

# Planning for End of Life Issues

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## What Everyone Should Have

- A Will
- A Durable Power of Attorney
- A Durable Power of Attorney for Health Care
- An Advance Directive for Health Care (Living Will)
- An Estate Plan

### • A will

Who needs a will? Anyone wishing to control the distribution of his or her property upon death should consider drafting a valid will. The property of a person who dies without a valid will or other estate plan is distributed according to state "intestate succession" laws, and that person is called an "intestate." Those laws provide for the distribution of your property as follows:

The surviving spouse will inherit the entire estate if there are no surviving children, siblings or parents of the decedent.

If the decedent leaves behind surviving parents or siblings, the surviving spouse inherits all property acquired during the marriage by joint effort of the spouses. However, the surviving spouse and surviving parents or siblings must share any of the decedent's property brought into the marriage or acquired by gift or inheritance during the marriage.

If the decedent leaves behind surviving children, the surviving spouse inherits one-half of the decedent's entire estate and the children inherit and share the remaining one-half of the estate.

If the decedent leaves behind surviving children, but no surviving spouse, the children share the estate.

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The intestate succession laws make no provision for the distribution of property to the decedent's friends or business/charitable interests. An intestate's property will pass only to his kin. Therefore, it is possible that distant relatives, possibly those the intestate has never personally met, may inherit the property. If there are no surviving relatives of an intestate decedent, the property is given to the state for the support of public education.

A person who has a valid will may give his property to virtually anyone he pleases on his death. However, a person cannot completely disinherit a spouse in Oklahoma.

Every will must meet certain formal requirements in Oklahoma:

- The person making the will, known as the "testator," must be at least 18 years of age.
- The testator must be of sound mind when the will is made, meaning the testator understands the nature and extent of his property and the effect of his will upon his death.
- The testator must intend the will to be his last will and testament when the will is drafted and signed.
- The testator must be free from any undue interference or influence from other people. In other words, the gifts and dispositions made in the will must be made by the free will of the testator reflecting his own wishes and desires.

Oklahoma allows its citizens to choose between two types of wills: an attested will and a holographic will. An attested will is a formal typed will. Most attested wills are drafted by an attorney, but Do-It-Yourself Will kits are available at business stores. A word of caution is necessary about those kits, however. The requirements of a valid will must be strictly adhered to or the will may be declared invalid. Property would then pass according to the Intestate Succession laws previously discussed. The requirements for a valid attested will are:

It must be signed by the testator himself at the end of the document. If the testator is unable to sign the document himself he may direct another person to sign for him in his presence.

The testator must sign the will in the presence of at least two witnesses. The witnesses are known as the attesting witnesses.

As the testator or his representative is signing the will, he must declare it to be his last will and testament.

The two attesting witnesses must also sign the will in the presence of the testator.

Special care should be used when choosing the attesting witnesses. Can anybody witness another's will? In Oklahoma, the answer is a qualified "yes." The witnesses must be competent. Any person competent to make a will is competent to witness a will. May a person receiving property in the will, or an interested beneficiary, witness the will? In Oklahoma, an interested beneficiary is competent to witness a will, but his gift may be challenged or reduced by the court. Thus, for all practical purposes, the will should always be witnessed by two disinterested witnesses. Also, it is usually better to choose a witness who is familiar with the testator and has no immediate plans to relocate.

The second type of will recognized in Oklahoma is a holographic will. This will is **entirely** written, dated and signed by the testator himself. A holographic will must meet the requirements of all valid wills, but it does not have to meet the requirements for an attested will. For instance, a holographic will does not have to be witnessed. Holographic wills are not the most popular choice for estate planning. Courts are very strict with the requirement that **the entire will be completely in the testator's handwriting**, including the date. As there are usually no witnesses to the document, the validity of these wills is frequently contested, and will contests are expensive and time-consuming. Therefore, most experts in estate planning agree that one desiring a last will should consult an attorney to draft an attested will.

