Glossary and Descriptions of Some Legal Document and Estate Planning Terms

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These glossary definitions and descriptions are off the web, sources cited. They are just some of many. Always check local and state laws, and if you draft legal documents yourself, it's always wise to have an attorney review them to be sure they will accomplish what you want them to. This is an informational document and is not legal or financial advice.

RESOURCES

• Compassion & Choices – Good-To-Go Resource Guide and the Good-To-Go Toolkit here: https://www.compassionandchoices.org/eolc-tools/ (you may also wish to check out The Five Wishes here: https://www.agingwithdignity.org/)

• Nolo Press – www.nolo.com – self-help legal books (paper and e-books)
• https://www.nolo.com/dictionary

Advance Health Care Directive

https://en.wikipedia.org/wiki/Advance_healthcare_directive

An **advance healthcare directive**, also known as **living will**, **personal directive**, **advance directive**, **medical directive** or **advance decision**, is a legal document in which a person specifies what actions should be taken for their health if they are no longer able to make decisions for themselves because of illness or incapacity. In the U.S. it has a legal status in itself, whereas in some countries it is legally persuasive without being a legal document.

A living will is one form of advance directive, leaving instructions for treatment. Another form is a specific type of power of attorney or health care proxy, in which the person authorizes someone (an agent) to make decisions on their behalf when they are incapacitated. People are often encouraged to complete both documents to provide comprehensive guidance regarding their care, although they may be combined into a single form.[1] An example of combination documents includes the Five Wishes in the United States. The term *living will* is also the commonly recognised vernacular in many countries, especially the U.K.[2]

https://www.nolo.com/dictionary/advance-directive-term.html

Advance Directive

A legal document that allows you to set out written wishes for your medical care and to name a person to make sure those wishes are carried out. (See also: living will, durable power of attorney for health care)

https://www.nolo.com/dictionary/durable-power-of-attorney-for-health-care-term.html

Durable Power Of Attorney For Health Care

A legal document that you can use to give someone permission to make medical decisions for you if you are unable to make those decisions yourself. The person you name to represent you may be called your agent, attorney-in-fact, health care proxy, patient advocate, or something similar, depending on where you live.

https://www.nolo.com/dictionary/living-will-term.html

Living Will

A legal document in which you state your wishes about the types of medical care you do or do not want if you are unable to speak for yourself. This document may go by many other names, including health care directive, advance directive, declaration, or directive to physicians.

https://resources.lawinfo.com/estate-planning/maryland/what-is-the-difference-between-a-living-will.html

What Is The Difference Between A Living Will And An Advance Directive?

A living will is a more limited type of advance directive because you only make decisions about lifesustaining procedures in the event that your death from a terminal condition is imminent despite the application of lifesustaining procedures or you are in a persistent vegetative state (permanent unconsciousness). The advance directive provides you with many more options, including the naming of a health care agent. With the advance directive, you can also make decision about lifesustaining procedures in the event of terminal condition, persistent vegetative state AND endstage condition. If you decide to make decisions about lifesustaining procedures in Part B of the advance directive, you should NOT fill out the living will too.

DNR (Do Not Resuscitate) & POLST (Physician Orders for Life-Sustaining Treatment)

https://www.nolo.com/legal-encyclopedia/dnr-polst-forms.html

DNR and POLST Forms

In an emergency, will your caregivers know your healthcare wishes? By Betsy Simmons Hannibal, Attorney

Living wills and health care powers of attorney are essential documents for anyone who wants to put their health care wishes in writing. However, these health care directives may not be immediately available in an emergency. You may want to also make a Do Not Resuscitate (DNR) order because it will be more easily apparent to emergency response teams. Some states are supplementing or replacing DNR orders with a similar form, often known as a POLST form. This article discusses both documents.

DNR Orders

A DNR order tells emergency medical personnel that you do not wish to be administered cardiopulmonary resuscitation (CPR). DNR orders are used both in hospitals and in situations where a person might require emergency care outside of the hospital. In some states, DNR orders go by a different name, such as "Comfort One." In other states, if you are using the document outside of a hospital or other health care facility, the document may simply be called a "DNR form." Here, we use "DNR order" because that is the most common name for the document.

You may want to consider a DNR order if you:

- have a terminal illness
- are at significant risk for cardiac or respiratory arrest, or
- have strong feelings against the use of CPR under any circumstances.

In most states, any adult may secure a DNR order.

Because emergency response teams must act quickly in a medical crisis, they often do not have the time to determine whether you have a valid health care directive explaining treatments you want provided or withheld. If they do not know your wishes, they must provide you with all possible life-saving measures. But if emergency care providers see that you have a valid DNR order—which is often made apparent by an easily identifiable bracelet, anklet or necklace—they will not administer CPR.

If you ask to have CPR withheld, you will not be given:

- chest compression
- electric shock treatments to the chest
- tubes placed in the airway to assist breathing
- artificial ventilation, or
- cardiac drugs.

If you want a DNR order, or if you would like to find out more about DNR orders, talk with a doctor. In most states, a doctor's signature is required to make the DNR valid—he or she will often need to obtain and complete the necessary paperwork. If the doctor does not have the form or other information you need, call the Health Department for your state and ask to speak with someone in the Division of Emergency Medical Services.

POLST Forms

Many states are starting to use a form that is similar to a DNR order, but differs in a few important ways. The form is most often called Physician Orders for Life-Sustaining Treatment (POLST), though some states use other names, such as Physician Orders for Scope of Treatment (MOST), Clinician Orders for Life-Sustaining Treatment (COLST), Medical Orders for Life-Sustaining Treatment (MOLST), Medical Orders for Scope of Treatment (MOST), or Transportable Physician Orders for Patient Preferences (TPOPP). A POLST form may be used in addition to—or instead of—a DNR order.

Like a DNR order, a POLST tells emergency medical personnel and other medical providers whether or not to administer cardiopulmonary resuscitation (CPR) in case of emergency. A POLST is often prepared to ensure that different health care facilities and service providers (including EMS personnel) understand a patient's wishes. In most states, a POLST form is printed on brightly colored paper so it will easily stand out in a patient's medical records. To be valid, the form must be signed by a doctor or other approved health care professional.

