



Chapter  
9

# KEEPING THE POWER: END-OF-LIFE PLANNING

## **In This Chapter, Learn:**

- About Advance Health Care Directives
- About a Health Care Power of Attorney
- About a Living Will
- About the Importance of Choosing the Right Agent
- How to Create a Health Care Power of Attorney
- How to Create a Living Will
- About Guardianships
- About Conservatorships
- About Much More

# ADVANCE HEALTH CARE DIRECTIVES

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## What is an Advance Health Care Directive?

An Advance Health Care Directive, also called an “Advance Directive,” is a legal document that describes your end-of-life health care wishes. In Utah, the Advance Directive is a form with four parts:

### **Part I. Health Care Power of Attorney**

This part allows you to appoint another person called a health care agent to make health care decisions if you are unable to make decisions or speak for yourself.

### **Part II. Living Will**

This part allows you to express directly to health care providers your preferences regarding life-prolonging medical procedures.

### **Part III. Revocation**

This part allows you to revoke or change an Advance Directive.

### **Part IV. Execution**

This part makes the document legal. This part requires your signature and that of a witness.

You don't have to complete all parts of an Advance Directive. For example, you can fill out Part I but not Part II of the form.

## Do I need an Advance Directive?



You can benefit from having an Advance Directive at any age. You could have an accident or get sick. In the future you could have a mental or physical illness that leaves you without the ability to make decisions.

Making an Advance Directive allows you to direct how decisions should be made if you can no longer communicate your wishes. This keeps the focus of decision-making on you and your wishes.

## What is a health care agent?

A health care agent is a person you appoint to make medical decisions for you in the event you are unable to make them for yourself.

## How should I choose an agent?



Choosing your agent is one of the most important things you do when creating a Health Care Power of Attorney. It is important to choose an agent whom you trust because your agent will carry out your wishes when you are unable to make or communicate decisions. You should also choose an alternate agent in case your agent is unable or unwilling to serve.

## What should I tell my agent?

You should have a discussion with your agent about any current, serious medical conditions, specific health care preferences, and general thoughts you have about end-of-life care. To help you get started with this discussion, download a copy of Utah's

Toolkit for Advance Health Care Planning (see the “More Information” section on page 134). If you fill out a Toolkit or worksheets, you should give your agent a copy, along with your Advance Directive.

## What powers can I give my agent?

Your agent has broad powers to make medical decisions for you, including:

- Consenting to, refusing, or withdrawing any health care treatment.
- Hiring and firing health care providers.
- Asking questions and getting answers from health care providers.
- Consenting to admission or transfer to a medical provider or facility.
- Getting copies of medical records.
- Asking for consultations or second opinions.

You can give your agent additional powers, if you choose, including:

- Getting copies of your medical records even if you can communicate your health care decisions.
- Authorizing organ donation.
- Admitting you into a facility such as a nursing home.
- Other powers not contained in Utah’s form on the blank lines provided in Parts I and II.

## When do an agent’s powers begin?

Your agent’s powers begin when you cannot make or communicate health care decisions for yourself.

The law requires a finding by a physician or in some cases a physician assistant or a nurse practitioner that you lack capacity to make a health care decision.

## How do I express end-of-life care wishes?

Part II of Utah's Advance Directive lets you document your end-of-life care preferences. You can choose whether you want medical procedures that prolong life or not. If you don't want to prolong life, you can choose at what point you want to withdraw life-sustaining treatment.

## Do I need an attorney to create an Advance Directive?



No, you don't need to hire an attorney to create an Advance Directive. The form discussed in this section was designed for use by the public.

You can download the Advance Directive Form from Utah's Division of Aging and Adult Services (see the "More Information" section, page 134).

## Should I complete a new Advance Directive if I already have one?



If you created an Advance Directive before 2008 that was legally valid, it is legally valid today. However, a new law was passed in 2008 that covers more circumstances than the older form. Everyone who can should complete the new form.

## What should I do after I sign my Advance Directive?



Keep the original Advance Directive and worksheets or other notes where your agent can get the original document, if needed.

