

## **Virginia Advance Directives Day**

All adults in Virginia have a right to prepare a document called an "Advance Directive" to put their wishes regarding medical care in writing. An Advance Directive lets other people know the types of medical care you do and do not want in the event you are unable to express your wishes on your own. There are two kinds of Advance Directives:

### **Appointment of an Agent**

You may authorize another person, such as a spouse, child, or friend, to be your "agent" or "proxy" to make decisions for you if you become incapable of making informed health care decisions for yourself. You can also specifically tell your agent what kinds of care you do and do not want. This authorization is, in legal terms, often called a "Power of Attorney for Health Care."

### **Living Will**

You may also state what kinds of life-prolonging treatment you want or do not want if you are diagnosed as having a terminal condition and you are unable to express your own wishes. The legal term for this is a "living will."

### **FREE FORM:**

Attached to this document is a free Advance Directive form (with both "Appointment of an Agent" and "Living Will" sections) for you to execute today. You should make copies and provide a copy to your doctor, bring one when you come to the hospital, and give copies to your family and friends.

## **Frequently Asked Questions**

### **Why Create an Advance Directive?**

An Advance Directive allows you to state your choices for health care 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 health care, a living will, or both. Of the two kinds of Advance Directives, a power of attorney for health care is broader. A living will is limited to situations in which you are diagnosed with a terminal condition and it only applies to life-prolonging treatment. The best way to protect your interests, however, is to execute both.

### **Can I Just Say My Wishes Orally?**

You should always share your health care 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 Health Care 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 health care 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.

### **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 health care

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 Health Care 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 health care 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 health care 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 Spouse be One of My Two Witnesses? What About Other Blood Relatives?**

Yes, your husband/wife can be your witness. Other blood relatives can also be witnesses as long as they are adults.

## **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 Health Care Decisions?**

Probably not. It is better to have a separate health care 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 the US Living Will Registry at: [www.uslivingwillregistry.com](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.

## **Does It Cost Anything to Create an Advance Directive?**

No. A free form is attached. Large print forms are available at: <http://www.vsb.org/sections/hl/advancedirectivesday2007.html>

## **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 health care 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 health care 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 health care provider will know your wishes about resuscitation.

## **Is Information Available in Spanish?**

Yes. See "Su Derecho a Decidir" at:

<http://www.vsb.org/sections/hl/advancedirectivesday2007.html>

## **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?**

See the Virginia State Bar's Web site for Virginia Advance Directives Day:

<http://www.vsb.org/sections/hl/advancedirectivesday2006.html>

On the Virginia Advance Directives Day Web site you will find the following documents:

- Your Right to Decide (and Su Derecho a Decidir)
- Advance Directive Tool Kit
- Health Care Decision Making: What You Need to Know

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 sites with more information about Advance Directives:

10 Myths About Advance Directives (from the American Bar Association):  
<http://www.abanet.org/aging/myths.html>

Information on Advance Directives (from Findlaw.com) :  
<http://estate.findlaw.com/estate-planning/living-wills.html>

Dying With Dignity: Medical Treatment (from Findlaw.com):  
[http://public.findlaw.com/healthcare/life\\_events/le28\\_3dying.html](http://public.findlaw.com/healthcare/life_events/le28_3dying.html)

US Living Will Registry:  
<http://www.uslivingwillregistry.com>

Put It In Writing:  
[www.putitinwriting.org](http://www.putitinwriting.org)

Caring Connections:  
[www.caringinfo.org](http://www.caringinfo.org)

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  
(804) 775-0500