

Among the confusing terms used in the estate planning industry use, perhaps some of the most misunderstood involve “advanced directives.” Much of the confusion is unnecessary, however, and this brochure attempts to set forth plainly what the terms used in this area of estate planning mean.

First, the term “advance directives” itself generally refers to three different documents that confer authority to a decision maker or set forth one’s wishes for property and health care decisions in the event of disability. These documents are: (i) a Property Power of Attorney (“Property POA”); (ii) a Health Care Power of Attorney (“Health POA”); and (iii) a “Living Will.” While the first document concerns management of one’s financial assets, the latter two cover important health care decisions.

Typically each of these documents will be on a form or in a format prescribed by the laws of the State where you live or where you want to use the document. Some confusion arises because each State may refer to these documents by different names. For example, some states refer to the Property POA as a “Durable Power of Attorney” or a “General Power of Attorney.” Regardless of your State’s particular name for each of these documents, the basic principles will be the same. Let us look at each of these documents a little more closely.

Property Powers of Attorney

If you become mentally or physically disabled, who will make deposits into your accounts, pay

your bills, and handle other financial matters for you? If you have a properly executed Property POA, you have an answer to that question. If not, the best you can say is that you hope it will be this person or that person.

A Property POA normally names one or more persons (i.e., individuals or entities) to handle your financial matters if you become too mentally or physically disabled to do so. Although statutory forms set forth the broad, basic powers granted to your agent, the forms usually allow additions to or limitations on those powers, among other decisions you must make. One decision relates to the effective dates of the Property POA.

Property POAs often become effective immediately upon execution, particularly when the person signing the document is giving the power to his or her spouse. That is known as an “immediate” power of attorney. A “springing” power of attorney, on the other hand, becomes effective upon a certain date or event. The effective date might coincide with a departure date for a long trip, or more commonly, a springing power of attorney will take effect upon sufficient mental or physical disability, as defined by applicable state law.

Although some people incorrectly use them to transfer a decedent’s assets shortly following death, Property POAs actually terminate upon the death of the principal. The Property POA may also terminate before death in certain circumstances. For example, a Property POA granted during a long trip may terminate upon the return date, or a Property POA effective upon disability will terminate if the principal later recovers from the triggering disability.

You should use great care and considerable prayer when selecting an agent under a Property POA. Just as the Lord entrusted us as His stewards and our handling of resources reflects on Him, the way your agent handles resources in your place will reflect upon you. Your agent should be someone who understands you and shares your values so that decisions will be made in accordance with your Christian testimony. Above all, he or she must be someone trustworthy to handle your financial matters.

Healthcare Powers of Attorney

A Health POA grants an agent the authority to make medical decisions for you *in the event of your disability*. Although many aspects of the Health POA are identical to those of the Property POA, the variations in the States’ forms are far greater. The following discussion is very general, and you should check with an advisor knowledgeable on this topic about your specific State’s form or format.

A Health POA makes a broad grant of powers to the agent over its subject matter. Unless limited by the language in the document (or by another method by which you make limitations known), your agent will be able to make decisions for you ranging from what kind of pain relievers and medications are acceptable, to what types of surgeries and procedures may be allowed, to what kind of hospital room or care facility may be used, and ultimately what level of life support may be administered.

Like the Property POA, the Health POA can

be of the immediate or springing variety. The Health POA will be an immediate power more often, however, because it is harder for someone to subvert your wishes on personal health matters than it is with financial assets. A Health POA also generally terminates at death, though some States’ Health POAs allow continued authority for matters such as funeral arrangements and organ donation.

Since your Health POA agent may be making very personal decisions for you—perhaps even life-and-death decisions—it is probably even more important that the agent understands your faith and values, and that he or she can be trusted to make each decision as you would make it yourself. Even though selecting an agent may be difficult, you should not allow it to paralyze you into inaction. Your worst choice as an agent is better than no choice, and failing to execute a proper Health POA leaves the decision to a court as part of a guardianship proceeding if you become disabled.

Living Wills

The final document in our threesome of advance directives is commonly known as a “Living Will.” Actually, the Living Will has nothing to do with your Trust or your Will. The phrase “Living Will” simply sounds better than “Declaration Relating to Use of Life-Sustaining Procedures” or the many variations by which State statutes refer to it. A Living Will is a written declaration indicating your will (or desire) for living (or not) with the assistance of certain life-sustaining procedures.

Advance Directives: CONTROLLING HOW DECISIONS WILL BE MADE FOR YOU

How Do I Get Started?

The first step is obtaining good counsel to determine what types of advance directives are appropriate for you. This counsel should come from an experienced professional with nothing to gain by convincing you of one option or another. For Christians, this counsel is also best if obtained from someone with a godly perspective (Ps. 1:1). Believers Stewardship Services, Inc., offers to counsel believers in their estate planning without cost or obligation. We work with your existing advisors or help you find advisors to ensure you have the best estate plan for your needs. If we can assist you with these important decisions, please feel free to contact us.

While we state without reservation that every adult in this country should have a Health POA, we are not quite so assertive on the *need* to have a Living Will. A Living Will may or may not be a good fit for you depending upon your particular situation.

The upside of having a Living Will is that it removes pressure from the person named as your agent under the Health POA. That is, rather than leaving the entire decision on denying or terminating all life-sustaining procedures to your agent, a Living Will relieves some pressure by making your preferences known in writing ahead of time.

On the downside, a Living Will could limit your Health POA agent from pursuing a treatment he or she sincerely believes you would pursue. The language of many states' Living Will forms is scant at best, and, even in the best of drafting circumstances, it is difficult to come up with form language to cover a wide range of unknown future circumstances. If your Health POA agent can be trusted to make difficult decisions without being paralyzed by the emotions of the situation, a Living Will may not be as important in your estate plan.

Some recent studies actually question whether a Living Will can ensure your wishes will be observed regarding life-sustaining procedures. In the end, we can only use the tools available to us, trusting the outcome of the Lord. Any doubts about the efficacy of Living Wills, however, only point more to the need of a Health POA.

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