Unlike a DNR order, a POLST form includes directions about life-sustaining measures—such as intubation, antibiotic use and feeding tubes—in addition to CPR. The POLST form helps to ensure that medical providers will understand your wishes at a glance, but it is *not* a substitute for a thorough and properly prepared health care directive.

When you enter a hospital, hospice, or other health care facility, a member of the staff may ask whether you want to complete a POLST form. If not, you can ask for one.

To learn more about POLST forms, see POLST Forms in Your State.

What to Do After Making a DNR Order or POLST Form

If you obtain a DNR order or make a POLST form, discuss your decision with your family or other caretakers. If you are keeping a DNR form at home, be sure that your loved ones or caretakers know where it is. Even if you are wearing identification, such as a DNR bracelet or

necklace, keep your form in an obvious place. You might consider keeping it by your bedside, on the front of your refrigerator, in your wallet or in your suitcase if you are traveling. If your form is not apparent and immediately available, or if it has been altered in any way, CPR will most likely be performed.

Learn more about Health Care Directives and Getting Your Affairs in Order

https://www.nolo.com/legal-encyclopedia/do-not-resuscitate-orders.html

DNR (Do Not Resuscitate)

Do-Not-Resuscitate Orders

For the elderly or ill, a DNR order can help ensure death with dignity. By Shae Irving, J.D.

Given how much of TV is given over to medical emergencies, you've probably heard of "do-not-resuscitate" or DNR orders. Depending on your health and your preferences, you may want to prepare a DNR order when you're thinking about other end-of-life documents.

The Role of the DNR

A "prehospital" or "out of hospital" DNR order contains directions for emergency medical personnel who might treat you if you stop breathing, or your heart stops beating, when you haven't been admitted to a hospital. It tells them that you do NOT want them to use cardiopulmonary resuscitation (CPR), artificial breathing tubes, electric heart shocks, or other invasive emergency techniques on you. (If you are admitted to a hospital, you can get another DNR order that becomes part of your medical chart.)

DNR orders affect only resuscitation of someone who has stopped breathing or has no heartbeat. They don't have any effect on treatment while you're still breathing. For example, unless your heartbeat and breathing had actually stopped, emergency medical services providers would still try to keep you warm and comfortable, stop any bleeding, and alleviate your pain.

You can express your wishes about CPR in an advance directive, but in an emergency, this document may not be available. And even if emergency responders had access to your advance directive, they probably wouldn't take the time to read it.

As a result, first responders who rush to help someone who has collapsed typically don't know anything about the person's preferences for treatment. They simply do everything they can. The same is true for emergency room staff. The result can be extremely invasive procedures such as intubation and ventilation and CPR.

Should You Obtain a DNR?

Unlike an advance directive and healthcare power of attorney, a DNR order is not a document everyone needs. Make a prehospital DNR order only if you don't want CPR or other extraordinary measures used on you if you collapse at home or in public.

CPR can save lives, but success rates (especially outside of hospitals) are not high. If you are seriously ill, CPR can make things worse; it may leave you brain-damaged or with painful injuries. (For one physician's view on the ineffectiveness of CPR on patients who are old or ill, see the thoughtful essay "How Doctors Die.")

Typically, people consider a DNR if they have a terminal illness or are at a high risk for cardiac or respiratory arrest. In the words of the Texas law authorizing DNR orders, the document serves allow a person "to forgo resuscitation attempts and … have a natural death with peace and dignity."

You can revoke a DNR order at any time.

Making the (DNR) Document—and Making Sure It Gets Used
A prehospital DNR order is generally a simple, one-page document; you don't need a lawyer to prepare it. You do, however, need to talk to your physician, who will sign your DNR. In some states, adult witnesses or a notary public must also watch you sign the order.

Many states have their own forms; in others, the form can be written out. Your doctor should be able to provide the paperwork. You can find many states' forms (Illinois, New York, and Texas, for example) online at the state health department's website.

Be sure to follow whatever rules your state imposes—for example, in Florida, a DNR must be printed out on yellow paper. If it's not, it's not legally valid and emergency medical services providers don't have to honor it. If you move to another state (or spend significant time there), get a DNR order that complies with state law.
A prehospital DNR order won't have any effect unless emergency medical personnel see it before they begin CPR. If you have a DNR order, keep a copy in a prominent place—by your bedside or on the refrigerator, where emergency medical staff may look for medication lists. Also keep one in your wallet, even though emergency responders probably won't look there. When you travel, take a copy in your suitcase and make sure whomever you're with knows where it is. You can also buy bracelets that alert emergency medical personnel that you have a DNR.

POLST Forms
Some states now offer another form, called a Physician Orders for Life-Sustaining Treatment (POLST), which combines features of a DNR and an advance medical directive. On a POLST, you can state your wishes about resuscitation and address treatment issues as well. You can find out more about these forms, including whether your state offers a Physicians Orders for Life Sustaining Treatment Form on Nolo.com.

To learn more about otherways to document your health care wishes, go to the Living Wills & Medical Powers of Attorney section of Nolo.com.

POLST or Physician Orders for Life-Sustaining Treatment – see information above at DNR or Do Not Resuscitate

https://www.nolo.com/legal-encyclopedia/californias-physician-orders-life-sustaining-treatment-polst-form.html

California's Physician Orders for Life-Sustaining Treatment (POLST) Form By Shae Irving, J.D.

A POLST form describes health care wishes for someone facing a life-threatening medical condition.

You may have heard about a new kind of health care directive in California, called a Physician Orders for Life-Sustaining Treatment (POLST) form. Here, we discuss what a POLST form is and when you need one.

What Is a POLST Form?

A POLST form is a doctor's order that helps you keep control over medical care at the end of life. Like a Do Not Resuscitate (DNR) order, the form tells emergency medical personnel and other health care providers whether or not to administer cardiopulmonary resuscitation (CPR) in the event of a medical emergency. A POLST form may be used in addition to -- or instead of -- a DNR order. The POLST form may also provide other information about your wishes for end-of-life health care.

How to Make a POLST Form

A health care professional can help you create a POLST form if you enter a medical facility or health care setting -- such as a hospital, nursing home, or hospice care in a facility or at home. If a member of the medical staff does not ask you whether you want to create a POLST form, you may ask for one.

