

Estates: Planning Ahead

(A personal manual for estate planning)



ESTATES: PLANNING AHEAD

A personal manual for estate planning

**Pamela Priest Naeve
Isabel Walker**

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Please Note:

The information contained in this booklet is of a general nature and is not intended as legal advice. Readers are urged to consult with an attorney or other professional before taking action. This booklet has been written by and for residents of California. If you are using this booklet in a state other than California, it is recommended that you check the laws of your own state for applicability. The checklists provided in this booklet, however, will be helpful regardless of where you live.

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Introduction

Congratulations—either you have gone looking for information on estate planning or someone who cares about you has offered this book as a resource to begin your estate planning. There are many resources and many approaches to estate planning, but one thing is clear, it is a very personal process. This book was first initiated in 1986 after several cancer patients told us that they were not prepared legally or financially for their illness or their death. At their request we agreed to develop a practical guide to estate planning that is easy to understand and which provides numerous resources for additional assistance.

We have tried to provide a general overview of estate planning without getting involved in too much detail. Although this guide is based upon California law, we are not attorneys and the legal system is complex. This book is provided with the understanding that neither the authors, editor, publisher nor any consultants on this project are engaged in rendering legal, accounting or other advice. If legal advice or other expert assistance is required, the services of a professional who comes well-recommended should be sought.

PART I: PLANNING AHEAD

Purpose of this Booklet

The purpose of this booklet is to assist you and your family with certain practical financial and legal matters. It is also designed to clarify issues related to estate planning. Often, we wait until someone is very ill before we think of making a Will. Coping with the illness of a loved one **and** worrying about a Will can be very stressful. Planning ahead will reduce that stress. No one likes to think about death either for our loved ones or ourselves. Yet, simple preparation of some details can make life much easier for everyone. Writing a Will does not mean you are going to die immediately; but it does mean that you are planning ahead for unforeseen circumstances and are looking out for the people about whom you care.

Ben Franklin said there are two things in life that we can count on—death and taxes. We prepare each year for taxes. Why not set aside time for planning the details of our death? You don't have to dwell on it, but by planning ahead you can help your family and loved ones. Let them grieve your loss as a person without the burden of family disagreements, misallocation of cherished items, confusion over where your accounts are, long sessions in court, and so on.

Regardless of size or monetary value of your estate, you have worked hard to build it. There are treasured belongings of love and sentimentality that need a good home when you are no longer there to care for them. Some preparation on your part can accomplish that, making the transition much easier for your survivors.

Resources are available to assist in planning your estate. Documents such as this one are intended to help you think through the process. Included in this publication is a bibliography that addresses practical issues as well as some philosophical ones. In your community there are estate planning lawyers who are trained to write Wills and to help you plan your estate. Not everyone needs or can afford a lawyer. Each of us, however, needs to understand the process so that we can be prepared. We recommend that you have an attorney to assist you, if possible. There are also legal aid societies that you can contact (check the Yellow Pages of your telephone directory).

There is another reason for this booklet—to assist nurses, social workers, doctors, and other health professionals to understand what to say when patients ask for help in “putting my house in order”. Do I need witnesses for my Will? What is legal? Can a word be crossed out in a Will, initialed, and still be valid? Is there



a checklist to help the anxious patient do things correctly? When is a Will not necessary? If a patient writes a Will while in the hospital, what wording should be used to decrease the chances the Will may be contested?

Estates: Planning Ahead

Planning Ahead provides you with guidelines to organize your personal financial matters and minimize some of the confusion and frustration. Some topics discussed in this booklet may not apply to you. However, use this booklet for evaluating your own situation. This is a general guide and is not intended to take the place of professional and legal advice. Each individual situation and need will vary with the circumstances. As an expression of your love and caring, we hope you will discuss these matters openly with your family, consult appropriate advisors, and then make decisions that reflect your joint financial, religious and emotional needs. We feel that if you address these issues as a family unit, you will all share in the comfort and peace of mind knowing you prepared for your death or the loss of a loved one. You will also help minimize the legal, financial and emotional difficulties associated with this loss. It is good to review your total estate plan on an annual basis and update it when necessary, alerting family members of any changes.

A note to us all. Even if we prepare well ahead, and we have our house in order, the death of a loved one may be very difficult. It is very important to grieve the loss of someone we love. Our busy, modern society often tells us to hide our feelings, but mourning is important to healing. We need not go through grieving alone. There are people and services available to assist—a friend, the family doctor, clergy, a hospital social service department, or a family service agency. We may not feel the entire impact of our loss right away. It may happen months later. Whenever it happens, we need to grieve, and we need not do it alone.

Additional resource information is available in the Bibliography.

PART II: ESTATE PLANNING

Purposes of Estate Planning

There is a woman living in Palo Alto, California, who gave each of her children a special birthday present upon reaching the age of eighteen. The gift? A trip to the family attorney to write a Will. Why? In her words,

“The basic tenant in the theory of making a Will is to do it in time to avoid the tangles of dying intestate (without a Will).

Many people think that children have limited financial assets. They forget that college trust funds, savings accounts, CDs, audio systems, computers, bikes, sports equipment, autos, etc. can make up a sizable investment.

Even when there is little money, there are other reasons to prepare a Will. It provides early education about the importance of estate planning. It allows an adolescent to think of himself/herself as a real person, someone who could die, and someone who has the responsibility of a legal adult with the right to vote and the right to learn to plan for the disposition of lifetime acquisitions. This brings an opportunity to reassess the custodial status of certain investments and to plan financial needs for the future as it affects advanced education, employment and changes in living arrangements.

The offer to have a Will prepared shows that parents think of their children with respect. It also teaches an expression of caring and thought for survivors as, hopefully, parents have already made their own Wills.

By experiencing the process of making a Will at an early age, some of the mystique and threatening feelings are lessened. Wills can be easily updated at future occasions during a lifetime.”

