



Planning ahead

Who will make decisions for you?

Minnesota Board on Aging

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The Minnesota Board on Aging and the Area Agencies on Aging operate Senior LinkAge Line® which provides information and assistance services for older persons. The number is 1-800-333-2433.

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Planning Ahead for Incapacity

As people age they may need help to manage their affairs. It may be for financial management, personal health care management, or ordinary tasks of daily living. We all hope and pray that we **“won’t be the one,”** that somehow we will make it through our entire lives, live to a ripe old age, and never need help to manage our own lives. **Some of us will be lucky. Many of us won’t.** Many of us will lose the ability to make decisions or care for ourselves. This is called incapacity. Incapacity can result from dementia, Alzheimer’s disease, physical injury, illness and disease, or an accident. None of us has the ability to predict incapacity, insure against it, or to be assured that it won’t happen to us.



So, what can we do for ourselves and our families? We can plan for the very real risk that we may become incapacitated. Taking such actions will benefit not only you, but also your family, public authorities and institutions.

■ If you lose the ability to make or communicate decisions for yourself do you know:

- Who will manage your finances?
- Who will decide where you will live?
- Who will decide what medical care and treatment you get? Or do not get?
- Who will make sure that you are safe from abuse and exploitation by dishonest people and businesses?
- Who will help you with basic activities of daily living like toileting, bathing, dressing, eating and others?

■ How will you know if you have done enough to plan for incapacity or death?

- Have you given directions, and put a plan in place to manage your property and income? Do you know what will happen to your property when you die?
- Have you given directions about who will make medical decisions for you if you can’t make them for yourself?
- Do you know what will happen to your body when you die?
- Have you prepared directions to help your loved ones who are dependent on you or may not have the ability to care for themselves?

■ When should you plan for your own incapacity?

- **Are you over 18 years of age?** If so, you should think about your options for incapacity now. You should make decisions before you need help and while you can still communicate and make your own decisions.

■ It can be too late for you to plan ahead.

- It will be too late if you have lost the ability to make or communicate decisions for yourself.
- It may be too late if someone has asked a judge to decide that you need to have a person appointed as your guardian or conservator.

■ What will happen if you become incompetent or incapacitated and have not planned ahead?

- If you lose the ability to make or communicate decisions for yourself, and you did not plan ahead, a court may be asked to appoint a guardian or conservator for you. The guardian or conservator may be given authority to make medical decisions for you, to decide where you will live, to manage your property and income for you, and to decide on how you will live your daily life.
- Legal fees may have to be paid from your resources and property in a Guardianship or Conservatorship.
- Sometimes, someone who is a stranger to you, who does not know what you hope for or want, will make decisions for you.

■ How can you plan ahead?

These are the planning tools that will be discussed in this booklet.

- Informal arrangements with personal friends and/or members of your family.
- Appointment of a representative payee to manage your Social Security benefits.
- Making arrangements with a trusted family member or friend to manage your income and property.
- Preparing a durable power of attorney where you appoint someone to manage your finances, property, and income.
- Setting up a trust and appointing a trustee to manage the trust for your benefit.
- Making a selection now about who should serve as your guardian or conservator if you end up needing one.

- Preparing a health care directive to tell your family, friends, and medical professionals what you feel and believe about your own future medical care.
- Learning about how to pay for long term care.
- Planning your own funeral and burial.
- Understanding if you need a will and writing one if you do.

Planning ahead

Who will make decisions for you?

Informal arrangements with friends or family members



■ Is it possible to plan for the future without formal legal documents?

It could be. You may not need any formal legal documents if you only need a little support. This could be things like:

- someone who can help you to write your checks and balance your checking account
- simple home care or personal assistance
- meals delivered to your home
- other services that can be brought into your home

Your needs may be as simple as having a family member visit weekly or monthly to review your bills with you, then write your checks so that you can sign them. Or, you might hire a personal care attendant or a cleaning service to come to your home. You might be able to arrange for people to help you with things like grocery shopping, transportation, cooking, or other services that could let you remain independent. These kinds of arrangements leave you in control but give someone else the responsibility of making sure necessary tasks are done. You can have a person you trust do this, or you can hire someone.

You may be able to get your need for these services assessed at no cost by your County Human Services Department or a private home health care agency. They can come to your home, assess your needs and give you their opinion about the types of care and services that you might need to remain independent in your own home. This service is called a Long Term Care Consultation.

You can check into what is available in your area for either an assessment or other services by calling the **Senior LinkAge Line® at 1-800-333-2433**.

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■ Are there risks in making informal arrangements?