To be legal, a POLST form must be signed by:

- a doctor, or a nurse practitioner or physician assistant acting under the supervision of the doctor, and
- you or your legally appointed health care representative.

In California, a POLST form is usually printed on bright pink paper so it will easily stand out in your medical records. The form travels with you if you move from one health care setting to another. You can change it or cancel it at any time.

How Does a POLST Form Differ From Other Health Care Directives?

A POLST form differs from a DNR order in one important way: A POLST form also includes directions about life-sustaining measures in addition to CPR, such as intubation, antibiotic use, and feeding tubes. The POLST form helps medical providers understand your wishes at a glance, but it is *not* a substitute for a properly prepared advance health care directive. An advance directive provides more information than a POLST form, including details about your health care agent, more complete health care wishes, and your preferences for organ donation.

Which Health Care Directives Do You Need?

You need to consider a POLST only if you're facing a life-threatening medical condition. If you're healthy, you need only an advance directive to provide a full set of wishes for your treatment in the event of an unexpected accident or medical crisis.

On the other hand, a patient diagnosed with a terminal illness or frailty that requires care in a medical setting -- or ongoing care at home -- may need a POLST in addition to a traditional health care directive. That's because an advance directive may not be enough to prevent medical personnel from resuscitating a patient in an emergency. For that, it's important to have a medical order such as a POLST or DNR form. If you feel strongly that you don't want emergency measures at the end of life -- or if you're caring for someone who feels that way -- find out about making a POLST in addition to an advance health care directive.

For details about making an advance directive, see California Living Wills and Advance Health Care Directives: What You Need to Know.

For More Information
To learn more, and to view an example of the California POLST form, visit POLST California. (From that website, you may download the form in English or about a dozen other languages.) To prepare a POLST form for yourself or a loved one, talk to your doctor.

For general information about how to document your health care wishes, see the Living Wills & Medical Powers of Attorney section of Nolo.com. For more on California estate planning issues, see our section on California Estate Planning.

Estate Plan (several links because it can be so involved)

What is Estate Planning?
https://www.estateplanning.com/What-is-Estate-Planning/

Believe it or not, you have an estate. In fact, nearly everyone does. Your estate is…everything you own— your car, home, other real estate, checking and savings accounts, investments, life insurance, furniture, personal possessions. No matter how large or how modest, everyone has an estate and something in common—you can't take it with you when you die.

When that happens—and it is a "when" and not an "if"—you probably want to control how those things are given to the people or organizations you care most about. To ensure your wishes are carried out, you need to provide instructions…
That is estate planning—making a plan in advance and naming whom you want to receive the things you own after you die. However, good estate planning is much more than that. *See online article for more. Link above.*

What is Estate Planning?
http://estate.findlaw.com/planning-an-estate/what-is-estate-planning.html?version=2
Estate planning is one of the most important steps any person can take to make sure that their final property and health care wishes are honored, and that loved ones are provided for in their absence. Though often overlooked or put off in favor of more immediate concerns, a comprehensive estate plan can resolve a number of legal questions that arise whenever anyone dies: What is the state of their financial affairs? What real and personal property do they own? Who gets what? Does a personal guardian need to be appointed to care for minor children? How much tax will need to be paid in order to transfer property ownership? What funeral arrangements are appropriate? Below you will find a brief overview of estate planning including a definition of basic terminology, where to go to do additional research, and how to find an experienced estate planning attorney in your area.

What is an "Estate"?
Your "estate" consists of all property owned by you at the time of your death, including:

- Real estate
- Bank accounts
- Stocks and other securities,
- Life insurance policies,
- Personal property such as automobiles, jewelry, and artwork.
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How Can an Estate Plan Help?
Regardless of your age, or the size and complexity of your estate, an estate plan can accomplish the following:

- Identify the family members and other loved ones that you wish to receive your property after your death.
- Ensure that your property will be transferred to those you have identified, as quickly and with as few legal hurdles as possible.
- Minimize the amount of taxes that will need to be paid in order for your property to pass to others after your death.
- Avoid the time and costs associated with the probate process by utilizing estate planning devices like living trusts and "payable on death" bank accounts.
- Dictate the kinds of life-prolonging medical care you wish to receive should you be unable to make your wishes known when the time comes.
- Set forth the kind of funeral arrangements you would like, and how related expenses are to be paid.

12 Simple Steps to an Estate Plan
https://www.nolo.com/legal-encyclopedia/12-simple-steps-estate-plan-29472.html
A checklist to help you take care of your family by making a will, power of attorney, living will, funeral arrangements, and more. By Mary Randolph, J.D.

1. Make a will.
In a will, you state who you want to inherit your property and name a guardian to care for your young children should something happen to you and the other parent. For more information, see The Simple Will: No Frills, No Fuss, No Anxiety or create an Online Will.

2. Consider a trust.
If you hold your property in a living trust, your survivors won't have to go through probate court, a time-consuming and expensive process. For more information, see the Living Trust FAQ or create a Trust Online.

3. Make health care directives.
Writing out your wishes for health care can protect you if you become unable to make medical decisions for yourself. Health care directives include a health care declaration ("living will") and a power of attorney for health care, which gives someone you choose the power to make decisions if you can't. (In some states, these documents are combined into one, called an advance health care directive.) For more information, see The Living Will and Power of Attorney for Health Care: An Overview.

4. Make a financial power of attorney.
With a durable power of attorney for finances,you can give a trusted person authority to handle your finances and property if you become incapacitated and unable to handle your own affairs. The person you name to handle your finances is called your agent or attorney-in-fact (but doesn't have to be an attorney). For more information, see Financial Powers of Attorney: Do You Need One?

5. Protect your children's property.
You should name an adult to manage any money and property your minor children may inherit from you. This can be the same person as the personal guardian you name in your will.For more information, see Leaving an Inheritance for Children.

6. File beneficiary forms.
Naming a beneficiary for bank accounts and retirement plans makes the account automatically

"payable on death" to your beneficiary and allows the funds to skip the probate process. Likewise, in almost all states, you can register your stocks, bonds, or brokerage accounts to transfer to your beneficiary upon your death. For more information, see How to Avoid Probate or *8 Ways to Avoid Probate*.

