



# Estate Planning Is for Everybody Workbook

**Make Sure the right things happen  
if something happens to you**

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# Estate Planning is For Everybody

# WORKBOOK

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This workbook is a reference guide to the subject of estate planning for people of all ages, all walks of life, and all levels of wealth. Use it to motivate yourself to put your own plan in order. Pass it on to friends. This plagiarized material will always be free until I get around to re-writing it in my own words. Enjoy!

# INTRODUCTION

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## Estate Planning is for everybody:

Most people think estate planning is only for the elderly or for people who have a lot of money. The two issues most commonly associated with estate planning are:

- Who gets my money and stuff?
- Who cares for my dependent children?

So if you don't have money and stuff, or you don't have kids or they are grown and gone, who needs estate planning?

But estate planning has elements that apply to everyone, regardless of age or wealth. Here are some of the more important ones:

- Who is authorized to run my business, pay my bills, and maintain my property if I am disabled?
- What are my expectations and wishes for actions to be taken by this person?
- Who is authorized to make medical decisions on my behalf if I can't?
- How will my caretaker know what I want done to/for me?
- Should the stereo be playing Beethoven or Led Zeppelin?
- Windows open or closed?
- Who is authorized to spend my money to take care of me and my loved ones?
- What actions do I expect from them?
- What do I own?
- Where is everything?
- How are my assets accessed?
- Who should be notified?
- Do I want a memorial service?
- What kind?
- What do I want for my last resting place?
- How do you coax my cat down from the crawlspace above the closet?

At their best, your loved ones are going to be gathering around trying their best to help, and they'll be looking for guidance. At their worst, your loved ones may find themselves fighting over issues that can be avoided if everything is spelled out clearly by you in advance.

This workbook is about leaving the gifts of clarity and simplicity. More than money, these gifts provide comfort and healing to your loved ones. On to the 5 documents of estate planning.

# Titling of Assets

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The way you “**HOLD TITLE**” to your assets takes priority over all your other documents. So you may make a bequest in your will or trust, only to have your beneficiaries find out that your wish cannot be fulfilled because of the way the property is titled or “held.” Remember the old 401(k) from the job you left in 2005. You may have “Willed” this to your children. But your ex-wife is still listed as beneficiary! Oops.

## **Common forms of property ownership include the following:**

**Joint Tenancy:** Property is owned by two or more persons at the same time in equal shares. Unity of time, title, interest, and possession is vested in each joint tenant (four unities). Each joint tenant has an undivided right to possess the whole property and a proportionate right of equal ownership interest. When one joint tenant dies, his/her interest automatically vests in the surviving joint tenant(s) by operation of law. Words in the deed such as "John and Mary, as joint tenants with right of survivorship and not as tenants in common", establishes title in joint tenancy. Some states do not allow this form of property ownership. California does.

**Tenancy in the Entirety:** Most states (NOT California) have a special form of joint tenancy when the joint tenants are husband and wife, with each owning a one-half interest. Neither spouse can sell the property without the consent of the other. Words in the deed such as "John and Mary, husband and wife as tenancy in the entirety", establishes title in tenancy by the entireties.

**Sole Ownership:** Property is owned entirely by one person. Words in the deed such as "John, a single man", establishes title as sole ownership.

**Tenants in Common:** Property is owned by two or more persons at the same time. The proportionate interests and right to possess and enjoy the property between the tenants in common need not be equal. Upon death, the decedent's interest passes to his/her heirs named in the will, who then become new tenants in common with the surviving tenants in common. None of the tenants in common automatically receives the share of the decedent. There is no right of survivorship as with joint tenants. The words in the deed such as "Larry, Moe, and Curly as tenants in common", establishes tenancy in common.

**Community Property:** In states that recognize community property (California is one), a special form of joint tenancy exists between husband and wife, with each owning a one-half interest. Upon death, the decedent's interest passes in a manner similar to tenants in common. One big advantage is that the property receives a step-up in basis for the entire property, not just the half owned by the spouse. Words in the deed such as "John and Mary, husband and wife as community property", establishes community

# Titling of Assets (continued)

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property ownership. California also allows adding the phrase “with right of survivorship” to this title. This serves the added feature of avoiding probate if the property is not held in a Trust, and may provide some extra creditor protection.

## **Living trust**

Property can be transferred into a *living trust* which is established with the assistance of an estate attorney. There is some cost to setting up and maintaining the trust, but there are so many advantages that it is recommended for almost all real property, stock accounts (except retirement money), and businesses.

## **In Trust for (ITF)**

You can put this title on most bank and investment accounts. Put the account in your name “in-trust for” the child; for example: “John Doe ITF Bobby Doe.” Assets in this type of account pass directly to the Beneficiary upon the death of the original owner, so probate is avoided. This is great for saving up money for education. Income in this type of account is taxed to the original owner until the account is transferred.

## **Corporation or partnership**

A corporation or partnership can hold title to a property. Each has different rights and arrangements that affect the title. There are some unique advantages to this type of ownership, but also some costs. See me after class.

The above ways for owning real property are all present interests and rights of the owner. Future interests can also exist, which come into effect in the future. Typically, future interests are based upon the occurrence of a contingency, such as someone dies and the decedent's interest in the property passes in accordance with his/her last will or trust.

## **SPECIAL IDEA:**

You can accomplish a lot with the titling of assets. For example, a property that is “under water” should be held as sole property. That way, when the owner dies it will go through probate and the executor will receive probate fees that get paid BEFORE the mortgage company does. Sometimes you can get blood out of a stone.

**If you don't have money or children, you may wish to skip the next two chapters (The Will and The Trust) and read about the Durable Power of Attorney on page 25.**

# The Will

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## Origin:

Throughout most of the world, disposal of an estate has been a matter of social custom. According to Plutarch, the written will was invented by Solon. Originally it was a device intended solely for men who died without an heir. The English phrase "will and testament" is derived from a period in English law when Old English and French Law were used side by side for maximum clarity.

## Definition / Purpose:

A will is a legally binding document that identifies who should inherit a person's property after they die. A will, sometimes called a "last will and testament," is a document that states your final wishes. It is read by a county court after your death, and the court makes sure that your final wishes are carried out. Recipients often include a spouse, children, grandchildren or a charitable organization. Many wills also contain a provision that names a guardian to care for minor children. A person that makes a will is called a testator.

Wills are the most common way for people to state their preferences about how their estates (property) should be handled after their deaths. Many people use their wills to express their deepest sentiments toward their loved ones. A well-written will eases the transition for survivors by transferring property quickly and helping them to avoid many tax burdens. Despite these advantages, many estimates figure that at least seventy percent of Americans do not have valid wills. While it is difficult to contemplate mortality, many people find that great peace of mind results from putting their affairs in order.

Wills vary from extremely simple single-page documents to elaborate volumes, depending on the estate size and preferences of the person making the will (the "testator"). Wills describe the estate, the people who will receive specific property (the "devisees"), and even special instructions about care of minor children, gifts to charity, and formation of posthumous trusts. Many people choose to disinherit people who might usually be expected to receive property. For all these examples, the testator must follow the legal rules for wills in order to make the document effective.

## Types of wills generally include:

- **nuncupative (non-culpatory)** - oral or dictated; often limited to sailors or military personnel
- **holographic**- written in the hand of the testator; in many jurisdictions, the signature and the material terms of the holographic will must be in the handwriting of the testator.

- **self-proved** - in solemn form with affidavits of subscribing witnesses to avoid probate
- **notarial** - will in public form and prepared by a civil-law notary (civil-law jurisdictions and Louisiana, United States)
- **mystic**- sealed until death
- **serviceman's will** - will of person in active-duty military service and usually lacking certain formalities, particularly under English law
- **reciprocal/mirror/mutual/husband and wife wills** - wills made by two or more parties (typically spouses) that make similar or identical provisions in favor of each other
- **unsolemn will** - will in which the executor is unnamed
- **will in solemn form** - signed by testator and witnesses

## Terminology

- **Administrator** - person appointed or who petitions to administer an estate in an intestate succession.
- **Beneficiary** - anyone receiving a gift or benefitting from a trust
- **Bequest** - testamentary gift of personal property, money or property.
- **Codicill** - (1) amendment to a will; (2) a will that modifies or partially revokes an existing or earlier will.
- **Decedent** - the deceased
- **Demonstrative Legacy** - a gift of a specific sum of money with a direction that is to be paid out of a particular fund.
- **Descent** - succession to real property.
- **Devise** - testamentary gift of real property.
- **Devisee** - beneficiary of real property under a will.
- **Distribution** - succession to personal property.
- **Executor or personal representative [PR]** - person named to administer the estate, generally subject to the supervision of the probate court, in accordance with the testator's wishes in the will. In most cases, the testator will nominate an executor/PR in the will unless that person is unable or unwilling to serve.
- **Exordium clause** is the first paragraph or sentence in a will and testament, in which the testator identifies himself or herself, states a legal domicile, and revokes any prior wills.
- **Inheritor** - a beneficiary in a succession, testate or intestate.
- **Intestate** - person who has not created a will, or who does not have a valid will at the time of death.
- **Legacy** - testamentary gift of personal property, traditionally of money. Note: historically, a legacy has referred to either a gift of real property or personal property.
- **Legatee** - beneficiary of personal property under a will, i.e., a person receiving a legacy.
- **Probate** - legal process of settling the estate of a deceased person.

- **Specific legacy** (or specific bequest) - a testamentary gift of a precisely identifiable object.
- **Testate** - person who dies having created a will before death.
- **Testator** - person who executes or signs a will; that is, the person whose will it is.

## What a Will Does

Most people use a will to leave instructions about what should happen to their property after they die. However, you can also use a will to

- Name an executor.
- Name guardians for children and their property.
- Decide how debts and taxes will be paid.
- Provide for pets.
- Serve as a backup to a living trust.

You *shouldn't* try to use a will to:

- Put conditions on your gifts. (I give my house to Alice if she finishes college.)
- Leave instructions for final arrangements. (see Instructions Document section)
- Leave property for your pet.
- Make arrangements for money or property that will be left another way. (Property in a trust or property for which you've named a pay-on-death beneficiary.)

## What Are the Legal Requirements of a Will

There are very few legal requirements for wills. To make a will in any U.S. state, you must:

- Know what property you have and what it means to leave it to someone after your death. Legally, this is called having "capacity" and it is also known as being "of sound mind."
- Create a document that names beneficiaries for at least some of your property.
- Sign the document.
- Have the document signed by two witnesses.

A will is old law, before the existence of a Notary. No state requires your will to be notarized, although you may use a notarized self-proving affidavit that will make your will easier to get through probate after your death.

A few states allow you to make a handwritten "holographic" wills, that don't have to be signed by witnessed. However, handwritten wills should only be used when you do not have time to make a formal will because they are much more susceptible to challenge after your death.



## How to Write a Will

You can write a will yourself, or you can hire a lawyer to write one for you. If you write one yourself, you'll want to find a good will template to help you. There are several online sources for this.

There are no magic words that must be used to create a will. Use clear, unambiguous language to accurately describe your wishes. You should especially talk to a lawyer if you:

- Want to disinherit your spouse or child.
- Are worried that someone might challenge your will.
- Want to provide money and care for pets after your death.
- Want to control what happens to your property long after your death.
- Are worried about estate taxes.

## Making Your Will Legal

If you are writing your own will, you'll need to do a few things to make it legal:

- Sign your will.
- Have two witnesses sign your will.
- In most states, have a notary sign a self-proving affidavit – this is optional.

Your witnesses do not need to know what's in your will. Simply gather them around, say 'this is my will' and have them sign. In California, there is specific language which you should use. Wills do not need to be signed by a notary public to be legal and binding. However, in most states you can also attach a self-proving affidavit and those must be signed by a notary public. Self-proving affidavits don't affect the legality of your will, but they do make your will easier to probate after your death.

## Having a Lawyer Write Your Will

If you decide that your situation is a bit complicated and you need professional help, or if you would just rather have a professional do it, then you'll need a lawyer's help. But hiring a lawyer doesn't mean you need to hand over the entire process or spend an outrageous amount of money. Instead, you can educate yourself about the law. Doing so will save you money because you will need less time with the attorney and increase the likelihood that the attorney will draft a document that reflects your wishes.

## Handwritten Wills:

Handwritten, unwitnessed wills, called "holographic" wills, are legal in about 25 states. To be valid, a holographic will must be written and signed in the handwriting of the

person making the will; in some states it must also be dated. Some states allow you to use a fill-in-the-blanks form if the rest of the will is handwritten and the will is properly dated and signed.

A holographic will is better than nothing if it's valid in your state. But a will signed in front of witnesses is better. If a holographic will goes before a probate court, the court may be unusually strict when examining it to be sure it's legitimate. And if you don't have guidance -- from a good self-help resource or a good lawyer -- it's easy to write something that turns out to be ambiguous or even contrary to what you intended.

### **Naming Guardians:**

If both parents of a child die or become otherwise unable to care for a minor child, another adult -- called a "personal guardian" -- must step in. The personal guardian will be responsible for raising your children until they become legal adults. You and the child's other parent can use your wills to nominate someone to fill this position. To avert conflicts, you should both name the same person.

Please ask your proposed guardian in advance if they are willing, and provide the name of a contingent guardian if the named guardian is not available when needed.

You can choose that same guardian to manage property that you leave to your minor children or you can name someone different. You can name a "property guardian," a "custodian", or a "trustee" to manage the property:

- **Name a property guardian.** You can simply name a property guardian to manage whatever property the child inherits, if there's no other mechanism (a trust, for example) to handle it. The guardian will manage the property until the child reaches the age of 18.
- **Name a custodian under the Uniform Transfers to Minors Act (UTMA).** In every state, except South Carolina, you can choose a custodian to manage property you are leaving to a child. The custodian will step in to manage the property until the child reaches the age specified by your state's law -- 18 in a few states, 21 in most, and 25 in several others.
- **Set up a trust for each child.** You can use your will to create a trust for any property the child inherits and to name a trustee to handle the trust property until the child reaches the age you specify.
- **Set up a "pot trust."** If you have more than one child, you may want to set up just one trust for all of them. This arrangement is usually called a pot trust. You name a trustee to decide what each child needs and to spend money accordingly.