Absolutely. Sometimes people make informal arrangements without really knowing or understanding all of the possible outcomes. One example is when a person adds their child's name to their bank account and their account is garnished to collect debts owed by their child. Another example is when a person transfers ownership of their home to their children and later is denied Medical Assistance (Medicaid) to pay for their costs of long-term nursing home care. While some informal arrangements work for some people, they may not always be ideal.

Selling property for less than it is actually worth is the same as giving it away. If you have given away property, or if your property is sold to someone for less than it is actually worth, you may be denied Medical Assistance (Medicaid) help to pay for your costs of long-term care when you are unable to live independently and need either nursing home care or other long-term care services.

Here are some other risks of informal arrangements:

- Your family members or friends won't keep up their end of the bargain.
- Members of your family may not approve or agree with your actions or with the actions of the person you want to make decisions for you. This could cause fights in your family.
- If you become incapacitated, you will have no guarantee of who will be responsible for actually making decisions for you and responding to your needs.
- If you have added a child to an account or given them property because you want them to share with others when you die, you cannot be sure that they will follow through and obey your directions.

Because of these risks, making formal arrangements makes it easier for you to protect yourself. You may want to get advice. You want to be sure that your needs will be met and that you will not be denied valuable rights and services if or when you become incapacitated. It is almost always a good idea to back up your planning by using formal arrangements and legal planning tools.

You should not give away money or property, or sell property for less than it is worth, to anyone as a tool to plan for your own future incapacity without first discussing it with a lawyer.

Formal Arrangements and Legal Planning Tools

■ Why make formal plans?

Even if informal arrangements are working perfectly, the time may come when you decide you would like more help managing your affairs. Or the time may come when you lose the ability to make important decisions. Maybe you are the kind of person who does not want to talk about money with family and friends. This section describes various formal arrangements and legal planning tools that can help you plan ahead. Read this section carefully to find the tools that would work best for you.

■ Direct deposit and representative payee

Social Security and some pension checks can be deposited directly into your bank account. To have your Social Security check direct deposited, call Social Security at 1-800-772-1213. You can also ask your bank to help you make these arrangements.

If most of your income is Social Security and you have limited finances, you could name someone your Representative Payee. Your Social Security check will be sent to your Representative Payee. Your Representative Payee is responsible for paying your bills and making sure that you are able to buy food and other necessities with the money that is left over. You should call your local Social Security office at 1-800-772-1213 if you are interested in making this arrangement.

■ Automatic banking

If you have a hard time managing your money because you are ill or homebound, you can keep control of your money by using different banking services. Your bank can arrange to have your regular bills paid automatically. You can bank by phone, mail, or computer. Your bank will also have special communication devices for the blind or hard-of-hearing.



■ Adding a Name to Your Bank Account

You can add a trusted friend or relative's name to your bank accounts. This is called a multi-party account. Adding this person's name to your account will give them the power to help you sign checks, pay bills, or transfer money between different bank accounts. You can add a person to any account, including savings, checking, and certificates of deposit. There are different types of multi-party accounts. Each type has different rules about what the other person can do. Be very careful about the type of account you choose and make sure that the bank gives you the account you asked for. You must also be very careful about the person you choose to add to your account.

These are the different types of multi-party accounts:

• Joint Account

In a joint account, each person named on the account is a co-owner of the money in the account. This means that each person can deposit and withdraw money without the other person's permission or knowledge. Because of this, you should only use joint accounts with your spouse, life partner, or for very small accounts. If you are thinking about setting up a joint account with more than \$10,000, talk with a lawyer or accountant about how this could affect your taxes. Remember, when one of the owners of a joint account dies, the other owner automatically gets all the money in the account without having to go through probate (court). There are some risks to joint accounts:

- The other person named on the account could take all of your money.
- If the other person owes money to creditors, the creditors could freeze your bank account until you prove how much of the money in the account is yours.
- You may not be able to take the other person off of your account without their written approval.
- You could be temporarily disqualified from Medical Assistance (Medicaid) because adding a name to your account is like giving away property.

• Authorized Signer Account

If you are worried about the risks of a joint account, an authorized signer account may be a better choice. In an authorized signer account, the person you add to the account can make deposits, withdrawals, and sign checks on your account, but is not a co-owner. This means that the other person's creditors cannot freeze your account and the other person does not automatically inherit the money in your account when you die. NOTE: There is still the risk that the other person can withdraw all of your money.

