD

- SAFE
- HEALTHY
- FINANCIALLY
SECURE



- INDEPENDENT
- LEAST
RESTRICTIVE
- WARD-CENTERED

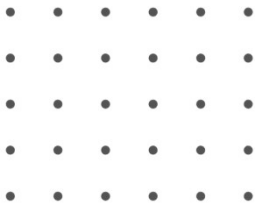


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TERMINATION OF GUARDIANSHIP



- Death of the ward
- Court order
 - Ward
 - Guardian
 - Interested party



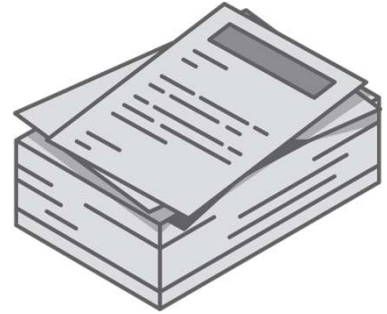
QUIZ

- What are the different types of guardianship?
- When would someone need a guardianship?



CASE STUDY – KEALOHA

- Characters:
 - Gerard Puana – uncle
 - Florence Puana – grandmother in her 90s
 - Katherine Kealoha – deputy prosecutor described as smart and sweet
- 2007: Trust set up for Gerard
 - Kealoha set up as trustee
 - Kealoha had power of attorney and control over most of his assets
 - Gerard said it was fraudulent



"Years in the making: How prosecutors built their case against the Kealohas," by Hawaii News Now (October 27, 2017)

CASE STUDY – KEALOHA

- Florence approached Kealoha for help with a reverse mortgage.
 - Some proceeds for Gerard to buy condo
 - Some proceeds for Katherine's bills
 - After a few years, Kealoha would pay back entire reverse mortgage.
 - Gerard would pay monthly fee for loan to Kealoha.
 - Money put into joint account with Kealoha



Alexander Silvert, HSBA SCD Coffee Hour - The Kealoha Conspiracy - How it All Began (August 6 2020)
 "I felt like I was nothing": Grandma who launched Kealoha probe speaks out," by Hawaii News Now (August 24, 2017)

CASE STUDY - KEALOHA

- Kealoha created P.O. Box for Florence's mail.
 - Florence never got any bank statement
 - 2012: New mortgage company mailed statement to Florence's residential address.
 - Mortgage was not paid off.
 - Now \$600-\$700K in debt
- Florence sent letter to Katherine to stop use of her Power of Attorney.
 - Angry response from Katherine for questions about her integrity
- Misuse of joint account
 - \$300K all gone
 - Lawsuit filed by Puanas against Kealoha for misuse of joint bank account
- 12/1/14: Conservatorship filed against Florence.
 - Denied



Alexander Silvert, HSBA SCD Coffee Hour - The Kealoha Conspiracy - How it All Began (August 6 2020)

"I felt like I was nothing": Grandma who launched Kealoha probe speaks out," by Hawaii News Now (August 24, 2017)

"Years in the making: How prosecutors built their case against the Kealohas," by Hawaii News Now (October 27, 2017)

THINGS TO CONSIDER

- What supports do you have?
- What help do you need?
- How much control do you want to retain?
- Who do you trust? Are they able to handle the responsibilities?
- Do you already have documents that list people to help you?
- Where are these documents?



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MAKING**

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TABLE OF CONTENT

INTAKE

PHONE: 808-536-4302

MONDAY-FRIDAY, 9:00-11:30 A.M. AND 1:00-3:30 P.M.

ONLINE: WWW.LEGALAIDHAWAII.ORG

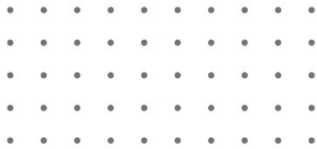
AREAS OF PRACTICE

- IMMIGRATION
- PUBLIC BENEFITS
- HOUSING
- CONSUMER
- ELDER LAW
- VITAL DOCUMENTS
- FAMILY



HELPFUL RESOURCES

- **UH ELDER LAW HANDBOOK**
 - WWW.HAWAII.EDU/UHELP/PUBLICATIONS.HTM
- **LEGAL NAVIGATOR**
 - WWW.LEGALAIDHAWAII.ORG/LEGAL-NAVIGATOR.HTML



THANK YOU

