

EQUALITY VIRGINIA

Frequently Asked Questions about Advance Directives*

Why Create an Advance Directive?

An Advance Directive allows you to state your choices for healthcare or to name someone to make those choices for you, if you become unable to make decisions about your medical treatment. It enables you to say "yes" to treatment you want, or "no" to treatment you do not want.

What Kind of Advance Directive do I Need?

You may execute a power of attorney for healthcare, a living will, or both. Of the two kinds of Advance Directives, a power of attorney for healthcare is broader. A living will is helpful in stating your wishes, but it may not be possible to anticipate all possible medical situations for which your living will might apply. The best way to protect your interests, however, is to execute both.

Are Advanced Directives Only for End-of-Life Issues?

No. Advance directives may address any types of care in situations in which you cannot make decisions for your self. For example, an advance directive may address psychiatric (mental health) issues, chronic disease issue, and wishes about admissions to certain types of healthcare facilities.

Can I Just Say My Wishes Orally?

You should always share your healthcare wishes with your loved ones and your doctors. However, you may only create an Oral Advance Directive if you have a terminal condition and tell your wishes directly to your doctor. Also, putting your wishes in writing reduces confusion about your wishes since people often forget or misunderstand what was said orally.

What If I'm Unsure of What Healthcare I Might Want?

You should still execute an Advance Directive to describe the important values and beliefs you have. You can also indicate your religious beliefs. Often, these types of statements will help others make appropriate healthcare choices for you when you cannot make them yourself.

I Don't Know Medical Terms. What Do I Need to Say?

You can, and should, put your wishes in your own words. Just describe as best you can what medical care you do and do not want.

* This material is based almost entirely on material prepared and issued as a public service of the Health Law Section of the Virginia State Bar, Eighth & Main Building, 707 East Main Street, Suite 1500, Richmond, VA 23219-2800; Updated: April 12, 2010 © Virginia State Bar 2010; *Disclaimer: This general information is neither legal opinion nor advice, and is not specific to any particular jurisdiction or set of facts. As each situation is different, you should seek independent legal advice from an attorney in the jurisdiction in which you live for specific information.*

I'm Young and/or In Good Health, Do I Need an Advance Directive?

Yes. No one knows what the future might bring. For example, you might need someone to make medical decisions for you in the event that you suffer a sudden injury or illness (such as a car accident). It is better to choose this person in advance and tell him or her about your healthcare wishes. If you do not choose someone in advance, the law will assign a decision maker who must guess about your wishes.

Who Should I Pick as My Healthcare Power of Attorney?

You may appoint any adult (18 years or older). This person needs to be accessible, but he/she does not need to live in Virginia. When you choose your agent, make sure that you have chosen someone who will be able to make potentially difficult decisions about your care, is willing to serve as your agent, and is aware of your wishes. You should also choose an alternate in case your first choice is unavailable (for example, your first choice may not be found or may not be willing to be your agent).

I Have Several Children; Can I Appoint All of Them?

You really should pick just one person as your agent. Picking more than one person can result in a conflict, delay decision-making, or result in an inability to make any decision at all. You can include your other children by letting them know your choices. You may also require your one agent to talk with your other children prior to making any decisions.

If I Appoint an Agent Will I Lose My Ability to Make My Own Decisions?

No. Your agent only gets to make healthcare decisions for you if your doctor and another doctor or licensed clinical psychologist examine you and determine you cannot make decisions for yourself. Furthermore, as soon as you can speak for yourself again, decision-making authority returns to you.

What If I Change My Mind?

You may cancel or modify your Advance Directive at anytime, but it is important that you tell others that you have cancelled or changed your Advance Directive.

What Does It Mean to Have a Terminal Condition?

It means that your doctor has determined that you are likely to die soon or that you are in a persistent vegetative state, which is when you have no awareness of your surroundings and your doctors have determined you will not recover.

What Does Life-Prolonging Treatment Mean?

It means using machines, medicines, and other artificial means to help you breathe, eat, get fluids in your body, have a heartbeat, and otherwise stay alive when your body cannot do these things on its own. Life-prolonging treatment will not help you recover. It does not include drugs to keep you comfortable.