• Payable on Death Account

A payable on death account allows you to name one or more people who will automatically inherit the money in your account when you die. They will not have to go through probate. This kind of account is also called an "in trust for" or "Totten trust" account. While you are alive, the person you name on the account has no access to your account. This means that the other person's creditors can not freeze your account. However, this also means that they can not make withdrawals or write checks. So, this account is not a way to arrange for help with your money matters while you are alive. Rather, it is simply a way to give money to your loved ones without going to court.

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Power of Attorney



■ What is a power of attorney?

A power of attorney is a written document that names someone to handle your property or money for you. The person authorizing and signing the power of attorney document is called the principal. The person named to handle the principal's property is called the attorney-in-fact. The attorney-in-fact does not have to be a lawyer.

■ Why use a power of attorney?

A power of attorney is used when you want business taken care of for you and you cannot do it yourself. For example, a power of attorney can be used to authorize someone to handle a business transaction when you are out of town. Or, a power of attorney can be used to authorize someone to pay your bills if you are physically or mentally incapable of doing so yourself. There is an ordinary power of attorney and a durable power of attorney.

■ What is the difference between a power of attorney and a durable power of attorney?

An ordinary power of attorney ends when you (the principal) are no longer able to make decisions for yourself. A durable power of attorney says the power continues after you become incompetent. If you plan to use the power of attorney document as a way to handle your financial matters after you are unable to make decisions for yourself, you must create a durable power of attorney.

If you want the power of attorney to go into effect only when you become incompetent, you can tell your lawyer to keep the power of attorney document and deliver it to the attorney-in-fact only if and when that happens. You can even tell your lawyer how to decide if you have become incompetent. For example, you can tell your lawyer to deliver the power of attorney document only when your family doctor calls to say that you can no longer handle your own affairs.

■ What kind of authority does the attorney-in-fact have?

The attorney-in-fact will have whatever authority you give him or her. You can give them the authority to handle all of your property and money matters. Or, you can limit their authority to certain actions, like paying bills, selling a piece of property, or filing and paying your taxes.

Because the attorney-in-fact will be able to conduct business without your knowledge or permission, you must be very careful about who you appoint and what powers you give that person. Although the attorney-in-fact must act in your best interest, it is difficult to get back any money or property that the attorney-in-fact has taken or mishandled.

■ How is a power of attorney created?

Any competent adult may create a power of attorney. To be valid, the power of attorney document must be in writing, dated, and signed in front of a notary public. It should also specify what powers are being granted. You can write your own power of attorney, or you can use the Minnesota durable power of attorney short form. This form can be purchased at any store that sells legal forms or downloaded for free from the Minnesota State Court website at www.mncourts.gov. Most people use the short form because it is easy to do and third parties must accept the power of attorney if it is properly created using this form. There is a chance if you create your own that it might not be accepted.

When you fill out or write your power of attorney, be very careful that you are granting only the powers that you want the attorney-in-fact to have. If you mark an "X" next to every power listed on the form, you are giving the attorney-in-fact total power over all of your property. This means that the attorney-in-fact could give all of your property away even to him or herself. While there may be valid legal reasons for granting the attorney-in-fact such broad authority, you should not sign such a document without first talking to a lawyer.

■ How does the power of attorney work?

Both you and your attorney-in-fact should have a copy of the document. If you are giving a power to sell land, file a copy at the county recorder's office. If the power deals with money matters, file a copy with the bank. When the attorney-in-fact acts for you, they sign their own name and then write:

(their signature) **As attorney-in-fact for** (your name).

A power of attorney only works if third parties, like banks and creditors, honor the power of attorney document and are willing to do business with the attorney-in-fact. Although you do not have to use the short form described previously to create a valid power of attorney, there is a chance third parties will not accept one you created yourself. If you use the short form, third parties are obligated to deal with your attorney-in-fact.

■ Should safeguards be put into a power of attorney?

Safeguards that would verify that things are being done as you want can be put into your power of attorney. It doesn't matter what kind of power of attorney you have. The sort of safeguards you may want depends on your particular needs or circumstances. Some possible safeguards to think about:

- In your document, state that the attorney-in-fact has to give a yearly accounting. This report can be made to you, your lawyer, or an independent accountant for review.
- Name two attorneys-in-fact on the document and state that they must act jointly. There is a box you can check on the short form for this.
- You may be able to get a special type of bond in the power of attorney to cover the value of your property if it is stolen by the attorney-in-fact.
- Make sure that the person you pick as your attorney-in-fact is trustworthy, willing, and able to handle this responsibility.
- Consider naming a second person to take over if the first attorney-in-fact dies or becomes incompetent.

