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Legal Documents: A Guide for the Perplexed


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Learning Objectives

- Understand *who* needs to plan and *why*
- Determine *what* essential legal documents you need in your toolkit
- Recognize life changes that may impact your plan and *when* your plan requires updates



Who Needs to Plan?

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1. Are you over the age of 18?
2. Do you have a taxable estate?
 - Minnesota Estate Tax exemption is currently \$2.4M
 - Federal Estate Tax exemption is currently \$11.2M
3. Do you have a loved one with special needs?
 - Disability, hard times, addiction?
4. Do you have real property in more than one state?
5. Did you recently get married or divorced?

Who Needs to Plan?

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6. Are there charitable objectives that are important to you?
7. Do you have children from a prior marriage?
8. Will your family members agree on your end of life care?
9. Does your retirement plan and estate plan lack coordination?
 - Do your beneficiary designations match your estate planning goals?
10. Do you have a diagnosis that may require long-term care?

“Two sure
things in life...”

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- Everyone over 18 needs to have a plan
- Planning includes establishing the right legal documents *and* discussing them with your loved ones
- Pre-planning for death includes:
 - Disability Planning
 - What happens when you are alive, but experience short-term or long-term disability?

“Two sure
things in life...”

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- Pre-planning for death also includes:
 - Estate planning
 - What happens with your assets when you die?
 - Tax planning
 - What are the tax implications upon death?
 - Considering disposition of remains after death
 - What happens to your body when you die?





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- Make Decisions Early
- Create Your Team
- *Plan for the worst, so you can live your best!*



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- Disability Planning Tools
- Health Care
 - Advance Directives
 - Durable Power of Attorney for Health Care
 - Health Care Directive
 - Contents could include
 - Nomination of Agent
 - DNR / DNI Designation
 - End of Life Wishes



Importance of a Health Care Directive

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- Protects your autonomy by protecting your right to make medical choices - even if you are unable to speak for yourself!
- Appoints an individual to make medical decisions on your behalf if you are incapacitated
- If Agent is unavailable, physicians can use the HCD to guide them until an Agent can be reached or until you can communicate for yourself

Without a Health Care Directive

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- There is no way to insure your treatment preferences are followed
- You will still receive medical treatment if you don't have a HCD and cannot speak for yourself
- A court proceeding ("guardianship") may be required
 - This can take time and money away from your family during an already stressful situation

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MINNESOTA STATUTE § 145C HEALTH CARE DIRECTIVE OF

(Your Name)

I, _____, understand this document allows me to do ONE OR BOTH of the following:

Part I: Name another person (called the health care agent) to make health care decisions for me if I am unable to decide or speak for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or must act in my best interest if I have not made my health care wishes known.

AND/OR

Part II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care, and my family, in the event I cannot make decisions for myself.

Part I: Appointment of Health Agent

This is who I want to make health care decisions for me if I am unable to decide or speak for myself (I know I can change my agent or alternate agent at any time and I know I do not have to appoint an agent or an alternate agent). NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II.

When I am unable to decide or speak for myself, I trust and appoint _____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____
Telephone number of my health care agent: _____
Address of my health care agent: _____

Health Care Directive Example

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POLST: Provider Orders for Life Sustaining Treatment POLST

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY

PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)

FIRST follow these orders, THEN contact the patient's provider. This is a provider order about based on the patient's medical condition and wishes. POLST translates an advance directive into provider orders. Any section not completed implies the most aggressive treatment for that section. Patients should always be treated with dignity and respect.

Last Name: _____
First/Middle Initial: _____
Date of Birth: _____
Primary Care Provider/Phone: _____

A CARDIOPULMONARY RESUSCITATION (CPR):

Check One: **DO NOT ATTEMPT RESUSCITATION** **DO NOT ATTEMPT RESUSCITATION (Allow "Natural Death")**
When used on cardiopulmonary arrest, follow orders in B and C. An asterisk (*) next to a question indicates that the question should not be used for a patient who has chosen "Do Not Attempt Resuscitation."

B GOALS OF TREATMENT:

Check One Goal: **COMFORT CARE** — Do not intubate, use cardiac resuscitation, oxygen, oral nutrition, and manual repositioning of airways, etc. as needed for immediate comfort.
Check all that apply:
 Avoid calling 911, call _____ instead.
 If possible, do not transport to ER when patient can be made comfortable at residence.
 If possible, do not admit to the hospital from the ER (e.g., when patient can be made comfortable at residence).
 LIMIT INTERVENTIONS AND TREAT REVERSIBLE CONDITIONS — Provide interventions aimed at treatment of now or reversible conditions (e.g., intubation, chest compressions). Duration of invasive or uncomfortable interventions should generally be limited. (Transport to ER presumed).
Check one:
 Do not intubate.
 Trial of intubation (e.g., _____ days) or other instructions: _____
 Intubate long term if necessary.
 PROVIDE LIFE-SUSTAINING TREATMENT — Intubate, resuscitate, and provide medically necessary care to sustain life. (Transport to ER presumed).