Give your agent a copy of the Advance Directive plus any worksheets or notes. Make sure your agent knows where to find the original. Also, give copies to other family members or friends who may have to make a medical decision for you if your agent is not available.

Give your doctor a copy of your Advance Directive. Ask for it to be included in your medical record. Make sure your doctor will support your wishes.

## When should I update my Advance Directive?

Review your Advance Directive once a year or when an event changes your life. Think about the ‘5 Ds’ to decide when you should change or update your Advance Directive. The 5 Ds are: decade birthday (40th, 50th, etc.), diagnosis of a new illness or condition, deterioration of health, divorce, and death of somebody close to you.

## What if the doctor won’t follow the Advance Directive?

While you can sue in court to enforce the directive, the easiest way to resolve the situation is to work with the hospital (customer service or risk management) or to get a different doctor.

## Do EMTs have to follow my Advance Directive?

No. EMTs are not trained to follow Advance Directives. If EMTs are called, their primary task is to keep you alive until you get to the hospital. If you don't want emergency providers to perform CPR, you must work with your health care provider to complete an order on a form approved by the Utah Department of Health.

# GUARDIANSHIP

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## What is a guardianship?

A guardianship is a court-ordered arrangement through which one or more persons, called guardians, are legally authorized to make decisions for another person, called a ward.

## When is a guardianship necessary?

Sometimes people become incapable of making minimally adequate decisions about medical treatment, everyday life, or other important matters and there are no voluntary arrangements through which the person can be assisted in making adequate decisions. As a result, their health and safety are in jeopardy. Under Utah law, when this happens, a court may appoint a guardian to make decisions for that person.

## What are the responsibilities of a guardian?

Under a limited guardianship, a guardian may only make those decisions that the court has authorized the guardian to make.

Under a full guardianship, the guardian is generally responsible for:

- Determining where the ward lives.
- Making sure that the ward's basic needs are met.
- Protecting and advocating for the ward's rights.
- Making decisions about the ward's health care and treatment.
- Keeping track and taking care of the ward's property and possessions.
- Making some financial decisions for the ward, if the ward does not have a conservator.
- Reporting to the court annually about their guardianship activities, the condition of the ward, and the status and condition of the ward's estate.

## Who can become a guardian?

Any competent adult and some agencies can be appointed as a guardian. The law gives preference, however, to appointment of the following persons in the following order:

- Persons suggested by a ward, in the event the ward is capable of expressing a preference.
- Close family members of the ward.

## How is a guardianship established?



Any person who believes that another person needs a guardian may file a petition for appointment of a guardian in state court. Usually an attorney represents the person filing the petition and another attorney represents the proposed ward. A doctor or psychologist may examine the proposed ward to determine if the person has capacity to make decisions and care for themselves.

After receiving a petition, the court schedules a hearing. Various interested parties, including the proposed ward, must be notified of the hearing. If the proposed ward does not have an attorney or cannot afford one, the court will appoint one to represent the proposed ward. At the initial hearing the judge may schedule a trial, or if the judge finds no opposition to the petition, the judge may grant the petition. At the conclusion of the hearing or trial, the judge or jury decides whether or not to grant the petition.

## What is a conservatorship?

A conservatorship is like a guardianship, but only for finances. The conservator has authority to make financial decisions on your behalf.

Under a full conservatorship, the conservator is generally responsible for:

- Using the protected person's income and financial resources to provide for the person's care, support, and comfort and to pay the person's bills and debts.

- Keeping track and taking care of the protected person's property and personal possessions.
- Investing or selling the protected person's assets and property, if needed.

## What are some of the alternatives to guardianship and conservatorship?



Because guardianship limits a person's ability to make decisions for himself or herself, it should always be used as a last resort. Some decision-making tools and voluntary arrangements that may be used as alternatives to guardianship include:

### **Money Management Services**

Banking services, such as direct deposit and direct payment, may help you if you are having difficulties keeping track of your money and paying your bills.

### **Representative Payee**

If you are unable to manage your financial affairs, the Social Security Administration (SSA) can appoint a relative, friend or institution as the representative payee.