That trip to the attorney is a most unusual gift and one which many of us regard as unnecessary, insensitive, or at best, premature. The mother’s motivation is a sincere one, however. Estate planning helps you make sure that certain practical financial matters are taken care of. It protects the assets that you have and establishes specific gifts to your family and other loved ones. Where there are minor children, it helps to provide for their protection and future. Estate planning also enables us to complete business or legal transactions, including minor or major debts.

Estate planning and writing a Will can provide comfort and peace of mind to you and people you care about. It reaffirms the importance of you as an individual as well as providing a sense of accomplishment. There are other reasons to do this planning such as giving you power to control aspects of your life. Often, when



one is ill, there is the feeling of losing control. This planning puts you back in the driver's seat. It also enables you to express some sentimentality and love for family and friends. And, it provides closure for met and unmet goals.

On another level, estate planning enables communication with others in planning, conceptualizing, and reaching satisfactory agreement in problem areas. So, you can find personal satisfaction in the doing of the planning as well as knowing that you have minimized future legal, financial and emotional difficulties for your loved ones.

Personal Record File

You can be very helpful to your spouse and other survivors by simply assembling in one place copies of certain records and documents that they will need.

A large envelope or file box, marked to show its contents and kept in a place known to your survivors, is sufficient. Only photocopies of important documents should be placed in this envelope. Originals should be safeguarded in a fireproof place such as a safe-deposit box. Place a check mark (✓) in front of each item that you have assembled and then enclose this list with the documents.

- ___ Will, with name and address of attorney.
- ___ Life, medical, long-term care, property, and auto insurance policies (complete with policy numbers, names and addresses of insurance agents).
- ___ Real estate deed, title policies, closing statements, mortgages, record of mortgage payments, tax receipts, receipts for home improvements over the years, etc.
- ___ Leases (property, auto, office, rentals, business, etc.)
- ___ Stock certificates and bonds (with purchase slips or other records of cost and dates of purchases, exact registration or ownership if it is not evident from the enclosures), as well as names and addresses of brokers.
- ___ Names of banks, credit unions, and savings and loans and account numbers for these accounts. Also note the names of the individuals, if any, who are listed on your accounts.
- ___ List of other assets and locations (including personal and business loans, deeds of trust, and accounts receivable).
- ___ Retirement plan documents, including pension, profit sharing, IRA accounts and Keogh Accounts, with updated beneficiaries.
- ___ Contracts to which you are a party (including installment purchase agreements).

- ___ Business records.
- ___ Location of safe-deposit box, key, name and location of bank, and box number.
- ___ Income tax returns for the last three years, plus name, address and phone numbers of persons preparing these returns.
- ___ Birth certificates for yourself, your spouse, and your dependents.
- ___ Marriage certificate and proof of divorce, if appropriate.
- ___ Automobile ownership title and current registration receipt.
- ___ Any trust you have created or of which you are a beneficiary.
- ___ Power of Attorney.
- ___ Advance Health Care Directive.
- ___ Social Security number for yourself, your spouse, and your dependents.
- ___ Veteran's discharge papers (Form DD214).
- ___ Charge account numbers and credit cards.
- ___ Receipts, appraisals, or valuations for items of substantial value such as jewelry, furs, furniture, silver, art objects, antiques, etc.
- ___ List of close relatives and friends, with addresses and telephone numbers.
- ___ Funeral or memorial instructions, including names of funeral director or memorial society.
- ___ General instructions to surviving spouse or children, including a list of advisers.

This personal record file will be very helpful if you see an attorney or other advisers for assistance with estate planning.

Preparations for Your Attorney

People often resist the initial effort required to start making an estate plan. If you intend to use an attorney, start by making a phone call for an appointment and enlist your spouse (who probably has also resisted) to accompany you. But, go alone if you have to.

If you go to an attorney for legal assistance for your estate, we suggest consulting one who specializes in probate and estate planning. Your meeting(s) will be more productive if you know how to prepare. You may ask the attorney at the time you make an appointment what materials or information you should have.



If you do not receive specific information, you may wish to review your:

- salary and employee benefits materials,
- life insurance policies,
- medical insurance policies,
- existing Will (if any),
- last federal income tax return,
- list of other assets and liabilities,
- intentions for guardianship/care of minor children.

Several appointments with your attorney may be necessary to complete your estate planning. Do not hesitate to be the one who follows up on the discussions.

If you do not have an attorney and are looking for one, shop around and use care in choosing an attorney who has experience in planning and probating estates. This expertise is important when considering the tax ramifications of your estate.

Ask your attorney about the fees for your Will preparation. Some Wills can be fairly simple and drafting a Will by a lawyer may not be expensive.

Various self-help tools, including books and software programs prepared by attorneys and independent paralegals specializing in Will and probate documents are also available see page 44.

Wills and Trusts

What Is A Will?

A Will is a legal document which specifies how you want the assets of your estate distributed and makes provisions for minor children following your death.

What Is An Executor?

An executor is a trusted person you name in your Will to see that your Will is executed according to your wishes. Banks & trust companies can also act as executor. The executor's duties include dealing with the attorneys and accountants for the estate, reviewing and signing court documents, opening bank accounts, maintaining financial records, safeguarding and investing assets, selling property as necessary and filing tax returns. If there is no Will or if there is a Will but it does not name an executor who can serve, the court will appoint an administrator to perform the same duties. An executor or administrator is sometimes called a "personal representative." The executor or administrator is entitled to receive a fee that is set by the court and payable out of the estate.

Who Needs A Will?

Anyone over 18 years of age who has children, property, financial assets, sentimental keepsakes, or any valued possessions should consider making a Will. For those individuals who have no money, no property and no family, a Will is not necessary, but even a few personal possessions may be intended for someone in particular and a Will can help to insure that that happens.