C INTERVENTIONS AND TREATMENT

Check All That Apply: **ANTIBIOTICS** (do not use).
 No Antibiotics (Use other methods to relieve symptoms whenever possible).
 Oral Antibiotics Only (No IV/IN).
 Use IV/IM Antibiotic Treatment.
 NUTRITION/SUPPLEMENTS (do not use if not applicable).
 Offer food and liquids by mouth (Oral fluids and nutrition must always be offered if medically feasible).
 Tube feeding through mouth or nose.
 Tube feeding directly into GI tract.
 IV fluid administration.
 Other: _____

Additional Orders: _____

POLST Example

Provider Name (SIGNATURE) when allowed, an acceptable: _____ Date: _____
HANDY COPIES AND PHOTOCOPIES OF THIS FORM ARE VALID TO VOID THIS FORM, DRAW A LINE ACROSS SECTIONS A - D AND WRITE "VOID" IN LARGE LETTERS.
Downloaded from <http://www.nidirectives.com>



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- Powers of Attorney (POA)
 - Statutory Short Form Power of Attorney (SSFPOA)
 - Common Law or General Durable POA
- Powers of Attorney end at death of principal

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- Names Attorney(s)-in-Fact
- Effective when signed
- Can have limitations on power and on time
- Power to revoke or change
- If spouse is appointed, terminates in event of divorce
- Gifts to the attorney-in-fact and family limited
- Easy for financial institutions to recognize

Statutory Short Form Power of Attorney

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STATUTORY SHORT FORM POWER OF ATTORNEY
MINNESOTA STATUTES, SECTION 523.23

Before completing and signing this form, the principal must read and initial the IMPORTANT NOTICE TO PRINCIPAL that appears after the signature lines in this form. Before acting on behalf of the principal, the attorney(s)-in-fact must sign this form acknowledging having read and understood the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT that appears after the notice to the principal.

PRINCIPAL (Name and Address of Person Granting the Power)

<p style="font-size: x-small; margin: 0;">ATTORNEY(S)-IN-FACT (Name and Address)</p> <p style="margin: 5px 0;">_____ _____ _____ _____</p>	<p style="font-size: x-small; margin: 0;">SUCCESSOR ATTORNEY(S)-IN-FACT (Optional) To act if any named attorney-in-fact dies, resigns, or is otherwise unable to serve. (Name and Address)</p> <p style="margin: 5px 0;">First Successor _____ Second Successor _____ _____</p>
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NOTICE: If more than one attorney-in-fact is designated to act at the same time, make a check or "x" on the line in front of one of the following statements:

Each attorney-in-fact may independently exercise the powers granted.
 All attorneys-in-fact must jointly exercise the powers granted.

EXPIRATION DATE (Optional)
Use Specific Month Day Year Only

Common Law/General Durable Power of Attorney

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- POA can be customized by attorney for client's specific situation
- May allow powers beyond those granted by the statutory form (SSFPOA)
- Can have unlimited gifting amounts
- May be more difficult to use with financial institutions

Without a Power of Attorney

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- There is no way to insure someone could manage finances on your behalf should you become incapacitated
- A court proceeding ("conservatorship") may be required
 - Time and money involved and ongoing court reporting can be burdensome for your loved ones

Estate Planning – Wills, Trusts, etc.

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- The purpose of estate planning is to designate where your assets pass upon your death and who has the power to administer your estate

How Assets Transfer at Death

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- Distribution determined by:
 - Joint Ownership
 - Beneficiary Designations
 - Statutes of Intestacy (without a Will or Living Trust)
 - Will in existence
 - Trusts in existence

Probate vs. Non-Probate


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- What does probate mean?!
- Probate Assets (Decedent's Name Alone)
 - Triggers may include real estate or \$75,000+
- Non-Probate Assets (Joint Owner, Designated Recipient, Beneficiary or Trust)

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Wills (Pros and Cons)


<u>PROS</u>	<u>CONS</u>
<ul style="list-style-type: none"> • Ease of Establishment • Simplicity During Life • Certainty for Beneficiaries and Others • No Need to Re-title Assets 	<ul style="list-style-type: none"> • Requires a Probate Administration • Some Loss of Privacy (Probate is Public) • May be More Expensive for Heirs than a Trust or Beneficiary Designations



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Trust Planning

- Inter Vivos Trust (Set up During Lifetime)
 - Revocable Trusts are the most commonly used Trusts in estate planning
 - Irrevocable Trusts are sometimes used for gift or estate tax planning
- Testamentary Trust (Set up Upon Death in a Will)
 - Commonly used when individuals have minor children



Revocable Trusts (Pros and Cons)

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PROS

- Maintains privacy of assets and family matters
- Avoids probate of the Estate
- Provides management of assets if you become incapacitated
- Disposition of assets at death

CONS

- Cost to Establish
- Cost to Administer
- May Not Save Taxes
- Requires Constant Vigilance

How to Prepare?

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- Identify your Team or Key Players
- Consider your Values and Legacy
- Meet with an Attorney
- Execute Documents
- Have "the Talk"
- Review Annually

When to Update?

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- Life Change
 - Retirement
 - Moves
 - Receipt of Inheritance
 - Desire to Gift
 - Children/Grandchildren/Great Grandchildren
- Values Change

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Thank You!

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