

Health Care Directives, Wills

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Presentation today is:

- General information only
- The basics
- Not legal advice
 - Every situation is different
 - If you need legal advice, get a lawyer



Health Care Directives

You have the right to make decisions about your health care

How will your rights be asserted if you lose capacity? A Health Care Directive (HCD)

- HCD creates a plan for incapacity by:
 - Naming a Health Care Agent (agent) AND/OR
 - Leaving health care instructions



Health Care Directives

What is a Health Care Directive (HCD)?

- Document that lets you leave instructions about your health care
 - May name a **Health Care Agent** (agent)
- AND/OR
- May **leave instructions**



Health Care Directives

Who can be your agent?

- 18 or older
- Anyone except your health care provider or employee of a provider
 - Exception: certain specified relationships



Health Care Directives

Pick a person to be your agent who:

- Knows you well
- Will follow your wishes
- You trust
- Will act in your best interest
- Who is available to your health care providers



Health Care Directives

Talk to the person you want to name as agent

- Is that person willing to make your health care decisions when it becomes necessary?
- Does that person know your wishes for your health care?



Health Care Directives

Can you name more than one agent?

- Yes. If you do, you should say:
 - If the agents have to decide things together
- OR
- If they make decisions independently

ALSO: You can name an alternate agent or agents



Health Care Directives

When can the agent take over decisions?

- You doctor thinks that you cannot make your own decisions
OR
- When the HCD says so



Health Care Directives

REMEMBER: Your agent is your voice when you cannot speak

When the agent takes over, the agent should:

- Make health care decisions as if they were you
- Make sure the HCD is followed and get legal help if it is not

BUT: agent does not have legal duty to act



Health Care Directives

Requirements of HCD?

- In **writing**
- **Dated** and state your name
- **Signed** in front of a Notary Public OR witnessed by 2 people
 - Witness can't be your agent or alternate agent
- **Name someone** to make decisions for you (agent) and/or give health care **instructions**
- **Important**: You must have capacity to make one



Health Care Directives

Is there an HCD form?

- Minnesota's HCD statute suggests a form
 - Available at LawHelpMN.org
 - Allows customization (stating limits and preferences)
 - Allows building in protections



Health Care Directives

Using the suggested HCD form, your agent will automatically be able to (unless you limit your agent's powers):

- Consent to, refuse or withdraw medical or health care treatment on your behalf.
 - This includes intrusive mental health treatment.
- Stop or not start care which is keeping you or may keep you alive.

Remember: You can limit these powers. You can provide instructions to your agent.



Health Care Directives

Continued - Using the suggested HCD form, your agent will automatically be able to (unless you limit your agent's powers):

- **Choose**
 - your health care **providers**.
 - **where** you will get your health care.
- Decide if you will live in your own home, or a hospice, or a nursing home.

Remember: You can limit these powers. You can provide instructions to your agent.



Health Care Directives

Continued - Using the suggested HCD form, your agent will automatically be able to (unless you limit your agent's powers):

- Review of your **medical records**, and give your medical records to other people
- **Visit you** when you are a patient

Remember: You can limit these powers.
You can provide instructions to your agent



Health Care Directives

Using the suggested HCD form, you can choose to give the agent permission to make decisions after your death:

- Whether to **donate** any parts of your body, including organs, tissues, and eyes when you die
- Say what you want done with your body after death



Health Care Directives

Do I need a lawyer to make an HCD?

- No.
- But a lawyer could:
 - Give advice and guidance
 - Help customize and build in protection



Health Care Directives

What should I do with the HCD?

- Keep in a safe place where others can find it
 - ex: not safety deposit box
- Give copies to:
 - The person named in the HCD:
 - Agent
 - Alternate agent
 - Family and close friends
 - Health care providers like:
 - Doctors
 - Clinics and hospitals
 - Home care agency or nursing home
 - Hospice



Health Care Directives

Can I **cancel** the HCD or part of it?

Yes, if you have capacity, by:

- Destroying the original document
- Telling another person to destroy it
- Writing and dating a statement that you want to cancel all or part of it
- Verbally stating that you want to cancel the HCD in front of two witnesses
- Making a new HCD

Tip: Update your HCD as your life changes



Wills

- Allows you to spell out where you want your property and assets to go after your death and name a Personal Representative (AKA executor)
- If you do not have a will, the law determines where your property and assets go: spouse, children, grandchildren, parents, siblings ...
- Having a will does not mean your estate will avoid probate.
- If you have real estate or assets in excess of \$75,000**, your estate will need to go through probate. Can avoid probate by naming beneficiaries, POD and TODD for real estate.