## **Inheritance Rights:**

### **Surviving Spouse**

Whether a state follows community property laws or common law determines how inheritance law affects the distribution of a married decedent's estate. The following are community property states: Arizona, California, Idaho, Nevada, New Mexico, Texas, Washington, Wisconsin, and Alaska (although in Alaska, there must be a written agreement between the spouses). The remaining states follow common law.

### Inheritance Law in Community Property States

Community property is generally property acquired by either spouse during the marriage. This includes income received from work, property bought during the marriage with income from employment, and separate property that a spouse gives to the community. A spouse retains a separate interest in property acquired through the following methods:

- Inheritance or a gift
- Acquisition of the property prior to the marriage
- An agreement between the spouses to keep the property separate from the marriage community

In a community property state, each spouse owns a one-half interest of the marital property. Spouses have the right to dispose of their share of the community property in whatever way desired. A deceased spouse, for instance, can elect to give his or her half of the community property to someone other than the surviving spouse. Spouses cannot give away the other spouse's share of the community property, however. A provision in a prenuptial agreement may also change a spouse's right to distribute the property. A spouse has the sole right to dispose of their separate property. A deceased spouse can distribute both their separate property and their share of the community property in a will.

### Inheritance Law in Common Law States

Unlike a surviving spouse in a community property state, a spouse is not entitled to a one-half interest in all property acquired during the marriage. In a common law state, both spouses do not necessarily own the property acquired during marriage. Ownership is determined by the name on the title or by ascertaining which spouses' income purchased the property if a title is irrelevant. If, for example, only one spouse takes the title to a property, the spouse with the name on the deed owns the house even if the other spouse actually paid for it.

A surviving spouse in a common law state has protection from complete disinheritance, however. Every common law state has different guidelines, but most common law states' inheritance law allows the surviving spouse to claim one-third of the deceased spouse's property. A deceased spouse can choose to leave less than a state's mandated inheritance right, but the surviving spouse may make a claim with the court to inherit the predetermined amount. The will is carried out according to the decedent's

wishes if the surviving spouse agreed in writing to accept less than the statutory amount or the surviving spouse never goes to court to claim the legal share.

### **Spouse after Divorce**

Once a divorce becomes final, many states automatically revoke gifts made in the will to the ex-spouse. In other states, a divorce has no effect on gifts to the ex-spouse. It is best to create a new will after a divorce becomes final to prevent an unintentional gift to a former spouse.

### **Children**

Unlike a spouse, a child generally has no legally protected right to inherit a deceased parent's property. The law does protect children when an unintentional omission in a will occurs, however. The law presumes that such omissions are accidental -- especially when the birth of the child occurred after the creation of the will. Depending on whether a spouse survives the decedent, the omitted child may inherit some portion of the deceased parent's estate. If the omission was intentional, though, the will should expressly state this.

### **Disinheriting Family**

**Disinheriting spouses.** The law protects surviving spouses from being left with nothing. If you live in a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin -- or Alaska if you have made a written community property agreement), your spouse automatically owns half of all the property and earnings (with a few exceptions) acquired by either of you during your marriage. You can leave your half of the community property, and your separate property, to anyone you choose.

In all other states, a surviving spouse has a legal right to claim a portion of your estate, no matter what your will provides. But these provisions kick in only if your spouse goes to court and claims that share.

If you don't plan to leave at least half of your property to your spouse, either through your will or outside it, you should consult a lawyer -- unless your spouse willingly consents in writing to your plan.

**Disinheriting children.** Generally, it's perfectly legal to disinherit a child. If, however, it appears that you didn't mean to disinherit a child -- the most common example is a child born after you made your will -- then the child has the right to claim part of your property.

### **Challenging the will**

Very few wills are ever challenged in court. When they are, it's usually by a close relative who feels somehow cheated out of a share of the deceased person's property. To get an entire will invalidated, someone must go to court and prove that it suffers from a fatal flaw: the signature was forged, you weren't of sound mind when you made the will, or you were unduly influenced by someone.

## **Will Requirements**

Formal requirements for wills vary from state to state. Generally, the testator must be an adult of "sound mind," meaning that the testator must be able to understand the full meaning of the document. Wills must be written. Some states allow a will to be in the testator's own handwriting, but a better and more enforceable option is to use a typed or pre-printed document. A testator must sign his or her own will, unless he or she is unable to do so, in which case the testator must direct another person to sign the will in the presence of witnesses, and the signature must be witnessed and/or notarized. A valid will remains in force until revoked or superseded by a subsequent valid will. Some changes may be made by amendment (called a "codicil") without requiring a complete rewrite.

## **Will Limitations**

Some legal restrictions prevent a testator from giving full effect to his or her wishes. Some laws prohibit disinheritance of spouses or dependent children. A married person cannot completely disinherit a spouse without the spouse's consent, usually in a pre-nuptial agreement. In most jurisdictions, a surviving spouse has a right of election, which allows the spouse to take a legally-determined percentage (up to one-half) of the estate when he or she is dissatisfied with the will. Non-dependent children may be disinherited, but this preference should be clearly stated in the will in order to avoid confusion and possible legal challenges.

Some property may not descend by will. Property owned in joint tenancy may only go to the surviving joint tenant. Also, pensions, bank accounts, insurance policies and similar contracts that name a beneficiary must go to the named party.

## **Appointing a Representative**

A will usually appoints a personal representative (or "executor") to perform the specific wishes of the testator after he or she passes on. The personal representative need not be a relative, although testators typically choose a family member or close friend, as well as an alternate choice. The chosen representative should be advised of his or her responsibilities before the testator dies, in order to ensure that he or she is willing to undertake these duties. The personal representative consolidates and manages the testator's assets, collects any debts owed to the testator at death, sells property

necessary to pay estate taxes or expenses, and files all necessary court and tax documents for the estate.

## **When No Valid Will Exists**

If a person dies without a valid will and did not make alternative arrangements to distribute property, survivors may face a complicated, time-consuming, and expensive legal process. Dying without a will leaves an estate "intestate," and a probate court must step in to divide up the estate using legal defaults that give property to surviving relatives. The court pays any unpaid debts and death expenses first, then follows the legal guidelines. The rules vary depending on whether the deceased was married and had children, and whether the spouse and children are alive. If the intestate individual has no surviving spouse, children, or grandchildren, the estate is divided between various other relatives. Therefore, intestacy may mean that people who would never have been chosen to receive property will in fact be entitled to a portion of the estate. Additionally, state intestacy laws only recognize relatives, so close friends or charities that the deceased favored do not receive anything. If no relatives are found, the estate typically goes to the state or local government. Intestacy also poses a heavy tax burden on estate assets. When made aware of the consequences of intestacy, most people prefer to leave instructions rather than subject their survivors and property to government-mandated division.

## **Revising a will**

A testator can change a will by preparing a new will or by adding an addition called a codicil. When changes are substantive, revoking a will and starting over may be easier. An express statement in the new will of the revocation of all prior wills legally revokes a will. Minor changes, such as the addition of a new provision or the removal of a beneficiary, are appropriate changes for a codicil. See also [Changing a Will](#).

## **Sample will**

There is no standard, legally foolproof will. State laws vary, as do the needs of people making wills. This sample is designed to give you an idea what a will might look like and why certain language is in it.

This will is provided solely for the purpose of illustration and education and should not be "copied and pasted" into your own documents. We do not guarantee the accuracy or validity of this document, SO DON'T USE IT.

**I, Terry Turtle, residing at 1 Shell Way, any town, any state, declare this to be my Will, and I revoke any and all wills and codicils I previously made.**

The opening sentence should make it clear that this document is intended to be your will, give your name, place of residence and revoke any previous wills and **codicils** (amendments to previous wills). This can help avoid a court battle if someone should produce an earlier will.

#### **ARTICLE I: Funeral expenses & payment of debt**

**I direct my executors to pay my enforceable unsecured debts and funeral expenses, the expenses of my last illness, and the expenses of administering my estate.**

By law, debts must be paid before other assets are distributed. This clause gives your executor authority to pay the funeral home, court costs, and hospital expenses. Using the term "enforceable" prevents creditors from reviving debts you are no longer obliged to pay, usually those discharged in bankruptcy. And the term "unsecured" prevents a court from interpreting this clause to mean that your estate must pay off your mortgage or other secured debts that you probably don't want immediately paid off. Note: in some states, the executor is required by law to pay enforceable unsecured debts. In these states, this clause is unnecessary and may create problems.

#### **ARTICLE II: Money & Personal Property**

**I give all my tangible personal property and all policies and proceeds of insurance covering such property, to my husband, Jed. If he does not survive me, I give that property to those of my children who survive me, in equal shares, to be divided among them by my executors in their absolute discretion after consultation with my children. My executors may pay out of my estate the expenses of delivering tangible personal property to beneficiaries.**

This gives your personal property to your spouse. If there are particular items that you want to go to other people (such as heirlooms, jewelry, professional equipment, and so on) you should enumerate them and the person you want them to go to in a separate clause (e.g., "I give my Beatles albums to my friend William Shears"), and note that Article II excludes those items. Some people will use separate clauses for **legacies** (disposition of money) and **bequests** (disposition of tangible personal property). Note the important clause that accounts for the possibility that your spouse will die first. The clause on insurance means that if some property you owned was destroyed (perhaps in the event that caused your death, like a car wreck), your heirs will receive the insurance proceeds, not the mangled car.

#### **ARTICLE III: Real Estate**

**I give all my residences, subject to any mortgages or encumbrances thereon, and all policies and proceeds of insurance covering such property, to my husband, Jed. If he does not survive me, I give that property to \_\_\_\_\_.**

Most people want their spouse to keep the family home. In some states, particularly community property states, it's sometimes preferable to leave your residence to your spouse in a marital trust.

#### **ARTICLE IV: Residuary Clause**

**I give the rest of my estate (called my residuary estate) to my husband, Jed. If he does not survive me, I give my residuary estate to those of my children who survive me, in equal shares, to be divided among them and the descendants of a deceased child of mine, to take their ancestor's share per stirpes.**

Usually, the residuary clause begins "I give all the rest, residue, and remainder of my estate...." because lawyers are afraid to change tried-and-true formulas, and for decades, legal documents never used one word when a half-dozen would do. However, this plain-English form will also work. This clause covers any property you own or are entitled to that somehow wasn't covered by the preceding clauses.

#### **ARTICLE V: Taxes**

**I direct my executors, without apportionment against any beneficiary or other person, to pay all estate, inheritance and succession taxes (including any interest and penalties thereon) payable by reason of my death.**

One common mistake by people who use a living trust as well as a will is to make the beneficiary of the estate different from the people benefiting from the trust. The same problem exists when there are significant specific gifts and the residuary beneficiaries are different from the recipients of the specific gifts. In such cases those paying the taxes are not those who receive the most property, an arrangement that can unfairly saddle some beneficiaries with the whole tax bill, and at worst can even bankrupt the estate. The goal should be to see that the taxes are paid by those who benefit from gifts. Often, a provision apportioning taxes to taxable transfers is used to make sure that each recipient of a taxable gift pays his or her fair share. Additional language is sometimes used to apportion credits.

#### **ARTICLE VI: Minors**

**If under this will any property shall be payable outright to a person who is a minor, my executors may, without court approval, pay all or part of such property to a parent or guardian of that minor, to a custodian under the Uniform Transfers to Minors act, or may defer payment of such property until the minor reaches the age of majority, as defined by his or her state of residence. No bond shall be required for such payments.**

This clause gives your executors discretion to make sure any gift to a minor will be given in a way that's appropriate to his or her age. The "no-bond" language is intended to save the estate money.

#### **ARTICLE VII: Fiduciaries**



**I appoint my spouse, Jed, as Executor of this will. If he is unable or unwilling to act, or resigns, I appoint my daughter, Ellie Mae, and my son, Jethro, as successor co-executors. If either co-executor also predeceases me or is unable or unwilling to act, the survivor shall serve as executor. My executor shall have all the powers allowable to executors under the laws of this state. I direct that no bond or security of any kind shall be required of any executor.**

If you set up a trust in the will, you could name the trustees in this clause as well. The "bond or security" clause is designed to save the estate money.

**ARTICLE VIII: Simultaneous Death Clause**

**If my spouse and I shall die under such circumstances that the order of our deaths cannot be readily ascertained, my spouse shall be deemed to have predeceased me. No person, other than my spouse, shall be deemed to have survived me if such person dies within 30 days after my death. This article modifies all provisions of this will accordingly.**

This clause helps avoid the sometimes time-consuming problems that occur if you and your spouse die together in an accident. Your spouse's will should contain an identical clause; even though it seems contradictory to have two wills each directing that the other spouse died first, since each will is probated by itself, this allows the estate plan set up in each will to go forward as you planned. The second sentence exists to prevent the awkward legal complications that can ensue if someone dies between the time you die and the time the estate is divided up. Instead of passing through two probate processes, your gift to a beneficiary who dies shortly after you do would go to whomever you would have wanted it to go had the intended beneficiary died before you did. Most such gifts go into the residuary estate.

**ARTICLE IX: Guardian**

**If my husband does not survive me and I leave minor children surviving me, I appoint as guardian of the person and property of my minor children my uncle Ernest Entwistle. He shall have custody of my minor children, and shall serve without bond. If he does not qualify or for any reason ceases to serve as guardian, I appoint as successor guardian my cousin Kevin Moon.**

I have signed this will this \_\_\_\_ day of \_\_\_\_, 20\_\_ .

\_\_\_\_\_  
(legal signature)

**SIGNED AND DECLARED by Terry Turtle on \_\_\_\_\_ to be her will, in our presence, who at her request, in her presence and in the presence of each other, all being present at the same time, have signed our names as witnesses.**

\_\_\_\_\_  
(signature)

**Blair Witness**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
(signature)

**I. Witness**

\_\_\_\_\_  
**Address**

**Self-Proving Affidavit**

*(Not necessary in California)*

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

**Each of the undersigned, Blair Witness and I. Witness, both on oath, says that:  
The attached will was signed by Terry Turtle, the testator named in the will, on the  
\_\_\_ day of \_\_\_, 20\_\_\_, at the law offices of Lex Juris, 5440 Orfite St., Geo,  
Washington.**

**When she signed the will, Terry Turtle declared the instrument to be her last will.  
Each of us then signed his or her name as a witness at the end of this will at the  
request of Terry Turtle and in her presence and sight and in the presence and  
sight of each other.**

**Terry Turtle was, at the time of executing this will, over the age of eighteen years  
and, in our opinions, of sound mind, memory and understanding and not under  
any restraint or in any respect incompetent to make a will.**

**In our opinions, Terry Turtle could read write and speak in English and was  
suffering from no physical or mental impairment that would affect her capacity to**

make a valid will. The will was executed as a single original instrument, and was not executed in counterparts.