If you do not have a Will, your assets are disposed of according to California law, and that disposition may not be in accordance with your wishes. You should consult an attorney on these matters. If you do not have an attorney, you may wish to ask your friends for names of attorneys with whom they have had satisfactory relationships. Most communities have a Lawyer Referral Service that is listed in the Yellow Pages of the telephone directory. The attorney's fees can be reasonable for this service. Do not hesitate to call for professional assistance and feel free to ask the attorney in advance what he or she might charge.

What if I Have Lived in Another State or Country?

In general, the law of the state and country where you live at the time of your death determines the validity of your Will. It will also dictate how your property will pass on after death in the absence of a Will, even if you are not a citizen of that country. When you own real estate in another country or another state, you need to check with a lawyer practicing in that state or country to determine how to plan for that property.

A Will drawn before you become a resident of California should be reviewed by a California attorney. It may be necessary to re-draw, since each state has different legal rules.

If you have a Will recognized under California law, review it to make sure that it carries out your present intentions. State, Federal, inheritance and tax laws as well as personal circumstances change, and your Will, which may have been right for your family several years ago, may now need revising. It is wise to consult an attorney to prepare or change your Will.

What If I Don't Have A Will When I Die?

If you die without a Will ("intestate"), the law of the state in which you reside determines who will receive the proceeds of your estate. In California, the "intestacy law" generally provides for property to pass to your closest living relatives. For example, the surviving spouse is usually entitled to receive all community property and a share of any separate property. The portion of separate property that does not go to the surviving spouse (or all of the property if there is no surviving spouse) usually goes to the decedent's children and the descendants of any deceased children;



or if there are no children or descendants of children, to the parents of the decedent, or if the parents are deceased, to the decedent's brothers and sisters and descendants of any deceased brothers and sisters. If there are no such relatives living, the property is generally divided among more distant relatives, such as the decedent's grandparents, the descendants of the grandparents and the next of kin. There are a number of exceptions to these general rules, including exceptions that may give rights in certain situations to relatives of any predeceased spouse of the decedent.

Holographic or Handwritten Wills

A holographic Will is one that is completely handwritten by the person making the Will. No part of it can be typed or written by another person. The document must expressly state that it is a Will, and it must be dated and signed. A holographic Will does not require witnesses.

Witnessed Wills

A Will that is typewritten, printed or handwritten by another person must be signed in the presence of two competent adult witnesses. After the testator signs, the witnesses are to sign, date, and include their address below their signature. The witnesses do not need to know the contents of the Will, but there should be a written statement from the testator, at the time of signing, that the document is the testator's Will. The testator and both witnesses should remain together in the same room until the process is complete. The witnesses should see the testator sign and date the Will.

Changing Your Will—Codicils

If you want to change your Will at some point, you can either make a new Will or a Codicil. A Codicil is a partial modification or supplement to your existing Will. The requirements for a valid Codicil are the same as the requirements for a valid Will. A testator cannot change a Will by crossing things out or writing on the original Will.

A testator can also revoke a Will or Codicil by destroying the original document with the intent to revoke it.

When Is A Will Not Necessary?

This is a difficult question to answer briefly, but if there is no money, no property and no family, a Will is not needed.

Remember:

- If any valuable property is involved, it is best to have a Will. Even if the only property is held as joint tenancy, another joint tenant may die first or there may be simultaneous deaths as in an automobile accident.

- Put your original Will in a safe place, but not so safe that it cannot be found. Tell a trusted person the location of the Will.
- You may wish to include the whereabouts of the original will in the Personal Record File discussed on page 4.
- Consider discussing your estate planning with an attorney trained and experienced in probate procedures.
- Name guardian(s) for minor children and leave guidelines.

Safekeeping

Your original Will should be placed in a secure place, such as a safe-deposit box or fire-retardant box; if you are in the hospital when you prepare a Will, consider placing it in a safe-deposit box at the hospital.

What Is a Trust?

A trust is a legal document created when an individual, called the “Trustor,” transfers property to a person, called the “Trustee,” with instructions to hold or distribute the property for the benefit of designated persons, trusts, charities, or institutions, called the “Beneficiaries”. (A “Trustor” is sometimes called a “Grantor” or “Settlor”.)

A “**living trust**” is one that becomes effective during the life of the Trustor. A living trust can be set up so that it is “revocable,” that is, the Trustor can revoke the trust or change its terms at any time during his/her life. A living trust can be “irrevocable,” that is, the Trustor cannot revoke (end) or change its terms once it is created.

A “**testamentary trust**” is one that is created by the Will of the Trustor and becomes effective on the Trustor’s death. A Trustor can always change a testamentary trust any time during his life by changing his Will. Testamentary trusts do not avoid probate but are used for tax planning purposes or to control how or when a beneficiary will receive gift.

Revocable living trusts are often used to avoid probate since a Trustor can transfer property to such a trust and retain the use and income of the property for the rest of his/her life. When the Trustor dies, the property held in the trust can be transferred to beneficiaries named by the Trustor without going through probate. The revocable living trust thus acts like a Will but avoids the expense and delay that is sometimes encountered in probate (see page 16 for discussion of probate). Revocable living trusts can also help manage assets during the trustor’s life if the Trustor becomes incompetent (see pages 12-13 for discussion of handling incapacity).

See your attorney to determine the kind(s) of trust(s), if any, which are appropriate to your situation. In order for a trust to be honored by the authorities, certain formalities must be undertaken.



Creating a trust may also have significant tax effects. Consult your attorney or accountant about this. There are many kinds of trusts. Depending upon the purpose, beneficiary(ies) and assets, it is suggested that you discuss these with an attorney knowledgeable in estate planning.

