PacificCPE

COURSE
40657A

Directives, Plan Maintenance, and Estate Settlement

The final pieces of a complete estate plan go beyond documents—they include planning for incapacity and keeping the plan current over time. This course covers advance health care directives and financial powers of attorney, strategies for reviewing and updating an estate plan as life changes, and a practical walkthrough of what's involved in settling an estate after death. CPAs and tax professionals who work with executors or aging clients will find this course directly applicable to their practice.

CREDIT HOURS 2 | FIELD OF STUDY BUSINESS | EXAM QUESTIONS 10

Start Course ↓ | Final Exam Copy ↓

Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Recognize the characteristics of health care directives.
- Identify the ways in which to revise a will or a trust.
- Recall the steps in the property distribution process.

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Chapter 1: ADVANCE HEALTH CARE DIRECTIVES AND POWERS OF ATTORNEY FOR FINANCES

Chapter Objective

After completing this chapter, you should be able to:

- Recognize the characteristics of health care directives.

If you were to die unexpectedly, your loved ones would rely on your will or your living trust to put things in order and pass along your money and property to the right people. (If you don't have either a will or living trust, your state's intestacy laws, described in Chapter 1 of course 40652B, will determine who gets your assets.)

But if you became incapacitated (either seriously ill or injured, or confused and unable to make decisions), your loved ones would need two legal documents that would give them the legal authority to act on your behalf while you are alive:

- **A health care directive**. This allows you to name an agent to act on your behalf with respect to medical decisions. If you could no longer communicate with your doctors, your agent would speak for you and manage your care. You may also state your wishes for end-of-life care, to direct your doctors and your agent. In some states, you would do this in one document, called an advance health care directive. In other states you'd use your health care directive to name an agent to act for you and then a separate document, called a living will, to state your end-of-life wishes.
- **Durable power of attorney for finances**. This lets you name someone to manage your finances if someday you couldn't—for example, if you were hospitalized or otherwise unable to write checks or manage your accounts on a temporary basis, or if you suffered from dementia or some other mental impairment that rendered you unable to do so on a permanent basis.

Does everyone need these documents, even young and healthy people, and those without a lot of assets? Yes. After all, anyone can be injured in a car accident or unexpectedly require hospitalization, and everyone needs to manage daily affairs. If you're unable to handle your personal affairs or make your health care decisions known, your loved ones will rely on these documents so that they can do both. And at the end of life, if you are not able to speak for yourself, your health care directive or living will provides you with a place to make a clear statement of your wishes concerning life-sustaining treatment, such as artificial nutrition and hydration or artificial

respiration—keeping this agonizing decision within your family circle of loved ones and out of court.

My clients often asked me whether they still needed both powers of attorney if they already had a living trust. The answer is a clear "Yes!" If you become incapacitated, your successor trustee would be able to step in and manage your trust assets for your benefit (and possibly the benefit of those dependent upon you), but they would have no authority over the assets outside of your trust (like your everyday checking account or retirement assets) and they'd have no authority to make medical decisions for you, either.

Financial and Health Care Documents

Several terms used in this chapter sound similar but have distinct meanings. Here's a chart to help you keep them straight.

Term	Also Called	What It Means
Living will	• Directive to physicians • Health care declaration • Medical directive • Health care directive	A legal document in which you state your wishes about life support and other kinds of medical treatments. The document takes effect if you can't communicate your own health care wishes.
Durable power of attorney for health care	• Medical power of attorney • Power of attorney for health care • Designation of surrogate • Patient advocate designation	A legal document in which you give another person permission to make medical decisions for you if you are unable to make those decisions yourself.
Advance health care directive		Any of the documents discussed above may be called an advance health care directive; the term most often refers to a legal document that includes both a health care declaration and a durable power of attorney for health care. This type of combined form is used in more than one-third of the states.
Do-not-resuscitate (DNR) order	DNR form, DNR directive, comfort one	A medical order or form, usually signed by a doctor, that documents your wish not to receive cardiopulmonary resuscitation (CPR) or other invasive resuscitation techniques if you stop breathing or your heart stops beating.