Each of us was acquainted with Terry Turtle when the will was executed and makes this affidavit at her request.

\_\_\_\_\_  
(signature)

**Blair Witness**

\_\_\_\_\_

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
(signature)

**I. Witness**

\_\_\_\_\_

\_\_\_\_\_  
**Address**

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(signature and official seal) notary

# The Trust

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## Origin:

During the early 1500's in England landowners found it advantageous to convey the legal title of their land to third parties while retaining the benefits of ownership. Because they were not the real "owners" of the land, and wealth was primarily measured by the amount of land owned, they were immune from creditors and may have absolved themselves of some feudal obligations. While feudal concerns no longer exist and wealth is held in many forms other than land (i.e., stocks, bonds, bank accounts), the idea of placing property in third party hands for the benefit of another has survived and prospered. This is the idea of a trust.

## Definition / Purpose

A trust is an estate planning tool that allows you to continue to manage your property and affairs while you are alive, but provides for unique dispositions of the property not available in a will. Trusts come in a variety of types and forms and can often supplement or even replace a will. Trusts fall into two main categories, "testamentary trusts" and "living trusts." While a living trust is created while you're alive, a testamentary trust is created after you die. In addition, there are several trusts that cater to an individual's specific needs.

To speed up the process of administering your estate, to avoid unnecessary probate fees, and to facilitate transfer of your assets – you need a trust.

A trust is a legal entity that lets you put conditions on how certain assets are distributed upon your death. Trusts also can help minimize gift and estate taxes.

A trust is a fiduciary arrangement that allows a third party, or trustee, to hold assets on behalf of a beneficiary or beneficiaries. Trusts can be arranged in many ways and can specify exactly how and when the assets pass to the beneficiaries.

Since trusts usually avoid probate, your beneficiaries may gain access to these assets more quickly than they might to assets that are transferred using a will. Additionally, if it is an irrevocable trust, it may not be considered part of the taxable estate, so fewer taxes may be due upon your death.

Other benefits of trusts include:

- **Control of your wealth.** You can specify the terms of a trust precisely, controlling when and to whom distributions may be made. You may also, for example, set up a revocable trust so that the trust assets remain accessible to you during your lifetime while designating to whom the remaining assets will pass

thereafter, even when there are complex situations such as children from more than one marriage.

- **Protection of your legacy.** A properly constructed trust can help protect your estate from your heirs' creditors or from beneficiaries who may not be adept at money management.
- **Privacy and probate savings.** Whether you're married or single, the assets included in your will must pass through your state's probate process. This requirement raises several concerns: First, there are fees associated with probate; second, depending on your state, probate may be a time-consuming ordeal lasting more than a year; and third, probate records are generally accessible to the public. By putting assets into a revocable trust during your lifetime, however, you can avoid having these assets pass through probate at your death and retain your family's privacy, while at the same time retaining full use and control of those assets during your lifetime.
- **Gift tax considerations.** By making large outright gifts during their lifetime, some taxpayers are taking advantage of the elevated lifetime gift tax exclusions as a way to remove future appreciation from their estates. While this may be a sound strategy for removing the money from the donor's estate, Bartlett points out that the donor is relinquishing all control over the money. By gifting the money to a trust, instead of outright to the beneficiaries, the benefactor can at least establish control over how and when it is to be distributed to beneficiaries.
- **State inheritance taxes.** Estate taxes aren't solely under the province of the federal government. As of 2015, 19 states and the District of Columbia also impose some form of estate or inheritance tax. Such taxes can be far from inconsequential, and often apply to estates worth much less than the current federal estate tax exclusion of \$5.43 million. For those who live in a state that does impose such a tax (or those who have assets—real estate, for example—located in such a state), a properly constructed trust can be an effective estate-planning tool for reducing state level estate taxes, just as it can be for potentially reducing federal estate or generation-skipping transfer taxes.

There are many reasons to create a trust, making this property distribution technique a popular choice for many people when creating an estate plan.

## Creation of a Trust

The basics of trust creation are fairly simple. To create a trust, the property owner (called the "trustor," "grantor," or "settlor") transfers legal ownership to a person or institution (called the "trustee") to manage that property for the benefit of another person (called the "beneficiary"). The trustee often receives compensation for his or her management role. Trusts create a "fiduciary" relationship running from the trustee to the beneficiary, meaning that the trustee must act solely in the best interests of the beneficiary when dealing with the trust property. If a trustee does not live up to this duty, then the trustee is legally accountable to the beneficiary for any damage to his or her interests. The grantor may act as the trustee himself or herself, and retain ownership

instead of transferring the property, but he or she still must act in a fiduciary capacity. A grantor may also name himself or herself as one of the beneficiaries of the trust. In any trust arrangement, however, the trust cannot become effective until the grantor transfers the property to the trustee.

*Example:* A grantor transfers money to a bank as trustee for the grantor's children, with the bank instructed to pay the children's college expenses as needed; the bank carefully manages the money to ensure there are funds available for this purpose. The children do not have control of the funds and cannot use the funds for any other purposes.

## Trust Categories

Trusts fall into two broad categories, "testamentary trusts" and "living trusts."

A **testamentary trust** transfers property into the trust only after the death of the grantor. Because a trust allows the grantor to specify conditions for receipt of benefits, as well as to spread payment of benefits over a period of time instead of making a single gift, many people prefer to include a trust in their wills to reinforce their preferences and goals after death. The testamentary trust is not automatically created at death but is commonly specified in a will and so as a will provision, the trust property must go through probate prior to commencement of the trust.

*Example:* A parent specifies in her will that upon her death her assets should be transferred to a trustee. The trustee manages the assets for the benefit of her children until they reach an age when the parent believes they will be ready to control the assets on their own.

A **living trust**, also sometimes called an "inter vivos" trust, starts during the life of the grantor, but may be designed to continue after his or her death. This type of trust may help avoid probate if all assets subject to probate are transferred into the trust prior to death. A living trust may be "revocable" or "irrevocable."

A revocable trust can help assets pass outside of probate, yet allows you to retain control of the assets during your (the grantor's) lifetime. It is flexible and can be dissolved at any time, should your circumstances or intentions change. A revocable trust typically becomes irrevocable upon the death of the grantor.

You can name yourself trustee (or co-trustee) and retain ownership and control over the trust, its terms and assets during your lifetime, but make provisions for a successor trustee to manage them in the event of your incapacity or death.

Although a revocable trust may help avoid probate, it is usually still subject to estate taxes. It also means that during your lifetime, it is treated like any other asset you own.

An irrevocable trust typically transfers your assets out of your (the grantor's) estate and potentially out of the reach of estate taxes and probate, but cannot be altered by the grantor after it has been executed. Therefore, once you establish the trust, you will lose control over the assets and you cannot change any terms or decide to dissolve the trust.

An irrevocable trust is generally preferred over a revocable trust if your primary aim is to reduce the amount subject to estate taxes by effectively removing the trust assets from your estate. Also, since the assets have been transferred to the trust, you are relieved of the tax liability on the income generated by the trust assets (although distributions will typically have income tax consequences). It may also be protected in the event of a legal judgment against you.

## **Transferring Assets**

Irrevocable trusts transfer assets before death and thus avoid probate. However, revocable trusts are more popular as a means of avoiding the probate process. If a person transfers all of his assets to a revocable trust, he owns no assets at his death. Therefore, his assets do not have to be transferred through the probate process. Even though the grantor of the trust died, the trust did not die, so the trust assets do not have to be probated. However, trusts avoid probate only if all or most of the deceased person's assets had been transferred to the trust while the person was alive. To allow for the possibility that some assets were not transferred, most revocable living trusts are accompanied by a "pour-over" will, which specifies that at death, all assets not owned by the trustee should be transferred to the trustee of the trust.

*Example:* Mark sets up a revocable trust, which states that on his death, his assets should be distributed to his children in equal shares. Mark transfers his house to the trust, but does not transfer some rental real estate he owns. At Mark's death, the trust can distribute the house outside of the probate process, but the rental real estate will have to be probated. Based on the will, the probate court will order the rental real estate be transferred to the trustee, who will then distribute it according to the terms of the trust.

## **Successor Trustees**

Although a grantor may name himself as trustee of a living trust during his lifetime, he should name a successor trustee to act when he is disabled or deceased. At the grantor's death, the successor trustee must distribute the assets of the trust in accordance with the directions in the trust document. In many states, certain people must be notified at the death of the grantor.

## **Basic Types of Trusts**

- **Marital or “A” trust:** Designed to provide benefits to a surviving spouse; generally included in the taxable estate of the surviving spouse.
- **Bypass or “B” trust:** Also known as **credit shelter trust**, established to bypass the surviving spouse’s estate in order to make full use of any federal estate tax exemption for each spouse.
- **Testamentary trust:** Outlined in a will and created through the will after the death, with funds subject to probate and transfer taxes; often continues to be subject to probate court supervision thereafter.
- **Irrevocable life insurance trust (ILIT):** Irrevocable trust designed to exclude life insurance proceeds from the deceased’s taxable estate while providing liquidity to the estate and/or the trusts’ beneficiaries.
- **Charitable lead trust:** Allows certain benefits to go to a charity and the remainder to your beneficiaries.
- **Charitable remainder trust:** Allows you to receive an income stream for a defined period of time and stipulate that any remainder go to a charity.
- **Generation-skipping trust:** Using the generation-skipping tax exemption, permits trust assets to be distributed to grandchildren or later generations without incurring either a generation-skipping tax or estate taxes on the subsequent death of your children.
- **Qualified Terminable Interest Property (QTIP) trust:** Used to provide income for a surviving spouse. Upon the spouse’s death, the assets then go to additional beneficiaries named by the deceased. Often used in second marriage situations, as well as to maximize estate and generation-skipping tax or estate tax planning flexibility.
- **Grantor Retained Annuity Trust (GRAT):** Irrevocable trust funded by gifts by its grantor; designed to shift future appreciation on quickly appreciating assets to the next generation during the grantor’s lifetime.

## Who Needs a Trust?

You don't have to be a Rockefeller to need a trust. Just owning real estate or a business is enough reason. A trust can be a useful estate-planning tool for lots of people. Many people are taken aback by the cost of establishing a trust, but it’s a great investment that usually produces a financial benefit many times the cost. And the process of setting up a trust provides a feeling of security and confidence that things will go as you hope.

### Here's a good rule of thumb:

If you have a net worth of at least \$100,000 or hold real estate or a business, or have very specific instructions on how and when you want your estate to be distributed among your heirs after you die, then a trust could be for you. Trusts are also great for minimizing estate taxes or protecting your estate from lawsuits and creditors.



Trusts are flexible, varied and complex. Each type has advantages and disadvantages, which you should discuss thoroughly with your estate-planning attorney before setting one up.

*Take note: Assets you want protected by the trust must be retitled in the name of the trust. Anything that is not titled to the trust when you die will have to go through probate. In California, it is possible to ask the Probate court to allow the transfer of assets into the trust, but I have personal experience of this process costing one Trust about \$12,000 in attorney's fees. These fees would have been avoided if the asset had been properly re-titled.*

## **Tax Reduction**

You have to have net worth over \$5,430,000 per person to owe estate taxes in 2015, so the tax advantages of Living Trusts are less likely to benefit the average person. The limit used to be \$1 Million, so there are a lot of old trusts out there with complicated provisions to avoid taxes that aren't a problem anymore. This should not discourage you from using the other advantages of a trust.

## **Trust vs. Will**

A trust does not replace a will. Most trusts deal only with specific assets, such as life insurance or a piece of property, while a will governs distribution of nearly everything else in your estate.

## **Getting Help With a Trust**

Trusts have important tax, governmental assistance, probate, and personal ramifications, so an experienced estate planning attorney should be consulted at all stages of the process -- from preliminary discussions to execution of trust documents. With so many state and federal laws to take into account, it's important to enlist the advice and services of an expert. A lawyer can guide you through the various types of trusts and help you decide what best suits your assets and goals - while helping make sure it's legally sound.

# The Durable Power of Attorney

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## Origin

The concept of the Durable Power of Attorney was created in 1969 when the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Probate Code (U.P.C. § 5–501). Ten years later, the provisions of the code dealing with the Durable Power of Attorney were modified and published as the Uniform Durable Power of Attorney Act (UDPA). All fifty states recognize some version of the Durable Power of Attorney, having adopted either the UDPA or the Uniform Probate Code, or some variation of them. Versions of the Durable Power of Attorney vary from state to state. Certain powers cannot be delegated, including the powers to make, amend, or revoke a will, change insurance beneficiaries, contract a marriage, and vote.

## Definition / Purpose

A Durable Power of Attorney is a written document in which one person (the principal) appoints another person to act as an agent on his or her behalf, thus conferring authority on the agent to perform certain acts or functions on behalf of the principal.

A traditional Power of Attorney generally is terminated when the principal dies or becomes incompetent, but the principal can revoke the power of attorney at any time. The Durable Power of Attorney differs from a traditional power of attorney in that it continues the agency relationship beyond the incapacity of the principal.

For most people, the Durable Power of Attorney is the most important estate planning instrument available -- even more useful than a will. A power of attorney allows a person you appoint -- your "attorney-in-fact" or "agent" -- to act in place of you -- the "principal" -- for financial purposes when and if you ever become incapacitated. In that case, the person you choose will be able to step in and take care of your financial affairs. Without a Durable Power of Attorney, no one can represent you unless a court appoints a conservator or guardian. That court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship or conservatorship, your representative may have to seek court permission to take planning steps that she could implement immediately under a simple Durable Power of Attorney.

A Durable Power of Attorney may be limited or general. A limited power of attorney may give someone the right to sign a deed to property on a day when you are out of town. Or it may allow someone to sign checks for you. A general power is comprehensive and gives your attorney-in-fact all the powers and rights that you have yourself.