■ How does a power of attorney end?

As long as you are competent, you can cancel the power of attorney at any time. This is called a revocation of power of attorney.

The revocation is only valid if it is in writing and you sign it in front of a notary public. You have to send a copy of the revocation to the attorney-in-fact, and to any third party that has done business with your attorney-in-fact for you. For example, if the attorney-in-fact handled the money in your bank account, you should send a copy of the revocation to your bank. If the attorney-in-fact had the power to sell your property, you should send a copy of the revocation to your County Recorder's office. If you become incompetent and you have a durable power of attorney, the power can only be revoked by a guardian or conservator, if one is appointed for you. Powers of attorney that are NOT durable end when you become incompetent.

All powers of attorney end automatically when you die. If you want the power to end at a certain time, you can state the specific date when the power will end. If you give a power of attorney to your spouse, the power will end as soon as you start divorce, separation, or annulment proceedings.



Your link to an expert

Trusts

■ What is a trust?

A trust is a legal arrangement where a person or financial institution, called the trustee, holds legal title and manages assets for the benefit of some person, called the beneficiary. The person who creates and funds the trust is called the grantor. For example, if you want to set up a trust for your child, you are the grantor, your child is the beneficiary, and the bank or person in charge of the trust is the trustee.



Two types of trusts serve two very different planning purposes.

- **Testamentary Trust:** If you create the trust in your will, to take effect after you die, it is called a testamentary trust. A testamentary trust can be an important estate planning tool in order to provide for loved ones after your death.
- **Living Trust:** A living trust (also called an inter vivos trust) is one that you create with a trust agreement for your benefit or the benefit of a loved one during your lifetime. You transfer ownership and control of your assets to a trust during your lifetime.

■ Should a living trust be used to plan for incapacity?

A living trust is sometimes used as a planning tool because it can be used to manage your property for your benefit during your life. However, you must consider many things in deciding whether a living trust makes sense for you. For most people, the costs and disadvantages of a living trust make it a less helpful planning tool.

■ Things to think about with living trusts

- Living trusts can be a useful tool for planning for incapacity. But they are expensive and generally used for larger estates. If you have less than \$200,000 in assets, not counting your home, a living trust is generally not used. One exception might be if you own real estate in another state. There are legal fees for setting up a trust agreement, and then the trustee charges a fee for handling the property. This is often a minimum fee plus an annual percentage of the amount in the trust. Institutional trustees, like banks or trust companies, will usually not accept a trust unless it has at least \$500,000 in liquid assets. This is because the expense of maintaining the trust is too great.

- You can name a trusted family member or other person as your trustee, but remember a fair amount of knowledge is needed to handle the paperwork, tax returns, and property management tasks that may be involved. Other planning tools mentioned in this book do the same thing, for less money and with less work.
- How long a trust lasts depends on if you set up a revocable or irrevocable trust. You can change or end a revocable trust at any time as long as you are still competent. But, an irrevocable trust cannot be changed after it is signed. It will only end when it says it will end and under defined conditions. For property management purposes, a revocable trust is normally used. Taxes are also a factor in deciding whether to make the trust revocable or irrevocable. You should talk to a lawyer and/or tax advisor about taxes and trusts.
- You lose control of your assets while you are alive. To get the advantages of a living trust, you must actually transfer ownership and control of your assets to the trust. Even title to your home should be put into the trust.
- Be cautious of anyone who tries to sell you a living trust package. Do not deal with anyone who demands that you sign something right away. Do not put up money before you have a chance to do more research. Some companies only want to sell their pre-packaged plans and they do not help you put your assets into the trust. These trusts can cause problems that may be expensive to fix.

■ Standby trusts

A less expensive way to use a living trust to plan for incapacity is to set up the trust but not put any money or property into it, or just put a small amount of money into it. Then you also sign a durable power of attorney, telling your attorney-in-fact to transfer your money and property to the trust only if you become incompetent or incapacitated. This type of arrangement is often called a standby trust.

■ Should a living trust be used to avoid probate?

In most cases, you should not use a living trust to avoid probate. Many people fear the expense and delay of probate so they are looking for another way. But, in Minnesota, it usually costs more to set up a living trust than to prepare and probate a will. You often have to pay a high fee to have someone set up the trust instrument, which is the document that sets forth the terms of the trust.

Remember, a living trust is only effective if you transfer assets to the trust. Transfers usually need to involve the services of a lawyer, especially when there is real estate. If the trustee is a financial institution like a bank, it will charge fees regularly for its services. A living trust may turn out to be more expensive than the costs of probate.

