

ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR
GUARDIANSHIP

CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1357.001. SHORT TITLE. This chapter may be cited as the Supported Decision-Making Agreement Act.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

Sec. 1357.002. DEFINITIONS. In this chapter:

(1) "Adult" means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.

(2) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(3) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.

(4) "Supported decision-making agreement" is an agreement between an adult with a disability and a supporter entered into under this chapter.

(5) "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

Text of section as added by Acts 2015, 84th Leg., R.S., Ch. 214,
Sec. 23

Sec. 1357.003. PURPOSE. The purpose of this chapter is to recognize a less restrictive substitute for guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Text of section as added by Acts 2015, 84th Leg., R.S., Ch. 1224,
Sec. 1

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Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING AGREEMENT. An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter to do any or all of the following:

(1) provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;

(2) subject to Section 1357.054, assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological,

financial, educational, or treatment records, from any person;

(3) assist the adult with a disability in understanding the information described by Subdivision (2); and

(4) assist the adult in communicating the adult's decisions to appropriate persons.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

Sec. 1357.052. AUTHORITY OF SUPPORTER; NATURE OF RELATIONSHIP. (a) A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

(b) The supporter owes to the adult with a disability fiduciary duties as listed in the form provided by Section 1357.056(a), regardless of whether that form is used for the supported decision-making agreement.

(c) The relationship between an adult with a disability and the supporter with whom the adult enters into a supported decision-making agreement:

(1) is one of trust and confidence; and

(2) does not undermine the decision-making authority of the adult.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 514 (S.B. 39), Sec. 10, eff. September 1, 2017.

Sec. 1357.0525. DESIGNATION OF ALTERNATE SUPPORTER IN CERTAIN CIRCUMSTANCES. In order to prevent a conflict of interest, if a determination is made by an adult with a disability that the supporter with whom the adult entered into a supported decision-making agreement is the most appropriate person to provide to the adult supports and services for which the supporter will be

compensated, the adult may amend the supported decision-making agreement to designate an alternate person to act as the adult's supporter for the limited purpose of participating in person-centered planning as it relates to the provision of those supports and services.

Added by Acts 2017, 85th Leg., R.S., Ch. 514 (S.B. 39), Sec. 11, eff. September 1, 2017.

Sec. 1357.053. TERM OF AGREEMENT. (a) Except as provided by Subsection (b), the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(b) The supported decision-making agreement is terminated if:

(1) the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter;

(2) the supporter is found criminally liable for conduct described by Subdivision (1); or

(3) a temporary or permanent guardian of the person or estate appointed for the adult with a disability qualifies.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 514 (S.B. 39), Sec. 12, eff. September 1, 2017.

Sec. 1357.054. ACCESS TO PERSONAL INFORMATION. (a) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or

educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

(c) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED DECISION-MAKING AGREEMENT. (a) A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.

(b) If signed before two witnesses, the attesting witnesses must be at least 14 years of age.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING AGREEMENT. (a) Subject to Subsection (b), a supported decision-making agreement is valid only if it is in substantially the following form:

SUPPORTED DECISION-MAKING AGREEMENT

Important Information For Supporter: Duties

When you agree to provide support to an adult with a disability under this supported decision-making agreement, you have a duty to:

- (1) act in good faith;
- (2) act within the authority granted in this agreement;
- (3) act loyally and without self-interest; and

(4) avoid conflicts of interest.

Appointment of Supporter

I, (insert your name), make this agreement of my own free will.

I agree and designate that: _____

Name: _____

Address: _____

Phone Number: _____

E-mail Address: _____

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter

Y/N taking care of my physical health

Y/N managing my financial affairs.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

2. Help me understand my options so I can make an informed decision; or

3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this _____ day of _____, 20____

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

(signature of supporter) (printed name of supporter)

Signature

(my signature) (my printed name)

(witness 1 signature) (printed name of witness 1)

(witness 2 signature) (printed name of witness 2)

State of _____

County of _____

This document was acknowledged before me

on _____ (date)

by _____ and _____

(name of adult with a disability) (name of supporter)

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed name)

My commission expires: _____

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

(b) A supported decision-making agreement may be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 514 (S.B. 39), Sec. 13, eff.

September 1, 2017.

SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF LIABILITY. (a) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(b) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.

Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION. If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Department of Family and Protective Services in accordance with Section 48.051, Human Resources Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 214 (H.B. 39), Sec. 23, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1224 (S.B. 1881), Sec. 1, eff. June 19, 2015.