TRANSFEROFRICHTS

PARENTS &
GUARDIANS!

Happy 18th Birthday!

Cool, I'm an adult

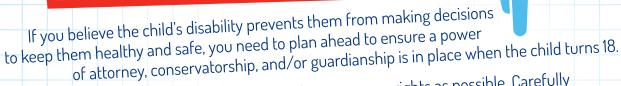
for students with disabilities

SD LAW SAYS:

The child will legally become an adult at age 18.

They will be responsible for making their own decisions - no matter how significant their disability.

Parents/Guardians will lose their right to make decisions on the child's behalf.



It is best to allow a young adult to keep as many rights as possible. Carefully consider his/her limitations – and abilities – when making these decisions.



If the person has the ability to understand and sign contracts, consider... Young adult giving authority is called PRINCIPAL

Person receiving authority is called **AGENT** or **TTORNEY-IN-FAC**

THERE ARE TWO TYPES

POWER OF ATTORNEY

- Authority given orally or in writing (in writing is best)
- Authorizes agent to act on behalf of principal
- Terminates when principal:
 - Revokes the authority
 - Dies
 - Becomes incapacitated

DURABLE POWER OF ATTORNEY

- Attorney should help write the document
- Sets out agent's authority to act on principal's behalf, even if principal becomes incapacitated
- Can go into effect now or upon principal's incapacity
 - Terminates when principal:
 - Revokes (prior to incapacity)
 - Dies

Information on Power of Attorney can be found in South Dakota Codified Law (SDCL) Title 59.

MORE ON THE OTHER SIDE ...

IN SITUATIONS WHERE THE PERSON DOES NOT HAVE THE CAPACITY TO SIGN CONTRACTS AND NEEDS HELP MAKING DECISIONS, **CONSERVATORSHIP** AND/OR **GUARDIANSHIP** IS AVAILABLE IN SOUTH DAKOTA TO FILL THAT NEED.

CONSERVATOR

GUARDIAN

WHAT

Responsible for only a person's estate and finances

WHO

- One or more adults; or
- Public agency; or
- Non-profit corporation; or
- Bank or trust company

WHAT

Responsible for one or more areas of a person's affairs (except finances) and helps make decisions

WHO

- One or more adults; or
- Public agency; o
- Non-profit corporation

HOW

- Appointed by a judge during
- a court hearing



HOW

Appointed

by a judge

during a

court

hearing

Attorney will file petition, along with current evaluations, IEP, and financial statements.

Court hearing will be set within 60 days of filing petition.

START

Find attorney with conservatorship and/or guardianship experience.

Expect to pay \$500 or more. South Dakota Establishment Grant can assist with \$500. Apply at dhs.sd.gov/gdn/EstablishmentPage3.aspx.

Attorney mails letters to the person and family members to notify them of petition for conservatorship and/or guardianship.

3 DIFFERENT TYPES OF CONSERVATORS & GUARDIANS

Full All areas of a person's life

Limited

Temporary Need help right away, but only for a short time

Only some areas of a person's life

Attend court, and the judge determines if the person is in need of a conservator and/or guardian and the type (full, limited, or temporary).

The judge issues order appointing conservator and/or guardian. The person in need of a conservator and/or guardian can appeal the decision within 30 days.

The court order can be modified as needed or completely revoked if the person no longer needs assistance.

RESPONSIBILITIES OF A CONSERVATOR & GUARDIAN

- Encourage person to be an active participant in decision-making process and act on their own behalf.
- Consider the desires of the person.
- Be knowledgeable about the person.
- Make decisions to keep the person safe and healthy.
- Act in the person's best interests.

Information on the South Dakota Guardianship and Conservatorship Act can be found in South Dakota Codified Law (SDCL) 29A-5-101 through 29A-5-510.



Disability Rights
South Dakot

1.800.584.9294

1.800.658.4782



This document is for informational purposes only. It is not intended as legal advice. Because each situation is unique, it is recommended that you consult with an attorney to discuss all options. The contents and printing were developed under a grant from the U.S. Department of Education (Project # H282MH40021). However, the contents do not necessarily represent the policies of the Department of Education, and you should not assume endorsement by the Federal Government.