



Own Your Future Legal Terms & Resources

Legal Terms & Resources

Advance Directives

An advance directive is a way to communicate your wishes about the use of life-sustaining treatment. It can be used to authorize or refuse certain treatments and to designate another person to make medical decisions for you.

Advance directives may be revoked at any time. Because of the serious nature of advance directives, the matter should be discussed thoroughly with your family and physician while you are healthy. You may cancel or change an advance directive at any time in accordance with state law. Changes should be made in writing and should be signed and dated.

Your healthcare decision-maker needs to know your:

- Preferred and undesired types of medical treatment.
- Acceptable extent of medical treatment and invasive procedures.
- Family dynamics and who to consult in making decisions.
- Health care and death-related fears and concerns.
- Religious or spiritual considerations.
- End-of-life planning and, if necessary, desire to die at home versus the hospital.
- Desired quality-of-life level.
- Thoughts on the experiences of others who have gone through similar situations.

There are two types of advance directives to consider: living will and durable power of attorney.

Advance Directives and Living Wills protect your right to self-determination and protect your family from uncertainty. They ensure that you will receive the medical care you want when you can no longer speak for yourself. Both documents must be signed, dated, and witnessed, either by two non-relatives or a notary public.

Living Will

This document which instructs your doctor, family, and the health care power of attorney of an individual's wishes concerning the use of

artificial means to save or prolong their life (i.e. CPR or a respirator), or the withholding or withdrawal of nutrition and fluids administered through a vein or through a tube inserted into the stomach or through the nose. This document would apply in the event that you become terminally ill or are in a persistent coma.

A Living Will may be part of, or separate from, a durable power of attorney document and would be used if you become incapable of making your wishes known to others. Artificial nutrition and fluids cannot be withheld unless so directed by your Living Will or power of attorney document.

You can revoke your Living Will at any time. You can do this by simply telling your physician and family that you have changed your mind and wish to revoke your Living Will. It is a good idea to ask anyone who has a copy of the document to return it to you.

Durable Power of Attorney for Health Care

A Durable Power of Attorney for Health Care is a legal document which authorizes another person to make health care decisions for you if you lose the capacity to make informed health care decisions for yourself.

A Durable Power of Attorney for Health Care:

- Names an individual you trust to make a wide variety of health care decisions for you at anytime you cannot do so for yourself — whether or not your condition is terminal.
- Becomes effective only when you are temporarily or permanently unable to make your own decisions regarding treatment.
- Requires the person you appoint to make decisions that are consistent with your wishes.
- Will not overrule a Living Will in the event you have both documents.

The Patient Self-Determination Act

This is a federal law that requires most hospitals, nursing homes, home health agencies, and HMO's to provide information on advance directives at the time of admission. Advance directive forms are available in both official state law forms and in unofficial forms created by state medical and bar associations and national organizations such as AARP, the American Bar Association, and the American Medical Association.

Do-Not-Resuscitate Order

A Do-Not-Resuscitate (DNR) order is a physician's written order instructing health care providers not to attempt cardiopulmonary resuscitation (CPR) in case of cardiac or respiratory arrest. Ohio's DNR law relieves emergency medical services (EMS) personnel and other medical professionals and facilities of their duty to resuscitate a person if that person has DNR identification or a DNR order, provided that withholding or

withdrawal of CPR is in accordance with the Ohio Department of Health's (ODH) do-not-resuscitate protocol. This Do-Not-Resuscitate order would go along with the individual's Living Will.

Guardianship

Guardianship is designed to protect and promote the well-being of those whose functional limitations prevent them from making their own decisions.

Guardianship is a legal relationship between a competent adult and a person over the age of 18 whose disability causes incompetency (a ward). A ward is a person who by reason of incapacity (as a minor or incompetency) is under the control of a guardian. Guardianship is usually sought by family members, social service agencies, or health care providers whose purpose is to protect the ward. Guardians other than family members may be appointed by the court.

Guardianship can be requested by anyone who is interested in the proposed ward's well-being. In most instances, an attorney is retained to file a petition in the probate court in the county of residence of the ward. The proposed ward is entitled to legal representation at the hearing. The court will appoint an attorney if the proposed ward does not have an attorney.

