

**Down Syndrome  
Advocates in  
*Action***



# Guardianship vs. Power of Attorney in Nebraska

When a young adult with Down syndrome approaches adulthood, families often ask: What legal supports do we actually need?

In Nebraska, the two most common options are **Power of Attorney (POA)** and **Guardianship**. These tools are very different. Understanding how each works — and when each is appropriate — helps families choose the **least restrictive option that truly protects safety while preserving independence**. This document will review both options.

## Understanding Power of Attorney

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A **Power of Attorney (POA)** is a legal document in which an adult voluntarily gives another person (called an "agent") authority to act on their behalf in specific areas.

Power of Attorney does **not remove rights**. The adult keeps their legal authority unless they lack decision-making capacity at the time.

For many adults with Down syndrome, POA can provide enough support without needing court involvement.

### **Types of Power of Attorney Families May Consider**

#### **1. Medical Power of Attorney (Health Care POA)**

Allows an agent to make health-care decisions if the individual is unable to do so.

Covers:

- Medical treatment, surgeries and procedures, hospital decisions, access to medical records (often paired with HIPAA authorization)

Does NOT cover- Financial matters, Housing contracts, Education decisions

**This is often the first tool families consider.**

#### **'2. Durable Financial Power of Attorney**

Allows an agent to manage financial matters. "Durable" means it remains effective even if the person later loses capacity.

Covers:

- Banking
- Paying bills
- Managing income (including SSI)
- Signing contracts
- Handling benefits paperwork
- Tax matters

This can be very important for adults who:

- Receive public benefits
- Need help managing money
- Are vulnerable to financial exploitation

It does not automatically give control — the individual still has authority if they have capacity.

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### **3. General Power of Attorney**

A broader POA that may combine financial and legal authority, depending on how it is written.

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Families sometimes use a general POA when they want one document covering multiple areas. However, some prefer separate medical and financial documents for clarity.

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## How Power of Attorney Actually Works

A critical point:

- If the adult **has capacity**, their decision controls.
- The agent cannot override a capable adult's decision.
- The agent steps in when the adult cannot understand, evaluate, or communicate a decision.

POA allows someone to act *with* or *for* a person — it does not transfer legal rights away from them.

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## Why Families Choose Power of Attorney

Power of Attorney may be appropriate when:

- The adult can participate in decisions
- Support is needed, not full substitution
- There is cooperation between the adult and parent
- Providers respect supported decision-making

Benefits include:

- Preserves autonomy
- No court involvement
- Less expensive
- Flexible and revocable
- Can be customized to specific needs

Limitations include:

- May be questioned by institutions
- Does not allow overriding a capable adult's refusal
- Does not provide enforcement authority

## Understanding Guardianship

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Guardianship is a **court-ordered arrangement** that transfers certain decision-making rights from an adult (the "ward") to another person (the "guardian").

Unlike Power of Attorney, guardianship **does remove legal rights** in the areas granted by the court.

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## Types of Guardianship in Nebraska

### Limited Guardianship

The court grants authority only in specific areas. All other rights remain with the individual.

Nebraska law presumes limited guardianship unless broader authority is proven necessary.

### Full Guardianship

The guardian is granted all powers allowed by law. This requires clear and convincing evidence that no lesser option will protect the individual.

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## Why Families Consider Guardianship

Guardianship may be necessary when:

- Power of Attorney has been ineffective
- The adult consistently lacks capacity
- There are significant safety risks
- The adult refuses essential care and lacks understanding
- Institutions require enforceable legal authority
- There is risk of exploitation or serious harm

Benefits include:

- Clear legal authority
- Required recognition by systems
- Ability to override decisions within granted powers

Drawbacks include:

- Loss of civil rights
  - Court oversight and reporting requirements
  - Cost and legal complexity
  - Harder to reverse
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## Person-Centered Planning: Start With Strengths

Before choosing either option, families should ask:

- What decisions can the person already make?
- What supports improve understanding (visuals, repetition, trusted supporters)?
- Where are the true risks?
- What does the person want for their life?

The goal is not maximum control. The goal is **maximum independence with appropriate protection.**

Often, families use:

- Medical POA + Financial POA, Supported decision-making practices, and Representative Payee (for SSI)

**Guardianship is usually considered only when those options are not sufficient.**

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### **Steps to Obtain Power of Attorney in Nebraska**

1. The individual must be 18 or older and have capacity to sign.
2. Determine which type(s) of POA are needed (medical, financial, limited, or general).
3. Prepare Nebraska-compliant documents (often with legal assistance).
4. Sign according to state requirements (typically notarized and/or witnessed).
5. Provide copies to relevant institutions.
6. Review periodically and update if needed.

No court filing is required.

### **Steps to Obtain Guardianship in Nebraska**

1. Determine that less restrictive alternatives are insufficient.
2. File a petition in county court.
3. Provide required notice to the individual and family members.
4. Complete required background checks (for adult guardianship).
5. Attend a court hearing.
6. If appointed:
  - File acceptance documents
  - Complete required education
  - Receive Letters of Guardianship

Guardians are subject to ongoing court oversight.

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## **Frequently Asked Questions**

### **Is guardianship required at age 18?**

No. Guardianship is never automatic.

### **Is the age of majority 18 or 19 in Nebraska?**

Nebraska's general age of majority is 19, but some legal rights begin at 18. Planning often starts at 18, but parental authority typically ends at 19 unless another legal arrangement is in place.

### **Can Power of Attorney override my adult child's decision?**

No, not if they have decision-making capacity at the time. Guardianship is required to legally override a capable adult's decision.

### **Should we get both Medical and Financial POA?**

Many families do. Medical POA covers health decisions, while Financial POA covers money, contracts, and benefits.

### **Can guardianship be limited?**

Yes. Nebraska presumes limited guardianship unless full authority is proven necessary.

### **What is the least restrictive option?**

The least restrictive option is the one that protects safety while preserving the most rights. For many families, that begins with Power of Attorney before considering guardianship.

Families do not have to make this decision alone. Thoughtful planning, legal guidance, and person-centered discussion can ensure that protection and independence grow together.