

Everyone, especially individuals 60 years and over should consider the following Facts, Myths and Legal Planning Tools in preserving their personal autonomy

Consider these Facts:

90% of people say that talking with their loved ones about end-of-life care is important. 27% have actually done so.

Source: *The Conversation Project National Survey (2013)*

About 1 in 8 persons over age 65 suffers from Alzheimer's disease or other forms of dementia. In the over-age 85 population, the number rises to nearly 50 percent.

Source: *Alzheimer's Association, 2008 Alzheimer's Diseases Facts and Figures*

Consider these Myths

(by Charles Sabatino, American Bar Association, Commission on Law and Aging, Washington, D.C., Bifocal, Volume 37 Issue 1. Reprinted by permission of the American Bar Association. All rights reserved.):

Myth #1: You must have a living will to stop treatment near the end of life.

False. Treatment that is no longer helping can be stopped without a living will. Physicians will generally consult with your health care agent or close family when you cannot speak for yourself. Having an advance directive can make the right decision easier and help avoid family disputes.

Myth #2: You have to use your state's statutory form for your advance directive to be valid.

False. Most states do not require a particular form, but they do have witnessing requirements or other special signing formalities that should be followed.

Myth #3: Advance directives are legally binding, so doctors have to follow them.

False. Advance directives are legally recognized document and doctors must respect your known wishes, but doctors can always refuse to comply with your wishes if they have an objection of conscience or consider your wishes medically inappropriate. Then, they have an obligation to help transfer you to another health care provider who will comply.

Myth #4: An advance directive means "Do not treat."

False. No one should ever presume it simply means "Do not treat." An advance directive can express both what you want and what you don't want.

Myth #5: If I name a health care proxy, I give up the right to make my own decisions.

False. Naming a health care agent proxy does not take away any of your authority. You always have the right, while you are still competent, to override the decision of your proxy or revoke the directive.

Myth #6: I should wait until I am sure about what I want before signing an advance directive.

False. Most of us have some uncertainty or ambivalence about what we would want, and our goals of care change over time. A young adult may not be ready to contemplate end of life but that individual can think about and appoint a health care agent in case of serious accident or illness.

Myth #7: Just talking to my doctor and family about what I want is not legally effective.

False. Meaningful discussion with your doctor and family is actually the most important step.

Myth #8: Once I give my doctor a signed copy of my directive, my task is done!

False. You have just started. Make sure your doctor understands and supports your wishes, and you understand your health state, likely futures, and options. You and your proxy should always double-check to make sure your providers are aware of your directive and have a copy.

Myth #9: If I am living at home and my advance directive says I don't want to be resuscitated, EMS will not resuscitate me if I go into cardiac arrest.

Usually False. Your advance directive will usually not help in this situation. If someone dials 911, EMS must attempt to resuscitate you and transport you to a hospital, UNLESS you have an out-of-hospital Do-Not-Resuscitate (DNR) Order.

Myth #10: Advance directives are only for old people.

False. It is true that more older, rather than younger, people use advance directives, but every adult needs one.