Guardianship Programs

These agencies offer opportunities for volunteers to serve as volunteer guardians for incompetent indigent older adults. Training and support are provided by the agency. LifeSpan serves the residents of Butler and Warren Counties through the following areas: Hamilton, Middletown, West Chester, Fairfield, Mason, and Oxford.

LifeSpan

www.lifespanohio.org

513-868-3210

888-597-2751

Guardianship and Representative Payee Programs serving Butler and Warren Counties.

Personal Guardianship Services

www.pgsohio.org

513-821-5500

Alternatives to Guardianship

Representative or Protective Payee is a person who is appointed to manage Social Security, Veterans' Administration, Railroad Retirement, Welfare Assistance or other State or Federal benefits or entitlement program payments on behalf of an individual.

The Protective Payee Program's mission is to keep the most vulnerable of clients from becoming homeless and to provide them with necessities such as food and shelter. Potential clients include any developmentally-disabled person who cannot manage his or her income to meet basic needs, and who has no family. Referrals come from mental health and developmental disability agencies.

FreeStore FoodBank Representative Payee Program

www.freestorefoodbank.org

513-241-1064

LifeSpan

www.lifespanohio.org

513-868-3210

888-597-2751

Personal Guardianship Services

www.pgsOhio.org

513-821-5500

Power of Attorney and Durable Power of Attorney

Power of Attorney is a contract between two individuals where one party (the principal) gives to the other (the agent) the authority to make any number of decisions (e.g. medical, placement, financial) on his or her behalf. The person granting the power of attorney must be mentally competent to enter into the contract. If the contract is made "durable," the power of attorney remains in effect if the principal becomes mentally incapacitated.

A durable power of attorney is especially useful to save you, your family, and loved ones from court proceedings to appoint a guardian or committee for you if you become incapacitated. As a practical matter, most attorneys recommend the use of a durable power of attorney more than a power of attorney because the durable power of attorney is long-lasting.

Both the power of attorney and durable power of attorney are created using specific language, and the advice of an attorney should be sought in preparing them. Care should be taken to ensure you make these documents as specific as possible in order to protect your rights and property. You should be sure that the person granted your power of

attorney is an individual whom you completely trust to use the power as you would direct if you were capable of doing so.

Trust

A Trust is a legal arrangement where one person (the "grantor") gives control of his property to a trust, which is administered by a "trustee" for the "beneficiary's" benefit. The grantor, trustee and beneficiary may be the same person. In the event of incapacitation or death, the grantor names a successor trustee, as well as successor beneficiaries.

Revocable Living Trust

A Revocable Living Trust, created while you're alive, lets you control the distribution of your estate. You transfer ownership of your property and your assets into the trust. You can serve as the trustee or you can select a person or an institution to be the trustee. A living trust is an effective means of avoiding probate and providing for management of assets. It can be revoked by the person who created it during that person's lifetime. If you're the trustee, you will have to name a successor trustee to distribute the assets at your death. If you are interested in a living trust, you should seek the advice of your attorney in order to draft a trust instrument which best suits your particular needs and circumstances.

Irrevocable Living Trust

A trust which has terms and provisions that cannot be changed.

Conservator

A conservator is a person appointed by the court to manage your financial affairs if you are judged to be incapable of doing this for yourself. A court-appointed conservator may be necessary if you have not executed a durable power of attorney for finances prior to becoming incapacitated. An attorney must be consulted to prepare the legal paperwork and to file the petition requesting a court hearing.

A physician must certify that you are temporarily or permanently incapable of managing your financial affairs and evidence must be produced that you have property or assets that would be wasted unless properly managed by someone else.

A family member is usually appointed to be a conservator, but a friend, an attorney or another person may be appointed. If you disagree with the conservatorship petition you have the legal right to retain an attorney to challenge the petition. A limited conservatorship may be granted, allowing you to retain control over specific financial matters.

Will

A Will is a written document that dictates how to distribute your estate after your death. An estate consists of all real property (land), personal property (stocks, bank accounts, cars) and intangible property (claims,

interests, rights) that the individual owns at death.

