

What are Advance Directives?

*Advance Directives are **legal documents** informing others of **your wishes** relative to medical treatment **and who can make decisions** for you when you are unable to make your own decisions.*

- *Legal Documents we will discuss tonight:*

- *Living Will*

- *Durable Power of Attorney*

- *Physician's Order regarding Scope of Treatment (POST)*

- *VA Advanced Healthcare Directive*

Living Will

- A living will is a **legal document** that tells your doctor and other healthcare providers whether or not you wish to have life-sustaining **treatment and procedures** provided to you if you are **in a terminal condition** or persistent vegetative state, and the level to which such treatment should be provided.
- Can also contain other specific directions about your care.

A Living Will is not the same as a “Do Not Resuscitate” order.

LIVING WILL

Directive to Withhold or to Provide Treatment

This Advance Directive states my choices about life-sustaining medical treatment at the end of life. This Directive shall be effective only if I am unable to communicate my instructions and:

- A. I have an incurable injury, disease, illness or condition and a medical doctor who has examined me has certified:
 - i. That such injury, disease, illness or condition is terminal; and
 - ii. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and
 - iii. That my death is imminent, whether or not artificial life-sustaining procedures are utilized;

OR

- B. I have been diagnosed as being in a persistent vegetative state.

IF I AM IN ONE OF THE ABOVE SITUATIONS, my choices are as follows (*Choose Box 1, 2 or 3 below, check the box and initial the line after the box you checked*).

Regardless of the box chosen below, pain and symptom management (comfort care) will be provided.

- 1** _____ If my death is imminent, I do not want life-sustaining medical treatment or procedures to be started and, if already started, I want all such treatment and procedures to be withdrawn, including withdrawal of artificial nutrition (such as feeding tube) and artificial hydration (such as IV).

OR

- 2** _____ If my death is imminent, I do not want any artificial life-sustaining medical treatment, care or procedures except for artificial nutrition and artificial hydration as follows:

Check one box and initial the line after such box:

- A. _____ Only artificial hydration;
B. _____ Only artificial nutrition;
C. _____ Both artificial hydration and artificial nutrition.

OR

- 3** _____ If my death is imminent, I want all medical treatment, care and procedures necessary to sustain my life, including artificial nutrition and artificial hydration.

SPECIAL PROVISIONS

The following are additional statements of my wishes. *Check all boxes that apply and initial on the line after such box:*

- _____ If I have a medical condition from which I will not likely recover, am unable to think or communicate and am dependent on others for my care, I do not want life-sustaining medical treatment or procedures to be started. If already started, I want all such treatment and procedures to be withdrawn, including withdrawal of artificial nutrition (such as feeding tube) and artificial hydration (such as IV). In such condition, I want care to be focused on my comfort.
- _____ Other situations as described in the box below *(If needed, attach and sign additional pages):*

Some examples of things that may be included here are: DNR (Do Not Resuscitate); no ICU care; willingness to live permanently in a nursing home; people you do not want involved in your medical decisions; limitations to treatment options, including time limits; willingness to have a permanent feeding tube; funeral and burial wishes; organ/body donation, etc.*

*If you wish to be DNR (Do Not Resuscitate), ask your physician to complete a POST form with you.

Durable Power of Attorney for Healthcare

- A Durable Power of Attorney for Healthcare is a legal document in which you appoint another **person to make medical decisions for you** if you should become temporarily or permanently unable to make those decisions.
- Applies to healthcare decisions only.
- Your POA's "job" is to tell your healthcare providers what YOUR wishes are, and to advocate for treatment consistent with your wishes.

1. **DESIGNATION OF AGENT.** I designate and appoint the following individual as my healthcare agent to make health care decisions for me as authorized in this Directive:

Name of Health Care Agent: _____

Telephone Number of Health Care Agent: _____

Address: _____

2. **DESIGNATION OF ALTERNATE AGENTS.** If the person designated as my health care agent in paragraph 1:

- Is not available or becomes ineligible to act as my agent to make a health care decision for me; or
- Loses the mental capacity to make health care decisions for me; or
- If I revoke that person's designation or authority to act as my agent to make health care decisions for me,

then I designate and appoint the following person to serve as my agent to make health care decisions for me as authorized in this Directive

You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1 above, in the event that agent is unable or ineligible to act as your agent.