Planning for the Care of Minor Children

A Will is especially important if you have children under the age of 18. If there is a surviving parent, the court will typically look to this person to resume or continue their guardianship, whether or not the child has been living with him/her. If there is no surviving parent or if the court determines the surviving parent is unable to care for the child, the court will appoint a guardian of the person and a guardian of the estate. The guardian of the person is responsible for the child's physical care. The guardian of the estate is responsible for holding or managing any money or property left to the child. The guardian of the person and the guardian of the estate may, but need not be, the same person. By your Will you can nominate the person or persons you would like the court to appoint as your child's guardian.

As an alternative to a guardianship of the estate, your Will can create a trust to hold your child's property. A trust need not automatically terminate when your child turns 18, but can continue until whatever time you think is appropriate. Also, a trust allows you to give the trustee you name broader discretion about how you would like the money invested and spent. Unless the Will so provides, a trustee generally does not have to account to the court although a court proceeding is available if there is ever a dispute or problem.

Another alternative is to leave your property to a named custodian for the benefit of your child under the Uniform Transfers to Minors Act (UTMA). Property left to the custodian will be managed and distributed in accordance with the detailed rules set out in the Probate Code. The property will be distributed to the child at whatever age you specify in your Will, but not later than the child's 25th birthday.

A person designated as guardian, trustee or custodian can decline to serve. It is wise to check with the person you designate before you put the name in your Will. It is also wise to name alternate guardians, trustees and custodians in case your first choice is unable to serve or continue to serve.

We suggest that you write guidelines for the individual(s) you select for guardian(s), and include information about your children—such as likes or dislikes, medical history, and school

history. It will help your children have an easier time of adjusting and will reduce the “trial and error” method of learning for the guardian(s).

Multiple Marriages

If you are married and have children from a prior marriage, it can be difficult to decide on a fair way to divide property between your spouse and your children. One solution may be to create a trust that will allow your spouse the use of the property for the rest of his or her life, and then distribute the property to your children. These circumstances can raise some complex legal and tax issues, so it is particularly important that you get advice from an attorney. Also ask about legal prenuptial agreements to arrange for these issues.

Multiple marriages also can affect funeral and memorial service planning, burial or cremation. Please see page 29.

Protecting Your Pet

Your pet(s) will need care if you are seriously ill or hospitalized, or in the event of your death. The Animal Rescue Foundation in Walnut Creek, California, suggests that you designate at least two friends or relatives who agree to serve as emergency caregivers if something unexpected happens to you. Tell them ahead of time how to enter your house and give instructions how to feed and care for your pet(s). Also include the kinds and number of pets, as well as the names and contact numbers of the individuals who have agreed to serve as “emergency caregivers”. Carry a wallet “alert card” that lists names and phone numbers of the emergency pet caregivers. “In case of emergency” notices may be posted on a door or window specifying how many and what types of pets you have. On the back of the notice, list the emergency caregivers information for your pets.

Formal arrangements for the care of your pets can be included in your Will, trust, or other documents. You may also want to designate a sum of money to go to the caregiver to help with the expenses for your pet.

In your Will, you may also direct the executor or personal representative to place the animal with another individual or family, rescue group, or shelter. Keep in mind that many of those agencies do not have the space or funds to care for your pet adequately. Be sure they are able to guarantee adoption before designating an agency or shelter. You may want to visit them, determine the care and confinement of the shelter and if a donation is necessary.

For more information about protecting your pet:

The Humane Society of the United States
1.202.452.1100
www.hsus.org



Procedures for Handling Incapacity

Conservatorships

If a person becomes unable to care for him or herself, it may be necessary to establish a **conservatorship**.

A conservatorship is a court proceeding in which a person, called a “Conservator” is appointed to be responsible for the physical care and/or the financial affairs of another person, called the “Conservatee.” A Conservator responsible for the physical care of the Conservatee is called the Conservator of the Person, and a Conservator responsible for managing the financial affairs of the Conservatee is called the Conservator of the Estate. (A “conservatee” is called a “ward” in many states.)

All acts of a Conservator are subject to review by, and in some cases require prior approval of, the probate court. The Conservator is usually required to post a bond to protect against misuse of the Conservatee’s money or property. At the time the Conservator is appointed and periodically thereafter, a court investigator will visit the Conservatee to insure that he or she is being properly cared for.

Power of Attorney and Durable Power of Attorney

A power of attorney is a written document in which you (“the principal”) designate another person (“the attorney-in-fact”) to act on your behalf in matters requiring legal action e.g.— broad power to buy, sell or encumber your property. A power of attorney should be given only after careful consideration. The principal can revoke a power of attorney at any time. *It is revoked automatically if the principal subsequently becomes mentally incompetent or at the time the principal dies.*

*A **durable power of attorney** is one that continues to be effective even after the principal becomes incompetent. To ensure against the loss of this power, one can have a durable power of attorney that continues.*

A **springing durable power of attorney** is a durable power of attorney that becomes effective **only after** the principal is incompetent. The springing durable power of attorney can give the agent, or some third party, the power to determine when the principal has become incapacitated or set criteria for determining incapacity.

A power of attorney should be given only after careful consideration, and if you have any doubts or questions about the document, you should consult with a lawyer before signing it.

Conservatorship vs. Power of Attorney

It may be possible to avoid having to establish a conservatorship if before becoming incapacitated, the person gives someone a **durable power of attorney**.

The primary advantages of handling incapacity by a conservatorship instead of a durable power of attorney are that the court supervision of the conservatorship proceeding allows for full disclosure to all interested parties and provides extra protection to the Conservatee.

The primary advantages of a durable power of attorney are that it is less costly than a conservatorship and avoids public disclosure of what might be considered personal family matters. Which alternative is best depends on all of the circumstances involved, and you should consult with a lawyer in deciding how to proceed.

