

Many important decisions concerning finances, health care, and end-of-life care require legal documents. Creating these documents in advance can save you time, money, and stress. Without them, you may need a court proceeding to establish guardianship or conservatorship when and if an elder loses his or her capacity to make financial or health care decisions.

It's never too early to start talking about health care decisions with the elder and others involved in the care of the elder. Good advance planning requires that you have an ongoing conversation with the elder about his or her beliefs and values about quality-of-life and end-of-life issues. You need to communicate *before* a crisis arises so that you can feel confident that you understand the wishes of the elder and can make decisions without arguing with him or her or other family members.

Important Legal Documents

The following is a basic introduction to the important legal documents involved in caring for an elder, but it is NOT intended to substitute for professional legal advice.

Durable Power of Attorney (DPOA)

DPOA is a document that grants a person or persons ("Attorney-in-fact") the legal powers to perform on behalf of the elder ("Grantor") certain acts and functions specifically outlined in the document. This power is effective immediately and continues even if the grantor becomes disabled or incompetent. The powers usually granted include real estate, banking and financial transactions, personal and family maintenance, government benefits, estate trust and beneficiary transactions.

The choice of the attorney-in-fact should be carefully considered because the responsibilities involved may require significant time and work. Professional advice should be used for the preparation of the DPOA, since the documents must meet certain legal requirements.

Advance Directives

Advance directives are written instructions regarding an individual's medical care preferences. The forms vary from state to state, but in general, advance directives can include a Living Will, Health Care Power of Attorney or Health Care Proxy, and a Do Not Resuscitate or Do Not Intubate Order (DNR or DNI). You do not necessarily need a lawyer to create these.

All adults, young or old—and especially you and the elder in your care—should have advance directives to deal with an accident or illness that would make it impossible to communicate choices concerning treatment. Contact the following organizations for more information:

- The **American Bar Association Commission on Law and Aging** at www.abanet.org/aging/publications/onlinepublicationsconsumers.shtml, 202-662-8690, offers free online publications, including “Consumer’s Tool Kit for Health Care Advance Planning” and “Ten Legal Myths about Advance Directives.” Click on “Online Publications for Consumers” or order copies by phone.
- The **Medline Plus** Web site at www.nlm.nih.gov/medlineplus/advancedirectives.html, a service of the National Library of Medicine and the National Institutes of Health, offers various resources on creating advance directives.

Living Will

A written advance directive, called a living will, is a valuable way to clarify an elder’s choices and wishes. It is used if an elder becomes terminally ill, incapacitated, or unable to communicate or make decisions. Some states do not recognize a living will as binding on medical personnel. However, documents used to prepare a living will provide information that can convey the individual’s intent, and help the health care agent carry out the elder’s wishes.

Health Care Power of Attorney/Health Care Proxy

One of the most important steps in being able to implement an elder’s wishes is appointing a health care agent or proxy. To do this, you must draw up a Health Care Power of Attorney (POA) or a Health Care Proxy, a legal document that names a health care agent. The health care agent or proxy needs to be able to talk openly and often with the elder, so that he or she understands the elder’s wishes and values and can make treatment decisions (when the elder cannot) without having to argue with family members or medical staff. The agent should be someone the elder trusts and someone who can communicate easily with family, friends, and health care professionals. The health care agent will not only have decision-making powers, but also have full access to confidential medical records.

A health care agent does not have to be a family member. Any competent adult (18 or older) may serve as a health care agent, except someone who works at a facility where the elder is a patient at the time the agent is appointed. The health care agent can be different from the person who handles financial matters. Once a health care agent has been chosen, let your family and close friends of the elder know so that everyone is clear about who to contact in the case of emergency.

The health care proxy takes effect only if the family, hospital, or nursing home physician has determined in writing that the elder lacks the capacity to make or communicate health care decisions. The document should also contain specific language dealing with HIPAA (see www.hhs.gov/ocr/hipaa/), the federal law that deals with patient privacy. You should know where this document is and bring it with you if the elder in your care is hospitalized or in the emergency room.

If the elder in your care has moved since documents were drawn up, travels frequently to, or lives full-time or part-time in another state, find out what that state requires to ensure that the documents you have are legally binding. If not, you may need additional legal documents.