7. Consider life insurance.
If you have young children or own a house, or you may owe significant debts or estate tax when you die, life insurance may be a good idea. For more information, see Do I Need Life Insurance? and Using Life Insurance to Provide for Your Kids.

8. Understand estate taxes.
Most estates -- more than 99.7% -- won't owe federal estate taxes. For deaths in 2016, the federal government will impose estate tax at your death only if your taxable estate is worth more than $5.45 million. (This exemption amount rises each year to adjust for inflation.) Also, married couples can transfer up to twice the exempt amount tax-free, and all assets left to a spouse (as long as the spouse is a U.S. citizen) or tax-exempt charity are exempt from the tax. (For more information, see Estate and Gift Tax FAQ.)

9. Cover funeral expenses.
Rather than a funeral prepayment plan, which may be unreliable, you can set up a payable-on-death account at your bank and deposit funds into it to pay for your funeral and related expenses. For more information on prepayment plans and alternatives, see The Prepaid Funeral and its Perils.

10. Make final arrangements.
Make your wishes known regarding organ and body donation and disposition of your body -- burial or cremation. For more information, see Final Arrangements FAQ.

11. Protect your business.
If you're the sole owner of a business, you should have a succession plan. If you own a business with others, you should have a buyout agreement. For more information, see Plan Ahead for Changes in Partnership Ownership.

12. Store your documents.
Your attorney-in-fact and/or your executor (the person you choose in your will to administer your property after you die) may need access to the following documents:

- will
- trusts
- insurance policies
- real estate deeds
- certificates for stocks, bonds, annuities
- information on bank accounts, mutual funds, and safe deposit boxes
- information on retirement plans, 401(k) accounts, or IRAs
- information on debts: credit cards, mortgages and loans, utilities, and unpaid taxes
- information on funeral prepayment plans, and any final arrangements instructions you have made.

For more information, see Practical Estate Planning: Organize Your Documents.

Payable on Death (see also Transfer on Death)

http://www.investopedia.com/terms/p/payableondeath.asp
An arrangement between a bank or credit union and a client that designates beneficiaries to receive all the client's assets. The immediate transfer of assets is triggered by the death of the client. Also referred to as a "totten trust."

POD accounts are created by filling out the proper forms at your bank or credit union. It is a cost-free service that allows for the transfer of all checking and savings accounts, security deposits, savings bonds and other deposit certificates. A POD account is very similar to a transfer-on-death arrangement, but deals with a person's bank assets instead of their stocks, bonds, mutual funds or other assets. Both POD and TOD agreements offer quick means of asset dispersement, as both avoid the probate process, which can take several months.

More info, including pros and cons, here: https://www.nolo.com/legal-encyclopedia/free-books/avoid-probate-book/chapter1-1.html

Power of Attorney (several links because of different kinds)

https://www.nolo.com/legal-encyclopedia/durable-power-of-attorney-health-finances-29579.html
The Durable Power of Attorney: Health Care and Finances
Understand medical and financial powers of attorney and why you need to prepare both.
By Shae Irving, J.D.

What if an accident or illness -- or simply the effects of aging -- left you unable to tell your doctors what kind of medical treatment you want, or made it impossible to manage your financial affairs? No one likes to consider such grim possibilities, but the truth is that almost every family will eventually face this kind of difficulty. While medical and financial powers of attorney can't prevent accidents or keep you young, they can certainly make life easier for you and your family if times get tough.

What Is a Power of Attorney?
A power of attorney is a legal document that gives someone you choose the power to act in your place. In case you ever become mentally incapacitated, you'll need what are known as "durable" powers of attorney for medical care and finances. A durable power of attorney simply means that the document stays in effect if you become incapacitated and unable to handle matters on your own. (Ordinary, or "nondurable," powers of attorney automatically end if the person who makes them loses mental capacity.)
With a valid power of attorney, the trusted person you name will be legally permitted to take care of important matters for you -- for example, paying your bills, managing your investments, or directing your medical care -- if you are unable to do so yourself.

Taking the time to make these documents is well worth the small effort it will take. If you haven't made durable powers of attorney and something happens to you, your loved ones may have to go to court to get the authority to handle your affairs.

To cover all of the issues that matter to you, you'll probably need two separate documents: one that addresses health care issues and another to take care of your finances. Fortunately, powers of attorney usually aren't difficult to prepare.

Medical Power of Attorney

A medical power of attorney is one type of health care directive -- that is, a document that set out your wishes for health care if you are ever too ill or injured to speak for yourself.
When you make a medical power of attorney -- more commonly called a "durable power of attorney for health care" -- you name a trusted person to oversee your medical care and make health care decisions for you if you are unable to do so. Depending on where you live, the person you appoint may be called your "agent," "attorney-in-fact," "health care proxy," "health care surrogate," or something similar.

Your health care agent will work with doctors and other health care providers to make sure you get the kind of medical care you wish to receive. When arranging your care, your agent is legally bound to follow your treatment preferences to the extent that he or she knows about them.

To make your wishes clear, you can use a second type of health care directive -- often called a "health care declaration" or "living will" -- to provide written health care instructions to your agent and health care providers. To make this easier, some states combine a durable power of attorney for health care and health care declaration into a single form, commonly called an "advance health care directive."

For more information about preparing documents to direct your health care, see the article The Living Will and Power of Attorney for Health Care: An Overview.

Financial Power of Attorney

A financial power of attorney is a power of attorney you prepare that gives someone the authority to handle financial transactions on your behalf. Some financial powers of attorney are very simple and used for single transactions, such as closing a real estate deal. But the power of attorney we're discussing here is comprehensive; it's designed to let someone else manage all of your financial affairs for you if you become incapacitated. It's called a "durable power of attorney for finances."

With a durable power of attorney for finances, you can give a trusted person as much authority over your finances as you like. The person you name is usually called your "agent" or "attorney-in-fact," though he or she most definitely doesn't have to be an attorney.

