

LIVING WILLS AND OTHER LEGAL MATTERS

Most of us can go through our lives needing few legal documents, and those documents we have usually deal with our possessions -- a property deed, the titles to our cars, our wills, etc. Ironically, it is in preparation for the end of our lives or our relatives' lives that legal documents may be most important, because they affect our right to make decisions about the kind and duration of medical care and treatment, and even about death.

It is best to decide these issues and develop the correct legal documents well before decisions must be made. It is especially important to have them before our elderly relatives or we:

- Become very ill
- Must have surgery
- Become mentally unable to make decisions or care for themselves

Since we cannot predict when these circumstances might arise, it's wise to prepare now. The natural tendency is to put off discussions and decisions about end of life issues. We believe that there will be plenty of time. But if you wait until they're needed, it's often too late.

Advance Directives. Are written instructions regarding future medical treatment in case a person is incapable of making decisions for him or herself. Advance directives include living wills, powers of attorney, and "do not resuscitate" (DNR) orders.

Power of Attorney. Authorizes one person to act on behalf of another in certain legal and business matters. The person authorizing the power of attorney may still do all these things on his/her own behalf, but names another person who may handle these legal matters as well. A power of attorney document has a specified end date at which time the power to act ends.

Durable Power of Attorney. Stays in effect when the person is incapacitated. A regular power of attorney is revoked when the person becomes incapacitated. In general, neither power of attorney nor durable power of attorney enable someone else to make health-care decisions.

Medical Durable Power of Attorney. Authorizes someone (a "health care proxy" or "agent") to make health care and treatment decisions when another person is incapacitated or unable to communicate. Unless you legally appoint someone to make decisions for you, physicians and hospitals will make those decisions, and they may not be what you want. Everyone should have a durable medical power of attorney. It is important to remember certain features of durable powers of attorney:

- They must be made before the person becomes incapacitated. Once the person is incapacitated, it is too late to draw up these documents.
- The person named as power of attorney does not become the decision-maker as soon as the document is signed, only when the author becomes incapacitated.
- The person named as power of attorney must agree to take on that responsibility, and he/she has the right to withdraw from that role in the future.

Incapacity. These advance directives go into effect when a person is incapacitated, and a certain process must determine incapacity:

- An examination, prescribed by state law, must be performed. The examinations must be documented in the person's medical record.
- The examination must find that the person is incapable of making decisions.

Living Will. Specifies the treatments (medical care and nourishment) that are wanted as well as those that are not wanted in the event of terminal illness or injury. Note that most living wills are limited to terminal illness. Therefore, it is advisable to have a Medical Durable Power of Attorney and a written statement of your wishes even if you also have a living will.

CPR Directive. Instructs emergency medical personnel to initiate or not to initiate cardio-pulmonary resuscitation (CPR) if the person is found with no heart beat or breathing. The CPR directive must be signed by a physician and should be included as part of the patient's medical record. It is also prudent to attach a copy to the refrigerator and/or store a copy in the medicine cabinet at home, since emergency response personnel (EMT's, ambulance crews) are instructed to look there for advance directives. Without a CPR directive, it is presumed that a patient wishes and consents to CPR.

Conservatorship. A court-ordered decree naming another person to assist in the management of finances and property in the event of incapacity. A conservator does not have power over personal or health care decisions.

Conservatorship can be expensive and can be difficult to terminate, so it isn't as attractive as other advance directives.

Guardianship. Similar to conservatorship in that it is appointed by the court, but a guardian has power over a wider range of decisions, including health care decisions.

Some Summary Tips on Legal Matters

Plan ahead and settle these legal matters in advance. It may be difficult to discuss issues as sensitive as finances, end-of-life care and death, but it is far easier to have these discussions now than to attempt them during a crisis. Furthermore, if you wait, and your relative becomes incapacitated, it's too late to write advance directives, and your loved one may lose the chance to decide the kind and duration of care and treatment she wants – someone else will make those decisions for her.

Advance directives can spare the family great heartache and regret. If they haven't already done so, help your aging relatives prepare advance directives now. (And while you're at it, prepare your own advance directives).

Talk with your relative about their wishes. If he/she becomes unable to make health care decisions, whom do they want to make those decisions for them? Whom do they trust, who knows them well and is nearby? In Colorado, that person must be at least 21 years old.

When she contemplates a terminal illness or dying, what is she most afraid of? Does she want life support treatment?

It's often wise to have these discussions with the family physician and clergy as well as family members.

Draw up a Living Will, a Medical Durable Power of Attorney and/or an advance directive that expresses your relative's wishes, and review them periodically. As long as your relative is not incapacitated, he/she can always change or revoke them if their wishes change.

You can obtain the necessary forms from physicians or health care providers or in bookstores and libraries. They are not complex, and you can fill them out yourselves. However, it is wise to have them reviewed by an elder law attorney.

Over 1/3 of advance directives aren't found when they are needed, so make sure others know that you've written out your wishes, and where the copies are. Let family members know where the original copies of documents are kept, and be sure that family members and your relative's primary physician have copies of the documents.

Living wills and health care proxies can be registered at uslivingwillregistry.com or (800- 548-9455). If a hospital requests it, a living will can immediately be faxed to that hospital.

For More Information

CPR Directives can be obtained from the Colorado Department of Public Health and Environment.

For good and comprehensive information about the pros and cons of end of life emergency medical care (e.g., CPR, mechanical ventilation) contact the Colorado Collective for Medical Decisions at (303) 788-1198.

A good overview and a form that combines a Living Will and a Health Care Power of Attorney can be found in "Shape Your Health Care Future With Health Care Advance Directives", produced by the AARP, American Bar Association and the American Medical Association.

One of the best forms we've found is called the "Five Wishes". It's uncomplicated, and thorough. It also serves the purposes of both a health care power of attorney and a living will -- it lets you name someone to make health care decisions for you and lets you specify the kind of end-of-life care you desire. It is valid in 35 states including Colorado. Contact [agingwithdignity.org](http://www.agingwithdignity.org) at <http://www.agingwithdignity.org>.