What if a testator decides to change an existing will? Changing a will is relatively simple and can be accomplished by a "codicil" or a whole new will. A codicil is an amendment that changes or supplements an existing will. A codicil must meet the same requirements as a last will and testament. There are no limits to the number of codicils that may be drafted to change a will. However, if several codicils have already been written, the testator should consider drafting a new will. Language declaring the new will to be the last will and testament and revoking the prior will should be included. Never attempt to change a will by marking directly on the will. This often leads to a will contest and may invalidate the will.

Finally, always remember to keep your will in a secure location. For instance, consider keeping this important document in a safe deposit box, a safe or a specific desk drawer (preferably with a lock). Remember to keep all codicils to the will in the same location. Also consider keeping other important documents, such as a deed or a vehicle title, in the same general location. While Oklahoma does recognize methods for proving the contents of a lost or destroyed will, it is very difficult to do.

Source: Senior Citizens Handbook, Third Edition, 2001, Young Lawyers Division, Oklahoma Bar Association

### • **A Durable Power of Attorney**

A Durable Power of Attorney is a document which is used to delegate legal authority to another person (the "agent" or "attorney in fact") to act on behalf of the grantor (the "principal").

By including certain statutory-required language in the document, the agent's authority will remain valid even if the principal subsequently becomes incapacitated. Thus, the Durable Power of Attorney is an inexpensive alternative to a court-supervised guardianship or conservatorship which is necessary for a person who becomes incapacitated without preplanning. A Durable Power of Attorney allows the principal, rather than the court, to choose the caretaker of his person and property upon terms designed by the principal.

In a Durable Power of Attorney document, the principal can give his agent a range of powers from a very limited action-specific power to a comprehensive laundry list of powers. Oklahoma law requires that the power be stated in specific terms, such as "to gain access to my safe deposit box" rather than in general terms such as "to do every act that I may legally perform in my place." An attorney-in-fact is prohibited from making decisions regarding signing an Advance Directive for Health Care, also known as a "Living Will."

The principal decides whether the granted powers in the document are effective immediately or become effective upon the happening of a triggering event such as a letter by the principal's personal physician that the principal is now incapable of handling his own affairs. If the power is immediately effective, the principal and attorney-in-fact share immediate, co-equal powers to the extent those powers are granted in the document. A power, which becomes effective upon a trigger event, is advantageous if the principal fears that the agent will act prematurely.

Typically, the principal selects a relative or close friend as his agent. It is imperative that the agent is trustworthy and conscientious as the agent could use the powers to the disadvantage of the principal. The principal should also discuss the nomination with his agent in order to determine the agent's willingness to serve. The principal may name a successor attorney-in-fact in the event his first choice dies, ceases to act or resigns.

The document may state that the power terminates upon a specific date or event. If the principal is not incapacitated, he may revoke the power of attorney at any time. The power always terminates at the death of the principal.

To obtain a Durable Power of Attorney, consult with an attorney who will draft a need-specific, individualized document and insure that the document is signed according to Oklahoma legal requirements.

Source: Senior Citizens Handbook, Third Edition, 2001, Young Lawyers Division, Oklahoma Bar Association

- **A Durable Power of Attorney for Health Care**

A Durable Power of Attorney for Health Care is a recommended planning tool in order to delegate health care decisions to a chosen person in the event of the principal's disability or illness. Execution of a Durable Power of Attorney for Health Care is especially important for Oklahoma residents because Oklahoma has not adopted a family consent statute, which allows a prioritized list of individuals to make medical decisions on behalf of an incapacitated person without appointment of a guardian or a court order.

The Durable Power of Attorney for Health Care operates in the same manner as the general Durable Power of Attorney. The principal may include health care powers in the general Durable Power of Attorney covering property issues. However, some thoughtful consideration of creating separate documents for property and medical powers should be given in order to separate information regarding the principal's assets from his medical records or medical requests.

Powers included in the Durable Power of Attorney for Health Care grant authority for the agent to handle the principals' health care decisions. The attorney-in-fact cannot make life-sustaining decisions for the principal, except for "do not resuscitate." However, he may make other medical decision for the principal. Additional powers can cover such issues as the agent's access to medical information, employment or termination of health care personnel, authorization of pain relief, granting of releases, admission to and discharge from medical facilities, binding the principal to pay for treatment and seeking court intervention.