There are other less expensive ways to avoid probate. For example, there is generally no need to probate real estate that you own in joint tenancy with your spouse or children, although you should be aware of the risks of co-owning property with someone other than your spouse. Or bank accounts that are joint accounts or payable on death or "in trust for" accounts.

You can also transfer your property outside of probate using a transfer on death deed.

Remember, trusts are complicated. If you think you want to use a trust for planning, talk to a lawyer who knows trust law.

If a married couple owns all their property together, there is usually no need for probate when one of them dies. All the property will automatically belong to the survivor. The same is true for life insurance proceeds and retirement accounts. They go automatically to the named beneficiary, without probate.

To make sure that your property goes to the person you choose, and that it is designated to the person(s) in the safest, fastest, least expensive way possible, you may want to seek legal advice. Compare lawyer fees. Lawyers can give you estimates of their fees for setting up a trust. You can also get estimates of trustee fees from the persons or institutions (such as a bank) that you are considering naming as trustee.

■ Can a living trust be used to avoid paying nursing home costs?

The Medical Assistance (Medicaid) laws are very complicated and are subject to change at any time. The rules about trusts are even more complicated. Do not try to use a living trust to avoid paying for long-term care costs without getting competent legal advice.

Guardianships and Conservatorships

When you can't manage your own affairs, a court can name someone to help you. There are two ways to do this: **guardianship** and **conservatorship**. Sometimes, the court will name both a guardian and a conservator. The court always looks for ways to help you without you losing complete control over your life.



■ What is a guardianship?

A guardianship is a relationship the court creates between you, the "ward" and the person helping you, the "guardian." The idea of a guardianship is to protect a person who is incapacitated and cannot handle their own personal affairs.

A guardian looks after your personal needs. The guardian makes personal decisions such as what medical care you will get and where you will live. A guardian must tell the court the decisions made for you and why. They usually do this once per year. A guardian can be held responsible for making wrong decisions, especially if the ward is hurt by those decisions.

■ What is a conservatorship?

A court can also create a conservatorship. A conservatorship protects you when you cannot manage your own financial affairs. You do not have to be incapacitated for the court to name a conservator for you.

In a conservatorship, you are called the "protected person". The person helping you is the "conservator". The conservator looks after your financial affairs. A conservator takes care of your money and property. He or she handles your income and pays your bills. A conservator must tell the court what money you have, how it was spent and why. This is usually done every year. A conservator can be held responsible for making bad decisions about how your money is used.

■ How is a guardianship or conservatorship established?

Almost anyone can file a case to ask the court to name a conservator or guardian for you if they think you cannot take care of yourself or your finances. You must be given notice of the case. You also have a right to a lawyer. If you cannot afford a lawyer, the court can order the county to pay for one. The person filing the case must show “clear and convincing” evidence that a conservatorship or guardianship is needed. This can be hard if you don’t think you need help.

■ How is a guardianship or conservatorship ended?

You can end the guardianship or conservatorship if you can show the court you no longer need protection. Usually, a doctor or social worker needs to tell the court that you can now handle your own affairs. If the court ends the guardianship or conservatorship, you are free to make your own decisions again.

■ What are the risks of a guardianship or conservatorship?

A decision to name a guardian or conservator should not be made lightly because it takes away your most basic right the right to make decisions about your own life. The other options explained in this booklet should be reviewed. Also, each county has a program to determine if you need nursing home care or are eligible for home health care that could allow you to remain living on your own independently. The program is called Coordinated Home Services for Seniors and Disabled People. Adult Protective Services can also assess your situation to see if there are any other options for you.

■ When should I plan ahead for a guardianship or conservatorship?

You should think about a guardianship and/or conservatorship plan if you think someone might disagree with your planning arrangements. For example, if you think a family member might disagree with your plans to care for yourself, think about guardianship or conservatorship as a back-up. Since anyone can be appointed to serve as your guardian and/or conservator, you can be safe by planning ahead and naming a person to be your guardian and/or conservator. This is the best legal protection against family or the court naming someone you do not want to manage your affairs.

■ How can I plan ahead for my guardianship or conservatorship?

You can choose someone in advance to be your guardian and/or conservator if you become incapacitated and need one. You can name the person you want to be your guardian and/or conservator in a written document, like a will. In that document, you can also write instructions on how you want your affairs handled. Your guardian and/or conservator must follow these instructions unless a court says following them is not in your best interest. Keep in mind the person you choose is not required to be your guardian and/or conservator just because you name them. Make sure they are willing to be your guardian and/or conservator and understand their responsibilities. Choose a reliable person and talk to them about your plan. You may also want a lawyer to help you write out your plan.

