



## The Sojourner Project

*...help for the journey*

### Advanced Directives

*and other important legal matters to consider*

Advanced Directives" are those instructions you put in writing ahead of time regarding your medical, legal and financial affairs. These instructions can be very specific or very broad and usually identify an "agent" or "proxy" who can or will make decisions on your behalf. Advanced directives do not go into effect until the individual is either physically or mentally incapable of making their own decisions. These legal documents cover several areas of the business of a person's life. There are many standard forms and most do not need to be prepared by an attorney.

- Use the form recognized by the state your loved one resides or will be receiving care.
- Be sure to read and understand the document before signing
- Cross out any provisions that are not wanted or do not apply
- Add specifics instructions about any wishes or requests not stated
- Don't leave any blanks draw a line through those sections or write "Not Applicable."
- Have the document properly witnessed and notarized as required by your state. The form's instructions will guide you to what is required.

**Visit the website [www.caringinfo.org](http://www.caringinfo.org) to find state specific forms and detailed instructions.**

### Medical Directives

#### **Living Will**

This written statement provides specific instructions on the type of medical treatment or interventions a person does or does not wish to receive at the end of life. It does not go into effect until the person can no longer speak for him or herself. This document only covers very specific circumstances and interventions so an individual would also want to identify a healthcare proxy in a DMPOA. Usually the living will is combined with a DMPOA into one single document.

#### **Durable Medical Power of Attorney (DMPOA)**

Also know has a Medical POA this legally enforceable document identifies a person to act as someone's agent or health care proxy when that individual is no longer able to speak for themselves. This must be prepared when the individual is mentally competent and does not go into effect until that person becomes mentally incompetent or is physically unable to speak for him or herself. The Agent cannot change the Living Will and it is intended for those circumstances not covered or if one has not been prepared. All POAs automatically terminate at death. When the document includes specific language stating that it will remain in effect after death it is then considered "Durable" allowing the agent to handle funeral and burial arrangements.

#### **Do Not Resuscitate Order (DNR)**

This separate written medical directive of the individual is standard among hospice patients and in other end of life circumstances. It is sometimes called an "AND" or "Allow Natural Death". This form states that the individual does not wish to be resuscitated in the event of cardiac or respiratory arrest. It must be signed by at least one physician. Unlike a living will a medical power of attorney can authorize a DNR when acting as a person's agent. A DNR must be presented to any EMS, Emergency Room, hospital or any other medical personnel at the time of the event or resuscitative measures will automatically be initiated.

This information is for educational purposes only and does NOT provide any legal, medical or financial advice.

The goal is to provide general information so that you can seek out professional assistance from the appropriate subject matter expert

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### Legal & Financial Matters

These are best prepared or reviewed by an attorney to ensure they are properly executed, protect the individual's rights, and clearly express their wishes. Not having these documents at all or having them improperly prepared can lead to enormous stress and conflict for family caregivers. These documents can only be prepared when the individual is mentally competent.

#### **Power of Attorney (POA)**

This document allows an individual to name someone to act on their behalf to handle the matters it specifies. They can be very detailed and specific or general. It is important to know and understand the rights and limitations you wish your agent to have, since they will be able to act on your behalf. As a caregiver, it is important to know if your loved one has given these broad powers and how that may impact your ability to provide the care your loved one.

There are several different types of POAs:

- **General** is the broadest category of POA allowing your agent to act on almost all matters on your behalf. Because it is so broad it is highly recommended that you carefully choose your agent, one you know will act in your best interest.
- **Springing** is one that does not go into effect until a specific time or circumstance.
- **Limited** gives your agent limited authority to do only certain tasks or responsibilities.

#### **Caregiver Agreement**

This is a formal "employment agreement" between the individual and the family caregiver. It outlines the specific job functions and the payment for providing caregiving services to the individual. This is an important document if later the individual would need to apply for any financial assistance (e.g. Medicaid) to offset the cost of a nursing home stay. Any monies paid to family members for the 5 (five) years prior to the application may be considered a transfer of assets and may impact an individual's ability to qualify for financial assistance.

#### **Trusts: Living / Medicaid / Special Needs / Revocable / Irrevocable**

A Trust is a separate legal entity set by an individual who then transfers ownership of all of their assets to the trust - all money, property and investments. The Trust names a trustee (one or several) who then manages all of the assets placed in the trust. Your loved one is the trustee of their own assets and they can designate additional trustees to take over when they can't or no longer wish to manage the trust. Anyone named as trustee has access to the assets and can pay bills and transfer money as needed. These need to be set up with the help of an attorney who can best explain the differences, the benefits and limitations to this approach.

#### **Guardianships & Conservatorships**

Should an individual become mentally incapacitated and unable to handle their own affairs and they have not previously identified a POA, the court can be petitioned to assign a guardian or conservator. A guardian is appointed to handle the general affairs of the person while a conservator



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handles their financial affairs. Many times, but not always, the guardian and conservator are the same person.

### After Death

#### **Letter of Instruction**

This informal document gives the survivors information concerning important financial and personal matters that must be attended to after their death. The individual prepares it, not an attorney and there is no specific form or format to follow. It can be a handwritten letter or a checklist that tells the surviving family where to find certain documents, how to access accounts and the names of individuals to be contacted. It can also include any special instructions that are not specifically addressed in a will such as what to do with personal effects or special gift or bequests. A letter of instruction is to offer guidance and is not a substitute for a will and is not intended to be legally binding.

#### **Last Will and Testament**

In this legal document, an individual directs what is to be done with their money and property after their death. The individual, (or testator) usually identifies an Executor of their estate who will handle the distribution of the property and payment of debts owed. You must be of "sound mind" or legally competent to prepare a will. It must be in writing, signed by the individual and two or more disinterested witnesses. This document is best prepared by an attorney who can ensure that your will accurately reflects your wishes and provides the clearest instructions to your executor and heirs.

#### **Definitions:**

- Proxy / Agent - one who acts on behalf of another
- Testator - the individual making the will
- Disinterested witness - an individual who will not benefit from the document / will
- Intestate - to die without a will
- Executor - the administrator responsible for carrying out the terms of the will
- Beneficiary - an individual or entity identified to receive a benefit of the will or policy
- Probate - the legal process of proving the validity of a will and authorizing the executor
- A person who has "Standing" - the only one who can legally challenge a will

#### **Accounts / assets which by pass the will and probate process have an identified:**

- Beneficiary
- Payable on death
- Transfer on death
- Joint tenants with right of survivorship

To find an attorney who specializes in estate planning and elder law visit the  
National Association of Elder Law Attorney's website

**[www.NAELA.org](http://www.NAELA.org)**

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