A Durable Power of Attorney may also be either current or "springing." Most powers of attorney take effect immediately upon their execution, even if the understanding is that they will not be used until and unless the grantor becomes incapacitated. However, the document can also be written so that it does not become effective until such incapacity occurs. In such cases, it is very important that the standard for determining incapacity and triggering the Durable Power of Attorney be clearly laid out in the document itself.

Attorneys report that their clients are experiencing increasing difficulty in getting banks or other financial institutions to recognize the authority of an agent under a Durable Power of Attorney. A certain amount of caution on the part of financial institutions is understandable: When someone steps forward claiming to represent the account holder, the financial institution wants to verify that the attorney-in-fact indeed has the authority to act for the principal. Still, some institutions go overboard, for example requiring that the attorney-in-fact indemnify them against any loss. Many banks or other financial institutions have their own standard power of attorney forms. To avoid problems, you may want to execute such forms offered by the institutions with which you have accounts. In addition, many attorneys counsel their clients to create living trusts in part to avoid this sort of problem with powers of attorney.

## **The Agent**

While you should seriously consider executing a Durable Power of Attorney, if you do not have someone you trust to appoint as your agent, it may be more appropriate to have the probate court looking over the shoulder of the person who is handling your affairs through a guardianship or conservatorship. In that case, you may execute a Limited Durable Power of Attorney simply nominating the person you want to serve as your conservator or guardian. Most states require the court to respect your nomination "except for good cause or disqualification."

Your agent can handle mundane tasks such as sorting through your mail and depositing your Social Security checks, as well as more complex jobs like watching over your retirement accounts and other investments, or filing your tax returns. Your agent doesn't have to be a financial expert; just someone you trust completely who has a good dose of common sense. If necessary, your agent can hire professionals (paying them out of your assets) to help out.

Commonly, people give their agent broad power to handle all of their finances. But you can give your agent as much or as little power as you wish. You may want to give your agent authority to do some or all of the following:

- use your assets to pay your everyday expenses and those of your family
- buy, sell, maintain, pay taxes on, and mortgage real estate and other property
- collect Social Security, Medicare, or other government benefits
- invest your money in stocks, bonds, and mutual funds
- handle transactions with banks and other financial institutions
- buy and sell insurance policies and annuities for you

- file and pay your taxes
- operate your small business
- claim property you inherit or are otherwise entitled to
- transfer property to a trust you've already created
- hire someone to represent you in court, and
- manage your retirement accounts.

The agent is required to act in your best interests, maintain accurate records, keep your property separate from his or hers, and avoid conflicts of interest.

## **Making it Legal**

To create a legally valid Durable Power of Attorney, all you need to do is properly complete and sign a fill-in-the-blanks form that's a few pages long. Some states have their own forms, but it's not mandatory that you use them.

Some banks and brokerage companies have their own Durable Power of Attorney forms. If you want your agent to have an easier time with these institutions, you may need to prepare two (or more) durable powers of attorney: your own form and forms provided by the institutions with which you do business.

You must sign the document in front of a notary public. In some states, witnesses must also watch you sign. If your agent will have authority to deal with your real estate, you must put a copy of the document on file at the local land records office. (In two states, North and South Carolina, you must record your power of attorney at the land records office for it to be durable.)

## **Term**

Your Durable Power of Attorney automatically ends at your death. That means that you can't give your agent authority to handle things after your death, such as paying your debts, making funeral or burial arrangements, or transferring your property to the people who inherit it. If you want your agent to have authority to wind up your affairs after your death, use a will to name that person as your executor.

Your Durable Power of Attorney also ends if:

- **You revoke it.** As long as you are mentally competent, you can revoke a Durable Power of Attorney at any time.
- **You get a divorce.** In a handful of states, if your spouse is your agent and you divorce, your ex-spouse's authority is automatically terminated. In other states, if you want to end your ex-spouse's authority, you have to revoke your existing power of attorney. In any case, it's wise to make a new document as soon as you file for divorce.

- **A court invalidates your document.** It's rare, but a court may declare your document invalid if it concludes that you were not mentally competent when you signed it, or that you were the victim of fraud or undue influence.
- **No agent is available.** To avoid this problem, you can name an alternate agent in your document.

## Durable Power of Attorney Basics

A power of attorney can cover a large variety of events. You can appoint someone to look after your finances, your business, even your medical choices. But no matter what Power of Attorney you choose, you can make it “durable.” Here are few things you should know about this document before you create one.

### What “durable” means:

Durable simply means that your Power of Attorney will be valid even in the event you become incapacitated or mentally incompetent. Since many of the choices most people make in a Power of Attorney document concern this exact circumstance, most people choose to make their Power of Attorney durable.

### What kinds of Powers of Attorney can be made Durable:

In most states, any type of POA, including a healthcare power of attorney can be made durable. “Durable” is an attribute you give your Power of Attorney form. Think of it as an adjective. In fact, some people choose to make several different Durable Powers of Attorney. You can create one to deal with your medical decisions and another to take care of your finances.

### How a Durable Power of Attorney works:

A durable POA works like any other Power of Attorney. In an estate planning context, you’ll appoint an agent to make certain decisions on your behalf. As mentioned above, you may want to make several Powers of Attorney, each with a different agent. For example, your brother-in-law might be an accountant and therefore uniquely capable of handling your financial affairs. But you may want to grant your child the ability to make decisions on your behalf if you’re sick.

### A Durable Power of Attorney is different from a Springing Power of Attorney:

Although they’re sometimes confused, there’s actually a key difference between these POAs. As mentioned above, a springing power of attorney goes into effect *only* in the event you are incapacitated or mentally incompetent. A Durable Power of Attorney is valid before and after you’ve become incapacitated. Choose the document that’s right for you and, if you have questions, make sure to consult an estate planning attorney.

## Sample Durable Power of Attorney

### General Durable Power of Attorney, Effective Upon Execution

I, [Name] a [married / unmarried][man / woman] who resides at [address, city, county, state], designate [Attorney-In-Fact's Name] as my attorney in fact (the agent) to act for me, if I should become disabled or legally incapacitated. This document shall become effective upon the date of my disability or legal incapacity and shall not otherwise be affected by my disability or legal incapacity.

1. **Authority to Act.** This power of attorney is effective upon my disability or legal incapacity. My agent is authorized to act as indicated below in my name, place and stead in any way which I myself could do if I were personally present, to the full extent that I am permitted by law to act through an agent.
2. **Powers of Agent.** The Agent shall have the full power and authority to manage and conduct all of my affairs, and to exercise my legal rights and powers, including those rights and powers that I may acquire in the future, including the following:
  - a. **Collect and Manage.** To collect, hold, maintain, improve, invest, lease, or otherwise manage any or all of my real or personal property or any interest therein;
  - b. **Buy and Sell.** To purchase, sell, mortgage, grant options, or otherwise deal in any way in any real property or personal property, tangible or intangible, or any interest therein, upon such terms as the Agent considers proper, including the power to buy United States Treasury Bonds that may be redeemed at par to pay federal estate tax and to sell or transfer Treasury securities;
  - c. **Borrow.** To borrow money, to execute promissory notes for borrowed money, and to secure any obligation by mortgage or pledge.
  - d. **Business and Banking.** To conduct and participate in any kind of lawful business of any nature or kind, including the right to sign partnership agreements, continue, reorganize, merge, consolidate, recapitalize, close, liquidate, sell, or dissolve any business and to vote stock, including the exercise of any stock options and the carrying out of any buy sell agreement; to receive and endorse checks and other negotiable paper, deposit and withdraw funds (by check or withdrawal slips) that I now have on deposit or to which I may be entitled in the future in or from any bank, savings and loan, or other institution;
  - e. **Tax Returns and Reports.** To prepare, sign, and file separate or joint income, gift, and other tax returns and other governmental reports and documents; to consent to any gift; to file any claim for tax refund; and to represent me in all matters before the Internal Revenue Service;
  - f. **Safe Deposit Boxes.** To have access to any safety deposit box registered in my name alone or jointly with others, and to remove any property or papers

located therein;

- g. Proxy Rights. To act as my agent or proxy for any stocks, bonds, shares, or other investments, rights, or interests I may now or hereafter hold;
- h. Legal and Administrative Proceedings. To engage in any administrative or legal proceedings or lawsuits in connection with any matter herein;
- i. Transfers in Trust. To transfer any interest I may have in property, whether real or personal, tangible or intangible, to the trustee of any trust that I have created for my benefit;
- j. Delegation of Authority. To engage and dismiss agents, counsel, and employees, in connection with any matter, upon such terms as my agent determines;
- k. Other Matters. \_\_\_\_\_

**3. Restrictions on Agent's Powers.** Regardless of the above statements, my agent:

- a. Cannot execute a will, a codicil, or any will substitute on my behalf;
- b. Cannot change the beneficiary on any life insurance policy that I own;
- c. Cannot make gifts on my behalf;
- d. Cannot exercise any powers that would cause assets of mine to be considered taxable to my agent or to my agent's estate for purposes of any income, estate, or inheritance tax; and
- e. Cannot contravene any medical power of attorney I have executed whether prior or subsequent to the execution of this Power of Attorney.

**4. Durability.** The Agent shall be under no duty to act on my behalf and shall incur no liability to me or to my estate for failing to take any action under this power of attorney before receiving written notice from two licensed physicians that, because of either disability or incapacity, I am unable to attend to financial matters, in which case the agent shall immediately begin to act for me.

**5. Reliance by Third Parties.** Third parties may rely upon the representations of the Agent as to all matters regarding powers granted to the Agent. No person who acts in reliance on the representations of the Agent or the authority granted under this Power of Attorney shall incur any liability to me or to my estate for permitting the Agent to exercise any power prior to actual knowledge that the Power of Attorney has been revoked or terminated by operation of law or otherwise.

6. **Indemnification of Agent.** No agent named or substituted in this power shall incur any liability to me for acting or refraining from acting under this power, except for such agent's own misconduct or negligence.
7. **Original Counterparts.** Photocopies of this signed Power of Attorney shall be treated as original counterparts.
8. **Revocation.** I hereby revoke any previous Power of Attorney that I may have given to deal with my property and affairs as set forth herein.
9. **Compensation.** The Agent shall be reimbursed for reasonable expenses incurred while acting as Agent and may receive reasonable compensation for acting as Agent.
10. **Substitute Agent.** If [NAME] is, at any time, unable or unwilling to act, I then appoint [NAME2], presently residing at [ADDRESS] as my Agent to serve with the same powers.
11. **Appointment of Guardian or Conservator.** In the event that a court decides that it is necessary to appoint a guardian or conservator for me, I hereby nominate [Name], presently residing at [Address], to be considered by the court for appointment to serve as my guardian or conservator, or in any similar representative capacity.
12. **Choice of Law.** All questions concerning the validity and construction of this Durable Power of Attorney shall be determined under the laws of [State Name].

Dated: [DATE]

\_\_\_\_\_  
 [NAME]  
 Signed in the presence of:

\_\_\_\_\_  
 [NAME], Witness

\_\_\_\_\_  
 [NAME], Witness

**Notarization**

State of \_\_\_\_\_  
 County of \_\_\_\_\_

On [DATE], [NAME OF GRANTOR] appeared before me and proved to my satisfaction that [he/she] is the person whose name is subscribed to this Durable Power of Attorney, and acknowledged the due execution of the foregoing instrument.

\_\_\_\_\_  
 [Notary's Name]  
 Notary Public, [COUNTY, STATE]  
 My commission expires \_\_\_\_\_.



# The Advance Healthcare Directive

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## Origin

Advance directives were created in response to the increasing sophistication and prevalence of medical technology. Of U.S. deaths, 25%-55% occur in health care facilities. Numerous studies have documented critical deficits in the medical care of the dying; it has been found to be unnecessarily prolonged, painful, expensive, and emotionally burdensome to both patients and their families.

Aggressive medical intervention leaves nearly two million Americans confined to nursing homes, and over 1.4 million Americans remain so medically frail as to survive only through the use of feeding tubes. As many as 30,000 persons are kept alive in comatose and permanently vegetative states.

Cost burdens to individuals and families are considerable. A national study found that: "In 20% of cases, a family member had to quit work;" 31% lost "all or most savings" (even though 96% had insurance); and "20% reported loss of [their] major source of income." Yet, studies indicate that 70-95% of people would rather refuse aggressive medical treatment than have their lives medically prolonged in incompetent or other poor prognosis states.

As more and more Americans experienced the burdens and diminishing benefits of invasive and aggressive medical treatment in poor prognosis states – either directly (themselves) or through a loved one – pressure began to mount to devise ways to avoid the suffering and costs associated with treatments one did not want in personally untenable situations.

## Definition / Purpose

Advance Health Directives, also known as Living Wills, are legal documents that allow you to spell out your decisions about end-of-life care ahead of time. They give you a way to tell your wishes to family, friends, and health care professionals, especially when your medical care issues prevent you from doing so at the time, and helps to avoid confusion later on.

An Advance Health Directive tells which treatments you want if you are dying or permanently unconscious. You can accept or refuse medical care. A Durable Power of Attorney for health care is a document that names your health care proxy. Your proxy is someone you trust to make health decisions for you if you are unable to do so. These Directives are an important part of advanced care planning.

## What Is Advance Care Planning?

Advance care planning is not just about old age. At any age, a medical crisis could leave someone too ill to make his or her own healthcare decisions. Even if you are not sick now, making healthcare plans for the future is an important step toward making sure you get the medical care you would want, even when doctors and family members are making the decisions for you.

Advance care planning involves learning about the types of decisions that might need to be made, considering those decisions ahead of time, and then letting others know about your preferences, often by putting them into an Advanced Health Directive. The Advance Health Directive is a legal document that goes into effect **only** if you are incapacitated and unable to speak for yourself. This could be the result of disease or severe injury—no matter how old you are. It helps others know what type of medical care you want. It also allows you to express your values and desires related to end-of-life care. You might think of an advance directive as a living document—one that you can adjust as your situation changes because of new information or a change in your health.