You should also be aware that other kinds of planning ahead could affect how a court decides who will serve as your guardian and/or conservator if you need one. If you name someone to make medical decisions for you in a health care directive, a court will give that person priority to be your guardian if you need one. If you name someone to make financial decisions for you in a durable power of attorney, a court will give that person priority to serve as your conservator if you should need one.



Your link to an expert

Health Care Directives

■ What is a Health Care Directive?

A Health Care Directive (HCD) is like a living will and a Power of Attorney of Health Care rolled into one form. The HCD is a written document that you fill out and name someone to make decisions about your health care. If you are the person making the HCD you are called the Principal. The person named to make decisions is called the Health Care Agent. In the HCD you can also write your wishes about organ, eyes, and tissue donation; funeral arrangements; and other health care issues such as choice of providers (including where medical care will be received). The HCD is used when you (the Principal) is unable to make decisions for yourself.



■ Why make a Health Care Directive?

As an adult, you have the right to:

- make decisions about your own health care.
 - refuse treatment and authorize treatment.
 - get information about your health problems and various treatments
- That right does not end when you are not able to make decisions for yourself. By putting your health care wishes in writing, you are doing your family and loved ones a favor. They will know what your health care preferences are and who you choose to make decisions for you.

■ What must a Health Care Directive include?

- It must be in writing
- It must be dated
- It must state the Principal's name.
- The Principal must be competent when he or she signs the document.
- It must be signed and witnessed by two people or signed in front of a notary public.
- It must include either a health care power of attorney or health care instructions.

■ Who can be a Health Care Agent?

A Health Care Agent may be anyone 18 or older. It cannot be your health care provider or an employee of your health care provider on the date the HCD is signed or on the date the Health Care Agent must make a decision. You should choose someone you know very well and trust to help you make these decisions. It is very important that you talk to this person about being your Health Care Agent before you appoint him or her. You must make sure that the person you want to appoint:

- Wants to be your Health Care Agent
- Understands your wishes; and
- Will follow your instructions or act in your best interest.

■ What kinds of things can be included in a Health Care Directive?

You can put many things in the HCD. You can:

- Name one or more Health Care Agents or alternate Health Care Agents
- You can give instructions about how decisions should be made and if your joint agents can act alone or have to decide things together
- State in which nursing home you would like to live if nursing home care is necessary
- State which medical records your Health Care Agent should be able to get
- State whether the Health Care Agent shall be guardian or conservator in the event a petition is filed
- State if you want to donate eyes, tissues, or organs in the event of death
- State your ideas about serious medical treatments and what permission you give your Health Care Agent about consent for treatment
- State what will happen with your body when you die (burial/cremation)
- Make instructions regarding artificially administered nutrition or hydration
- If you are a woman of child bearing age state how you want your pregnancy to affect health care decisions made on your behalf;
- State under what circumstances the HCD becomes effective; and
- State any other instructions you have about care. Include how your religious beliefs may affect what you want or don't want.

■ **When do the Health Care Agent's responsibilities begin?**

The Health Care Agent may begin to make decisions for you (the Principal) when your doctor feels that you can no longer make decisions for yourself. Or, when you authorize the Health Care Agent to act in your HCD.

■ **What are the duties of the Health Care Agent?**

Your Health Care Agent has the authority to make health care decisions for you. The Health Care Agent does not have a legal duty to act. That is why it is so important that you talk with the person you want to appoint. You want to make sure they will act for you and follow your wishes. The Health Care Agent must carry out the HCD in good faith. The Health Care Agent should make sure that your wishes in the HCD are followed. If a doctor or health care provider does not want to follow the instructions in the HCD, the Health Care Agent should seek legal help.

■ **Can the Health Care Directive be cancelled?**

Yes. You may cancel or revoke the HCD in whole or in part by:

- Destroying the document and all copies, wherever they are;
- Making a written and dated statement stating what part of the HCD you want revoked; or
- Saying that you want to revoke it in the presence of two witnesses. The witnesses do not have to be present at the same time; or
- Making a new HCD. Make sure you put the new date on it.

■ **Where should the HCD be kept?**

The Health Care Directive should be kept with personal papers in a safe place. Do not keep it in a safe deposit box, because others cannot get at it in an emergency. Give signed copies to doctors, family, close friends, the Health Care Agent, and the alternative Health Care Agent. Make sure the doctor is willing to follow your wishes. This document should be part of your medical record at your doctor's office, your hospital, your home care agency, hospice, or nursing facility.

