

Exploring Long-Term Care Residents' Rights: The Theory & The Practice

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Creating pathways to justice



Resident rights are not one-size-fits-all...

- Each facility type operates under different statutes & regulations
- Although the specifics may differ, the intent is the same: To protect dignity, autonomy, and validate that the facility is the resident's HOME.

The Long Term Care / Housing Spectrum

Features	Skilled Nursing Facility	Assisted Living Facility	Independent Living
Contract or Lease	✓	✓	✓
Regulated by State	✓	✓	✗
Residents' Rights	✓	✓	✗
Health Care Facility	✓	✗	✗
Services & Assistance	✓	✓	✗
Right to a Hearing	✓	✗	✓

Statutes and Regulations

- Assisted Living Facility Resident's Rights:
 - §429.28, Florida Statutes
- Nursing Home Resident's Rights:
 - §400.022, Florida Statutes
 - 42 CFR §483.10

Rights Common to All Long-Term Care Residents

Some are similar:

- Civil Rights
- Right to privacy
- Private and uncensored communication
- Right to visitors
- Right to manage money
- Dignity in care: person -centered care
- Access to health, social, legal or other services
- Use of personal belongings
- Right to present grievances; freedom from retaliation
- Notice of termination of residency (allowable reasons, timelines, rights & remedies differ SIGNIFICANTLY)

Rights Exclusive to Nursing Home Residents

Because nursing homes are healthcare facilities, and most U.S. nursing homes participate in Medicare and Medicaid, they are highly regulated by State and Federal law. Regulated matters include, but are not limited to:

- Medical care and treatment
- Ability to request, refuse, and discontinue treatment
- Freedom from chemical and physical restraints

The Right...

To Privacy: F.S. § 400.022(1)(b)

- Private and uncensored communication including access to a telephone
- Receiving and sending unopened correspondence
- Visiting with persons of the resident's choice

The Reality...

- Establishing a lawyer/client relationship at the bedside
- Arranging for use of a phone to communicate with attorney
- Transmitting/e-signing documents by fax and email

The Right...

To privacy and dignity:

- The right to participate in medical care planning; F.S. § 400.022 (1)(j)
- The right to refuse medication or treatment and to be informed of the consequences; F.S. § 400.022(1)(k)
- Privacy in care and treatment; F.S. § 400.022(1)(m)
- Right to be treated courteously, fairly and with the fullest measure of dignity; F.S. § 400.022(1)(n)
- The right to be free from mental and physical abuse, including the use of physical and chemical restraints, except in specific circumstances; F.S. § 400.022 (1)(o)
- The right to retain and use personal clothing and possessions, within certain limits; F.S. § 400.022(1)(r)

The Reality...

- Real world examples
- Food for thought



The Right...

Civil rights and religious liberties:

- Knowledge of available choices
- The right to independent personal decisions
- The right to encouragement and assistance from staff in the fullest possible exercise of these rights; F.S. § 400.022(1)(a)
- The right to present grievances, free from restraint and retribution, coercion, discrimination and reprisal; F.S. §400.022(1) (d)
- The right to access Ombudsman and advocates; F.S. §400.022(1)(d)



The Reality...

- Real world examples
- Why advocacy is so important: “If a tree falls in a forest and no one is around to hear it, does it make a sound?”
- Remedies



If the resident has appointed an agent in a DPOA, or the court has appointed a guardian, what changes, if anything?



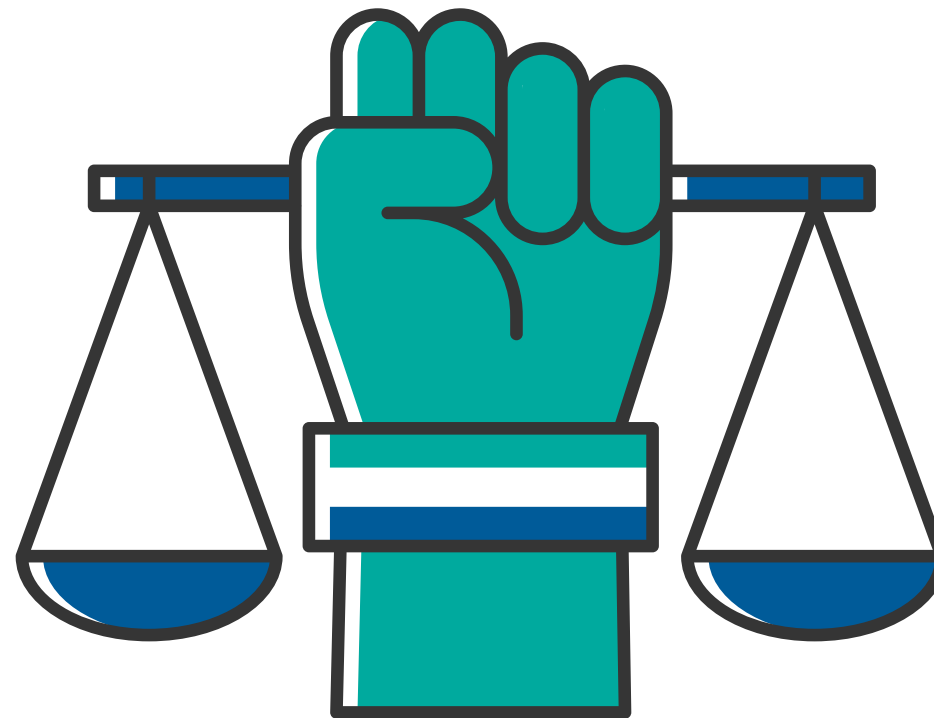
AUTHORITY	PLENARY GUARDIAN	LIMITED GUARDIAN	AGENT WITH DPOA
Contract	Yes	Review Letters of Guardianship	Usually But Must Confirm
Finances	Yes	Review Letters	Usually But Must Confirm
Residence	Yes	Review Letters	Not Usually
Visitors	Not Necessarily	Review Letters	Not Usually
Communication	Not Necessarily	Review Letters	Not Usually

- It DEPENDS...
- DPOAs are usually limited
- There are different types of guardianships and each guardianship is unique

But...

EVEN A PERSON WHO HAS BEEN DETERMINED INCAPACITATED
RETAINS CERTAIN RIGHTS!

F.S. § 744.3215



Rights Retained:

- To be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation.
- To remain as independent as possible, including having his or her preference as to place and standard of living honored, either as he or she expressed or demonstrated his or her preference prior to the determination of his or her incapacity or as he or she currently expresses his or her preference, insofar as such request is reasonable.

Rights Retained Continued:

- To have access to the courts
- To counsel
- To receive prudent financial management for his or her property and to be informed how his or her property is being managed, if he or she has lost the right to manage property
- To receive services and rehabilitation necessary to maximize the quality of life
- To receive visitors and communicate with others
- To privacy

The State Long-Term Care
Ombudsman's Role
F.S. Chapter 400, Part I

Questions?



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