Do Not Resuscitate/Do Not Intubate (DNR/DNI) Order

If an elder does not want to have cardiopulmonary resuscitation (CPR) or have a breathing tube inserted, ask the doctor to prepare a “Comfort Care” or “Do Not Resuscitate Order” (DNR), and/or “Do Not Intubate Order” (DNI), sign it, and make it part of the elder’s medical record. It is also essential to keep a DNR Order visible and accessible at all times so that emergency medical personnel, such as EMTs and paramedics, can provide care and transport without defibrillation and/or intubation. Some families keep the document on the refrigerator door or in a clearly marked folder.

Obtaining Legal Documents

You do not need a lawyer to complete an advance directive, living will, or health care proxy, although you may find an attorney’s advice helpful. (You *do* need a lawyer to complete the Durable Power of Attorney.) There are also free resources that can provide the legal templates you will need to fill out.

- **Caring Connections** at www.caringinfo.org/stateaddownload, a program of the National Hospice and Palliative Care Organization, is a national initiative to improve end-of-life care. It offers free advance directive packages (complete with instructions) for every state. Visit the Web site or call 800-658-8898 toll free to request a package.
- The **U.S. Living Will Registry** at www.uslivingwillregistry.com/forms.shtm, offers links to advance directive forms for each state. It also registers advance directives in a database and sends annual reminders to review and update your directives. Hospitals and health care providers check this registry. Visit the Web site or call 800-LIV-WILL (800-548-9455) toll free.

Wills and Trusts

It is essential to have an up-to-date will and/or trust that designates financial, estate, and legal control and distribution. You and/or the elder may have few assets, but even with simple estates it is generally advisable to have an attorney create a document that will protect the elder’s wishes about her or his estate. For help in finding a lawyer to guide you through the process—sometimes at a reduced or sliding-scale fee—see the Legal Issues section. Union benefits may also include free or reduced-fee legal services.

Guardianship

Guardianship (or conservatorship) is a legal process used when a person can no longer make sound decisions to protect his or her person or property, or when the court establishes that an elder has become susceptible to fraud or undue influence. Because establishing a guardianship removes considerable rights from the individual, it should only be used after other alternatives have been ineffective or are unavailable. The court decides who the guardian (sometimes called a conservator) will be: a family member, a friend, a professional certified guardian, a public guardian (such as a state agency), a bank, a volunteer or a nonprofit agency.

The court also decides how much authority to give to the guardian. A guardian might be appointed only to make decisions about living arrangements, personal needs, and medical care, or a guardian might be appointed only to make decisions about finances and property.

Setting up a guardianship can be expensive and emotionally difficult. If you think the elder in your care needs a guardian, first talk with a lawyer about the requirements in your state.

- **AARP** at www.aarp.org/families/caregiving/caring_parents/a2003-11-07-Guardianship.html, offers useful information on guardianships.
- The **National Guardianship Association, Inc.** (NGA) at www.guardianship.org/index.htm, provides standards for guardians. Each standard is explained in detail and provides guidance to guardians in the private and public sectors.

Finding Legal Services

Don't wait until a crisis to find a lawyer who specializes in legal planning for elders. Contacting one as you begin your role as a caretaker can help you avoid much aggravation and confusion. If an elder's income falls within certain guidelines, you may be able to receive help through the legal aid program from your local AAA or through volunteer lawyer programs of your local bar association. States offer legal assistance through the attorney general's office.

Other legal resources include the following:

- The **American Bar Association** at www.abanet.org/legalservices/findlegalhelp/home.cfm offers a free resource guide by state on its Web site. It will direct you to local bar associations, legal aid providers, and other helpful organizations.
- The **American Bar Association Commission on Law and Aging** at www.abanet.org/aging/resources/statemap.shtml provides a free list of key legal service providers for elders in each state. Visit the Web site and click on your state to get a free report or call 202-662-8690.

- The **National Academy of Elder Law Attorneys (NAELA)** at www.naela.org will help you locate an attorney. Visit its Web site and click on “Public,” then “Directory,” and enter your city or Zip Code. NAELA also offers a guide to help choose an attorney. Call 520-881-4005 or visit its Web site and click on “Public,” then “Questions and Answers When Looking for an Elder Law Attorney.”
- The **National Association of Social Security Claimants Representative** at www.nosscr.org/refer.html, 800-431-2804 toll free, provides representation and advocacy for people who are having problems collecting Social Security and Supplemental Security Income.
- The **National Senior Citizens Law Center**, www.nslc.org, 202-289-6976, focuses on the legal needs of poor and vulnerable elders and persons with disabilities.