Since the Advance Directive for Health Care (also known as "Living Will") statute also provides for an attorney-in-fact to make health care decisions, care must be undertaken to avoid a conflict between two attorneys-in-fact. It is recommended that the same individual be named as agent under both the Durable Power of Attorney for Health Care and the Advance Directive.

Provide copies of the signed Durable Power of Attorney for Health Care to the named agent, principal's primary physician and immediate family. Ready-access to the document is recommended rather than storage in a safe deposit box.

Source: Senior Citizens Handbook, Third Edition, 2001, Young Lawyers Division, Oklahoma Bar Association

- **An Advance Directive for Health Care (Living Will)**

An Advance Directive for Health Care is a written document that enables you to state what kinds of **life-sustaining** treatment you wish to receive or forego in the future under certain circumstances. Examples of life-sustaining treatment include breathing machines (ventilators), pacemakers, and tube feeding (artificial hydration and nourishment). Under no circumstances can you be denied medical care to reduce pain or discomfort.

Before an Advance Directive can be carried out, two physicians must certify in writing that (1) you have become incapable of making health care decisions for yourself, *and* that (2) you are in one of the following conditions: (a) you are in a "terminal" condition, (b) you are in a "persistently unconscious" condition, or (c) you are in an "end-stage" condition. Thus, even if you have signed an Advance Directive, as long as you retain the ability to make health care decisions for yourself, physicians will look to you for treatment decisions.

A "terminal" condition is an incurable condition in which a person will die within six months, even if life-sustaining treatment is administered. A "persistently unconscious" condition is an irreversible condition in which thought and an awareness of self and environment are absent. An "end-stage" condition is a condition caused by injury, disease, or illness, which results in severe and permanent deterioration indicated by incompetency and complete physical dependency for which treatment of the irreversible condition would be medically ineffective.

The Advance Directive gives you a choice in designating the individual you wish to carry out your instructions on life-sustaining treatment. You can designate the "attending physician," defined as the physician who has primary responsibility for your care at the time life-sustaining treatment decisions must be made. Accordingly, you may not know in advance of your illness or injury who that physician will be. In the alternative, you may name a health care proxy who is not an attending physician, usually a family member or trusted friend, who is willing to act on your behalf.

An attending physician who declines to follow your Advance Directive must promptly take all reasonable steps to arrange for your care by another physician willing to follow your directions.

The Advance Directive also allows you to make organ donations, but you are not required to do so.

It is a simple matter to revoke an Advance Directive if you change your mind.

The Advance Directive form with instructions is available from many sources, including the Oklahoma Bar Association and most county and local bar associations.

Source: Senior Citizens Handbook, Third Edition, 2001, Young Lawyers Division, Oklahoma Bar Association.

- **An Estate Plan**

Estate planning is beneficial for small estates as well as large estates. With proper estate planning you can designate who will receive your property at your death and also reduce, defer, or even eliminate estate tax on your property.

If you have not prepared a valid will or a trust at the time of your death, your estate will be distributed according to Oklahoma's "intestate succession" statutes. The statutes distribute property to spouses and relatives in a specific order. Although the order in which the statutes distribute property is logical and attempts to be fair, property may not be distributed as you would have wanted. With a valid will or a trust your assets can be distributed to whom you want and in the proportion you want.

Source: Senior Citizens Handbook, Third Edition, 2001, Young Lawyers Division, Oklahoma Bar Association

## Steps to Take to Ease the Burden on Your Family/Friends

Pre-death planning can ease the burden on your family and friends. Your pre-death plans should include preparing and updating the following documents:

- Last Will and Testament to dispose of your assets;
- Letter of instruction regarding your funeral, burial, and related matters;
- Statement summarizing your assets, debts, income, and expenses;
- Directory of relatives and friends with addresses and telephone numbers for giving notification of death; and
- Chart (Family Tree) showing names, addresses, and dates of birth of all children, siblings, and parents.