Another Procedure for Handling Incapacity

A **revocable living trust** can sometimes help to avoid the problems resulting from incapacity since the successor Trustee holds title to all of the assets and can continue to manage them even if the Trustor becomes incapacitated. (see page 12)

Advance Health Care Directive, Durable Power of Attorney for Health Care

An Advance Health Care Directive (AHCD) is an important written document in which you (the principal) designate another person (the “agent”) to make health care decisions for you if you cannot. Two alternate agents can also be appointed. The Directive permits you not only to appoint an agent but also to give instructions to your agent about your health care. Copies of your AHCD can be given to your attorney, physician and appointed agent.

The **Advance Health Care Directive**, formerly the Durable Power of Attorney for Health Care, is the best way to make sure that your health care wishes are known if for any reason you are unable to speak for yourself. By completing the Directive form, you may appoint another person to be your health care “agent” who will have legal authority to make decisions about your medical care if you become unable to make these decisions for yourself. Also, in the Directive, you may write down your health care wishes, such as your desire not to receive treatment that prolongs the dying process if you are terminally ill. You may also give instructions for donating organs or tissue, authorizing an autopsy, or disposing of your body after death.

The Advance Health Care Directive is now the legally recognized format for a “*living will*” in California. A living will is the general



term for written instructions that life supporting treatments are discontinued when the physician says there is a terminal and irreversible condition. The AHCD allows you to do more than the traditional living will, which only states your desire not to receive life-sustaining treatment if you are terminally ill or in a coma. An AHCD allows you to state your wishes about refusing or accepting life-sustaining treatment in any situation.

Although you do not have to appoint a health care agent, the California Medical Association recommends that you do so. By naming someone, you trust as your health care agent, you will have a person to actively participate in the decisions surrounding your health care.

To obtain a copy of the Advance Health Care Directive contact your doctor, hospital or the California Medical Association, Tel: 1.800.882.1CMA, Fax: 1.415.882.5195, www.cmanet.org or write CMA Publications, PO Box 7690, San Francisco, CA 94120-7690. CMA charges \$5 for the first copy.

See page 49 for a sample Advance Health Care Directive.

NOTE: All existing Durable Powers of Attorney for Health Care and Natural Death Act Declarations remain valid. Unless your existing Durable Power of Attorney for Health Care has expired, you do not have to complete a new Advance Health Care Directive. *A Durable Power of Attorney for Health Care executed before 1992 has expired and should be replaced with the Advanced Health Care Directive.*

Your Advance Directive for Health Care may not be binding in another country. It could, however, be useful as an advisory document. If you intend to travel, it is a good idea to carry a copy of your signed Directive as well as information concerning the whereabouts of your next of kin or others who should be consulted if the need arises. And, generally, in an emergency no certain determination can be made as to whether the victim has a chance of survival—therefore, all possible support is mobilized to maximize the chances of recovery. The patient’s consent is presumed. When the patient’s condition has stabilized to the point where a prognosis can be made, the Directive can be implemented to withdraw treatment that is unwanted and unwarranted.

Medical Insurance/Medical Payment Plans

Medical insurance is highly individualized. It is both important and wise to periodically review your policy and coverage. If you have questions, you can request interpretation from the personnel/benefits office at your place of employment. If you are retired, most senior citizen centers have a program to assist with insurance

explanation as well as with the processing of medical bills. You may also want to phone your insurance carrier directly for verification of coverage.

People who are faced with a critical or long-term chronic illness can become entangled in the complexities of payment for ongoing medical care. Treatment plans can become a financial burden if insurance providers are not informed at the onset of care. Some insurance companies require pre-authorization. This is usually done by the physician's office or the medical facility. It can be helpful to discuss payment plans at the beginning of care. There are many insurance plans available for long-term home and nursing home care. These require study, comparison and research before deciding on a plan. Premiums are dependent upon age, physical health and level of care. It can be helpful to discuss payment plans with your physician or designated representatives to avoid the additional worry and stress of unpaid bills.

If you find that you do not have adequate insurance coverage, please bring this to the attention of your physician for referral to appropriate assistance. There are representatives to discuss your needs with you and assess eligibility for government medical insurance plans.

Medicare is the medical insurance provided by the federal government for most individuals 65 years of age and older. Some people with disabilities may be eligible at an earlier age. Your inquiries concerning Medicare can be directed to the Social Security office in your city/county. Keep in mind that Medicare does *not* pay for nursing home custodial care. Also, Medicare currently does not pay for prescription drugs although this situation is under review. Inquire when you contact Social Security about your other questions. Their telephone listing appears in the US Government Section of the telephone book.

Medicaid is the medical insurance that each state is mandated to provide. In California it is called **Medi-Cal**. It is available to residents who are medically needy, have limited finances and meet eligibility requirements. The Human Services Agency in the county where you live can answer questions you may have.

Veterans

In some instances, veterans are eligible for medical care via the Veterans Administration Hospitals and outpatient units.

Note: In addition to discussing your insurance plans with your physician and other appropriate individuals as mentioned above, you may want to consult with your attorney about estate planning should you require long-term nursing home custodial care.



Probate and Disposition of Property at the Time of Death

Probate

Probate is a court proceeding to transfer property from the decedent to those persons named in his Will or those entitled to property under the law of intestacy.

Probate procedures include:

- Proving the Will, if there is a Will.
- Appointing an executor or administrator.
- Collecting and inventorying all assets subject to probate administration.
- Paying creditors and taxes.
- Transferring and distributing correctly the estate to persons designated under the decedent's Will or by intestate succession.

Although probate administration assures that the estate will be administered and distributed under court supervision, *the disadvantages of probate are*: (1) money paid to an executor, an attorney, and for court-related costs, (2) time required (often one year or more) and (3) the public nature of court proceedings.