A. Name of First Alternate Health Care Agent: _____

Telephone Number: _____

Address: _____

B. Name of Second Alternate Health Care Agent: _____

Telephone Number: _____

Address: _____

POST

- A POST (Physician Orders for Scope of Treatment) is a legal document that tells doctors, EMS and other healthcare providers whether or not you wish to be resuscitated in the event that your heart stops or you stop breathing, as well as which specific interventions are desired.
- A POST is a “permanent” statement of your wishes relative to resuscitation – **remains in effect** both in and out of healthcare facilities until you or your physician revokes it.
- Must be signed by your physician.

SAMPLE POST FORM

HIPAA permits disclosure to health care professionals and authorized decision makers for treatment	
Virginia Physician Orders for Scope of Treatment (POST) This is a Physician Order Sheet based on the patient's current medical condition and wishes. Any section not completed creates no presumption about the patient's preferences for treatment.	Name Last / First / M.I.
	Address
	City / State / Zip
	Date of Birth (mm/dd/yyyy) <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Last 4 Digits of SSN <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
A <input checked="" type="checkbox"/> one only	CARDIOPULMONARY RESUSCITATION (CPR): Person has no pulse <u>and</u> is not breathing. <input type="checkbox"/> Attempt Resuscitation <input type="checkbox"/> Do Not Attempt Resuscitation (DDNR/DNR/No CPR) <i>If "Do Not Attempt Resuscitation" is checked, this is a DDNR order. See Page 2 for instructions for use.</i> <small>If a previous Durable Do Not Resuscitate form or POST form indicating Do Not Attempt Resuscitation was signed by the patient, only the patient can consent to reversing such a Durable DNR Order.</small>
B <input checked="" type="checkbox"/> one only <i>If "Attempt Resuscitation" is checked in Section A, Virginia EMS protocol includes intubation when needed.</i>	MEDICAL INTERVENTIONS: Patient has pulse and / or is breathing. <input type="checkbox"/> Comfort Measures: Treat with dignity and respect. Keep warm and dry. Use medication by any route, positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Transfer to hospital <u>only</u> if comfort needs cannot be met in current location. Also see "Other Orders" if indicated below. <input type="checkbox"/> Limited Additional Interventions: Includes comfort measures described above. Do not use intubation or mechanical ventilation. May consider less invasive airway support (e.g., CPAP or BiPAP). Use additional medical treatment, antibiotics, and cardiac monitoring as indicated. Hospital transfer if indicated. Avoid intensive care unit if possible. Also see "Other Orders" if indicated below. <input type="checkbox"/> Full Interventions: In addition to Comfort Measures above, use intubation, mechanical ventilation, cardioversion as indicated. Transfer to hospital if indicated. Include intensive care unit. Also see "Other Orders" if indicated below. Other Orders: _____
C <input checked="" type="checkbox"/> one only	ARTIFICIALLY ADMINISTERED NUTRITION: Always offer food and fluids by mouth if feasible. <input type="checkbox"/> NO feeding tube (Not consistent with patient's goals given current medical condition) <input type="checkbox"/> Feeding tube for a defined trial period (specific goal to be determined in consultation with treating physician) <input type="checkbox"/> Feeding tube long-term if indicated Other Orders: _____
D <i>Must be signed by a physician, nurse practitioner or physician assistant</i>	PROVIDER SIGNATURE: My signature below indicates that I have discussed the decisions documented herein with the patient or the person legally authorized to consent on the patient's behalf and have considered the patient's goals for treatment to the best of my knowledge. DISCUSSED WITH (Required): <input type="checkbox"/> Patient <input type="checkbox"/> Agent named on Advance Directive <input type="checkbox"/> Other person legally authorized <input type="checkbox"/> Court appointed guardian SIGNATURE (REQUIRED): _____ DATE (REQUIRED): _____ PROVIDER NAME (REQUIRED): _____ PHONE: _____
Signature of Patient or Authorized Person (Required) Signature: _____ Date: _____ <small>If the patient signs and Do Not Attempt Resuscitation is checked in Section A, only the patient can revoke consent for the Do Not Resuscitate Order.</small> Print Name: _____ <small>If patient lacks capacity, describe authority to consent on the patient's behalf: _____</small> <small>If the patient has no Advance Directive, the following persons may consent for the patient in this order: Guardian, Spouse, Adult Children, Parents, Adult Siblings, Other Relative in descending order of blood relationship (Code of Virginia §54.1-2986)</small>	
FORM SHALL ACCOMPANY PATIENT WHEN TRANSFERRED OR DISCHARGED	



ADVANCE HEALTH CARE DIRECTIVE

VIRGINIA ADVANCE DIRECTIVE FOR HEALTH CARE to Appoint a Health Care Agent

I, _____ (date of birth: _____), make this advance directive in case I am not able to make health care decisions for myself. This advance directive says what I do want and what I do not want for my health care.