## Decisions That Could Come Up Near Death

Sometimes when doctors believe a cure is no longer possible and you are dying, decisions must be made about the use of emergency treatments to keep you alive. Doctors can use several artificial or mechanical ways to try to do this. Decisions that might come up at this time relate to:

- CPR (cardiopulmonary resuscitation)
- ventilator use
- artificial nutrition (tube feeding) or artificial hydration (intravenous fluids)
- comfort care

## Getting Started

Start by thinking about what kind of treatment you do or do not want in a medical emergency. It might help to talk with your doctor about how your present health conditions might influence your health in the future. For example, what decisions would you or your family face if your high blood pressure leads to a stroke

If you don't have any medical issues now, your family medical history might be a clue to thinking about the future. Talk to your doctor about decisions that might come up if you develop health problems similar to those of other family members.

In considering treatment decisions, your personal values are key. Is your main desire to have the most days of life, or to have the most life in your days? What if an illness leaves you paralyzed or in a permanent coma and you need to be on a ventilator? Would you want that?

What makes life meaningful to you? You might want doctors to try CPR if your heart stops or to try using a ventilator for a short time if you've had trouble breathing, if it means that, in the future, you could be well enough to spend time with your family. Even if the emergency leaves you simply able to spend your days listening to books on tape or gazing out the window watching the birds and squirrels compete for seeds in the bird feeder, you might be content with that.

But, there are many other scenarios. Here are a few. What would you decide?

- If a stroke leaves you paralyzed and then your heart stops, would you want CPR? What if you were also mentally impaired by a stroke—does your decision change?
- What if you develop dementia, don't recognize family and friends, and, in time, cannot feed yourself? Would you want a feeding tube used to give you nutrition?
- What if you are permanently unconscious and then develop pneumonia? Would you want antibiotics and a ventilator used?

For some people, staying alive as long as medically possible is the most important thing. An Advance Health Directive can help make sure that happens.

Your decisions about how to handle any of these situations could be different at age 40 than at age 85. Or they could be different if you have an incurable condition as opposed to being generally healthy. An Advance Health Directive allows you to provide instructions for these types of situations and then to change the instructions as you get older or if your viewpoint changes.

## **Making Your Wishes Known**

There are two elements in an Advance Health Directive —a Living Will and a Durable Power of Attorney for health care. There are also other documents that can supplement your Advance Health Directive (or stand alone). You can choose which documents to create, depending on how you want decisions to be made. These documents include:

- living will
- durable power of attorney for health care
- other documents discussing DNR (do not resuscitate) orders, organ and tissue donation, dialysis, and blood transfusions
- 

**Living Will.** A living will is a written document that helps you tell doctors how you want to be treated if you are dying or permanently unconscious and cannot make decisions about emergency treatment. In a living will, you can say which of the procedures

described above you would want, which ones you wouldn't want, and under which conditions each of your choices applies.

**Durable Power of Attorney for Health Care.** A durable power of attorney for health care is a legal document naming a healthcare proxy, someone to make medical decisions for you at times when you might not be able to do so. Your proxy, also known as a surrogate or agent, should be familiar with your values and wishes. This means that he or she will be able to decide as you would when treatment decisions need to be made. Having a healthcare proxy helps you plan for situations that cannot be foreseen, like a serious auto accident.

Some people are reluctant to put specific health decisions in writing. For them, naming a healthcare agent might be a good approach, especially if there is someone they feel comfortable talking with about their values and preferences.

### **Other advance care planning documents.**

You might also want to prepare separate documents to express your wishes about a single medical issue or something not already covered in your advance directive. A living will usually covers only the specific life-sustaining treatments discussed earlier. You might want to give your healthcare proxy specific instructions about other issues, such as blood transfusion or kidney dialysis. This is especially important if your doctor suggests that, given your health condition, such treatments might be needed in the future.

Two medical issues that might arise at the end of life are DNR orders and organ and tissue donation.

A *DNR (do not resuscitate) order* tells medical staff in a hospital or nursing facility that you do not want them to try to return your heart to a normal rhythm if it stops or is beating unevenly. Even though a living will might say CPR is not wanted, it is helpful to have a DNR order as part of your medical file if you go to a hospital. Posting a DNR next to your bed might avoid confusion in an emergency situation. Without a DNR order, medical staff will make every effort to restore the normal rhythm of your heart. A *non-hospital DNR* will alert emergency medical personnel to your wishes regarding CPR and other measures to restore your heartbeat if you are not in the hospital.

A similar document that is less familiar is called a *DNI (do not intubate) order*. A DNI tells medical staff in a hospital or nursing facility that you do not want to be put on a breathing machine.

*Organ and tissue donation* allows organs or body parts from a generally healthy person who has died to be transplanted into people who need them. Commonly, the heart, lungs, pancreas, kidneys, corneas, liver, and skin are donated. There is no age limit for

organ and tissue donation. You can carry a donation card in your wallet. Some states allow you to add this decision to your driver's license. Some people also include organ donation in their advance care planning documents. At the time of death, family may be asked about organ donation. If those close to you, especially your proxy, know how you feel about organ donation, they will be ready to respond.

## Selecting Your Healthcare Proxy

If you decide to choose a proxy, think about people you know who share your views and values about life and medical decisions. Your proxy might be a family member, a friend, your lawyer, or someone with whom you worship. However, most states do not permit you to appoint your attending physician (unless the individual resigns as your physician) or employees of the facility in which you are a resident (unless they are related to you by blood or marriage).

It's a good idea to also name an alternate proxy. It is especially important to have a detailed living will if you choose not to name a proxy.

You can decide how much authority your proxy has over your medical care—whether he or she is entitled to make a wide range of decisions or only a few specific ones. Try not to include guidelines that make it impossible for the proxy to fulfill his or her duties. For example, it's probably not unusual for someone to say in conversation, "I don't want to go to a nursing home," but think carefully about whether you want a restriction like that in your advance directive. Sometimes, for financial or medical reasons, that may be the best choice for you.

Your agent can be almost any adult whom you trust to make healthcare decisions for you. The most important considerations are that the agent be someone:

- you trust
- who knows you well
- who will honor your wishes

Ideally, it should be someone who is not afraid to ask questions of doctors in order to get information needed to make decisions. Today's healthcare procedures are very complicated, so if you know someone in the medical profession (like a nurse) they would be a good candidate for agent. Your agent may need to be forceful and not everyone is comfortable accepting this sort of responsibility, which is why it is very important to have a discussion with the person you plan to name as your healthcare agent before you select him or her.

Often people assume that their closest relatives know what they would want, so they think it is unnecessary to discuss wishes with them. However, people sometimes find that when they actually talk with their loved ones about end-of-life issues, they have very different views. Talking openly about your preferences is key to assuring that your agent knows what you want.

Everyone's situation is unique. Your decision about whom to appoint must be guided by your own relationships.

Of course, check with those you choose as your healthcare proxy and alternate before you name them officially. Make sure they are comfortable with this responsibility.

### **Information your agent needs**

Your agent needs to:

- Know when and how you would want life-sustaining treatments provided to you
- Understand personal and spiritual values that guide your thinking about death and dying
- Have a copy of your living will

To achieve a clearer understanding between you and your agent you might discuss some concrete situations. The following are some examples:

- If you should suffer a massive stroke or had a head injury from which you were unlikely to regain consciousness, how you want to be treated?
- Would you want life-sustaining treatments that might prolong your life if you suffered from a progressive debilitating disease such as Alzheimer's disease, Parkinson's or a similar disease and could no longer make decisions? If you want treatments, which ones? For how long? Indefinitely?
- If you were in any of the above situations, would you want to receive artificial nutrition and fluids?
- If you were seriously ill and your heart stopped beating or you stopped breathing, would you want resuscitation attempts? Would you want to have a ventilator breathe for you? If so, for how long?

Although you cannot review every specific situation that might arise, discussions like this can help your agent understand how you think about the use of medical treatments at the end of life.

Sometimes sharing your personal concerns and values, your spiritual beliefs, or your views about what makes life worth living can be as helpful to your agent as talking about specific treatments and circumstances. For example:

- How important is it to be physically independent and to stay in your own home?
- How do your religious or spiritual beliefs affect your attitudes toward dying and death? And medical care?
- What aspects of your life give it the most meaning?
- What are your particular concerns about dying? About death?
- Would you want your agent to take into account the effect of your illness on any other people?
- Should financial concerns enter into decisions about your treatment?

These are not simple questions and your views may change over time. It is important that you review these issues with your agent from time to time.

### **How does your agent make decisions?**

Under most states' laws your agent is expected to make decisions based on specific knowledge of your wishes. If your agent does not know what you would want in a particular situation, he or she should try to infer your wishes based on their knowledge of you as a person and on your values related to quality of life in general. If your agent lacks this knowledge, decisions must be in your best interest. Generally, the more confident the agent is about the decisions will accurately reflect your wishes; the easier it will be to make them.

In a few states, the law limits the agent's power to refuse some treatments in circumstances. State law, for example, may limit decisions to what the person has specifically stated in the living will. You should carefully review your state's documents.

### **Complying with your wishes**

To ensure that your wishes are followed, be certain that the person you appoint to be your agent understands your wishes and will abide by them. Your agent has the legal right to make decisions for you even if close family members disagree. However, should close family members express strong disagreement, your agent and your healthcare professional may find it extremely difficult to carry out the decisions you would want. If you foresee that your agent may encounter serious resistance, the following steps can help:

- Communicate with family members you anticipate may object to your decisions. Tell them in writing whom you have appointed to be your healthcare agent and explain why you have done so, and send a copy to your agent.
- Let them know that you do not wish for them to be involved with decisions about your medical care and give a copy of these communications to your agent as well.
- Give your primary care physician, if you have one, copies of written communications you have made.
- Prepare a specific, written living will. Make it clear in your documents that you want your agent to resolve any uncertainties that could arise with interpreting the living will. A way to say this is: "My agent should make any decisions about how to interpret or when to apply my living will."

### **Making It Official**

Once you have talked with your doctor and have an idea of the types of decisions that could come up in the future and whom you would like as a proxy, if you want one at all, the next step is to fill out the legal forms detailing your wishes. A lawyer can help but is

not required. If you decide to use a lawyer, don't depend on him or her to help you understand different medical treatments. That's why you should start the planning process by talking with your doctor.

You can write an advance directive in several ways:

- Use a form provided by your doctor.
- Write your wishes down by yourself.
- Call your health department or state department on aging to get a form.
- Call a lawyer.
- Use a computer software package for legal documents.

Advance directives and living wills do not have to be complicated legal documents. They can be short, simple statements about what you want done or not done if you can't speak for yourself. Remember, anything you write by yourself or with a computer software package should follow your state laws. You may also want to have what you have written reviewed by your doctor or a lawyer to make sure your directives are understood exactly as you intended. When you are satisfied with your directives, the orders should be notarized if possible, and copies should be given to your family and your doctor.

Many states have their own advance directive forms. Your local Area Agency on Aging can help you locate the right forms. You can find your area agency phone number by calling the Eldercare Locator toll-free at 1-800-677-1116 or going online at [www.eldercare.gov](http://www.eldercare.gov).

Some states want your advance directive to be witnessed; some want your signature notarized. A notary is a person licensed by the state to witness signatures. You might find a notary at your bank, post office, or local library, or call your insurance agent. Some notaries charge a fee.

Some people spend a lot of time in more than one state—for example, visiting children and grandchildren. If that's your situation also, you might consider preparing an advance directive using forms for each state—and keep a copy in each place, too.

## **Changing an Advance Health Directive**

You may change or cancel your advance directive at any time, as long as you are considered of sound mind to do so. Being of sound mind means that you are still able to think rationally and communicate your wishes in a clear manner. Again, your changes must be made, signed and notarized according to the laws in your state. Make sure that your doctor and any family members who knew about your directives are also aware that you have changed them.

If you do not have time to put your changes in writing, you can make them known while you are in the hospital. Tell your doctor and any family or friends present exactly what



you want to happen. Usually, wishes that are made in person will be followed in place of the ones made earlier in writing. Be sure your instructions are clearly understood by everyone you have told.

### **Allowing family to make the necessary decisions for you (without a Directive)**

Depending on your state's laws, your family might not be allowed to make decisions about life sustaining treatment for you without a living will stating your wishes. Some states laws do permit family members to make all medical decisions for their incapacitated loved ones. However, other states require clear evidence of the person's own wishes or a legally designated decision maker.

Even in states that do permit family decisions-making, you should still prepare advance directives for three reasons:

1. You can name the person with whom you are most comfortable (this person does not need to be a family member) to make sure your wishes are honored.
2. Your living will makes your specific wishes known.
3. It is a gift to loved ones faced with making decisions about your care.

### **Is it considered suicide to refuse artificial nutrition and hydration?**

No. When a person is refusing life-sustaining treatment at the end of life, including artificial nutrition and hydration, it is not considered an act of suicide. A person at the end of life is dying, not by choice, but because of a particular condition or disease. Continuing treatment may delay the moment of death but cannot change the underlying condition.

### **Are life insurance policies affected if life-sustaining treatments are refused?**

No. Because death is not the result of suicide, life insurance policies are not affected when medical treatments are stopped.

### **Some Points to Think about When Making Decisions about the Use of Artificial Nutrition and Hydration**

- What quality of life is important to you?
- What is the goal or purpose for providing artificial nutrition and hydration?
- Will it prolong life? Will it bring about a cure?
- Will it contribute to the level of comfort?
- Are there religious, cultural, or personal values that would affect a decision to continue or stop treatment?
- Are there any benefits that artificial nutrition and hydration would offer?

## Glossary

**Advance Health directive** - A general term that describes two kinds of legal documents, living wills and medical powers of attorney. These documents allow a person to give instructions about future medical care should he or she be unable to participate in medical decisions due to serious illness or incapacity. Each state regulates the use of advance directives differently.

**Artificial nutrition and hydration:** Artificial nutrition and hydration supplements or replaces ordinary eating and drinking by giving a chemically balanced mix of nutrients and fluids through a tube placed directly into the stomach, the upper intestine or a vein.

**Capacity** - In relation to end-of-life decision-making, a patient has medical decision making capacity if he or she has the ability to understand the medical problem and the risks and benefits of the available treatment options. The patient's ability to understand other unrelated concepts is not relevant. The term is frequently used interchangeably with competency but is not the same. Competency is a legal status imposed by the court.

**Cardiopulmonary resuscitation** - Cardiopulmonary resuscitation (CPR) is a group of treatments used when someone's heart and/or breathing stops. CPR is used in an attempt to restart the heart and breathing. It may consist only of mouth-to-mouth breathing or it can include pressing on the chest to mimic the heart's function and cause blood to circulate. Electric shock and drugs also are used frequently to stimulate the heart.