Your agent can handle mundane tasks such as sorting through your mail and depositing your Social Security checks, as well as more complex jobs like watching over your retirement accounts and other investments, or filing your tax returns. Your agent doesn't have to be a financial expert; just someone you trust completely who has a good dose of common sense. If necessary, your agent can hire professionals (paying them out of your assets) to help out.
To learn more, see the article Durable Financial Power of Attorney: How it Works.

Why You Need Separate Documents for Medical Care and Finances

You may wonder why you can't cover health care matters and finances in just one power of attorney document. Technically, you could -- but it isn't a good idea. Making separate documents will keep life simpler for your agent and others.

For example, your health care documents are likely to be full of personal details, and perhaps feelings, that your financial broker doesn't need to know. Likewise, your health care professionals don't need to be burdened with the details of your finances.

That said, even though you should make separate power of attorney documents for health care and finances, it makes a good deal of sense to name the same agent under both documents. If not, you must be sure to name people who will work well together.

To learn more about durable powers of attorney, see *Plan Your Estate*, by Denis Clifford (Nolo).

The Problem with Springing Powers of Attorney
https://www.nolo.com/legal-encyclopedia/the-problem-springing-powers-attorney.html
You may have heard of "springing" powers of attorney – that is, powers of attorney that "spring" into effect when you become incapacitated. Many people like the idea of these documents, because cause they're uncomfortable with making their power of attorney effective while they can still manage their own affairs. However, in practice, using a springing power of attorney can cause more problems than it solves. For example:

- **Delay**. Instead of being able to use the power of attorney as soon as the need arises, the agent must get a "determination" of your incapacity before using the document. In other words, someone – usually a doctor – must certify that you can no longer make your own decisions. This could take days or weeks and disrupt the handling of your finances.
- **HIPAA/Privacy issues**. State and federal laws, including the Health Insurance and Portability Act (HIPAA), protect your right to keep medical information private. This means that doctors can release information about your medical condition only under very limited conditions. To certify your incapacity, your agent will need to provide proof that the doctor may legally release information about you to your agent. You may be able to resolve this issue by completing a release form before you become incapacitated. However your agent could still run into problems caused by bureaucracy or by the doctor's confusion about what is legally required. Navigating these issues could cause serious headaches and delays for your agent.
- **Definition of incapacity**. To state the obvious, if your power of attorney requires you to be incapacitated, then you'll have to be incapacitated before your agent can help you manage your finances. But what does "incapacity" mean, and to whom? If you make a springing power of attorney, your document will have to define incapacity. Then, when it comes time for the determination, your doctor will have to agree that you meet that definition. But how do you know now what health changes will cause you to need help managing your finances? What if you want help before you become incapacitated as defined by your document? What if you have some good days and some bad days? What if your agent or your lawyer believes you no longer have capacity, but your doctor disagrees? These gray areas may make it difficult, if not impossible, for your agent to help you when you need it.

You can avoid all of these problems by making a durable power of attorney that takes effect as soon as you sign it. Just make sure your agent understands exactly when and how you want the document to be used. This degree of trust is a basic requirement for naming an agent. If you don't trust your agent to handle the power of attorney exactly as you intend, you should choose someone else to handle your finances.If you still feel that you want a springing power, see a lawyer for help. An experienced lawyer can draft a power of attorney that is more closely tailored to your specific situation and concerns.
Read more about Powers of Attorney for Finances.

Probate

https://www.nolo.com/legal-encyclopedia/probate-faq.html
https://www.nolo.com/dictionary/probate-term.html

QUESTIONS

- What is probate?
- How does the probate process work?
- Does all property have to go through probate when a person dies?
- Who is responsible for handling probate?
- Should I plan to avoid probate?

What is probate?

Probate is a legal process that takes place after someone dies. It includes:

- proving in court that a deceased person's will is valid (usually a routine matter)
- appointing someone to handle the deceased person's affairs
- identifying and inventorying the deceased person's property
- having the property appraised
- paying debts and taxes
- identifying heirs
- distributing the remaining property as the will (or state law, if there's no will) directs.

Typically, probate involves paperwork and court appearances by lawyers. The lawyers and court fees are paid from estate property, which would otherwise go to the people who inherit the deceased person's property. To see everything Nolo has to offer when it comes to estates, executors, and probate, visit our Wills, Trusts & Estates Center.

Formal probate is a costly, time-consuming process that is best avoided if possible. Most states now offer simplified probate procedures for estates of relatively small value. (See also: administrator, executor, personal representative)

How does the probate process work?

Probate usually works like this: After your death, the person you named in your will as executor -- or, if you die without a will, the person appointed by a judge -- files papers in the local probate court. The executor proves the validity of your will and presents the court with lists of your property, your debts, and who is to inherit what you've left. Then, relatives and creditors are officially notified of your death.

Your executor must find, secure, and manage your assets during the probate process, which commonly takes a few months to a year. Depending on the contents of your will, and onthe amount ofyour debts, the executor may have to decide whether or not to sell your real estate, securities, or other property. For example, if your will makes a number of cash bequests but your estate consists mostly of valuable artwork, your collection might have to be appraised and sold to produce cash. Or, if you have many outstanding debts, your executor might have to sell some of your property to pay them.

In most states, immediate family members may ask the court to release short-term support funds while the probate proceedings lumber on. Then, eventually, the court will grant your executor permission to pay your debts and taxes and divide the rest among the people or organizations named in your will. Finally, your property will be transferred to its new owners.

To learn more about the probate process--and reasons for avoiding it--see Nolo's article Why Avoid Probate?

Does all propertyhave to go through probate when a person dies?
No. Most states allow a certain amount of property to pass free of probate or through a simplified probate procedure. In California, for example, you can pass up to $100,000 of property without probate, and there's a simple transfer procedure for any property left to a surviving spouse.
In addition, property that passes outside of your will -- say, through joint tenancy or a living trust -- is not subject to probate. For a discussion of the most popular probate-avoidance methods, see Nolo's article How to Avoid Probate.

Who is responsible for handling probate?
In most circumstances, the executor named in the will takes this job. If there isn't any will, or the will fails to name an executor, the probate court names someone (called an administrator) to handle the process. Most often, the job goes to the closest capable relative or the person who inherits the bulk of the deceased person's assets.