Protecting the Rights of Elders

Although many elders are quite savvy when it comes to being consumers and in standing up for their rights, others can be vulnerable because of diminished capabilities, lack of knowledge about financial matters, or trouble in navigating complex voicemail and/or online instructions.

Consumer Protection

Today’s marketplace is complex, and, for many elders, it can be treacherous. Elders have often been the target of unethical business practices, such as abuse of guardianship and powers of attorney, lending scams, and Medicare fraud. The following organizations can help protect you as a caregiver and the elder in your care:

- **AARP** at www.aarp.org provides extensive information to help elders on a range of consumer issues, including scams, investment fraud, fixing homes, financing homes, utilities, and smart shopping. Visit the Web site and click on “Money and Work,” then “Be a Wise Consumer.”
- **Better Business Bureau, Inc. (BBB)** at <http://welcome.bbb.org/> answers questions about companies and can also assist in arbitration. To find the BBB near you, visit the Web site and enter your Zip Code.
- **Consumer Sentinel** at www.consumer.gov/sentinel/ is a secure online database used by the Federal Trade Commission to record Internet, telemarketing, identity theft, and other fraud-related complaints. Use this site to get the facts on consumer frauds such as Internet cons, prize promotions, work-at-home schemes, and telemarketing scams.

- The **National Consumer Law Center** (NCLC) at www.consumerlaw.org/ is a consumer advocacy group that addresses problems such as challenges to sustaining home ownership, fraudulent and exploitive sales practices, debt management, and financial decision making. It also distributes a consumer education brochure on predatory lending (available in English, Spanish, and Chinese).
- The **U.S. Administration on Aging** (AoA), through the **Eldercare Locator** at www.eldercare.gov/, 800-677-1116 toll free, provides legal services and hotlines to assist in terminating exploitive contracts, guardianships, or powers of attorney and to help seek restitution. It also helps older persons understand their rights, and exercise choice through informed decision-making.
- **The U.S. Federal Trade Commission** (FTC) at www.ftc.gov/bcp/consumer.shtml, 877-382-4357 toll free (TTY 866-653-4261), works to prevent fraudulent, deceptive, and unfair business practices and to help consumers spot, stop, and avoid them. To find free information or file a complaint, visit the Web site or call.
- **USA.gov for Seniors** at www.usa.gov/Topics/Seniors/Consumer.shtml is a government Web site that provides links to information and assistance on all aspects of consumer and fraud protection. You can also sign up for e-mail updates.

Protection from Elder Abuse

The frailty and dependence of elders can make them targets for abuse, even by family members. Signs to look for include poor hygiene, bedsores, marks or bruises, drowsiness from overmedication, and withdrawn or fearful behavior. Victims may be unwilling to seek assistance because they think no one will believe them, or they fear retaliation from their abusers, or they are too embarrassed. It may take the courage of a caring family member, friend, or caretaker to take action.

Adult Protective Services (APS) are provided in every state to ensure the safety and well-being of elders (and adults with disabilities) who are in danger of being mistreated or neglected, are unable to take care of themselves or protect themselves from harm, and have no one to assist them. APS receives reports of adult abuse, exploitation, or neglect; investigates these reports; and conducts case planning, monitoring, and evaluation. APS may also provide or arrange for the provision of medical, social, economic, legal, housing, law enforcement, or other protective, emergency, or supportive services.

Some state APS laws only apply to situations of domestic abuse, affecting people who live alone or with their families. Some states have laws against institutional abuse, protecting elders who live in nursing homes and other long-term care facilities. (For information on protective services for nursing home residents, see the Housing and Transportation section) Your state attorney general's office will have information as to where an elder can turn for protection and what organizations can help him or her, in addition to these:

- The **Eldercare Locator**, www.eldercare.gov/Eldercare/Public/Home.asp, provides information and referrals.
- The **National Center on Elder Abuse**, www.ncea.aoa.gov/NCEAroot/Main_Site/Find_Help/State_Resources.aspx, provides information and assistance, including a state-by-state directory of hotlines and APS resources on its Web site. You can also call the NCEA Information Desk at 302-831-3525.