**Do-Not-Resuscitate (DNR) order** - A DNR order is a physician's written order instructing healthcare providers not to attempt cardiopulmonary resuscitation (CPR) in case of cardiac or respiratory arrest. A person with a valid DNR order will not be given CPR under these circumstances. Although the DNR order is written at the request of a person or his or her family, it must be signed by a physician to be valid. A non-hospital DNR order is written for individuals who are at home and do not want to receive CPR.

**Emergency Medical Services (EMS)** - A group of governmental and private agencies that provide emergency care, usually to persons outside of healthcare facilities; EMS personnel generally include paramedics, first responders and other ambulance crew.

**Healthcare agent** - The person named in an advance directive or as permitted under state law to make healthcare decisions on behalf of a person who is no longer able to make medical decisions. Also known as proxy.

**Hospice** - Considered to be the model for quality, compassionate care for people facing a life-limiting illness or injury, hospice and palliative care involve a team-oriented approach to expert medical care, pain management, and emotional and spiritual support

expressly tailored to the person's needs and wishes. Support is provided to the persons loved ones as well.

**Intubation** - Refers to "endotracheal intubation" the insertion of a tube through the mouth or nose into the trachea (windpipe) to create and maintain an open airway to assist breathing.

**Life-sustaining treatment** - Treatments (medical procedures) that replace or support an essential bodily function (may also be called life support treatments). Life-sustaining treatments include cardiopulmonary resuscitation, mechanical ventilation, artificial nutrition and hydration, dialysis, and other treatments.

**Living will** - A type of advance directive in which an individual documents his or her wishes about medical treatment should he or she be at the end of life and unable to communicate. It may also be called a "directive to physicians", "healthcare declaration," or "medical directive."

**Mechanical ventilation** - Mechanical ventilation is used to support or replace the function of the lungs. A machine called a ventilator (or respirator) forces air into the lungs. The ventilator is attached to a tube inserted in the nose or mouth and down into the windpipe (or trachea).

**Medical power of attorney** - A document that allows an individual to appoint someone else to make decisions about his or her medical care if he or she is unable to communicate. This type of advance directive may also be called a healthcare proxy, durable power of attorney for healthcare or appointment of a healthcare agent. The person appointed may be called a healthcare agent, surrogate, attorney-in-fact or proxy.

**Palliative care** - A comprehensive approach to treating serious illness that focuses on the physical, psychological and spiritual, and existential needs of the patient. Its goal is to achieve the best quality of life available to the patient by relieving suffering and controlling pain and symptoms.

**Power of attorney** - A legal document allowing one person to act in a legal matter on another's behalf regarding to financial or real estate transactions.

**Respiratory arrest** - The cessation of breathing - an event in which an individual stops breathing. If breathing is not restored, an individual's heart eventually will stop breathing, resulting in cardiac arrest.

**Surrogate decision-making** - Surrogate decision-making laws allow an individual or group of individuals (usually family members) to make decisions about medical treatments for a patient who has lost decision-making capacity and did not prepare an advance directive. A majority of states have passed statutes that permit surrogate decision making for people without advance directives.

**Ventilator** - A ventilator, also known as a respirator, is a machine that pushes air into the lungs through a tube placed in the trachea (breathing tube). Ventilators are used when a person cannot breathe on his or her own or cannot breathe effectively enough to provide adequate oxygen to the cells of the body or rid the body of carbon dioxide.

**Withholding or withdrawing treatment** - Forgoing life-sustaining measures or discontinuing them after they have been used for a certain period of time.

On the following pages is an **Advanced Health Care Directive for California**

**Disclaimer**

**This is provided only for educational purposes, and is not meant to diagnose, treat, cure, or prevent any disease. Do not use this document for legal purposes. Discuss this and all healthcare decisions with your doctor, accountant, attorney, pharmacist, therapist, and knitting coach. Do not drink water or go to bed before reading this document. Do not sign this document if you have irritable fingernails or are taking grapefruit extract. Member FDIC. Read the prospectus before sending money.**

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## Advance Health Care Directive Form Instructions

**You have the right to give instructions about your own health care.**

**You also have the right to name someone else to make health care decisions for you.**

The Advance Health Care Directive form lets you do one or both of these things. It also lets you write down your wishes about donation of organs and the selection of your primary physician. If you use the form, you may complete or change any part of it or all of it. You are free to use a different form.

### INSTRUCTIONS

#### Part 1: Power of Attorney

**Part 1 lets you:**

- **name** another person as **agent** to make health care decisions for you if you are unable to make your own decisions. You can also have your agent make decisions for you right away, even if you are still able to make your own decisions.
- **also name** an **alternate agent** to act for you if your first choice is not willing, able or reasonably available to make decisions for you.

Your **agent may not be:**

- an operator or employee of a community care facility or a residential care facility where you are receiving care.
- your supervising health care provider (the doctor managing your care)
- an employee of the health care institution where you are receiving care, unless your agent is related to you or is a coworker.

Your **agent** may make all health care decisions for you, **unless** you limit the authority of your agent. You do not need to limit the authority of your agent.

**If you want to limit the authority** of your agent the form includes a place where you can limit the authority of your agent.

**If you choose not to limit** the authority of your agent, your agent will have the right to:

- Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition.

- Choose or discharge health care providers (i.e. choose a doctor for you) and institutions.
- Agree or disagree to diagnostic tests, surgical procedures, and medication plans.
- Agree or disagree with providing, withholding, or withdrawal of artificial feeding and fluids and all other forms of health care, including cardiopulmonary resuscitation (CPR).
- After your death make anatomical gifts (donate organs/tissues), authorize an autopsy, and make decisions about what will be done with your body.

#### Part 2: Instructions for Health Care

You can give specific instructions about any aspect of your health care, whether or not you appoint an agent.

There are choices provided on the form to help you write down your wishes regarding providing, withholding or withdrawal of treatment to keep you alive.

You can also add to the choices you have made or write out any additional wishes.

You do not need to fill out part 2 of this form if you want to allow your agent to make any decisions about your health care that he/she believes best for you without adding your specific instructions.

**Part 3: Donation of Organs**

You can write down your wishes about donating your bodily organs and tissues following your death.

included in the form) or acknowledged before a notary public. **A notary is not required if the form is signed by two witnesses. The witnesses must sign the form on the same date it is signed by the person making the Advance Directive.**

**Part 4: Primary Physician**

You can select a physician to have primary or main responsibility for your health care.

See part 6 of the form if you are a patient in a skilled nursing facility.

**Part 5: Signature and Witnesses**

After completing the form, **sign and date it** in the section provided.

**Part 6: Special Witness Requirement**

A Patient Advocate or Ombudsman must witness the form *if you are a patient in a skilled nursing facility* (a health care facility that provides skilled nursing care and supportive care to patients). See Part 6 of the form.

The form must be signed **by two qualified witnesses** (see the statements of the witnesses

*You have the right to change or revoke your Advance Health Care Directive at any time*

If you have questions about completing the Advance Directive in the hospital, please ask to speak to a Chaplain or Social Worker.

We ask that you **complete this form in English** so your caregivers can understand your directions.



## Advance Health Care Directive

Name \_\_\_\_\_

Date \_\_\_\_\_

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form also lets you write down your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or change all or any part of it. You are free to use a different form.

***You have the right to change or revoke this advance health care directive at any time.***

### Part 1 — Power of Attorney for Health Care

(1.1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

Name of individual you choose as agent: \_\_\_\_\_

Relationship \_\_\_\_\_

Address: \_\_\_\_\_

Telephone numbers: (Indicate home, work, cell) \_\_\_\_\_

ALTERNATE AGENT (Optional): If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent:

Name of individual you choose as alternate agent: \_\_\_\_\_

Relationship \_\_\_\_\_

Address: \_\_\_\_\_

Telephone numbers: (Indicate home, work, cell) \_\_\_\_\_

SECOND ALTERNATE AGENT (optional): If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent:

Name of individual you choose as second alternate agent: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone numbers: (Indicate home, work, cell) \_\_\_\_\_

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(1.2) AGENT'S AUTHORITY: My agent is authorized to 1) make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, 2) to choose a particular physician or health care facility, and 3) to receive or consent to the release of medical information and records, except as I state here:

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(Add additional sheets if needed.)

(1.3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I initial the following line.

If I initial this line, my agent's authority to make health care decisions for me takes effect immediately. \_\_\_\_\_

(1.4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(1.5) AGENT'S POST DEATH AUTHORITY: My agent is authorized to make anatomical gifts, authorize an autopsy, and direct disposition of my remains, except as I state here or in Part 3 of this form:

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(Add additional sheets if needed.)

(1.6) NOMINATION OF CONSERVATOR: If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as conservator, I nominate the alternate agents whom I have named. \_\_\_\_\_ (initial here)

## Part 2 — Instructions for Health Care

If you fill out this part of the form, you may strike out any wording you do not want.

(2.1) **END-OF-LIFE DECISIONS:** I direct my health care providers and others involved in my care to provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

- a) Choice Not To Prolong  
I do not want my life to be prolonged if the likely risks and burdens of treatment would outweigh the expected benefits, or if I become unconscious and, to a realistic degree of medical certainty, I will not regain consciousness, or if I have an incurable and irreversible condition that will result in my death in a relatively short time.  
Or
- b) Choice To Prolong  
I want my life to be prolonged as long as possible within the limits of generally accepted medical treatment standards.



(2.2) OTHER WISHES: If you have different or more specific instructions other than those marked above, such as: what you consider a reasonable quality of life, treatments you would consider burdensome or unacceptable, write them here.

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Add additional sheets if needed.)

### Part 3 — Donation of Organs at Death (Optional)

(3.1) Upon my death (mark applicable box):

- I give any needed organs, tissues, or parts
- I give the following organs, tissues or parts only: \_\_\_\_\_
- I do not wish to donate organs, tissues or parts.

My gift is for the following purposes (strike out any of the following you do not want):

Transplant      Therapy      Research      Education

### Part 4 — Primary Physician (Optional)

(4.1) I designate the following physician as my primary physician:

Name of Physician: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

### Part 5 — Signature

(5.1) EFFECT OF A COPY: A copy of this form has the same effect as the original.

(5.2) SIGNATURE: Sign name: \_\_\_\_\_ Date: \_\_\_\_\_

(5.3) STATEMENT OF WITNESSES: I declare under penalty of perjury under the laws of California (1) that the individual who signed or acknowledged this advance health care directive is personally known to me, or that the individual's identity was proven to me by convincing evidence (2) that the individual signed or acknowledged this advance directive in my presence (3) that the individual appears to be of sound mind and under no duress, fraud, or undue influence, (4) that I am not a person appointed as agent by this advance directive, and (5) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly nor an employee of an operator of a residential care facility for the elderly.

**FIRST WITNESS**

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_ Date: \_\_\_\_\_

**SECOND WITNESS**

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_ Date: \_\_\_\_\_

(5.4) ADDITIONAL STATEMENT OF WITNESSES: At least one of the above witnesses must also sign the following declaration:

I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance directive by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the individual's estate on his or her death under a will now existing or by operation of law.

Signature of Witness: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

**Part 6 — Special Witness Requirement if in a Skilled Nursing Facility**

(6.1) The patient advocate or ombudsman must sign the following statement:

**STATEMENT OF PATIENT ADVOCATE OF OMBUDSMAN**

I declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by section 4675 of the Probate Code:

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Address: \_\_\_\_\_ Date: \_\_\_\_\_

**Certificate of Acknowledgement of Notary Public** (Not required if signed by two witnesses)

State of California, County of \_\_\_\_\_ On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed it.

WITNESS my hand an official seal.

Seal

Signature \_\_\_\_\_

## **For More Information**

Other federal and non-federal resources with information about advance directives include:

### **Caring Connections**

#### **National Hospice and Palliative Care Organization**

1-800-658-8898 (toll-free)

1-877-658-8896 (toll-free/multilingual)

[www.caringinfo.org](http://www.caringinfo.org)

### **Caring Conversations**

#### **Center for Practical Bioethics**

Harzfeld Building

1111 Main Street, Suite 500

Kansas City, MO 64105-2116

1-800-344-3829 (toll-free)

[www.practicalbioethics.org](http://www.practicalbioethics.org)

### **American Bar Association**

321 North Clark Street

Chicago, IL 60654

1-800-285-2221

[www.americanbar.org](http://www.americanbar.org)

(search for "Consumer's Tool Kit for Health Care Advance Planning")

### **Donate Life America**

701 East Byrd Street, 16th floor

Richmond, VA 23219

1-804-377-3580

[www.donatelife.net](http://www.donatelife.net)

### **National Legal Resource Center**

[www.nlrc.aoa.gov](http://www.nlrc.aoa.gov)

### **OrganDonor.gov**

Health Resources and Services Administration

1-888-275-4772 (toll-free)

[www.organdonor.gov](http://www.organdonor.gov)

### **POLST (Physician Orders for Life-Sustaining Treatment)**

[www.polst.org](http://www.polst.org)

### **Put It In Writing**

#### **American Hospital Association**

155 North Wacker Drive

Chicago, IL 60606

1-800-424-4301 (toll-free)  
[www.putitinwriting.org](http://www.putitinwriting.org)

**The Living Bank**

P.O. Box 6725  
Houston, TX 77265  
1-800-528-2971 (toll-free)  
[www.livingbank.org](http://www.livingbank.org)

**For more information about health and aging, contact:  
National Institute on Aging Information Center**

P.O. Box 8057  
Gaithersburg, MD 20898-8057  
1-800-222-2225 (toll-free)  
1-800-222-4225 (TTY/toll-free)  
[www.nia.nih.gov](http://www.nia.nih.gov)  
[www.nia.nih.gov/espanol](http://www.nia.nih.gov/espanol)

# The Instructions

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EVERYBODY NEEDS THIS – SO READ UP!

Wills, Durable Power of Attorneys, Trusts, and Advanced Health Directives are all formal, legal documents that help you allocate property and determine the disposition of your life when you are critically ill. But, they only go so far – and not far enough.

## Definition / Purpose

It's important, probably most important, to also leave an Instruction Document with your legal files that helps your loved ones know how to best care for you should you become incapacitated, fills in the gaps in terms of details surrounding your accounts and property, and provides additional details for your final disposition.