If no formal probate proceeding is necessary, the court does not appoint an estate administrator. Instead, a close relative or friend serves as an informal estate representative. Normally, families and friends choose this person, and it is not uncommon for several people to share the responsibilities of paying debts, filing a final income tax return and distributing property to the people who are supposed to get it.

For details on the probate process in your state, see Nolo's articles Probate Shortcuts in Your State and Avoiding Probate in Your State.

Should I plan to avoid probate?
Probate rarely benefits your beneficiaries, and it always costs them money and time. Probate makes sense only if your estate will have complicated problems, such as many debts that can't easily be paid from the property you leave.

Whether to spend your time and effort planning to avoid probate depends on a number of factors, most notably your age, your health, and your wealth. If you're young and in good health, adopting a complex probate-avoidance plan now may mean you'll have to re-do it as your life situation changes. And if you have very little property, you might not want to spend your time planning to avoid probate because your property may qualify for your state's simplified probate procedure.
But if you're in your 50s or older, in ill health, or own a significant amount of property, you'll probably want to do some planning to avoid probate.

http://legal-dictionary.thefreedictionary.com/probate
Probate is…
The court process by which a Will is proved valid or invalid. The legal process wherein the estate of a decedent is administered.

When a person dies, his or her estate must go through probate, which is a process overseen by a probate court. If the decedent leaves a will directing how his or her property should be distributed after death, the probate court must determine if it should be admitted to probate and given legal effect. If the decedent dies intestate—without leaving a will—the court appoints a Personal Representative to distribute the decedent's property according to the laws of Descent

and Distribution. These laws direct the distribution of assets based on hereditary succession.

In general, the probate process involves collecting the decedent's assets, liquidating liabilities, paying necessary taxes,and distributing property to heirs. Probate procedures are governed by state law and have been the subject of debate and reform since the 1960s. The Uniform Probate Code (UPC) was first proposed in 1969 by the NationalConference of Commissioners on Uniform State Laws and the House of Delegates of the American Bar Association. The prime focus of the UPC is to simplify the probate process. The UPC, which has been amended numerous times,has been adopted in its entirety by 16 states: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan,Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. The other 36 states have adopted some part of the UPC but still retain distinct procedures.

Professional Fiduciary

http://www.fiduciary.ca.gov/forms_pubs/whatsa_pfb.pdf
A Professional Fiduciary is an individual who is entrusted property or power for the benefit of another. He or she serves vulnerable populations, such as the elderly and those who can no longer care for themselves, and is a neutral and objective party that provides overall care for a client. If an individual becomes incapacitated or dies, a Professional Fiduciary can take care of managing an estate. He or she can also serve independent, productive people who need assistance in making sound financial, health care, and day-to-day decisions.

Transfer on Death (see also Payable on Death)

http://www.investopedia.com/terms/t/transferondeath.asp
The transfer on death (TOD) designation lets beneficiaries receive assets at the time of the person's death without going through probate. This designation also lets the account holder or security owner specify the percentage of assets each designated beneficiary receives, which helps the executor distribute the person's assets after death. With TOD registration, the named beneficiarieshave no access to or control over a person's assets as long as the person is alive.

Trusts

Basic Information About Trusts
https://www.thebalance.com/what-is-the-definition-of-a-trust-3505391
A Beginner's Guide to Trusts by Julie Garber, Updated March 21, 2017

The concept of a trust fund carries a certain mystique, but exactly what is a trust? In simplest terms, it's a legal agreement between three parties:

- The trustmaker**:** This is the individual who creates the trust agreement, also commonly referred to as the grantor, trustor or settlor.
- The trustee: This person or entity is responsible for managing the property the trustmaker transfers into and titles in the name of the trust.
- The beneficiary or beneficiaries: These people or entities receive the benefits of the property titled in the name of the trust.

The trustmaker transfers ownership of certain assets to the trust and the trustee, and the trustee then manages them for the benefit of the beneficiary or beneficiaries.

What Is a Living Trust?

A living trust is one that is created and goes into effect during the trustmaker's lifetime. It's sometimes referred to as an "inter vivos" trust.

Some trusts don't go into effect until after the trustmaker has died. These are "testamentary" trusts. A testamentary trust is typically formed by the executor of the decedent's estate when his last will and testament names the trust as a beneficiary. The will directs that his property should be moved into the trust at his death.

Revocable Living Trusts

In most cases, the trustmaker, trustee and beneficiary of a revocable trust are the same person. Is your balance way off? Your account balance, that is. Here's how much money the experts say you should keep in your checking and savings accounts. GET IT RIGHT.
https://www.thebalance.com/how-much-to-keep-in-checking-and-savings-315474

The trust agreement may cite other beneficiaries as well, those who will inherit from the trust after the trustmaker's death. The two most common purposes of a revocable living trust are to plan for mental disability and to avoid probate of the assets the trustmaker funds into his trust before his death.

The creator of the trust can name someone else, called a "successor trustee" to take over should he become mentally incapacitated. This avoids having a court name a conservator or guardian to take over his financial affairs when he's unable to.

Irrevocable Living Trusts

In most cases, the trustmaker can't act as trustee if he forms an irrevocable trust. The most common use of an irrevocable trust is to move assets out of the trustmaker’s name to the next generation for their use and enjoyment, which in turn reduces the value of the trustmaker’s estate for estate tax purposes.

You cannot take your property back after you transfer it into an irrevocable trust. The trustmaker reserves the right to dissolve or change his revocable trust at any time, but an irrevocable trust is, for the most part, forever.

Other Types of Trusts

All living trusts are either revocable or irrevocable, but they can be designed to meet specific purposes as well within these frameworks.

- An irrevocable life insurance trust or ILIT holds only an insurance policy on the trustmaker's life. The policy is owned by the trust so its proceeds are not generally included in the gross value of the decedent's estate for estate tax purposes.
- A special needs trust is set up to provide for a disabled beneficiary in such a way that it doesn't compromise his entitlement to Supplemental Security Income or Medicaid benefits
- A spendthrift trust gives the trustee discretion as to how and when distributions should be made to a beneficiary who isn't financially responsible, or to safeguard the inheritance in the event the beneficiary divorces.

If you want to form a trust for a specific concern or reason, speak with an estate planning attorney. Almost certainly, there's a trust out there to meet your needs.