■ **Do Not Resuscitate (DNR)**

The DNR order is different from a Health Care Directive. The DNR tells health care providers, such as first responders that you do not want them to start CPR on you. A DNR should be signed by your doctor.

Understanding Health Care Options

If you become incapacitated and are unable to handle your own affairs, you may need home health care, nursing home care, assisted living, or rehabilitative therapies. It is very important that you understand the types of private medical insurance and public insurance programs that are available to you. While this is not the focus of this booklet, it is important that you are aware of these health insurance terms and programs.



- **Medicare** is the federal health insurance program you get after two years of being on Social Security Disability or at age 65 .

There are four parts to Medicare that cover different types of health care services. These are called Part A, Part B, Part C and Part D. Original Medicare consists of Part A, which is usually free and Part B, which has a monthly premium, which for most is deducted each month from your Social Security check. Part C, a unique way of receiving your Medicare Part A, B and D benefits through one plan usually has a monthly premium. Part D helps pay for prescription drugs and has a monthly premium.

Individuals on Original Medicare often also purchase some type of Medicare Supplement (Medigap) to pay for coinsurance and any deductibles not covered by Medicare. Medigap policies do not pay for long-term care services.

Please be aware that Medicare pays for very few long term care services such as home health care, skilled nursing home care, and rehabilitative therapies. You may want to consider long-term care insurance as an option.

To learn more about your options, including Medicare and long-term care, contact the Senior LinkAge Line® at 1-800-333-2433. The Senior LinkAge Line® is the State Health Insurance Assistance Program (SHIP) for Minnesota, as designated by the Centers for Medicare & Medicaid Services (CMS). Staff and volunteers have expertise in the area of Medicare and long-term care. Help is available in all 87 counties of Minnesota. Your link to an expert is just one call away! 1-800-333-2433

- **Medical Assistance (MA) is Minnesota's Medicaid program.** Covers the cost of care for people who are low-income and have few assets. Whether you can get MA depends on many rules. This is the program that generally pays for home health care and nursing home stays. MA also pays for low-income elderly medical care that is not covered by Medicare.

There are three programs to help pay for your Medicare premiums, co-pays and deductibles if you are eligible. These are the Medicare Savings Programs and consist of **QMB** (Qualified Medicare Beneficiary), **SLMB** (Service Limited Medicare Beneficiary) and **QI-1** (Qualified Individuals). For more information about the Medicare Savings Programs and assistance applying for the programs, call the Senior LinkAge Line® at 1-800-333-2433.

Minnesota has other programs to help low-income seniors.

- **The Alternative Care and Elderly Waiver** programs help seniors at risk of nursing home placement stay at home by paying for home care services.
- **The Minnesota Long-term Care Partnership Program** is a new option available in Minnesota. By purchasing a Partnership Certified Long-term Care Insurance policy, you can protect assets from being included in determining Medical Assistance eligibility, if, at a later date, you need to apply for Medical Assistance.
 - Long-term care insurance policies can help pay for long-term care that is not covered by Medicare, including assisted living, caregiver support, respite care, home care and other options that can help you remain in your home and community.
 - To find out more about this new long-term care financing option available statewide, contact the Senior LinkAge Line® at 1-800-333-2433.

Funeral Planning and Organ, Eye, and Tissue Donation

■ What is a funeral directive?

In Minnesota you can name a person who will be in charge of what happens to your body after you die. The person follows your instructions about funeral and burial arrangements. If you want someone to plan and carry out your funeral instructions, but you think that someone in your family will object to that person or your wishes, you should fill out a funeral directive. A written, signed and dated funeral directive will give the person you name the power to make the decisions, even if your spouse, children, parents or siblings do not agree.

■ What is the Uniform Anatomical Gift Act?

The Uniform Anatomical Gift Act lets you donate your body or organs, tissues, or eyes for transplant or research.

■ How do I make an anatomical gift?

- Put a symbol on your driver's license or I.D. card.
- Use a donor card.
- Sign a written document. No specific form is required.
- Get on a donor registry.

If you do not do any of these, close relatives or a guardian or conservator or a Health Care Agent can decide to donate at the time of your death, but only if you did not refuse to make an anatomical gift while alive.

■ Do you need separate documents or is filling out the Health Care Directive enough?

Anatomical gifts and funeral arrangements can be put into your HCD or Will. But making an anatomical gift with a HCD or using one of the anatomical gift designations listed above is better than putting it in your Will. This is because your Will may not be available for review right away when you die. An anatomical gift needs to be given quickly or it may not be honored.



