

Caregivers



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Housing for
Persons in Loss of
Autonomy

WHO DECIDES?



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Setting
the Scene

Someone you know appears to be losing autonomy and having difficulty living on their own.

Who is allowed to make housing decisions for them?

This pamphlet is up to date to June 2021.

It has general information only. If you need legal advice on a specific situation, consult a lawyer or notary.

Choosing for themselves as long as they are able

Adults normally choose for themselves where they wish to live even if a doctor or a family member believes that a different housing option would be better.

An incapacitated person may still be able to make housing decisions

Even if a person is declared incapacitated for some things, they may still be able to make decisions regarding care and housing.

Thus, even if they are declared incapacitated by a court (as part of an application for a tutorship, for example), a person may still make their own decisions regarding housing.



Criteria to evaluate if a person is incapacitated

An illness or a loss of cognitive abilities may rob a person of the ability to understand what is happening to them.

In this situation, a doctor must evaluate if the person understands the information regarding their situation, including the proposed housing option. More specifically, the doctor must assess the following:

- Does the person understand the nature of the illness or the physical or cognitive limitations that have given rise to the proposed housing option?
- Does the person understand the reason and nature of the proposed option (for example, being housed in a CHSLD)?
- Does the person understand the risks and advantages of the proposed option?
- Does the person understand the risks involved in remaining in their home or in another type of housing that no longer suits their needs?
- Has the person's capacity to understand been affected by their illness or other limitations?

In case of incapacity: Someone else can decide

When a doctor concludes that a person cannot provide valid consent to care, including housing, another person can make the required decisions.

Who provides this consent depends on the circumstances. The following persons (in this order of priority) can provide it:

- the person's mandatary, if the person has a protection mandate and it is in the process of—or has already been—homologated
- the person's legal representative (tutor or curator), if protective supervision has been authorized
- the person's married or civil-union spouse or common-law partner a close relative of the person
- someone concerned for the person, such as a close friend

Decisions must always be in the person's best interests

Whatever the circumstances, the decision must always be made in the person's best interests. The person's wishes must also be taken into account.

Refusal by a legal representative or inability to make a decision

If a legal representative is unable to make a decision or—contrary to the person's best interests—refuses a proposed housing option, a court will have to decide the matter.

Refusal of housing by a person unable to provide consent

If a person is unable to provide valid consent regarding housing and absolutely refuses a housing option required by their state of health, a court will have to decide the matter. The judge will ask for the person's opinion and the opinions of the person's loved ones.

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