I Do Not Want to Limit My Care if I Have a Terminal Condition. Will an Advance Directive Help Me?

Yes. Your Advance Directive will enable your physicians and family to know that this is your wish.

I'm Worried About Pain, but I Don't Want to be Hooked Up to Machines if I Have a Terminal Condition. Should I Have an Advance Directive?

Yes. No matter what you choose about life-prolonging treatment, you will be treated for pain and kept comfortable.

Will I Get Less Respect and Medical Attention if I Do Not Want to Have Life-Prolonging Treatment?

No. Your physicians and nurses may not discriminate against you based on your healthcare choices. You will get whatever care is appropriate, but you will not get any treatment that you have stated you do not want.

Can My Agent be a Witness?

Yes, but to avoid the chance of conflict, it is better to have someone who is not your agent (or your alternate agent) be a witness.

Does an Advance Directive in Virginia Need to be Notarized?

No.

Are Copies of Advance Directives Valid?

Yes.

I Have a Financial Power of Attorney. Does It Cover Healthcare Decisions?

Probably not. It is better to have a separate healthcare power of attorney document. If you are in doubt, consult a lawyer or ask at a hospital.

Can My Family or Physicians Override My Decisions if I am Unable to Speak for Myself?

No. This is one of the major reasons to create an Advance Directive.

Will My Virginia Advance Directive Be Valid in Other States?

It should be. Just as Virginia honors Advance Directives properly executed in other states, most states have similar rules to honor out-of-state Advance Directives. Nevertheless, if you spend a considerable amount of time in another state, you may want to have an Advance Directive executed for that state as well. You may also want to register your Advance Directive with an online registry, such as the new Virginia Advance Directives Registry: <http://bit.ly/VaMedDir> or the US Living Will Registry: <http://www.uslivingwillregistry.com/>.

Where Should I Keep My Advance Directive? Who Gets Copies?

Just as important as creating an Advance Directive is making sure that other people know that you have it and know where it is located. Specifically, you should:

- Give a copy or the original to your agent or proxy.
- Give a copy to your physician(s).
- Give a copy to family and friends.
- Bring it to the hospital with you.

Additionally, you should keep a copy of your Advance Directive in a safe place where it can be found easily. Do not keep your only copy in a lock box or safe. You may also register it on the Virginia Advance Directives Registry: <http://bit.ly/VaMedDir>.

Does It Cost Anything to Create an Advance Directive?

No. You can get started here: <http://bit.ly/VaMedDir>.

Do I Need a Lawyer to Draft an Advance Directive? Must I use These Forms?

No. The free forms at the links above are all you need, but a lawyer may help you if you have additional questions or complex healthcare needs. The free forms are also only models. You can use them or numerous other forms or no form at all. Just be sure that whatever you use includes: (1) your healthcare wishes, (2) your signature, and (3) the signatures of two adult witnesses.

What is a Do Not Resuscitate (DNR) Order?

A DNR is a doctor's order saying that you will not get CPR, drugs, or electric shock to restart your heart or breathing if your heart stops or you stop breathing. A Durable Do Not Resuscitate Order (DDNR) is a special DNR order that your doctor can provide you so that EMS, fire, and rescue and any healthcare provider will know your wishes about resuscitation.

Can My Advance Directive Provide Organ Donation Wishes?

Yes. Your advance directive may provide organ donation and other anatomical gift wishes.

Is Information Available in Spanish?

Yes. See <http://www.vsb.org/site/public/healthcare-decisions-day/#FAQ>

Is Information Available in Other Languages?

Your local hospital should have translation services to help with other languages.

Where Can I Go for Additional Information?

Advance Directive forms and additional information are available at any hospital. In addition, numerous Web sites have Advance Directives information.

Here are links to some other resources and sites with further information about Advance Directives:

Virginia State Bar: <http://www.vsb.org/site/public/healthcare-decisions-day/#FAQ>

Aging with Dignity: Five Wishes, <http://www.agingwithdignity.org/catalog/>

Caring Connections: Planning Ahead Checklist,
<http://www.caringinfo.org/PlanningAhead/PlanningAheadChecklist.htm>