

Sources

Dalton, M. A., & Langdon, T. P. (2006). Estate Planning for Financial Planners (Fourth edition). St. Rose, LA: Money Education.

<http://aging.dhr.georgia.gov/>

http://www.fcs.uga.edu/ext/econ/financial_planning.php

http://www.gabar.org/communications/consumer_pamphlet_series/advance_directive_for_health_care

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You've Got the Power:

Living Will and Health Care Power of Attorney



Your health could change at any time. In addition, your medical condition may prevent you from making decisions regarding your health care treatment. The good news is that there are legal documents that can be utilized to allow you to make choices regarding your health care if you are unable to do so. There are two main documents that can be utilized by you to make decisions about your health care: a living *will* or advance medical directive and a durable power of attorney for health care. The state of Georgia has created another document, Georgia Advanced Directive for Health Care, which combines the previous two documents to enable a more simplified process for directing health care decisions.

Living Will / Advance Medical Directive

One type of document that allows your wishes regarding health care to be carried out, even when you are incapacitated or unable to communicate these wishes, is called a living *will* or advance medical directive. A living *will* is a document that you can use to specify whether life-sustaining measures should continue to be taken in certain circumstances. Georgia passed the Living *Will* law in 1984 which allowed the use of a living *will*. There are certain circumstances when a living *will* is considered to determine if any life-sustaining measures should be taken. These circumstances include a terminal illness and a state of permanent unconsciousness (there is no reasonable expectation of regaining consciousness). A terminal illness is determined to be a condition that is incurable and will result in death.

The purpose of this document is to allow your wishes and desires regarding whether you want to continue to live to be known and honored, when you may be terminally ill or in a state of no recovery. A living *will* is a separate document from, and should not be confused with, a last *will* and testament. A living *will* allows you to communicate your wishes while you are still alive, but unable to do so when incapacitated. A last *will* and testament allows you to make decisions about your estate (property and other assets) after you die.

Durable Power of Attorney for Health Care

Another type of document that allows your chosen trusted representative to make health care decisions on your behalf when incapacitated is called a durable power of attorney for health care. A durable power of attorney for health care can be utilized by you to designate a person (known as an agent) to make health decisions on your behalf if you are unable to do so. Unlike a living *will* which allows you to specify if and how you will receive any life-sustaining measures, a durable power of attorney for health care leaves health care decisions for you to another designated person, the agent. An agent should be someone you trust to make the best choices on your behalf. This power of attorney is limited to only decisions regarding your health care. In addition, the durable part of the power of attorney allows the agent to act on your behalf even if you are incapacitated. If you have a durable power of attorney for health care and a living *will*, then the living *will* would not apply as long as your agent is available and able to make the decisions for you. The Durable Power of Attorney for Health Care Act was passed in Georgia in 1990 which allowed the use of this document.



Georgia Advance Directive for Health Care

In order to simplify the process for creating a living will and power of attorney for health care, the state of Georgia created the Georgia Advance Directive for Health Care to be effective beginning July 2007. This new document combines the best features of both documents. If you have a living *will* that is valid and was written between March 28, 1986 and June 30, 2007, then that document remains valid unless it is revoked. If you have a durable power of attorney for health care that is valid and was written prior to June 30, 2007, then that document remains valid unless it is revoked. To create a Georgia Advance Directive for Health Care, you must be of sound mind and at least 18 years old or an emancipated minor.

There are four parts to the Georgia Advance Directive for Health Care. The first part is taken from the former power of attorney for health care document.

- ✿ Part one allows you to designate a health care agent to make health decisions on your behalf. The agent cannot be the individual's physician or anyone else directly responsible for your health care.
- ✿ The second part contains information pertaining to a living *will*. This part allows you to choose whether or not to receive life-sustaining measures or whether you would like to receive hydration and nutrition if you became terminally ill or in a permanent state of unconsciousness.
- ✿ Part three allows you to specify a person you would want as your guardian if it becomes necessary to appoint a guardian. The general powers of the guardian are of the person (assistance with the physical care of the incapacitated person). Although the guardian may be allowed to make some decisions over property if there is no conservator, the guardian does not have the power to manage your property or financial affairs. It is best to use a financial power of attorney if designating someone to handle finances.
- ✿ The final part includes the signatures of you and the signatures of two witnesses. The witnesses must be at least 18 years old and of sound mind. The witnesses do not have to watch you sign the document or see the other witness sign the document; however, you must acknowledge signing and dating this form in the presence of two witnesses. There are some restrictions on who can be a witness. A witness cannot be the person(s) you choose as your health care agent, inherit anything from you or benefit from your death, not be directly involved in your health care, and only one witness can be connected to the health care facility where you are receiving care (employee, agent, and medical staff). The Georgia Advanced Directive for Health Care may be revoked at any time regardless of your state of mind or competency.

Conclusion

Naming someone as your agent does not impose a duty on the person to exercise the powers granted, but when a power is exercised, your agent has to use due care to act for your benefit and in accordance with the instructions in the document. A court can take away the powers of your agent if it finds the agent is not acting properly. Unless you revoke the power, the power is automatically revoked because of a change in marital status or the court acting on your behalf terminates it, your agent may exercise the powers given in the power throughout your lifetime. It is very important that you completely understand every part of the document before you sign anything. If you have any questions or concerns about the document, consult a lawyer or physician to explain it to you before signing it.

Some physicians or health care facilities may not honor living *wills* or advanced medical directives for health care because of religious beliefs or policies of the medical facility. Therefore, it is important to talk to your doctors about their beliefs or policies regarding living *wills* or advanced directives before a situation arises. If honoring your wishes is important to you, and your health care provider will not do so, you might want to consider changing the health care providers and facilities you currently use.

No one likes to think about their inability to take care of him or herself or dying. However, it is possible that you may be in a situation in which you are unable to make your own health care decisions. If you want to make your desires known and choose someone to act on your behalf if you are not able to do so, then complete a Georgia Advanced Directive for Health Care document.

Georgia Advance Directive for Health Care Document

- ✿ <http://aging.dhr.georgia.gov/> (Click on Publications, then Georgia Advance Directive for Health Care)
- ✿ http://www.fcs.uga.edu/ext/econ/financial_planning.php (Located under Related Links)

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Notice

Because laws change, it is important to check with an attorney or other experts to be sure this information is current.