Financial and Health Care Documents		
Term	**Also Called**	**What It Means**
Physician order for life-sustaining treatment (POLST)	Provider order for life-sustaining treatment, physician order for scope of treatment (POST), medical order for scope of treatment (MOST), medical order for life-sustaining treatment (MOLST), clinician order for life-sustaining treatment (COLST), transportable physician order for patient preferences (TPOPP)	A medical order signed by a doctor or other qualified health care professional. A POLST form is used in health care settings to document your instructions for medical care at the end of life. It is not a substitute for an advance health care directive.
Agent for finances	Attorney-in-fact for finances	The person you name in your durable power of attorney for finances to make financial decisions for you if you cannot make them yourself.
Health care agent	• Attorney-in-fact for health care • Patient advocate • Health care proxy • Surrogate • Health care representative	The person you name in your durable power of attorney for health care to make medical decisions for you if you cannot make them yourself.
Durable power of attorney for finances		A legal document in which you give another person authority to manage your financial affairs if you become incapacitated.
Springing power of attorney for finances		A durable power of attorney that takes effect only when and if you become incapacitated.

HEALTH CARE DIRECTIVES

Your right to control your medical treatment comes from the U.S. Constitution. In 1990, the U.S. Supreme Court ruled that if you state your wishes about end-of-life treatment in a clear and convincing way, your wishes should be respected by hospitals, physicians, and family members. This is sometimes called a constitutional "right to die," free of government intrusion into the intimate matter of how and when one's life should end.

States use different names for their health care forms and how they're structured, as you can see from the chart above. I'll refer to them as your "health care directives." No matter what your states call these forms, all of them allow you to direct your care and name a health care agent.

States generally provide two health care documents:

- One in which you state your wishes regarding the use of life-sustaining medical treatment, often called a living will, and
- One in which you designate a health care agent or proxy, often called a durable power of attorney for health care.

The rest of the states combine both documents into one, usually called an advance health care directive.

It's not hard to find health care directives for each state. Generally, they are widely available, usually for free, and they are easy to fill out and make legally valid. The federal government requires every facility that receives Medicare or Medicaid to provide information about health care directives to newly admitted patients and to record a patient's health care directives as part of their medical record.

You absolutely don't need an attorney to create your health care directive. If you're working with a lawyer to draft an estate plan, though, these documents should be created for you as part of that plan.

Once you fill out your health care directive, keep the original, but give copies to your doctors and health care provider, such as an HMO, and the people whom you've named as your agents. Remember that this is a document that your loved ones will need to have handy in an emergency. You can also scan the directive, save it as a PDF, and email it to your agents, so that they can access it easily (your agents might not have access to their filing cabinets at home, but goodness knows, they'll likely have their phones).

What Health Care Directives Do

- Appoint someone to make decisions for you if you can't communicate for yourself.
- Name the doctor whom you'd like to supervise your care.
- State whether you'd like to receive end-of-life medical treatments that would prolong your life artificially, such as artificial respiration or nutrition supplied by a feeding tube if you are unable to swallow on your own.
- State your wishes regarding pain medications or other aspects of your medical or personal care.
- State your wishes for organ donation after death.
- Provide a written document that outlines anything else important to you, such as the kind of care facility you'd like to be placed in if you can't live at home; the kind of environment that you'd like to be in at the end of your life—such as whether you'd like visitors, music, or a particular color or scent; and the kind of spiritual care that you'd like to receive (or not receive).

Your Right to Decide About Medical Treatments

Completing your health care directive requires you to make some decisions about the medical treatments you would (or wouldn't) want if you were unable to speak for yourself. This part of your health care directive is often called a living will.

You have the right to state your wishes concerning medical treatment that serves only to prolong your life by artificial means. Such treatment is often called life-sustaining treatment. To put it another way, you have the right to choose to die by declining certain kinds of health care at the end of your life. If you want all medical procedures used to prolong your life as long as it is medically possible to do so, you can say that in your living will instead.

You've probably given little thought to this issue, but don't be intimidated. Excellent resources available on the internet and in books will help you if you want to educate yourself before making a decision. (See "Advance Health Care Directive Forms and More Information," below.) Because your right to make such choices comes from the U.S. Constitution and not state law, you're not limited to the forms that are available where you live. If there's something you feel strongly about, you can attach your own statement of medical wishes to the form you're using and ask that these wishes be respected.

Before you fill out your health care directive, consider the following:

- If you become terminally ill, would you like doctors to treat you as long as it is medically possible to do so?