

# The Difference Between POA, Durable POA and a Living Will

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Creating a cohesive legal, financial and medical plan for an uncertain future is a complex process. Most people believe that drawing up a will is sufficient, but there are a number of other documents needed to create a comprehensive strategy for safeguarding one's health, property and finances.

A reputable elder law attorney can assist with creating a personalized plan, but it is very helpful to familiarize yourself with the basic legal tools that make up your portfolio of documents before planning begins.

## Definitions of Commonly Used Elder Law Documents

### Will

A last will and testament indicates how a person's assets will be distributed among beneficiaries after they pass away. The writer of the will (known as the testator) can also specify a person (the executor) to manage the probate process and distribution of the estate. A will does not take effect until the testator dies.

### Advance Directives

Advance directives are written instructions for future medical care in case you are unable to make or communicate decisions (for example, if you are unconscious or mentally incapacitated). These are also called healthcare directives. There are a few different forms and documents that can be used to articulate healthcare preferences.

## **Living Will**

Unlike a traditional will explained above, a living will provides instructions for use while the testator is still alive. A living will goes into effect when the testator is no longer able to communicate their wishes for health care or competent to make such decisions. This document is a type of advance directive that describes how a person wants emergency and/or end-of-life care to be managed.

Many people have strong opinions regarding life support, and a living will allows one to detail which life-sustaining procedures one does or does not want. It is important to be specific when composing a living will, but it is not possible to describe preferences for every possible medical scenario. Working with your physician and an elder law attorney can ensure that the instructions are clearly articulated and the document meets specific validity requirements in your state of residence.

## **Do Not Resuscitate (DNR) Order**

A DNR form is completed by a physician or health care provider stipulating that a patient does not wish to receive life-prolonging treatment if cardiac or respiratory arrest occur. These procedures include CPR, intubation, use of a ventilator, defibrillation and other related methods of resuscitation.

Obtaining a DNR does not affect the provision of other medical treatments or care. DNR forms are typically completed by a physician at a patient's direct request or in accordance with a patient's living will or other advance directives. DNRs are often obtained by individuals with a terminal illness, those who are opposed to certain life-saving measures and those who are at risk of cardiac or respiratory arrest.

## **Physician Orders for Life-Sustaining Treatment (POLST)**

Some states have replaced or supplemented DNR orders with POLST forms. They are very similar but POLST forms go into further detail regarding specific treatments like antibiotics and feeding tubes. Like DNR orders, POLST forms are intended to be a condensed version of your living will that medical professionals can quickly and easily consult when deciding on a plan of care.

## **Powers of Attorney**

Power of attorney (POA) documents allow a person (the principal) to give a trusted individual (the agent) the ability to make decisions on their behalf. A POA can be written to grant an agent the ability to act in very broad terms or to only take specific actions. This document can also be customized to take effect upon its creation (durable POA) or upon the principal's incapacitation (springing POA). If a person becomes incapacitated without drawing up POA documents, their family members may have to go through the long and expensive process of seeking guardianship to be able to manage their affairs.

In addition to the various terms that are possible for a POA, there are two general areas in which powers of attorney are granted: health care and finances.

### **Healthcare Power of Attorney**

This type of POA document gives a designated person the authority to make health care decisions on behalf of the principal. A medical POA essentially gives someone you trust the ability to oversee your medical care and ensure that your advance directives are followed. Without appointing a POA for your healthcare, your family members may not be able to access your medical information or actively participate in decision making. Medical POA is sometimes referred to as a health care proxy.

## **Financial Power of Attorney**

This type of POA document gives a designated person the authority to make legal and/or financial decisions on behalf of the principal. When someone becomes incapacitated, whether permanently or temporarily, bills and other financial matters do not stop. Without a financial POA, bills may go unpaid, which can have serious, lasting consequences, and family members may not be able to access one's accounts to cover health care costs.

The type and extent of the agent's powers are entirely customizable. For example, the agent may be authorized to manage all of a principal's finances and property or they may only be able to oversee certain investments or transactions.

## **Consult an Elder Law Attorney**

While there are many resources available to help families plan for the future and navigate legal issues, an experienced elder law attorney can learn about your situation and recommend the best course of action. To find a legal professional in your area, search in the Elder Law directory

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