Wills

■ What is a Will?

A Will is a legal document you can use to say who you want to get your property after you die. It usually has instructions about giving your property to family, friends or charity, paying your debts or claims on your property, and other things you might want to happen after you die.

A Will lets you name someone to manage and dispose of your property and any debts on it after you die. This person is called a "personal representative." If you prefer, you can name someone to choose a personal representative for you after you die instead. You can also name someone to take care of your minor children (age 18 or younger) if both you and the other parent die before the child reaches age 18.

■ What is a person's estate?

– Your estate is the property you own at the time of your death that does not pass to others simply because you die. This property is sometimes described as "probate property."

■ Do I need a Will?

You should consider making a Will if

- You are over age 18.
- You own property in your name only.
- You have minor children.
- You do not want your estate to be divided by the rules of the State. For example, maybe there are items you want to go to certain people or you want to make a donation to charity. Or maybe you don't want relatives to get equal parts, which is how the State usually does it.
- There is a person who would benefit by your death under the State rules, but you do not want to leave anything to that person.
- You and another person own property together as joint owners and that person dies before you do, you need to use a will to make sure the property goes to who you want it to when you die.



■ You might NOT need a will if

- All your property is jointly owned with someone else. Most married people own their homes as joint tenants with right of survivorship. This means that it will go to your spouse when you die.
- You agree with the State of Minnesota's rules to divide property. Minnesota's rules generally give your property to your closest living relatives. Usually this is the spouse and children.
- You have done other planning to divide your property. That plan should be detailed and complete.

This issue depends on your particular circumstances. The safe bet is to make a Will.

■ What happens if I die without a Will?

- If you die without a Will the State inheritance laws say what will happen to your property. It will probably go to your closest relatives. If you have a surviving spouse the greatest share of the estate probably goes to him or her. Next in line are your children.

■ What is probate?

- Probate is the legal process of dividing up your property after you die. The property goes to the people who are legally entitled to have the property.

■ What types of property require probate?

- Property titled solely in your name when you die and for which formal legal arrangements were not made.

■ What types of property do not require probate?

- Death benefits payable under a life insurance policy you own. These benefits can be immediately paid to a beneficiary by the insurance company after proof of death.
- Real estate when you are a joint tenant and the other joint tenant or tenants survive you.
- Pay on death (POD) bank accounts if the person named as the payee survives you.

■ Does having a Will help me avoid probate? Probably not.

A Will is not a way to avoid probate. It is a road map for probate. It guides the court on how to divide your property when you die.

■ What if I don't own much property when I die?

- If you do not own much property, or if the property you leave behind is worth \$20,000 or less, the property can be collected without probate using a legal document called an Affidavit for Collection of Personal Property. Your personal representative can use this affidavit and your death certificate to get all of the personal property that you left behind.
- After the property has been collected, the personal representative should notify your heirs. Your personal representative also needs to get information about your debts. If possible they will make payments on the debts. After this is done they divide up your property to your heirs according to what it says in your Will. Again, if you do not have a Will, the State says how it is divided.



Planning ahead

Who will make decisions for you?

Getting Assistance With Planning Ahead



Legal Assistance: Some of the planning tools discussed in this book can be handled without legal advice. However, the law is complicated and laws change frequently. To get the results you want, it may be a good idea to get legal advice on your documents and plan. When looking for a lawyer, you may want to ask a friend, relative, banker, accountant, or pastor to suggest someone.

You may want to interview more than one lawyer before making a decision. Do not be afraid to ask about the cost. You can help your lawyer help you by following a few guide-lines:

- Before you call a lawyer, gather and organize any written information you may have, and make a list of questions you want to ask.
- Ask for copies of all papers the attorney prepares for you.
- Do not sign any documents until you fully understand what you are signing.

Long-term Care Options Counseling through the Senior LinkAge Line®:

Call 1-800-333-2433 to get linked with an expert that can help you understand your options. Assistance is available by phone, in person and over the Internet. The Senior LinkAge Line® can also help connect you to legal assistance for more complex legal planning issues. The assistance provided by the Senior LinkAge Line® is comprehensive and unbiased. There is no fee. The Senior LinkAge Line® does not sell any insurance or financial product of any type.

Web-based Assistance through www.MinnesotaHelp.info®

www.MinnesotaHelp.info® is a comprehensive resource database with thousands of Minnesota long-term care resources available throughout Minnesota. There is also a long-term planning tool available through the Long-term Care Choices Navigator. Live Chat is also available on the site through MinnesotaHelp NOW!

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