At what point does an estate have to go to probate? **Aside from simple probate methods for small estates, there are ways of reducing the amount of an estate that must go through a probate proceeding, i.e., by transferring property to community property, joint tenancy, lifetime gifts, contracts, or trusts.**

Even if no probate is required because all property is in joint tenancy or in a living trust, it is still necessary to take action after death to change title to the property and to pay any state and federal taxes due.

Small Estates and Simple Court Proceedings

California law contains several provisions to help the prompt handling of small estates without probate or, at least, greatly simplifying the court proceedings:

- Any property which passes outright to a spouse by Will or by intestate succession (no matter what the size of the estate) does not have to go through probate, and there is a summary court proceeding available if necessary to confirm the spouse's ownership of the property without the delays and costs of a probate.
- If all of the property of a decedent otherwise subject to probate is worth less than \$100,000, the persons entitled to the estate

can collect the personal property and up to \$20,000 in real property by signing an affidavit in the form set out in the law and without having to file any court proceedings.

- If all of the property of a decedent is worth less than \$100,000, and the real property is worth more than \$20,000, the persons entitled to the real property can obtain a court order confirming their ownership of the real property in a summary court proceeding without the delays and cost of a full probate.
- A spouse can collect up to \$5,000 in wages due the decedent (whatever the size of the estate) by signing an affidavit in the form set out in the law.
- The probate court has discretion to “set-aside” estates worth less than \$20,000 to the decedent’s surviving spouse and minor children.

Bank Accounts

If you have a joint bank account with your spouse or someone else, they will already have access to the account at the time of your death. However, if you have an account in your name only, the disposition of the money in the account will be controlled by your Will or the intestacy laws in the absence of a Will. *Access to these funds may take some time. This fact should be considered in planning for your family’s immediate financial needs immediately following your death.*

If you have a bank account in your name that is in trust for another individual, that beneficiary is automatically entitled to the proceeds of the account upon your death. This type of account is not controlled by your Will or by the intestacy laws in the absence of a Will. However, before you set up such trust accounts, you should be sure that the beneficiary or beneficiaries of the trust account are the individuals whom you want the entire account to be given to upon your death.

Safe Deposit Box

If your safe deposit box is jointly rented, upon your death the co-renter will have access to it. If the box is rented solely in your name, only the executor or administrator of your estate has access to the box for the purposes of obtaining contents of the box. However, the bank can gain access to the box for purposes of a Will search only. Removal of the contents other than a Will codicil and/or funeral or burial instructions, must await the issuance of the necessary letters testamentary to the executor or administrator, or one of the summary probate proceedings. This is why it is important that your Personal Record File not be placed in the safe deposit box.



Access to Papers, Assets, Bank Accounts, etc.

The laws affecting access to papers, bank accounts, etc., have changed over the years. Like so much of estate planning, it is not always simple. Your survivors may or may not have access to your records after you die. If there are **non-recorded** assets that require immediate control and action, your survivors should have immediate access. If there is registered property (cars, stocks, bonds, real property, etc.) access becomes a question of their location and whose name is recorded on the property papers. If the only registered name of the property is your name, then a formal proceeding follows to establish the right of succession.

Joint Tenancy and Other Ways of Owning Property

How you hold title to property may determine whether or not the property goes through probate and how the property passes on death.

If title to property is held in your name alone, it will pass to your beneficiaries as directed in your Will. If you do not have a Will, it will pass to your heirs under the laws of intestacy.

Where your property is held with your spouse or someone else in **joint tenancy**, it will pass automatically on death to the surviving joint tenant or joint tenants. A Will cannot override true joint tenancy. It will be necessary to clear your name from the ownership of the property, by way of a joint tenancy proceeding. This entails either a court proceeding or the recording of an Affidavit of Death of Joint Tenant along with a copy of the death certificate. The property goes to the surviving joint tenants and is shared equally among them.

Separate property is property that was owned by one spouse before the marriage or that was acquired by gift or inheritance. Separate property can be willed to whomever the Will writer wants.

Community property is property acquired by married persons from the earnings of either spouse during the marriage. Each spouse owns an equal one-half share. If one of the spouses dies, the surviving spouse's half of the community property is not subject to tax and generally is not subject to probate under the decedent's Will. But it may be necessary for the surviving spouse to file with the court a community property/ confirmation petition. This is a court procedure wherein the court will confirm to the surviving spouse his or her share in the community property and award to the surviving spouse the decedent's share of the community property provided that the decedent left it to him or her.

Where property is held as **tenants in common**, your share will not pass automatically to the remaining owners, but will be passed to your heirs as directed in your Will and is likely to involve a probate proceeding. Also if you wish to own property with others in unequal shares, tenancy in common provides an appropriate vehicle.

You can convert separate property to community property, joint tenancy, or tenancy in common property by written agreement or conveyance either before or after marriage, provided that the formalities required by law are followed.

How title to property is held (for example, whether spouses own their home in joint tenancy or as community property) can have important tax consequences, and you should discuss this issue with your attorney or accountant.

Property: Real Property, Personal Property

Real Property is land and buildings. **Personal property** is all other property.

Unless one of the above mentioned simple probate proceedings is available, probate proceedings are always necessary if title is either in the decedent's name alone or held as tenants in common. Real estate becomes a complicated issue if not handled properly. Consult an attorney for proper ownership, listing of ownership, and potential distribution.

Automobile. Your automobile is personal property and will pass like other personal property, depending upon how ownership is held and directions in your Will. Having a second name on the pink slip of ownership facilitates transfer.

Investments. If your stocks or bonds are held in joint tenancy, they will pass automatically to the surviving joint owner. If your stocks are held in sole ownership, none of the summary probate procedures are available; it will be necessary to probate those stocks and bonds.

Make sure your investment portfolio is kept in a safe place known to your spouse and survivors. Let them know the name of the broker or account executive handling your account.