Revocable Living Trusts in California

http://statelaws.findlaw.com/california-law/revocable-living-trusts-in-california.html?version=2

The probate process is used to determine what to do with a person's property after they pass, unless there is another method already in place, which is where a trust comes into play. A trust is a common tool used to avoid having to go through probate. However, contrary to popular belief, avoiding probate does not avoid estate taxes, and estate taxes must be paid just as they would when someone has a will. This article offers general information about one specific type of trust used fairly often in California, the revocable living trust.

The Purpose of a Revocable Living Trust

The basic purpose of a living trust is to allow someone to maintain control of their property while making sure the property is managed according to their wishes upon death or incapacity. Revocable living trusts are used by thousands of people in California to avoid having their estates go through the probate process. In California, estates with a market value over $150,000 may be subject to the full probate process, and a simplified process is available for estates worth less. It probably should come as no surprise to Californians that most who own homes in the golden state are likely to have an estate worth more than $150,000.

What is a Trust?

A basic trust is a relationship between three people: a grantor, a beneficiary, and a trustee. The grantor gives property to the trustee to manage for the benefit of the beneficiary, according to certain rules written in the trust document. These three roles can be held by the same person. Although it may sound strange, a person can give property to themselves to manage for their own benefit. The only way that this legal relationship avoids probate is if subsequent beneficiaries are named in the trust document, who will receive the property after the original beneficiary passes.

What is a Living Trust?

A living trust is a type of trust that operates when the grantor is still alive (as opposed to a trust made in a will, which is called a testamentary trust). If the grantor wants the right to change the terms of the trust or end the trust, we call the trust a revocable trust. The living trust can be created with a legal document that includes instructions about who you want to leave your assets to (subsequent beneficiaries), in addition to who will manage your assets and how they will be managed if you become unable to manage them (alternate trustees). The trust document will contain instructions on how to manage the property after you (the initial trustee) pass.

How is a Trust Funded?

Given the nature of the trust relationship, every trust must manage specific property that is listed in the trust document. When you establish a living trust, the next step will involve transferring assets into the trust, such as bank accounts, real estate, and stocks. After the transfer, these assets still remain in your control, because you are the original trustee.

What Happens When I Die?

When you die, your co-trustee or successor trustee will carry out the instructions set forth in your trust, distributing and managing your assets for the named beneficiaries. The beneficiaries of the living trust can be people and/or organizations, such as family members, friends, religious organizations, and educational institutions. The assets held in your living trust will be subject to federal and state taxation. However, your attorney can add provisions in your living trust to help reduce and possibly even eliminate taxes, depending on the size of your estate. If your primary

concern is to avoid burdensome federal estate taxes, you may want to consider alternative options such as an irrevocable trust.

Conclusion

A revocable living trust can be a valuable planning tool to help you maintain control over your assets during your lifetime and at death. A living trust may be used as a substitute for a will, allowing flexibility for major life changes such as marriage, divorce, and children. A living trust can also help you reduce or eliminate probate and administrative expenses when your estate is settled. By creating a living trust, an experienced attorney may be able to lower estate costs and avoid unnecessary taxation at the federal and state levels.

If you would like to know more about revocable living trusts, and whether they are the best option for you, there are many estate planning attorneys throughout California who may be able to help.

Wills

What Is a Will?

https://www.nolo.com/legal-encyclopedia/what-is-will.html

Many people know they need a will, but not everyone knows what a will is or what it does.

By Betsy Simmons Hannibal, Attorney

Most people know that they should have a will, but many don't know what a will is and how it works.

A will, sometimes called a "last will and testament," is a document that states your final wishes. It is read by a county court after your death, and the court makes sure that your final wishes are carried out.

What a Will Does

Most people use a will to leave instructions about what should happen to their property after they die. However, you can also use a will to

- Name an executor.
- Name guardians for children and their property.
- Decide how debts and taxes will be paid.
- Provide for pets.
- Serve as a backup to a living trust.

You *shouldn't* try to use a will to:

- Put conditions on your gifts. (I give my house to Susan if she finishes college.)
- Leave instructions for final arrangements.
- Leave property for your pet.
- Make arrangements for money or property that will be left another way. (Property in a trust or property for which you've named a pay-on-death beneficiary.)

To learn more, read What a Will Won't Do. If you want to do any of these things, get help from a lawyer.

What Are the Legal Requirements of a Will

There are very few legal requirements for wills. To make a will in any U.S. state, you must:

- Know what property you have and what it means to leave it to someone after your death. Legally, this is called having "capacity" and it is also known as being "of sound mind."

- Create a document that names beneficiaries for at least some of your property.
- Sign the document.
- Have the document signed by two witnesses.

No state requires your will to be notarized, although you may use a notarized self-proving affidavit that will make your will easier to get through probate after your death.
A few states allow you to make a handwritten "holographic" wills, that don't have to be signed by witnessed. However, handwritten wills should only be used when you do not have time to make a formal will because they are much more susceptible to challenge after your death.
You can make your will online, quickly and easily, using Nolo's Online Will.

How to Write a Will
You can write a will yourself, or you can hire a lawyer to write one for you. If you write one yourself, you'll want to find a good will template to help you. To learn more about finding and using a good will template read Using a Will Template and Types of Will Templates.
There are no magic words that must be used to create a will. The best advice for writing your own will is to find a good will writing tool to help you. It should help you use clear, unambiguous language to accurately describe your wishes. It should also explain your options and help you decide what to include in your will. For example,

- Do you want to name several levels of executors?
- Do you want to name more than one executor to work together?
- Do you want to name guardians for your children or their property?
- Do you want to create a trust for your children, so that they receive your property when their older than 18?

And a good will making template will help you know when you should see a lawyer for help writing your will. For example, you should talk to a lawyer if you:

- Want to disinherit your spouse or child.
- Are worried that someone might challenge your will.
- Want to provide money and care for pets after your death.
- Want to control what happens to your property long after your death.
- Are worried about estate taxes.

To learn more about will making, read How to Write a Will or The Simple Will.

Pour-Over Wills

https://www.nolo.com/legal-encyclopedia/pour-over-wills.html
This popular kind of will goes hand-in-hand with a living trust.
By Mary Randolph, J.D.