You should also accumulate the following personal information and documents in one place and be certain that your family is aware of that location:

- Notice of any arrangements that have been made for making anatomical gifts (including a photocopy of your driver's license);
- Contracts relating to cemetery plots, pre-arranged funerals, and burial instructions;
- Safe deposit box(es) information;
- Copies of signature cards for all bank accounts and investment accounts;
- Copies of life insurance certificates;
- Notice of health insurance coverage;
- Notice of survivor annuity benefits;
- List of credit cards;
- Military service information including discharge certificate;
- Marriage and birth certificates;
- Judicial decrees of divorce, adoption, and name changes;
- Copy of social security card;
- Deeds, promissory notes, and mortgages;
- Name and address of professional advisors including attorney and accountant;
- Copies of federal gift tax returns and last seven (7) years of income tax returns; and
- Minutes of annual family estate planning meetings.

Source: Senior Citizens Handbook, Third Edition, 2001, Young Lawyers Division, Oklahoma Bar Association

## Communicating with Family about End of Life Issues

- **Talk! Talk! Talk!**

### **Talking about Your Final Wishes**

Source: AARP, [www.aarp.org](http://www.aarp.org)

Death is a natural part of life - but for most of us, talking about it isn't. Most people are uncomfortable talking, or even thinking, about what will happen when they or a loved one dies.

But, avoiding the topic doesn't stop death from happening. Not talking about it doesn't ease the pain associated with loss. Many people avoid talking about end of life because of their fears: suffering, pain, separation from loved ones and the unknown. These fears keep them from dealing with life's final lesson and make it harder to plan their lives as they wish. Not talking can make it harder for those left behind.

### **Why is it so important?**

Most of us hope that we will die quickly, but the fact is that many of us will die after a long, slow decline. That's why talking and planning for your death is so important to your well-being and your loved ones' peace of mind.

Facing our fears is the first step towards planning for the future. Talking and planning for your death is the best way to ensure that your wishes will be fulfilled. It can ensure you will be able to live your life to the fullest until the end and live it the way you want.

Making decisions about how you want to spend your final days is not simple. There are many factors and options available today that may influence your care at the end of life. Where do I want to die? Who will take care of me? What do I have to do to achieve a "good death?" These questions raise just a few of the issues to be considered in deciding your care at the end of life.

Another focus is on what kind of treatment you want during your final days. While some of the issues related to end-of-life care haven't changed for generations, new issues make decisions even more challenging. Also, health care has changed so quickly that there are new medical technologies and treatments that can extend your life well beyond its natural course.

When you were born, your parents spent nine months preparing for your birth. This same kind of planning should be applied at the end of life. Talking and planning for death are the very acts that may allow you to live a fuller and more comfortable life in your final days.

### **How to Begin**

The first conversation you must have is with yourself, to find out what your feelings are regarding your own death.

- Where do you want to die? At home? In a hospital or medical facility? Do you want to move to be closer to relatives, friends or other loved ones?
- What kind of medical treatment do you want? What don't you want?
- Who do you want to take care of you?
- What do you think is a "good death?"
- What kind of funeral services do you want?
- Where do you want to be buried?

Once you have decided on what you want, use advance directives to write your wishes down. Advance directives are formal documents that explicitly describe your wishes for care near the end. There are two kinds of advance directives: a living will (advance directive) and a health care power of attorney.

Now tell your loved ones and doctor what you want. By beginning the conversation with them, you are giving them comfort and peace of mind to follow your wishes.

## End of Life In-Home or Community-Based Services:

### **Hospice**

For a listing of area hospice providers refer to LIFE Senior Services' *The Vintage Guide to Housing and Services*

### **Hospice for End of Life Care**

Source: AARP, [www.aarp.org](http://www.aarp.org)

Some people get frightened or confused when they hear the word "hospice." That's because there are many myths and misconceptions about what hospice is and what it can do for people who are nearing the end of their lives.