Section 1: Health Care Decision Maker (My "Agent")

A. Who I Pick to be My Agent

I appoint _____ to make health care decisions for me when I cannot make those decisions myself.

First agent's contact information:

Ph. No. (home): _____ (cell): _____

Ph. No. (work): _____ Email: _____

Home Address: _____

I also pick a person to be my agent if the first person I picked is not available, able or willing to act as my agent. My back-up agent is _____.

Back-up agent's contact information:

Ph. No. (home): _____ (cell): _____

Ph. No. (work): _____ Email: _____

Home Address: _____

My agent will have full power to make health care decisions for me based on this advance directive. My agent will have this power only during a time when I am not able to make informed decisions about my health care.

I want my agent to follow what I have written in this advance directive. My agent may also be guided by information that I have given my agent in other ways, such as in conversation. If my agent cannot tell what choice I would have made, then my agent should choose what he or she believes to be in my best interests.

I want my agent and health care providers to communicate with me and consider my views even when I am unable to make my own decisions and the agent has the power to make decisions for me.

B. What My Agent Can Do On My Behalf

My agent will have power...

1. To consent to or refuse consent to or withdraw consent to any type of health care, treatment, surgical procedure, diagnostic procedure, and medication.

This may include use of a breathing machine, tube feeding, IV fluids, or CPR. It also includes higher than recommended doses of pain-relieving medication in order to relieve pain. This applies even if the medication carries the risk of addiction or of unintentionally hurrying my death.

2. To ask for, receive and review oral or written information about the health care decisions that need to be made. This includes medical and hospital records. My agent can also allow this information to be shared with others as needed to carry out my advance directive wishes.

3. To hire and fire my health care providers.

Power 5 Option:

Virginia law lets you authorize your agent to make the decision about admission to a mental health care facility on the basis of just one professional examining you and determining you cannot make an informed decision. Any other treatment decisions beyond admission to a mental health care facility will still require the usual determination process by (a) your attending physician + (b) a second physician or clinical psychologist. If you want to include this part of Power 5, you need to check the box.

Power 9: If you have any specific instructions about visitation, you can attach additional pages to this AD. Note: other laws and regulations may limit an agent's power to make visitation decisions.

You may add any additional details about the powers (e.g., "My agent may not fire Dr. Smith"). Nick: any attached page with instructions must be signed and witnessed, too.

Part C lets you give your agent the power to consent to treatment that you say "no" to. This power applies only if you cannot make informed decisions. If you do not want to give your agent this power, you can skip or cross through Part C.

This power has two parts:

1. You can give your agent the power to consent over your objection to incident mental health admission and/or
2. You can give your agent the power to consent over your objection to other health care.

You can also exclude specific treatments that you always want to be able to object to.

IMPORTANT: You need to have one of the licensed professionals listed in the box sign this page to make Part C legally binding.

Before signing, the professional will check to see if you understand the consequences of giving your agent the powers described on this page. If you are not completing Part C, you do not need to have this page signed.

4. To consent to my admission to or transfer to a hospital, hospice, nursing home, assisted living facility or other health care facility, and to authorize my discharge from any such facility.

5. To consent to my admission to or transfer to a mental health care facility when it is recommended by my health care providers, and to authorize my discharge from any such facility.

The admission can be for up to the maximum time permitted by current law. At the time I made this advance directive the maximum was ten (10) calendar days.

Power 5 option: My agent may exercise this power after one of the following professionals determines that I am not able to make an informed decision about admission: an attending physician, a psychiatrist or clinical psychologist, a psychiatric nurse practitioner, a clinical social worker, or a designee of the local community services board who is trained to assess capacity.

6. To continue to act as my agent as long as I am unable to decide for myself, even if I state that I want to fire my agent.

7. To consent to my participation in any health care study if the study offers the chance of therapeutic benefit to me.

The study must be approved by an institutional review board or research review committee according to applicable federal or state law.

8. To consent to my participation in any health care study that aims to increase scientific understanding of a condition that I may have or to promote human well-being, even though it offers no direct benefit to me.