Wills

- What is a Will?
 - A will states what you want done with your property after you die
 - Includes belongings and money too
 - You can name a Personal Representative (PR) in your Will
 - If you do not name a Personal Representative and your estate needs to go through probate, the Probate Court will name one for you.



Wills

- What if I die without a will?
 - State law says how your property is divided
 - It goes to your family in order set by law
 - Some people worry that the State will take their property if they don't have a will.
 - This is very RARE. (no heirs)



Wills

- When do I need a Will?
 - If you want to:
 - Leave property to a partner you aren't married to
 - Leave property to a friend or charity
 - leave property to someone who would not get anything or would get less than you would want them to
 - Give certain items to certain people
 - Leave someone out who would otherwise inherit from you
 - Divide your property unequally among heirs
 - Name a guardian of a minor child
 - Avoid fights between family members



Wills

- You don't need a will if:
 - You have no real estate in your name only
 - You have real estate, but you have a Transfer on Death Deed
 - You have beneficiaries named on all of your titled personal property such as banks accounts and retirement accounts
 - You have no real estate in your name only and your personal property totals less than \$75,000. If so, your family can use an affidavit to get the title without probate.
 - You want to leave your property to family in the order that the law says



Wills

- Does my executor take care of things if I get too sick to do it myself?
 - NO, wills only go into effect after you die.
 - If you want someone to take care of things when you become unable, you need to name them in a durable POA and/or in a HCD.



Wills

- What if the only property I have has sentimental value but is not worth much money?
 - You need a will. You can make a simple will and attach a list that says what property you have and who you want to get it
 - You can update it as your property changes
- You don't need a will if you give your property away before you die.



Wills

- How do I make sure my will is followed?
 - You PR safeguards your property while they handle your bills
 - Once bills have been paid, they give out your property to the people named in your will
 - Make sure you check with the person you want to name so they know what they have to do and that they want to do it
 - Make sure you trust them



Wills

- What is Probate Court?
 - It decides if wills are valid, rules on disputes about wills and makes orders to change titles to real estate, cars, and other property
 - If your estate is worth less than \$75,000 your will may not have to go through probate



Wills

- Do I need a special form or a lawyer to make my will?
 - You can get a simple will form online
 - These forms may work for you but talking to a lawyer can be helpful to be sure the form is right for your situation and follows state law



Wills

- One of the most important rules regarding wills is that **2 witnesses** must watch you sign your will
 - They also need to sign it
 - They should not be anyone named in your will and should not be family members
 - The witness must be:
 - Over 18
 - Signing voluntarily
 - Of sound mind



Wills

- Does my will need to be notarized?
 - NO, you do not need to notarize to make it valid
 - BUT MN lets you make your will “self-proving”
 - If you want to do this it needs to be notarized
 - A “self-proving” will helps prove validity if contested
 - It also helps speed up probate



Wills

- Where do I keep my will?
 - A will does not have to be filed anywhere, BUT
 - Make sure it is in a safe place
 - You can give it to your PR or at least make sure your PR knows where to find it
 - DON'T keep it in a safe or bank safe deposit box unless your PR or someone else has a way to access it



Mid-Minnesota Legal Aid (MMLA)

- Free civil legal services (not criminal)
- Help vulnerable Minnesotans gain access to:
 - safety,
 - shelter,
 - food,
 - health care and
 - education



Mid-Minnesota Legal Aid (MMLA)

- Serve clients who are disabled, older (60 and over) and/or low-income
- Poverty law work and work for older people:
 - More than 20 counties across central Minnesota
 - Offices: Minneapolis, St. Cloud & Willmar
- Founded in 1913 – over 110 years of experience!



MMLA Minneapolis Office's Senior Law Project

Who does Senior Law Project serve?

- Residents of Hennepin and Anoka counties
- People 60 years of age or older
- Income does not matter but we focus on clients with the greatest economic and social need.

CAVEAT:

- Limited resources



MMLA Minneapolis Office's Senior Law Project

Types of legal issues:

- Landlord-Tenant / Housing
- Public Benefits
- Medical Assistance
- SSI / Social Security
- Assisted Living Questions
- Nursing Home Questions
- Debtor rights / Consumer
- Grandparent Rights
- Powers of attorney / Health care directives
- Probate advice and referrals
- Immigration



MMLA Minneapolis Office's Senior Law Project

Our free legal services include:

- Referrals
- Advice
- Brief services
- Direct representation



Senior Wills Clinic

- We prepare:
 - Simple Wills
 - Health Care Directive
 - Transfer on Death Deed
 - Power of Attorney



MMLA Minneapolis Office's Senior Law Project

Need help?

Call our intake line at 612-334-5970

- Monday through Friday
 - 9:30 am-11:30 am
 - 1:30 pm-3:30 pm



Your questions and your experiences

Questions?

Do you have experiences to share?