### **Advance Health Care Directive**

An Advance Directive is a legal document that you can create to inform others how you want to be cared for in the event you become incapable of making medical decisions.

### **Trusts**

A trust is a legal arrangement in which a person or institution called a trustee holds title to property for your benefit or the benefit of another person. Trusts can be a very helpful option when planning for incapacity.

# POWER OF ATTORNEY

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## What is a power of attorney?

A power of attorney is a legal document in which you give a person, called an agent, the authority to act on your behalf. For instance, you can give someone the authority to sell your home, pay your bills, or buy groceries for you. The person who grants the power is called a “principal” and the person who is given the authority is the “agent.”

## What authority does the agent have under a power of attorney?

You decide what authority to give your agent. You can give the agent limited authority to pay your bills, for example, or you can give general power to make any day-to-day decisions, as well as business and legal decisions. You should give your agent only the authority you want them to have.

## When can my agent act?

This depends on the type of power of attorney you set up. There is a springing power, nondurable power, and durable power of attorney.

### **Springing Power of Attorney**

The agent receives authority at a specific time or when a specific event occurs (such as when the principal becomes incapacitated or lacks mental capacity).

## **Nondurable Power of Attorney**

The agent receives authority as soon as the principal creates the power of attorney, and it is revoked if the principal becomes incapacitated, dies, or revokes the power of attorney.

## **Durable Power of Attorney**

The agent is authorized to act even after the principal becomes incapacitated.

### **What is the most important thing to know about a power of attorney?**



You should select your agent with care. Your agent should be someone you completely trust. Talk to any prospective agent before you appoint them to make sure he or she is willing to be your agent. It is wise, especially with a Financial Power of Attorney, to appoint a monitor that watches over the agent. The monitor ensures the agent is acting in your best interest.

### **How do I create a power of attorney?**



Creating a power of attorney is not a “one size fits all” situation. You should hire an attorney to create a power of attorney that fits your specific needs. However, you don’t need to hire an attorney to create a Health Care Power of Attorney.

### **What is a Financial Power of Attorney?**



A Financial Power of Attorney gives your agent specific authority to make finance-related decisions.

## What is the most important thing to know about a financial power of attorney?

You should select your agent with care. Power of attorneys can be misused as they have little built in safeguards to protect you. So it is critical not only to pick an agent that you completely trust but also to appoint a monitor that watches over your agent and your accounts. The monitor should have no power to move assets or make decisions. The monitor's job is only to watch over your account to ensure your agent is acting in your best interest and is not misusing or stealing from your account. Your agent and monitor should be people that you completely trust. Talk to any prospective agent before you appoint them to make sure he or she is willing to be your agent.

## What if I don't have a durable financial power of attorney?

There may come a time in life where you are unable to handle your finances. This could be due to incapacity of some sort (e.g. dementia). If you don't have a durable financial power of attorney, your relatives or loved ones will have to go to court to appoint a conservator or guardian to manage your finances. This type of proceeding can be costly as it requires that both parties have an attorney. Sometimes the court hearing is contested and causes family strife. This doesn't mean that you should run out and get a durable financial power of attorney. Since an agent under a financial power of attorney has the potential to exploit, you first want to make sure you can appoint an agent you trust as well as a monitor to audit the agent (see chapter 3).

# MORE INFORMATION

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## ADVANCE HEALTH CARE DIRECTIVES

### **Advance Health Care Directive form, toolkit, and instructions**

Utah Division of Aging and Adult Services  
877-424-4640  
801-538-3910  
[www.hsdaas.utah.gov](http://www.hsdaas.utah.gov)

## GUARDIANSHIP AND POWER OF ATTORNEY

### **Information online regarding guardianship, conservatorship, advance directives, and power of attorney**

Utah State Courts' Self-Help Resource Center  
[www.utcourts.gov/howto](http://www.utcourts.gov/howto)

### **Information about guardianships**

Office of Public Guardian  
[www.opg.utah.gov](http://www.opg.utah.gov)