

How to Decide Who Decides When I Can't Decide

Decision Making Options in Virginia

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Vocabulary

Capacity

- The ability to:
 - Take in information;
 - Make an informed decision; and
 - Communicate your decision.

Vocabulary

Advance Directive

A legal document used to prepare for a future time when you may not be able to make medical decisions for yourself due to illness or injury. It can include:

- Power of Attorney
- Living Will
- Medical Directive

Vocabulary

Power of Attorney

A legal document you can use to name or appoint someone else to make medical decisions for you if you are ever unable to do so for yourself due to injury or illness.

Vocabulary

Living Will

A legal document you can use to tell your loved ones and your doctors how you would like to be treated if you are at the end of your life or if you are in a persistent vegetative state. You can state your wishes about life-prolonging treatments such as a feeding tube or respirator.

Vocabulary

Medical Directive

A legal document you can use to specify your choices for all sorts of medical care. You can include choices about your physical health and your mental health. Topics often covered include choices about hospitals, doctors, medications, and other medical treatments.

CAPACITY IS PRESUMED!

Our law says that all of us who are at least 18-years old are legally capable of making our own decisions unless we have been found to lack capacity by either a court or by 2 doctors. Anyone who has capacity can use an Advance Directive to state wishes for the future.

Decision Makers

Me: as long as I have capacity, I make my own decisions.

Advance Directive: I can use an Advance Directive to make decisions for myself now that can be used in the future if I'm not able to state my wishes.

- I can name someone to make decisions for me in a Power of Attorney
- I can write my choices in a Medical Directive
- I can do both

Decision Makers

Family: we have a law called the Health Care Decisions Act which states that our doctors may turn to family members to make decisions for us if we cannot and we have not written an Advance Directive. The law says that the doctor must follow the list below in this exact order. If there are 2 or more people in a category, they all get an equal vote and this can lead to disagreements. That's why it's often best to choose someone to be the decision-maker.

1. Spouse
2. Adult children
3. Parents
4. Siblings
5. Any other relative

Decision Makers

Authorized Representative

If you receive services from any program that is licensed, operated or funded by the Department of Behavioral Health and Developmental Services and you cannot make decisions for yourself, the Director of that program may assign someone to make decisions for you about services in that program. If you have named someone in a Power of Attorney, that person will make decisions for you and you will not need an Authorized Representative. An Authorized Representative can only make decisions about services in that particular program. They cannot make medical decisions for you if they are not provided within that program.

Decision Makers

A Judge

There are 2 ways a judge may make decisions that affect your decision-making rights:

1. Guardianship: if someone files a petition with the Court and asks to be your guardian, the judge may decide you do not have capacity and appoint someone to make decisions for you.
2. Court-ordered treatment: If you cannot make your own decisions and do not have an Advance Directive or anyone to make decisions for you or if your family cannot agree on treatment, the doctor may go to Court and ask the judge to make the decision.

Power of Attorney

Things to consider when choosing an agent:

- Complete trust: this person may have to make very important decisions for you
- Willingness: make sure the person is willing to take on the responsibility
- Availability: can the person be easily reached in case of emergency?
- Alternate agent: you may want to choose a list of 2 or more people just in case your first choice is not available
- Beliefs and values: does the person share your religious beliefs and values? If not, can the person make choices based on your wishes?

Powers of Agent

- Specific or general: some people choose to create a very basic Power of Attorney that gives the agent the power to make all medical decisions.
- Limitations: some people have very specific beliefs and feelings about certain medical treatments and they want their agent to follow their wishes for these decisions. Some people may limit their agent's power to control things such as:
 - End of life decisions
 - Visitation
 - Organ or tissue donation
 - Admission to psychiatric facility
 - Treatment over protest
 - Medical research

Medical Directive

If you choose to put your wishes in writing in a Medical Directive, you can include choices about any medical decision. The most common things people think about including are:

- Medications you agree to take and ones you don't want
- Allergies (include allergies to medications, food, or anything that could cause you harm or distress)
- Preferred hospitals and ones you would rather not go to
- Preferred doctors and those you would rather not see
- Preferences about specific types of treatment
- Whether you'd want to use experimental treatment
- People you'd want to be notified when you go to a hospital
- People you want to be able to visit you and those you want to be excluded

Can I Get Some Help?

Absolutely!

Here are some resources:

- You can call us if you have any questions about Advance Directives. dLCV advocates are available to answer your questions every Monday, Wednesday and Friday from 8:30 until 4:00. Our toll-free number is: **1-800-552-3962**
- You can find a basic Power of Attorney form with instructions on this website.
- You can find other forms and information at www.virginiaadvancedirectives.org
- You can talk to your doctor or therapist.
- You can hire an attorney to complete an Advance Directive.

Next Steps

Signing

- After you write your document, you need to sign it in front of 2 witnesses. These 2 people must be at least 18.
- Virginia law does not require a Notary, but it is a good idea if possible. If you plan to get your document notarized, you and both of your witnesses must sign it in front of the Notary. You will need to show the Notary your ID, so be sure to have that with you.

Copies

- Provide copies to the following:
 - Your agent
 - Your doctors
 - Your local hospital
 - State Registry
 - Family members and others
- Keep track of who received copies.

State Registry

Virginia has a free database where you can register your advance directive so that medical professionals can access it if necessary.

Their website is www.virginiaregistry.org

Their helpline is (800) 224-0791

Revoking

- Revoking an Advance Directive makes it invalid.
- An Advance Directive is easy to revoke
 - Prior one is automatically revoked when you write a new one.
 - Tear up all copies.
 - Notify everyone who received a copy.
- If you put your document on the state registry, be sure to let them know that you revoked it or send them a copy of the new one.

Why Not Just Use Guardianship?

Guardianship is an option for individuals who cannot make decisions for themselves, but it comes at a high price, both in terms of money and in terms of lost rights.

The only way for an adult (age 18 or older) to have a guardian is through a court process. Most people choose to hire an attorney to handle the paperwork and the process.

Why Not Just Use Guardianship?

- Guardianship is a last resort because:
 - It takes away basic rights.
 - It is the most restrictive choice.
 - There is stigma and humiliation involved when a person is declared incompetent.
 - It is expensive.
 - It is often unnecessary.
 - It is usually permanent (the only way to end it is to return to court).

Why Not Just Use Guardianship?

Once the court finds you need a guardian, you lose the right to:

- *Make medical decisions
- *Marry and divorce
- *Enter contracts
- *Write an Advance Directive
- *Possess a firearm
- *Buy, sell or rent property
- *Decide how your money is spent (conservatorship)
- *Decide where you live
- *Vote
- *Make or change a will
- *Drive

For more information:

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