Simply put, the Instructions includes as many details as possible that anyone might want to know, when you can't tell them any longer.

There is no specific form for Instructions – it's up to each person to decide what's important to communicate. But here are some general categories to help guide you.

## Property

- Where is your property located? Do you have safe deposit boxes or safes? If so, what are their addresses and where can the keys to them be found?
- List your valuables along with where they are located.
- Do you have storage facilities – where and how do your loved ones access them?
- For your bank, retirement and investment accounts, list the company names and account numbers. Include online passwords.
- If there are people associated with any property, give their names and full contact information. If you have an attorney, what is her contact information and location?
- Where are your legal documents located – where are your birth certificate, marriage certificate, divorce decree, passport, social security number, Will, Trust documents, Durable Power of Attorney, Advanced Health Directive, etc. (of course, it's helpful to have them in one place).
- Special bequests: We know from your will how your property will be divided – but what about special bequests. For example, you personal property may be divided equally between your 3 children but you might want Harriett to get your fine art collection, Sam to get your collection of vintage cameras, and Priscilla to get your jewelry. To avoid confusion, take a video of your stuff while you narrate where you want it to go; then put the video on a disk.
- Pet instructions. Harriett might take over caring for your dog, Bud. You might want to tell her that Bud has an allergy to wheat and does best on organic food. He might

get an insulin shot every day and his Vet is Dr. Marion Carter – and give her contact information. Perhaps Bud has an ID chip – where is that certificate located?

- In terms of real property, where are the purchase papers located, any maintenance and repair records, preferred vendors (HVAC, Roofing, etc.), and identify details or idiosyncrasies such as the window wells are cracked and cause minor flooding in the basement when it rains, the fireplace in inoperable, there is a crawl space with extra storage items there. You might even include info such as you and your neighbor alternate in caring for the trees on the side of the house – you might care for them during even years.
- Secrets: Do you have any secrets that you should expose? Perhaps you set up a private bank account when things were rocky in your marriage and need to alert your heirs or spouse to its existence (or dissolve it). Maybe you stole your neighbor's garden gnomes one year after a fight and want to make sure they get back to him. Maybe you want a section of your hard drive erased because you wrote nasty short stories. Maybe you voted for George W Bush and need to confess that to clear your conscious. Maybe you donated sperm when finances were tight one year and some of it is still viable and available for use. You might want to alert your kids that when they go through your personal effects, they may find your collection of women's clothing that you used when cross dressing on rare occasions.
- An Ethical Will (Hebrew tradition) is a document designed to pass ethical values from one generation to the next. Make a video telling your children how much you love them.

This list can go on and on – be thorough. Write it down now. Here are some examples of property items with explanations:

### Examples:

- My 40ft sale boat, Settlement, is located at Boataco Marina at 2239 Marina Way, San Francisco, CA. The passcode into the gated area is 1234. Samuel Ellison is the Marina Master and can be reached at 415-223-4455. I have a Silver Membership, which costs \$4,599 per year (in 2015) and allows for 1 week dry docking with full cleaning services and special security services. A file with all details can be found in the black, locked file cabinet in my home office – the key to which is located in my key vault in the front hall closet – passcode 2299. My online account with Boataco is at Botaco.com; my username is Fidelity, and my password is WooHooBaby.
- I have a business and personal checking and savings account with Wells Fargo (main branch is Main Street, Santa Rosa) as follows:
  - Personal Checking: 222333444
  - Personal Savings: 333444555
  - Business Checking: 444555666
  - Business Savings: 555666777
  - I have a Visa: 5555666677778888 exp: 2/18 Code: 888
  - Access to Wells Fargo online: username: hotstuFF; pw: 8ii!loxUUU\*
- I'd like my collection of porn, to be found under my mattress, to go to my son Sam.

- I have my father's watches in a safe deposit box at Bank of America. Box number 876. The key is located in my key vault in the front hall close, pass code 2299. I'd like those watches to go to Harriett.

### **Personal Wishes (not tied to property)**

Property access and bequests is only half of it. You may want to state your personal wishes in part of your Instruction Document – wishes that have to do with your care should you become incapacitated and your wishes pertaining to your final disposition and ceremonies surrounding that.

### **Incapacitation**

It's not that rare that our physical health deteriorates so that we need constant care at a time when we can no longer express our wishes. While we are healthy enough to express our desires around how we want to be cared for, we should. It's a terrible burden to loved ones to have to guess at how to best make decisions for your care. The more detail you can provide, the more psychic resources they'll be left with to properly grieve your situation and focus on other important aspects of this major transition. The list is up to you, but here are some suggestions and examples:

- Research nursing homes while you are well and let your loved ones know which you choose, should you need one.
- You may want to listen to classical and opera music at least 1 hour per day.
- You might want essential oils lightly dabbed under your nose and on your forehead once per day.
- You might want to be dressed in your 49er's jersey on game days.
- You might want your fingernails to be painted nicely at all times.
- You might want your caregivers to know that you have an intolerance to gluten and hate chunky applesauce.
- You might want them to know that your feet are constantly cold and so you sleep with socks on.
- Perhaps you have a dread of being left in dirty diapers and so want your loved ones to make sure the caregivers are checking you hourly.
- You might like the view from the northwest window and wish to be situated in that direction during the day.
- You might want a nightlight to be left on in the evenings.
- Perhaps wool is uncomfortable for you and you wish to avoid it.
- Every New Years, you'd like some champagne added to your IV.
- Maybe you want to have family photos displayed on your nightstand at all times.
- You might request that visitors talk to you as if you can hear every word.
- You might want the TV turned on for company at least 3 hours per day, but not on the Fox channel or MSNBC.

- You may want to request that your priest visit you monthly or as often as possible.
- I personally like the window open and the fireplace lit simultaneously. I sleep on my side with three pillows under my head and one between my knees. A large pillow is propped against the headboard, a small roller pillow goes under my neck, and a soft, dumpy down pillow cradles my head and covers my eyes but not my nose. I like to be turned every 90 minutes, like a smoked ham. I don't like the covers tucked under the mattress by my feet.

## Funerals and Wakes

- Who would you like invited to your final send-off? Who do you want to make sure is not invited? Who would you like to give your eulogy? Provide your loved ones with lists and contact information.
- Do you have any special requests for your funeral – such as special readings, quotes, poems, memories or goodbye messages you wish to be shared with the group.
- What music, if any, do you want at the ceremony? If you want a live musical group or friend to sing – name them and how to contact each.
- Perhaps you have a menu or specific food item you'd like served at your wake – you might even go so far as to say where to order the food from or to provide a recipe.
- Maybe you have a wish for activities at your wake – for example, maybe you'd like everyone to sing your alma mater's song and ask your loved ones to type up the lyrics for everyone to use.
- If you are to be cremated, are there any special instructions (perhaps you want to be cremated with your wooden golf clubs). Where would you like your ashes to be stored and in what kind of container? If you want them dispersed, is there a special place and reading or ceremony you'd like to request?
- If you are to be buried, do you have any requests regarding type of casket or location of your burial plot? What clothing would you like to be buried in? Where do you keep your lucky hat?
- Do you have a mortuary that you prefer? Flowers that you prefer or perhaps a donation in lieu of flowers?
- Who would you like as pallbearers? Include contact info.
- Perhaps you have requests of friends to help your family during the ceremony and reception afterwards.
- Maybe you are a dog lover and want all your friends to bring their dogs to the ceremony and reception. If they can be taught to howl on command, all the better. Maybe you want to name your younger brother, the one that always pestered you, to be the person to clean up after them.

## Checklists

You can create your own lists to share with loved ones, or use a boilerplate list off the internet to help guide you in making your wishes known (and customize it). Consider using video as a way to impart your wishes. Here's a sample checklist form you might use as a guide.



## **Checklist and Instructions at my Death**

Note: you do NOT have to use a funeral home! Should the police or hospital ask "What funeral home? below is what they need to know":

I have chosen for interment:

Burial: \_\_\_\_\_ Cremation \_\_\_\_\_

Direct burial \_\_\_\_\_ Direct cremation \_\_\_\_\_

(If burial is marked do NOT contact a funeral home to be involved.)

Instead, call the cemetery at \_\_\_\_\_ or the crematorium at \_\_\_\_\_  
Cemetery Deed or Other (note if plots are purchased and where documents are kept)

Ashes to be scattered \_\_\_\_\_

Memorial Stone \_\_\_\_\_

Other charities or  
memorials \_\_\_\_\_

### MEMORIAL SERVICE

Place \_\_\_\_\_ Contact \_\_\_\_\_ Speaker \_\_\_\_\_

Favorite Music \_\_\_\_\_

Favorite readings \_\_\_\_\_

### Speakers/Pall Bearers

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone number \_\_\_\_\_

Desires: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### PERSONAL NOTES

Information, Requests and Desires, Messages to Share \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Family members or friends to call for help \_\_\_\_\_

Phone: \_\_\_\_\_

Call the most important friends and family members

Name/Phone: \_\_\_\_\_

Name/Phone: \_\_\_\_\_

Name/Phone: \_\_\_\_\_

Name/Phone: \_\_\_\_\_

Name/Phone: \_\_\_\_\_

Name/Phone: \_\_\_\_\_

Name/Phone: \_\_\_\_\_

Name/Phone: \_\_\_\_\_

Directory of relatives and friends with addresses, e-mail addresses and telephone numbers for giving notification of death is found where \_\_\_\_\_

Notify employer \_\_\_\_\_ Phone: \_\_\_\_\_

Notify union, even if retired \_\_\_\_\_ Phone: \_\_\_\_\_

Funeral home \_\_\_\_\_ Phone: \_\_\_\_\_

I have included a listing and location of my official papers and records. This will let you know my thoughts and decisions to make this as easy as possible for you during this difficult time.

Please carry out these requests at the event of my passing, regardless of where my death occurs.

It is my wish that as far as is financially possible at the time, that my family and friends follow my wishes. Substitutions may be made only in order that funds available will cover the entire cost. I have put aside or have made funds available to be paid from the following sources:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A copy of this arrangement is in \_\_\_\_\_

Signed \_\_\_\_\_

Dated \_\_\_\_\_

(See "burial and memorial preparations")

Notify the newspaper \_\_\_\_\_ Phone \_\_\_\_\_

Request at least 10 copies of the death certificate (The funeral home will usually do this for you if you ask). One for each piece of property, one for each vehicle, one for each insurance policy, IRS, doctor if money is owed. You might need some for other things. A few places will allow you to scan it and send it to them electronically so you save buying more. Others will take a copy of your original document)

Funeral home will also usually send information to social security. (Confirm this with them. There should be a very small death benefit- approximately \$255.)

Call my attorney to begin the process of settling my will, if I don't have a trust. (Note to self: it will save my heirs months and even years of time plus thousands of dollars if I have a trust instead of allowing it to be probated. I can have an attorney set up a trust or buy a trust package on line from legalzoom or suzeorman.com has one for free on: <http://suzeorman.com> Left hand side under Will and Trust kit use the code peoplefirst.

Atty Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Set up appointment with local social security office and file a claim immediately, if funeral home does not do this: \_\_\_\_\_

Pension plan You will need social security number and birth date of employee and their spouse. If this is about a death they will then notify health, pension life and 401K groups, for you. A caseworker will be assigned.

For stock call \_\_\_\_\_ Phone: \_\_\_\_\_

Have PIN ready. \_\_\_\_\_

Notify the lenders (mortgage company, credit card companies, etc) which have accident or death insurance. With insurance, the balance will be paid off free and clear

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Military Discharge papers (for military honors) \_\_\_\_\_

OTHER \_\_\_\_\_

#### IMPORTANT PHONE NUMBERS

Accountant \_\_\_\_\_ Phone: \_\_\_\_\_

Attorney \_\_\_\_\_ Phone: \_\_\_\_\_

Bank Officer \_\_\_\_\_ Phone: \_\_\_\_\_

Clergy \_\_\_\_\_ Phone: \_\_\_\_\_

Dentist \_\_\_\_\_ Phone: \_\_\_\_\_

Doctor \_\_\_\_\_ Phone: \_\_\_\_\_

Employee Benefits \_\_\_\_\_ Phone: \_\_\_\_\_

Employer \_\_\_\_\_ Phone: \_\_\_\_\_

Human Resources Dept where I am employed: \_\_\_\_\_

Notify the insurance company to start the process of collecting benefits or canceling/transferring policies:

#### INSURANCE AGENTS

Auto Ins Agent \_\_\_\_\_ Phone: \_\_\_\_\_

Disability Ins. Agent \_\_\_\_\_ Phone: \_\_\_\_\_

Health Insurance Agent \_\_\_\_\_ Phone: \_\_\_\_\_

Homeowners Agent \_\_\_\_\_ Phone: \_\_\_\_\_

Life Ins Agent \_\_\_\_\_ Phone: \_\_\_\_\_

Mortgage Company \_\_\_\_\_ Phone: \_\_\_\_\_

Realtor \_\_\_\_\_ Phone: \_\_\_\_\_

Social Security Office \_\_\_\_\_ Phone: \_\_\_\_\_

Stock Broker \_\_\_\_\_ Phone: \_\_\_\_\_

Tax Preparation \_\_\_\_\_ Phone: \_\_\_\_\_

Trust Officer \_\_\_\_\_ Phone: \_\_\_\_\_

Veterans Administration \_\_\_\_\_ Phone: \_\_\_\_\_

Other \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

#### PERSONAL INFORMATION

This information may be requested for a number of purposes including hospitalization, to receive benefits, or by the funeral home.