The study must be approved by an institutional review board or research review committee according to applicable federal or state law.

9. To make decisions about visitation when I am admitted to any health care facility.

I have attached visitation instructions that my agent must follow to this advance directive.

10. To take any lawful actions needed to carry out these decisions. This may include signing releases of liability to medical providers or other health care forms.

C. What My Agent Can Do Over My Objection

When I am not able to make informed decisions about my health care, I may say "no" to treatment that I actually need. If my agent and my physician believe that treatment is medically appropriate, my agent has the power:

... 1. To consent to my admission to a mental health care facility as permitted by law, even if I object.

and/or

... 2. To consent to other health care that is permitted by law, even if I object. This authority includes all health care except for what I have written in the next sentence or elsewhere in this document. My agent does not have the authority to consent to _____ over my objection.

I am a licensed physician, clinical psychologist, physician assistant, nurse practitioner, professional counselor, clinical social worker. I am familiar with the person who has made this advance directive for health care. I attest that this person is presently capable of making an informed decision and that this person understands the consequences of the special powers given to his/her agent by this Subsection C of this advance directive.

Signature _____

Date _____

Printed Name and Address _____

This advance directive ("AD") complies with the Virginia Healthcare Decisions Act. You are not required to use this form to create an AD. If you choose to use a different form, you should consult with an attorney or your health care provider to be sure the different form will be valid under Virginia law.

As long as it is signed and witnessed (on page 3), you may complete any or all of the parts of this AD that you want. Cross out or leave blank any parts that you do not want to use.

Your AD is turned on only when you are found to be unable to make informed decisions about your care. That finding must be made by (a) your attending physician and (b) a second physician or clinical psychologist (or, if you're in a coma or otherwise unconscious, you're your physician) after they personally examine you. Your AD is turned off when a physician examines you and finds that you are able to make informed decisions again. (There is an option to have your AD turned on by just one professional for the sole purpose of agent consent to admission to a mental health care facility. See Power 5 on page 2 for more details.)

These are the powers that your agent will have.

You may cross through any powers that you do not want to give your agent.

If you have questions about what the powers mean, the "What it means to give powers to your health care agent" sheet may be helpful. It can be found on the VirginiaAdvanceDirective.org website.

Making your Wishes Known

- Why put my wishes in writing?
- How do I choose?
 - Treatment
 - Decision maker
- Who do I tell?
- Who will help?

Any Questions



Understanding the Power of Attorney: Roles, Responsibilities, and Legal Implications

Exploring legal authority and duties in detail

Agenda Overview

- Fundamental Concepts of Power of Attorney
- Roles and Responsibilities of Parties Involved
- Common Uses and Scenarios
- Legal Implications and Considerations

Fundamental Concepts of Power of Attorney



Definition and Purpose

Legal Authority Delegation

POA grants authority to an agent to act legally on behalf of the principal in specified matters.

Decision-Making Continuity

Ensures continuous decision-making when the principal is unavailable or incapacitated.

Flexibility and Peace of Mind

Allows individuals to delegate affairs and gain peace of mind on personal and financial decisions.

Types of Power of Attorney

General Power of Attorney

Grants broad authority to manage legal and financial matters on behalf of the principal.

Durable Power of Attorney

Remains effective even if the principal becomes incapacitated, ensuring continuous authority.

Limited or Special Power of Attorney

Restricts authority to specific tasks or timeframes tailored to the principal's needs.

Healthcare and Springing POA

Healthcare POA allows medical decisions; Springing POA activates upon incapacity.



Legal Requirements for Creation

Legal Capacity and Willingness

The principal must have legal capacity and willingly execute the power of attorney document for it to be valid.

Written and Witnessed Formality

Most jurisdictions require the POA to be written, signed, and witnessed or notarized to ensure its enforceability.

Jurisdictional Specific Requirements

Certain states require specific language or formalities depending on the type of power of attorney being created.

Importance of Compliance

Understanding and complying with legal standards prevents disputes and ensures the POA is enforceable.



Roles and Responsibilities of Parties Involved

Principal and Agent Defined

Role of Principal

The principal is the person who grants authority through the power of attorney and retains ultimate rights unless incapacitated.

Role and Choice of Agent

The agent is empowered to act on behalf of the principal with responsibility to follow fiduciary duties. Choosing an agent involves assessing trustworthiness, availability, and alignment with the principal's wishes. Agents selected from families often achieve higher effectiveness due to established trust and understanding. Outside agents may be suitable when impartiality and competence are ensured, offering professional expertise.