A will allows you to personalize the distribution of your property. If you do not make a will, you are said to have died "intestate" and, with certain exceptions, your possessions are distributed according to Ohio law. If you are married, both you and your spouse should have coordinated wills because each of you may have property that you would like to dispose of separately. Also, if one spouse inherits the other spouse's estate but does not have a will of his or her own, the second estate may not be distributed as wished when the surviving spouse dies.

Only about half the states recognize "home-made wills." Because many such wills contain imprecise language, they may be successfully attacked in court and declared invalid. Therefore, it is best not to attempt a do-it-yourself will.

Living Trusts vs. Wills: *What's the Difference?*

Living trusts and wills allow you to choose how your property will be distributed after death. Although there are other issues to consider, the primary advantage of a living trust is that it can make it easier to avoid probate. Property transferred into a living trust before death does not go through probate.

It is important to understand that:

- A living trust is not the only way to avoid probate. The rules about probate and avoiding probate are often different in different states. It is best to check with an attorney to find out more information.
- Most states have rules that allow small estates to be administered outside of probate or through an "expedited" probate process. These rules are different in each state. You can find out more from the Clerk (or Register) of Wills or from a local attorney.

Wills and Life Insurance

Life insurance policies in no way take the place of having a will. If your policy is payable to your estate after death, the proceeds will be distributed according to your will. If the policy benefits are payable to a beneficiary other than your estate, such as your spouse or another relative, your will has no effect on the distribution.

Probate

The legal process that usually involves filing a deceased person's will with the local probate court, taking inventory of the person's property, paying all legal debts, and eventually distributing the remaining assets and property. If the person died without a will (called dying "intestate"), the estate must still be probated, and property will be distributed according to state law.

Probate Court

Probate court provides a variety of services for citizens including: adoptions, name changes, marriage licenses and marriage information, processing estates of deceased persons, resolving issues of contested wills, appointing and reviewing guardianship of minors and incompetent persons.

[Butler County Probate Court](#)

513-887-3294
101 High Street
Hamilton, OH 45011

[Clermont County Probate Court](#)

513-732-7243
2379 Clermont Center Drive
Batavia, OH 45103

[Clinton County Probate Court](#)

937-382-2280
46 S. South Street St #224
Wilmington, OH 45177-2297

[Hamilton County Probate Court](#)

513-946-3600
230 East Ninth Street, 10th
Floor Cincinnati, OH 45202

[Warren County Probate Court](#)

513-695-1180
900 Memorial Drive
Lebanon, OH 45036

Legal Resources and Information

AARP

www.aarp.org

800-424-3410

Ask for a copy of Product Report: Wills & Living Trusts. AARP does not sell or endorse living trust products.

American Bar Association

www.abanet.org

**American Bar Association Commission on Aging
Cincinnati Bar Association**

<http://www.cincybar.org>

Cincinnati Bar Association provides information to the public regarding the legal community and legal education.

ElderLaw Answers

www.elderlawanswers.com

Information on legal topics affecting seniors

Legal Aid Society

www.lascinti.org

513-241-9400

Information about benefits, access to health care, housing issues.

National Academy of Elder Law Attorneys, Inc.

www.naela.org

Email: naela@naela.org

You can obtain information about elder law attorneys and the opportunity to find an attorney in your area. The site provides links to other legal resources.

National Consumer Law Center, Inc.

www.nclc.org

National Consumer Law Center is committed to supporting and advancing diversity inside and outside the organization. By devoting time and resources to encouraging diversity, the Center strives to foster an inclusive and welcoming climate that respects different viewpoints, backgrounds and life experiences.

Nolo

www.nolo.com

This site has information and articles, as well as do-it-yourself legal forms. Information and helpful links to most any legal situation can be found here.

Ohio Bar Association

www.ohiobar.org

1700 Lake Shore Dr.

Columbus, OH 43204

800-232-7124

The Ohio Bar Association produces and makes available printed material "Laws You Can Use."

ProSeniors

www.proseniors.org

513-345-4160

Pro Seniors is a non-profit organization whose mission is to enhance the independence and quality of life of older adults by empowering them, by protecting their interests and by facilitating their access to resources through three programs: legal services, long-term care ombudsman, and Ohio SMP (Senior Medicare Patrol).

The Federal Trade Commission

www.ftc.gov

202-326-2222

This site provides consumer educational materials and allows consumers to file a complaint online. There are links to other government sites.