Commentary

It is wise to review with an attorney the various assets you have and the types of ownership in which they are held. After your discussion with the attorney, you may decide to change the form of ownership. With respect to real property held by husband and wife, should you decide to change the form of title on this property but still retain ownership, you will not incur any adverse tax consequences, such as gift tax or property tax reassessment.



All of a decedent's cash, whether on deposit with a bank or in a safe place at the decedent's home, is subject to the same rules of taxation and administration.

Life Insurance Policies

Determine your life insurance coverage and be sure it is enough for your survivors. If it is inadequate, increase the amount if it is possible. Women with dependent children need a large amount. This source of funds helps with funeral expenses, taxes and future expenses of your children's education.

The payment of life insurance proceeds is governed by the beneficiary designation in the insurance contract and not by the Will of the person insured. As part of your estate planning, you should satisfy yourself that the beneficiary designation of any life insurance you own is consistent with your intent and with the rest of your plan. For example, a parent who establishes a trust in his Will for the benefit of younger children will want to make the trustee of that trust, and not the children themselves, the beneficiary of the life insurance policy.

Review the beneficiary provisions under your life insurance policies. Circumstances may have changed since you last designated your beneficiaries. Consult your insurance agent and attorney about such changes. You may also wish to review with your agent any designated settlement options you may have elected when you first bought your policies.

Check all outstanding mortgages, car loans, or other installment loans. Some may be covered by insurance that will provide automatic repayment of the balance due, in full, upon your death.

At the time of death, contact all life insurance companies to determine the procedure for obtaining the life insurance benefits. The original copies of your insurance policies must be submitted along with a death certificate as well as the insurance company's claim form in order for a payment to be made.

A life insurance benefit paid on death is generally not subject to income tax. However, life insurance death benefits are subject to estate tax in the estate of the person insured if they are payable to the estate or if the deceased person owned the insurance policy or had any of several "incidents of ownership" over the policy. Examples of incidents of ownership are the power to change beneficiaries or the power to borrow against the cash value of the policy.

One technique to avoid estate taxation of life insurance proceeds is to have the insurance policy purchased by (or ownership of the policy transferred to) the beneficiary or to an irrevocable life

insurance trust. Your insurance agent and attorney can advise you whether this would be beneficial for you and can explain the technical requirements of such a plan.

Pension Plans, Profit Sharing, Retirement Accounts

If you are a member of any employment benefit plan, such as a pension plan, profit sharing plan, etc., review the provisions or contact your employer to discuss these provisions.

Check to see if payments will continue to your surviving spouse and if the pension system pays death benefits. If so, make sure your spouse or family has available the necessary information to make an appropriate claim.

Like life insurance, the death benefits of any retirement plan or pension plan, IRA (Individual Retirement Account), or KEOGH plan are paid according to the beneficiary designation, not the Will of the employee or person who owns the account. You should confirm that the death beneficiary designation in any plan you have is consistent with your intent.

Pensions, profit sharing plans and retirement accounts are subject to estate tax. Beneficiaries of pension funds profit sharing, or retirement accounts may also be required to pay income tax when they receive distributions or make withdrawals, and there may be minimum distributions or withdrawals that have to be made every year. Also, a surviving spouse may have the right to “roll over” a retirement account to a new account of his or her own. For these reasons, it is important that beneficiaries of pensions and retirement plans get prompt professional tax advice.

Other Insurance Sources

Some credit card companies provide life insurance for their card-carrying members. Some automobile insurance companies do so as well. These should also be reviewed.

If an occupational factor was involved in the death, Worker’s Compensation Insurance claims may also be appropriate. Liability insurance from an automobile policy may be involved. The families of state employees in some states are entitled to survivor’s benefits. Such possibilities should be checked.

Social Security Benefits: 1.800.772.1213

Your telephone book provides the number for your local Social Security Office. Or, you may call 1.800.772.1213 or see www.ssa.gov.

The Social Security Office will tell you about social security benefits to your surviving spouse. Applications for Social Security benefits may be made by phone, in the office, and by appointment.



Certain documents will be needed to complete the application. Booklets are available from the Social Security Office describing in detail what is necessary.

If you have children under the age of 18 years of age (or 19 if they are full-time high school students), Social Security benefits may still be available for them. The federal government has instituted many changes with respect to the Social Security benefits, and you should phone your local Social Security Office to determine if these benefits are still available for your family.

Grandchildren may be eligible for benefits on your record if both of their parents are either deceased or disabled.

You may request from Social Security a Personal Earnings Benefit Statement (PEBS) to verify that your past earnings have been correctly credited to your Social Security record. You may also use the PEBS in determining whether your survivors are eligible for benefits on your record. A request for a PEBS can be made by phoning your Social Security Office.

Veterans Benefits: 1.800.827.1000

Veterans are entitled to certain benefits at the time of death. The following is a brief description of general death benefits:

- Veterans are eligible for free burial in a national cemetery to include the gravesite, opening and closing of the grave, and perpetual care. Many national cemeteries have columbaria for the inurement of cremated remains or special sections for the burial of cremated remains.
- A headstone or grave marker, a United States flag, and a memorial certificate are provided.
- A portion of the burial expenses may be reimbursed for veterans who at time of death were receiving or were entitled to receive VA compensation or pension, or if death occurred in a VA facility, or if the veteran's death is service-connected (the result of disease or injury incurred in military service).
- Additional costs for transportation of the remains may be allowed if the veteran died while hospitalized or domiciled by VA or died in transit at VA's expense to or from a medical facility.
- Dependency and Indemnity Compensation payments are available to the surviving spouse and children of veterans whose deaths are service-connected. A death pension is available to the survivors of veterans whose deaths are not related to service. Specific conditions must be met.

Complete information on the wide range of Veterans' benefits administered by VA can be obtained by telephone. The VA's national toll-free information number is 1.800.827.1000 and the web site is www.vba.va.gov. Information can be obtained from U.S. Dept. of Veterans Affairs at www.va.gov.