Fiduciary Duties

Agents must act in the principal's best interest, maintain transparency, and avoid conflicts of interest. The agent will pursue the best outcomes for the Principal with no regard to his or her own interests.

Duties and Obligations of the Agent

Fiduciary Duties

Agents must uphold loyalty, care, and obedience to protect the principal's interests at all times.

Authority Compliance

Agents are required to act strictly within their granted authority and **maintain accurate records of actions.**

Avoiding Conflicts

Agents must avoid self-dealing and prioritize the principal's interests to prevent conflicts and liability.

Legal Consequences

Failure to fulfill duties can lead to legal liability and damages, ensuring trust in agent-principal relationships.



Rights and Limitations of the Principal

Revoking POA Rights

Principals can revoke the Power of Attorney at any time while they remain competent.

Setting Document Limitations

Principals can specify explicit limitations and conditions for activation or termination within the POA document.

Limitations After Incapacity

Once incapacitated, principals may lose the ability to modify or revoke the POA, emphasizing durable POA design.



Common Uses and Scenarios



Healthcare Power of Attorney

Empowerment Through Healthcare POA

Healthcare POAs allow authorized agents to make medical decisions when the principal cannot express their wishes.

Scope of Medical Decisions

POAs cover a wide range of decisions from routine care to critical end-of-life treatments and advanced care planning.

Awareness and Execution Gap

Despite broad recognition of POA importance, many adults have not executed these documents, showing an awareness gap.



Financial Power of Attorney

Scope of Financial POA

Financial POAs allow agents to manage banking, investments, bill payments, and tax issues on behalf of principals.

Purpose and Importance

These POAs are critical during travel, illness, or disability to ensure continuous financial management.

Prevalence and Usage

Nearly 40% of adults prepare financial POAs to avoid probate and enable emergency fund access.

Situations Requiring Power of Attorney

Common POA Scenarios

Power of attorney is crucial for elderly care, long-term travel, military deployment, and temporary incapacity situations.

Rising Demand Factors

Increasing aging populations and complex financial landscapes drive higher demand for power of attorney arrangements.

Benefits of Proper POAs

Tailored power of attorney documents mitigate risks and ensure continuous decision-making without interruptions.



Legal Implications and Considerations

Virginia Law and the Power of Attorney

In 2010 Virginia adopted the Uniform Power of Attorney Act (“UPAA”)

The full text of the UPAA can be found in Virginia Code at Title 64.2 Chapter 16

The UPAA is the final word on all aspects of preparing, executing and operations of powers of attorney regarding Virginia residents.



Revocation and Termination

Revocation by Principal

A principal can revoke a power of attorney anytime if mentally competent, ensuring control over legal decisions.

Automatic Termination Conditions

POAs may automatically terminate upon the principal's death or bankruptcy in certain jurisdictions.

Durable POA Characteristics

Durable POAs remain valid despite incapacity until explicitly revoked, ensuring continuous authority.

Importance of Revocation Awareness

Understanding revocation prevents unauthorized use and promotes legal clarity and protection.





Abuse of Power and Safeguards

POA Abuse Risks

Power of Attorney abuse can lead to financial exploitation and neglect, posing serious risks for vulnerable individuals.

Elder Abuse Statistics

Up to 5 million elder abuse cases occur annually in the US, many involving misuse of Power of Attorney authority.

Safeguards Against Abuse

Common safeguards include legal oversight, agent accountability, trusted agents, and periodic reviews to prevent misuse.



International Power of Attorney

Cross-Border Transactions

International POAs facilitate cross-border transactions by enabling legal representation across different countries and jurisdictions.

Legal Compliance Variations

Different countries have varying requirements for notarization, certification, and apostilles for POA acceptance.

Need for Expert Guidance

Expert legal advice is essential to ensure international POAs are valid and enforceable in multiple jurisdictions.

Conclusion: Empowering Informed Decisions with Power of Attorney

Fundamentals of Power of Attorney

Understanding the basics of Power of Attorney helps individuals make confident legal decisions regarding their affairs.

Roles and Responsibilities

Recognizing duties involved in Power of Attorney ensures trust and accountability between parties.

Applications in Various Areas

Power of Attorney is essential in healthcare, financial, and international matters for managing affairs effectively.

Empowerment through Knowledge

Being informed about legal safeguards empowers individuals to protect their interests confidently.