If you've looked into creating a revocable living trust to avoid probate, you may have heard of a "pour-over will." This kind of will is often used with a living trust. Under the terms of a pour-over will, all property that passes through the will at your death is transferred to (poured into) your trust. Then it's distributed to the trust beneficiaries you named while you were alive.

Advantages of Pour-Over Wills
Why have a will that does nothing but transfer property to your trust? (For that matter, why do you need a will at all if you're using a living trust to leave your property?) The answer is that many estate planners think it's a good idea to have all your assets covered by the terms of just one document, the trust document. This arrangement offers several advantages.

Simplicity. When everything is controlled by just one document, the trust, it makes it clear who gets what. It's also easier for the executor and trustee who are in charge of wrapping up your estate after your death.

Completeness. You're not going to transfer everything you own into your living trust. (No one does.) A pour-over will takes care of assets that you don't get around to transferring to the trust before your death.

Privacy. Trusts, unlike wills, are private; they don't become public records after your death, available to anyone who wants to look at them. This keeps the details of who inherits your property more private. (Michael Jackson was just one celebrity who left a will that simply poured all his property into his trust. Reporters and the curious rushed to read the will once it was filed with the court, but learned nothing about who was to inherit.)

Disadvantages of Pour-Over Wills

The main downside to pour-over wills is that (like all wills), the property that passes through them must go through probate. That means that any property headed toward a living trust may get hung up in probate before it can be distributed by the trust. This may force the living trust to go on for months after the death of the will and trust maker. In contrast, property left directly through a living trust can usually be distributed to the beneficiaries within a few weeks after the trust maker's death.

EXAMPLE: Joy transfers her valuable property to her living trust. She also makes a pour-over will, which states that any property she owns at death not specifically left to someone in the will goes to the living trust. When Joy dies, the property left through her will goes to the trust and is distributed to the residuary beneficiary of her living trust, her son Louis. The living trust must be kept going until probate of the will is finished, when property left by the will is poured over into the living trust.

If Joy had simply named Louis as the residuary beneficiary of a plain backup will, the result would have been the same, but the process would have been simpler. The living trust would have been ended a few weeks after Joy's death. And after probate was finished, Louis would have received whatever property passed through Joy's will.

Fortunately, in most cases, not too much property passes through a pour-over will. If you do good job of estate planning, you'll transfer all of your valuable assets to the trust while you're alive. Only the leftovers—things of minor value—should pass under the terms of the will. And if the value of the property that passes under the will (often called the "probate estate") is small enough, your estate may qualify for special "small estate" probate procedures. These procedures are quicker, simpler, and less expensive than regular probate. In most states, they can be used for any kind of property except real estate.

Executor's Duties

Like other wills, a pour-over will nominates someone to serve as executor of the estate—that is, to wrap up the estate after your death. Normally, the executor's duties include gathering the assets, paying debts and taxes, and eventually transferring the assets to the beneficiaries named in the will. In the case of a pour-over will, however, the executor has just one job: to take all assets that pass under the will and put them into the living trust.

You're going to all the trouble of setting a revocable living trust to spare your family the expense and delay of probate. So it would defeat the purpose if a formal probate proceeding were necessary just to get assets into your living trust. But it's a possibility. Unless your estate

qualifies for probate shortcut, assets that pass through the pour-over will still need to go through probate.
You can make a pour-over will online, quickly and easily, using Nolo's Online Will.

Successor Trustee's Duties
Once the assets are held in the name of the trust, they become the responsibility of the successor trustee—the person you named in your living trust to take over at your death or incapacity.
A successor trustee's job is similar to that of an executor, except that that the trustee has control only over trust assets (and has no control over property that's part of the probate estate). Your trustee will collect trust assets, including those transferred under the terms of your pour-over will, and distribute them to the trust beneficiaries. A trustee, unlike an executor, doesn't need a probate court's approval to act.
The trustee will follow the instructions you left in the trust document. If you want all trust assets given to the beneficiaries right away, that's what the trustee will do. If you want the assets (or some of them) to stay in the trust, to be managed for the benefit of children or young adults, the trustee will keep them in the trust. In that case, the trustee will have a much more complicated job, requiring careful management, investment, and spending over a period of years.

What happens if you die without a will?
http://estate.findlaw.com/wills/what-happens-if-i-die-without-a-will-.html?version=2
If you die without a will, it means you have died "intestate." When this happens, the intestacy laws of the state where you reside will determine how your property is distributed upon your death. This includes any bank accounts, securities, real estate, and other assets you own at the time of death. Real estate owned in a different state than where you resided will be handled under the intestacy laws of the state where the property is located.
The laws of intestate succession vary greatly depending on whether you were single or married, or had children. In most cases, your property is distributed in split shares to your "heirs," which could include your surviving spouse, siblings, aunts and uncles, nieces, nephews, and distant relatives. Generally, when no relatives can be found, the entire estate goes to the state.

How an Estate Is Settled If There's No Will: Intestate Succession
https://www.nolo.com/legal-encyclopedia/how-estate-settled-if-theres-32442.html
Intestate succession laws control who inherits property if no will exists.
By Mary Randolph, J.D.

If you're settling the estate of a deceased person who hasn't left a will, you probably have more than a few questions about how the estate will be distributed. First, it's important to understand that many kinds of assets aren't passed by will, such as:

- life insurance proceeds
- real estate, bank accounts, and other assets held in joint tenancy, tenancy by the entirety, or community property with right of survivorship
- property held in a living trust
- funds in an IRA, 401(k), or retirement plan for which a beneficiary was named
- funds in a payable-on-death (POD) bank account
- stocks or other securities held in a transfer-on-death (TOD) account, and
- real estate or vehicles held with a transfer-on-death (TOD) deed or title document.
-

To find out who inherits these types of property, you'll need to locate the documents in which the co-ownership or beneficiary designation was established.

To find out who inherits other assets -- generally, solely owned property for which no beneficiary has been formally named, such as a house -- you'll need to consult state law. Every state has "intestate succession" laws that parcel out property to the deceased person's closest relatives. *More on this in the rest of the online article – link above.*