	FINANCIAL POWER OF ATTORNEY	TRUST	HEALTH CARE POWER OF ATTORNEY	LIVING WILL
What is it?	A document by which one person (the "principal") gives legal authority to another (called the "agent") to act on behalf of the principal.	An arrangement under which one person or institution called the Trustee holds the title to property for the benefit of other persons called Beneficiaries	This is similar to a Financial Power of Attorney but directed exclusively at health care concerns. It allows you to give instructions about future medical care should you be unable to participate in health care decisions due to serious illness or incapacity. It has other names, such as "health care proxy."	This is a written statement that describes the type of care you wish to receive in the event you suffer from a terminal illness or are in a persistent vegetative state.
What is it good for?	Provides a simple way to appoint an agent(s) whom you want to manage any part or all of your affairs such as financial, personal or both. You can include instructions, guidelines, or limitations as you wish.	Especially useful for lifetime management of property where there is a substantial amount of property, and professional management is desired. May also be written to continue even after your death. Has a high level of acceptance in business and finance community.	Enables you to appoint someone to make any or all health care decisions with specific guidelines outlined in the document. Helps ensure that your doctor and family will know and respect your wishes. It also helps relieve the stress and conflict caused when family have to guess what you would have wanted.	Helps ensure that your wishes are known and carried out. It is different from a Health Care Power of Attorney in that a Living Will does not appoint an agent, and applies to terminal illness or a persistent vegetative state.
Creating	Must be signed and notarized.	There is no special language, but trusts can be complicated and need to be carefully drafted.	Nebraska requires the document be witnessed and signed by two adults or notarized.	Living Will declarations are authorized under Nebraska law by the Rights of the Terminally Ill Act and the Nebraska law includes a sample living will declaration form. The form must be witnessed and signed by two adults or notarized.
Things to think about	Think about what process you want to use for determining when the principal has become "incapacitated." You can define the process – for example, "when a doctor confirms in writing . . ." Caution: Even though your agent must follow certain rules as a "fiduciary," there is no formal oversight of the agent. If there is no one you trust fully to act as your agent, don't use this tool.	<ul style="list-style-type: none"> Trust can be set up as a "standby" to be used only in case of incapacity. A trust can sometimes create problems for public benefit eligibility (Medicaid, SSI). A trust may also have important estate tax consequences and should be drafted in coordination with your will. Beware of high pressure sales tactics about the benefits of Living Trusts. 	<ul style="list-style-type: none"> Choosing your agent is your most important decision. Make sure your agent knows your wishes, values, and preferences and will be a strong advocate for you. If you use a form document, read it carefully & tailor it clearly to express your values and wishes. Make sure your doctor understands & will respect your wishes. The document must be made part of your medical record. 	<ul style="list-style-type: none"> Because the Living Will applies only in narrowly and sometimes unclearly defined circumstances, it is best to have both a Living Will and Health Care Power of Attorney or to combine them both in one Advance Directive. Make sure your doctor understands and will respect your wishes and has notified a "reasonably available" member of your family or guardian. The document should be made part of your medical record.

It is important to review your documents yearly or periodically to make sure they reflect any changes in your circumstances. Review your documents when any of the **5 Ds** occur:

1. You reach a new **DECADE**.
2. You experience a **DEATH** of family or friend.
3. You **DIVORCE**.
4. You receive a new **DIAGNOSIS**.
5. You have a significant **DECLINE** in your condition.

What's Next?

A lawyer can help you tailor an Advance Directive to meet your particular needs, especially if there are potential family conflicts or special concerns. A Financial Power of Attorney, Power of Attorney for Health Care or a Trust can be tailored for your needs. A lawyer who is familiar with "lifetime planning" or "planning for incapacity" will be your best resource.

Source: American Bar Association Commission on Law and Aging, "Health and Financial Decisions"

If you cannot afford a private attorney, the following publicly funded programs are available in Nebraska:

Legal Aid of Nebraska ElderAccessLine® where an attorney can help you over the phone to execute the advance directives. Call toll-free 1-800-527-7249.

Automated online Power of Attorney and Living Will Forms are available at:

<http://www.legalaidofnebraska.org/get-help/help-yourself-access-to-justice/agingmedical-self-help-forms>

The Nebraska Power of Attorney forms are available on the Nebraska Supreme Court website at:

<http://supremecourt.nebraska.gov/forms>

Legal Services Providers are available through the area agency on aging near you.

Visit the Nebraska Association of Area Agencies on Aging for contact information: www.nebaaaa.org

For more information on Advance Directives, Guardianships and Conservatorships, refer to the Surrogate Decision Making in Nebraska publication: www.dhhs.ne.gov/aging

HEALTH CARE POWER OF ATTORNEY