But thoughts of hospice shouldn't bring fear. Instead, hospice can be a tremendous source of help and comfort to people who are nearing the end of life and to their family.

### **What is hospice?**

Hospice cares for people who are terminally ill. Its team of specially trained professionals provides unique expert care, pain management, and emotional and spiritual support that are tailored to the individual patient's needs and wishes. The focus is on caring, not curing. Recognizing the tremendous toll that illness takes on family members, the hospice team also comforts and supports the patient's loved ones, both during the illness and through bereavement counseling.

### **Who can receive hospice care?**

Hospice is available to anyone regardless of illness, culture, age, gender or financial status. It requires the patient has a terminal illness, has been certified by a medical professional as having a prognosis of six months or less, and does not wish to pursue curative treatment.

### **How does hospice work?**

After hospice receives a referral from a medical professional, members of the hospice staff visit the patient to assess the patient's overall needs, as well as to set up a care team. The patient, hospice, and the primary caregiver (usually a member of the family) work together to create a care plan.

From the moment a patient enters hospice care, he or she can get a wide range of services, including:

- Physician services
- Regular home visits by registered and licensed practical nurses
- Home health aides to assist in activities of daily living, such as dressing and bathing
- Social work and counseling services
- Medical equipment, such as hospital beds and oxygen equipment
- Medical supplies, such as bandages and catheters
- Pain management and symptom control
- Volunteer support to assist exhausted caregivers and family members
- Specialized services, such as physical therapy, speech therapy, occupational therapy and nutritional counseling

### **Where do I get hospice services?**

You don't have to go anywhere - hospice comes to you. Whether you are in a nursing home, hospice facility, hospital or in your own home, hospice professionals provide services wherever you live and are most comfortable. This flexibility in service is part of the hospice mission to help patients live their lives as they wish.



### **How do I pay for hospice?**

If you have Medicare, it can pay for hospice. Many other types of health plans, including health maintenance organizations (HMOs) and preferred provider organizations (PPOs) cover costs related to hospice care. If you have Medicaid, it can also pay for hospice.

### **How do I find a hospice program in my community?**

For a listing of area hospice providers refer to LIFE Senior Services' *The Vintage Guide to Housing and Services*. In addition, your physician and other medical professions know of the hospice programs in your area. Two other resources are the National Hospice and Palliative Care Organization and the Hospice Foundation of America.

### **Clarehouse**

Clarehouse provides a loving home and compassionate 24-hour caregiving to dying people, including room, board and practical care. Many confuse the organization with hospice, but they are not a hospice. They collaborate with the hospice organization by filling the gap providing 24-hour quality care.

Clarehouse stands in place of a loving friend or family member as caregiver and home to dying people. The individual's existing hospice service provides care at Clarehouse just as they would in the home or at the hospital.

Guests at Clarehouse are terminally ill people enrolled in a local hospice program. Clarehouse is a place of emotional, spiritual, and social support of the dying person and his or her loved ones in an environment dedicated to helping them achieve the highest quality of living throughout their dying process. Clarehouse charges no fees for services.

Clarehouse Basic Services include: Routine personal care such as bathing, dressing, toileting, assistance with transfers and repositioning, assistance with eating, and assistance with medications; Meal preparation, laundry and housekeeping; and access to hospice services and cooperation with the hospice plan of care (limited to Hospice Routine Home Care and Continuous Care only).

### **Grief Resources**

- Tristesse Healing Hearts Grief Center  
1709 S Baltimore Ave  
Tulsa, OK 74119  
918-587-1200  
[www.thetristessecenter.org](http://www.thetristessecenter.org)

Offers individual and group grief support services. Special program for grieving adults, teens, and children to help them discover healthy ways to express grief effectively and develop coping skill to feel supported and less isolated. Sliding fee scale.

- AARP Widowed Persons Services  
AARP Tulsa Resource Center  
918-446-2277  
[www.aarp.org](http://www.aarp.org)

Enables recovery through emotional support, social and community activities, and education. Call for information and referral to other support groups in the area. Staffed by volunteers seven days a week.

- Hospice follow-up care
- Church resources