

ADVANCE DIRECTIVES

There are three very important documents which should be included in Everyone's estate plan. These are the General Durable Power of Attorney, Living Will, and Health Care Power of Attorney. Each document has its own distinct purpose and takes effect at different times and under specific circumstances.

Durable General Power of Attorney

The Durable General Power of Attorney permits you to designate another individual to perform certain business or financial acts for you. This document must be established and executed pursuant to Ohio law, which requires that the document be signed by you as the person giving the power, that your signature be witnessed by two disinterested parties, and in the presence of a notary public acknowledging that you signed the document as your free and voluntary act.

A Durable General Power of Attorney provides that the person designated as agent (the person receiving the power) may act for you (the principal or person giving the power), and further directs that the agent must act upon your behalf and at your direction. The powers of the agent may remain in effect even if you become incapacitated provided that the power of attorney contains language such as "This power of attorney shall not be affected by the disability of the principal" or "This power of attorney shall not be affected by the disability of the principal or lapse of time."

When you execute a Durable Power of Attorney as described in this article, you may nominate the agent or another person to be the guardian of your person, estate, or both. This nomination is considered by a court if proceedings for the appointment of a guardian for your person, estate, or both are commenced at a later date.

A Durable General Power of Attorney is of great value in the event your health or circumstances prevent you from handling everyday business transactions. The agent or attorney in fact will be able to perform these acts for you, thus alleviating the need for you to be concerned with these matters during such time as you are incapacitated or disabled.

Living Will

A Living Will is a legal document in which you (the declarant) declare your wishes relating to life sustaining treatment. It takes effect when you become terminally ill or permanently unconscious and cannot communicate your wishes.

The Living Will specifically states whether you desire life support systems to prolong your death and gives doctors and nurses the authority to follow your instructions. This document can be revoked only by you, and you may make changes to your Living Will at any time. Any changes or revocations must be made in writing in order to be valid. Therefore, no other individual may override your wishes.

Under the Living Will you may also direct that a care facility withhold nutrition and hydration if you are suffering from a terminal condition or in a permanently unconscious state. A terminal condition is defined as an irreversible, incurable and untreatable condition from which there is no reasonable possibility of recovery. A permanently unconscious state is a condition in which, to a reasonable degree of medical certainty, you are irreversibly unaware of yourself and your environment, and there is a total loss of cerebral cortical functioning resulting in you having no capacity to experience pain or suffering. The determination of either terminal condition or permanently unconscious state is made by your attending physician and at least one other physician who has examined you. This election to withhold nutrition and hydration must specifically be made by you at the time the Living Will is executed by initialing and checking the section stating that this is your desire.

The Living Will includes Do Not Resuscitate (DNR) Identification. This allows you, while executing the Living Will, to also complete a specific section that will serve as notice to the treating physicians that CPR and other measures are not to be performed in the event that you are in a terminal condition or permanently unconscious state. Keep in mind that the rights under a Living Will should be exercised by everyone. You may feel that a Living Will is only for the elderly and you need not prepare for these types of decisions. Unfortunately, when the Living Will is needed most is when you are incapacitated and would be unable to execute the document. Therefore, it is the recommendation of doctors and attorneys that all individuals, young and old, prepare and execute a Living Will.

Health Care Power of Attorney

A Health Care Power of Attorney gives the person you designate (the attorney in fact) the power to make health care and other medical decisions for you in the event you lose the ability to do so. This authority is given but not exercised until you lose your capacity to make medical decisions for yourself.

Decisions to be made by an individual given this power would be generally the same decisions you might make if you had the capacity to do so. For example, the document gives your attorney in fact the authority to give informed consent, to withdraw informed consent, to consent to care and treatment, or to request a diagnosis of a physical or mental condition.

The general authority given this person is to act in your best interests, however, the Health Care Power of Attorney will not give the attorney in fact the authority to refuse or withdraw informed consent to life sustaining treatments unless you are in a terminal condition or permanently unconscious state as defined previously.

In addition to electing to have nutrition and hydration withdrawn in a Living Will as discussed earlier, you may also direct your attorney in fact, in the Health Care Power of Attorney, to refuse or withdraw informed consent to the provision of nutrition or hydration if you are in a terminal condition or in a permanently unconscious state. Your election to give this authority to your attorney in fact is made by checking or otherwise marking a box and initialing a line that is adjacent to this statement within the document.

The Health Care Power of Attorney may also permit your attorney in fact to make medical decisions in emergency situations which incapacitate you for a time, but are not life and death situations. These decisions may be necessary if you are incapacitated from an accident or illness from which you will regain your ability to make your own medical decisions.