#### SELF

Full Name \_\_\_\_\_  
 Residence \_\_\_\_\_  
 Phone number \_\_\_\_\_  
 Date of Birth \_\_\_\_\_  
 Social Security number \_\_\_\_\_  
 Primary Doctor \_\_\_\_\_  
 Hospital \_\_\_\_\_  
 Health insurance co/Policy #/Phone  
 1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 allergies \_\_\_\_\_  
 notes \_\_\_\_\_  
 Birthplace \_\_\_\_\_  
 Father's Name \_\_\_\_\_  
 Father's Birthplace \_\_\_\_\_  
 Mother's Maiden name \_\_\_\_\_  
 Children \_\_\_\_\_  
 \_\_\_\_\_  
 Grandchildren \_\_\_\_\_  
 Length of residence in area \_\_\_\_\_  
 Military Service \_\_\_\_\_  
 Occupation \_\_\_\_\_  
 Affiliations \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**LOCATION OF PERSONAL PAPERS**

Birth Certificate \_\_\_\_\_  
 Divorce Decree \_\_\_\_\_  
 Last Will and Testament \_\_\_\_\_  
 Last updated on / / Power of Attorney \_\_\_\_\_  
 Executor \_\_\_\_\_  
 Living Will Information \_\_\_\_\_  
 Marriage Certificate (original or official replacement, for access to defined benefit plans and Social Security benefits) \_\_\_\_\_  
 Military Records \_\_\_\_\_  
 Naturalization Papers \_\_\_\_\_  
 Organ Donor Information \_\_\_\_\_  
 Social Security Card \_\_\_\_\_  
 Trust Agreement \_\_\_\_\_  
 Tax Returns-both Federal and state for previous years  
 Tax Preparer \_\_\_\_\_ Phone number \_\_\_\_\_  
 Other important papers \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Post Office Box  
 Address of Post office box \_\_\_\_\_  
 Owners of P.O.Box \_\_\_\_\_  
 Number of the Box \_\_\_\_\_  
 Key to the box is located at \_\_\_\_\_  
 Combination of the box \_\_\_\_\_  
 Safe Deposit Box  
 Bank \_\_\_\_\_  
 Address \_\_\_\_\_  
 Bank Phone number \_\_\_\_\_  
 The name of the box is \_\_\_\_\_  
 \_\_\_\_\_

The key to the box is located at \_\_\_\_\_  
This box contains \_\_\_\_\_

**BENEFITS YOU CAN EXPECT**

From my employer: \_\_\_\_\_

Company \_\_\_\_\_

Contact \_\_\_\_\_ Phone \_\_\_\_\_

Life insurance \_\_\_\_\_

Profit Sharing \_\_\_\_\_

Accident Insurance \_\_\_\_\_

Pension Plan \_\_\_\_\_

Other Benefits \_\_\_\_\_

From Social Security

Phone # \_\_\_\_\_

Approx lump sum plus monthly benefits \_\_\_\_\_

From Veterans Admin

Phone # \_\_\_\_\_

Approx lump sum plus monthly benefits \_\_\_\_\_

Other sources:

Phone # \_\_\_\_\_ Approx lump sum plus monthly benefits \_\_\_\_\_

Phone # \_\_\_\_\_ Approx lump sum plus monthly benefits \_\_\_\_\_

Phone # \_\_\_\_\_ Approx lump sum plus monthly benefits \_\_\_\_\_

Phone # \_\_\_\_\_ Approx lump sum plus monthly benefits \_\_\_\_\_

Savings bond, stock and bond certificates list and  
copies \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Life Insurance Declaration or

Record information for all additional life insurance policies, include Veteran's Insurance, if applicable  
Policy1

Person's life insured \_\_\_\_\_

Amount \_\_\_\_\_

Location of Policy \_\_\_\_\_

Insurance Company \_\_\_\_\_

Company Address \_\_\_\_\_

Contact/Phone # \_\_\_\_\_

Type of Policy \_\_\_\_\_

Policy number \_\_\_\_\_

Issue date/Maturity \_\_\_\_\_

Beneficiaries \_\_\_\_\_

How paid out \_\_\_\_\_

Other options on pay out \_\_\_\_\_

Additional notes \_\_\_\_\_

Other options on pay \_\_\_\_\_

Policy 2

Person's life insured \_\_\_\_\_

Amount \_\_\_\_\_

Location of Policy \_\_\_\_\_

Insurance Company \_\_\_\_\_

Company Address \_\_\_\_\_

Contact/Phone # \_\_\_\_\_

Type of Policy \_\_\_\_\_  
Policy number \_\_\_\_\_  
Issue date/Maturity \_\_\_\_\_  
Beneficiaries \_\_\_\_\_  
How paid out \_\_\_\_\_  
Other options on pay out \_\_\_\_\_  
Additional notes \_\_\_\_\_  
Other options on pay \_\_\_\_\_

**LIFE INSURANCE POLICIES ON MORTGAGE AND OTHER LOANS**

Policy 1 \_\_\_\_\_  
Policy 2 \_\_\_\_\_  
Loan Insured/Account # \_\_\_\_\_  
Company/Insurance Policy # \_\_\_\_\_  
Address/Phone # \_\_\_\_\_  
Location of policy \_\_\_\_\_  
Coverage \_\_\_\_\_

**ADDITIONAL INSURANCE POLICIES**

Accident \_\_\_\_\_  
Policy 1 \_\_\_\_\_  
Policy 2 \_\_\_\_\_  
Company/Agent \_\_\_\_\_  
Address/Phone # \_\_\_\_\_  
Policy number \_\_\_\_\_  
Location of Policy \_\_\_\_\_  
Coverage \_\_\_\_\_  
Beneficiaries \_\_\_\_\_  
Medical Insurance Declaration or coverage \_\_\_\_\_

Also Declaration or coverage, dental, disability, long-term care, auto, liability and homeowner/renter insurance policies.

Beneficiaries \_\_\_\_\_  
Auto Insurance \_\_\_\_\_  
Policy 1 \_\_\_\_\_  
Policy 2 \_\_\_\_\_  
Company/Agent \_\_\_\_\_  
Address/Phone # \_\_\_\_\_  
Policy number \_\_\_\_\_  
Location of Policy \_\_\_\_\_  
Coverage \_\_\_\_\_  
Beneficiaries \_\_\_\_\_

Homeowner's Insurance \_\_\_\_\_  
Policy 1 \_\_\_\_\_  
Policy 2 \_\_\_\_\_  
Company/Agent \_\_\_\_\_  
Address/Phone # \_\_\_\_\_  
Policy number \_\_\_\_\_  
Location of Policy \_\_\_\_\_  
Coverage \_\_\_\_\_  
Beneficiaries \_\_\_\_\_

**INVESTMENTS**

Stocks, Bond, Mutual Funds, IRA's  
(Note where certificates or documents are kept.)

Description \_\_\_\_\_  
Account # \_\_\_\_\_  
Number/Shares \_\_\_\_\_  
Stockbroker Contact/Phone \_\_\_\_\_  
Notes  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REAL ESTATE AND AUTO**

Real Estate

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

Property Name \_\_\_\_\_  
Names of owners \_\_\_\_\_  
Address \_\_\_\_\_  
Legal Description \_\_\_\_\_  
Location of legal documents \_\_\_\_\_  
Mortgage company \_\_\_\_\_  
Amount owed \_\_\_\_\_  
Location of payment book \_\_\_\_\_  
Life Insurance on mortgage? \_\_\_\_\_  
Real estate taxes \_\_\_\_\_  
Initial cost of property \_\_\_\_\_  
Cost of Improvements \_\_\_\_\_  
Location of itemized list of improvement/bills? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If Renting

Location of documents \_\_\_\_\_  
Date Lease expires \_\_\_\_\_  
Notes \_\_\_\_\_  
Household contents \_\_\_\_\_  
Location of inventory \_\_\_\_\_  
Location of receipts/warranties/document \_\_\_\_\_

Vehicles

Year/Make/Model \_\_\_\_\_  
Body type \_\_\_\_\_  
Cylinders \_\_\_\_\_  
Color \_\_\_\_\_  
Identification # (VIN) \_\_\_\_\_  
Location of title \_\_\_\_\_  
Names on Title \_\_\_\_\_  
Lease/loan information \_\_\_\_\_

**BANKING INFORMATION**

Checking and Savings Account

Bank \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Names on Account \_\_\_\_\_  
 Account number \_\_\_\_\_  
 Type of Account \_\_\_\_\_  
 Approximate amount I keep in this account \_\_\_\_\_  
 Additional Notes \_\_\_\_\_  
 Location of cancelled checks and statements \_\_\_\_\_

Bank \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Names on Account \_\_\_\_\_  
 Account number \_\_\_\_\_  
 Type of Account \_\_\_\_\_  
 Approximate amount I keep in this account \_\_\_\_\_  
 Additional Notes \_\_\_\_\_  
 Location of cancelled checks and statements \_\_\_\_\_

Bank \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Names on Account \_\_\_\_\_  
 Account number \_\_\_\_\_  
 Type of Account \_\_\_\_\_  
 Approximate amount I keep in this account \_\_\_\_\_  
 Additional Notes \_\_\_\_\_  
 Location of cancelled checks and statements \_\_\_\_\_

Bank \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Names on Account \_\_\_\_\_  
 Account number \_\_\_\_\_  
 Type of Account \_\_\_\_\_  
 Approximate amount I keep in this account \_\_\_\_\_  
 Additional Notes \_\_\_\_\_  
 Location of cancelled checks and statements \_\_\_\_\_

MONEY MARKET ACCOUNTS/CERTIFICATES OF DEPOSIT (CD)

Bank \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Names on Account \_\_\_\_\_  
 Account number \_\_\_\_\_  
 Type of Account \_\_\_\_\_  
 Approximate amount I keep in this account \_\_\_\_\_  
 Additional Notes \_\_\_\_\_  
 Location of cancelled checks and statements \_\_\_\_\_

Bank \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Names on Account \_\_\_\_\_  
 Account number \_\_\_\_\_  
 Type of Account \_\_\_\_\_  
 Approximate amount I keep in this account \_\_\_\_\_  
 Additional Notes \_\_\_\_\_  
 Location of cancelled checks and statements \_\_\_\_\_

A RECORD OF WHAT I OWE

LOANS:

Bank or Mortgage \_\_\_\_\_  
 Company \_\_\_\_\_



Address/Phone # \_\_\_\_\_  
 Name on Loan \_\_\_\_\_  
 Account number \_\_\_\_\_  
 Monthly payment \_\_\_\_\_  
 Approx balance as of \_\_\_\_\_  
 Location of papers and payment book \_\_\_\_\_  
 Collateral? Yes \_\_\_ No \_\_\_  
 Life Insurance on loan? Yes \_\_\_ No \_\_\_  
 Bank or Mortgage  
 Company \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Name on Loan \_\_\_\_\_  
 Account number \_\_\_\_\_  
 Monthly payment \_\_\_\_\_  
 Approx balance as of \_\_\_\_\_  
 Location of papers and payment book \_\_\_\_\_  
 Collateral? Yes \_\_\_ No \_\_\_  
 Life Insurance on loan? Yes \_\_\_ No \_\_\_  
 Bank or Mortgage  
 Company \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Name on Loan \_\_\_\_\_  
 Account number \_\_\_\_\_  
 Monthly payment \_\_\_\_\_  
 Approx balance as of \_\_\_\_\_  
 Location of papers and payment book \_\_\_\_\_  
 Collateral? Yes \_\_\_ No \_\_\_  
 Life Insurance on loan? Yes \_\_\_ No \_\_\_

**CREDIT CARDS**

(All credit cards in my name should be canceled or converted if I have a surviving spouse on the account.)

Company \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Name on Card \_\_\_\_\_  
 Location of Card \_\_\_\_\_  
 Life insurance on card balance \_\_\_\_\_  
 Company \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Name on Card \_\_\_\_\_  
 Location of Card \_\_\_\_\_  
 Life insurance on card balance \_\_\_\_\_  
 Company \_\_\_\_\_  
 Address/Phone # \_\_\_\_\_  
 Name on Card \_\_\_\_\_  
 Location of Card \_\_\_\_\_  
 Life insurance on card balance \_\_\_\_\_

**PERSONAL LOANS, ITEMS BORROWED & OTHER AGREEMENTS**

Owed to	Description	Payment Terms	Status	notes



Date of Marriage: \_\_\_\_\_  
Place: \_\_\_\_\_  
If deceased, date of death: \_\_\_\_\_  
Father's Name: \_\_\_\_\_  
City & State – If Living \_\_\_\_\_  
Mother's Maiden Name: \_\_\_\_\_  
City & State – If Living \_\_\_\_\_  
Education:  
High School: \_\_\_\_\_  
University or College: \_\_\_\_\_  
Fraternity, Sorority or Other Organizations: \_\_\_\_\_

Did you serve in the Military? \_\_\_\_\_  
Branch: \_\_\_\_\_  
Service Dates: \_\_\_\_\_  
Service No. if known \_\_\_\_\_  
Occupation. Give type of work done during most of working life, even if retired:  
\_\_\_\_\_  
\_\_\_\_\_

Name of Employer(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If Retired, Date of Retirement: \_\_\_\_\_  
Total years spent in your occupation: \_\_\_\_\_  
Church affiliation & activities: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Public Offices held, awards, clubs, civic, or professional organizations:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Hobbies or other special interests:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Surviving Family  
Name of children & their spouses, city and state:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Current number of Grandchildren: \_\_\_\_\_  
List names if less than 6: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Current number of Great Grandchildren: \_\_\_\_\_  
List names if less than 6: \_\_\_\_\_

Names of surviving brothers & sisters, city and state:

Additional surviving family members, city and state:

Preceded in death by:

Authorized Person(s) To Arrange Final Details  
(Name, address & contact information)  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ e-mail: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ e-mail: \_\_\_\_\_

Other Family Members to be Notified

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_

**Service Arrangements**

Place of Service: \_\_\_\_\_

Minister: \_\_\_\_\_ Phone: \_\_\_\_\_

Other Clergy: \_\_\_\_\_ Phone: \_\_\_\_\_

Musical Selections: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Organist: \_\_\_\_\_

Singer(s): \_\_\_\_\_

Pallbearers: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Alternates, if needed: \_\_\_\_\_  
\_\_\_\_\_

Favorite Bible Selections: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Special Services (Military or Lodge): \_\_\_\_\_  
\_\_\_\_\_

**Cemetery Information**

Name of Cemetery: \_\_\_\_\_

Location (City): \_\_\_\_\_

Lot is in the name of: \_\_\_\_\_

Section: \_\_\_\_\_ Lot #: \_\_\_\_\_ Grave Space: \_\_\_\_\_

**Casket and Burial Vault Preferences**

My choice of casket: \_\_\_\_\_

Type of burial vault: \_\_\_\_\_

Type of urn (if cremation): \_\_\_\_\_

Type of burial marker: \_\_\_\_\_

**My Special Wishes**

(Clothing, jewelry, etc.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