Outstanding Debts, Credit, Loans

Credit Responsibilities

Credit Cards and Charge Accounts. It is the responsibility of the executor or administrator of an estate to supervise the payment of your debts, if the estate is being settled through the probate court. If your estate passes under one of the simple probate proceedings, the persons who receive the property are liable for your debts up to the value of the property they receive. If your estate passes according to a Trust, the Trustee is usually directed to pay your debts.

How the debts will be handled will vary with each creditor. It will also depend upon how the estate is settled, what type of credit is involved and in whose name credit was granted. Debts include utility bills and rent as well as personal debts.

In the case of credit cards and charge accounts, the card issuer or credit department or the issuing store should be notified of the death. Give the account number and the names listed on the account. If the estate is being probated, it will be necessary for the creditor to file a claim against the estate within four months of the first issuance of letters testamentary or letters of administration. Otherwise, the creditor should send the person a bill or statement. The amount of each debt should carefully be recorded since it will be a deduction against any federal estate taxes due.

The survivor may want to establish an account in his/her own name. If it was a joint account, the survivor may be asked to reapply for an individual account. If reapplication is unnecessary, all activity on the joint account will be transferred to a new account in the survivor's name. If the survivor was an authorized user on the spouse's credit account, he/she may have to apply for an account in his/her own name. If credit was originally granted on the basis of the spouse's income, the survivor's income at the time may not have qualified him/her for credit. If requested, the survivor's participation in the spouse's account must be considered in the creditor's evaluation. Cancelled checks and signed receipts are used as proof.

If a single person dies and has an outstanding debt but no assets, the debt would not get paid. If a single person dies and has an outstanding credit balance, the credit would be treated as a probate asset.



Installment Credit

If credit was granted jointly to you and your spouse, that is, both of you signed a promissory note or installment contract, usually it is necessary for the survivor to notify the creditor so that names on the billing records can be changed. The survivor is still responsible for payments.

If only the deceased spouse was granted credit, the creditor's course of action depends on how the estate is settled; how credit payments will be settled; and whether credit was secured by property. If the estate is probated, the creditor will likely file a creditor's claim against the estate. Because of California's community property laws, assets that you and your spouse owned as community property may be held liable for payment of a spouse's debts.

If the survivor takes over payments he/she will have to sign all credit documents, and any insurance policies that may secure the debt may have to be altered, thus transferring the transaction into his/her own name alone. Repayment schedules may be adjusted to fit the new financial situation. If credit life insurance was carried on the debt, the debt may be paid off by this insurance. An accountant or attorney should be contacted to advise you on these matters.

If there is no survivor or documents to arrange for the disposition of liabilities and assets, they will be distributed according to the laws of the State.

Loans

The settlement of the deceased's loan obligations may be simple or complicated depending on such things as the terms of ownership (e.g., individual, community property, tenants in common, etc.), and the wording of the agreement itself. In general, loans are treated like other debts of the estate. They are settled prior to the distribution of the estate's assets to any beneficiaries. However, a mortgage or deed of trust on property is generally not paid, and the property passes subject to the mortgage or deed of trust. Because the issue can be complicated, we recommend that you contact your attorney.

Remember:

When in doubt, consult a lawyer who has experience in estate planning.

You have worked hard and you have treasured belongings of personal sentiment that will need a good home when you are no longer here to take care of them.

Taxes

Federal Gift and Estate Taxes

The federal government imposes an estate and gift tax whenever any significant amount of property is transferred either by gift during lifetime or at death. The gift and estate tax system is “unified” which means that the tax is calculated based on the total value of all gifts a person makes during life plus the net value of his or her estate at the time of death.

The property subject to tax on death includes all property that the person owns or over which he or she has substantial rights, and thus may include items such as the proceeds of life insurance, joint tenancy property, and retirement plans. Property other than money is valued for tax purposes at its date of death value by having it appraised.

Like income tax, the gift and estate taxes are calculated on a graduated rate schedule which starts at zero and increases with the value of the property being transferred. The highest estate tax rate of 50% was in 2002 which applied to amounts over \$2.5 million. The highest rate decreased to 49% in 2003, 48% in 2004, 47% in 2005, 46% in 2006 and will be 45% in 2007. *Estate tax is due and payable nine months after date of death.*

How the estate tax will fade away

Year	Estate tax exemption	Gift tax exemption	Highest estate and gift tax rate
2006	\$2 million	\$1million	46%
2007	\$2 million	\$1million	45%
2008	\$2 million	\$1million	45%
2009	\$3.5 million	\$1million	45%
2010	Estate tax repealed	\$1 million	top individual income tax rate (gift tax only)*

* At the time of this printing (Fall 2010) new information about the continuation of the estate tax exemption is not available.



For most people, the important points to know about estate and gift taxes are:

- There is an “unlimited marital deduction” so there is no tax on property that is given to your spouse by either gift or inheritance, as long as your spouse is a U.S. citizen. (Special planning is required to obtain the marital deduction if the surviving spouse is not a U.S. citizen.)
- There is an exemption amount (sometimes called the “unified credit”) which allows every person to transfer up to a certain amount of property without any tax. The exemption is \$2 million in 2006. The estate tax exemption will increase to \$3.5 million in 2009 (See chart on page 25).
- You can give up to \$12,000 each year free of any gift tax, to any recipient. Lifetime gifts in excess of this annual exclusion amount will reduce the exemption that will be available on death, and cumulative taxable gifts in excess of \$1 million will be subject to a gift tax.
- There is an unlimited charitable deduction, so there is no tax on property that is given to a recognized charity.

Under current law, the estate tax will be completely eliminated on January 1, 2010. (There will still be a gift tax of 35%, with a \$1 million exemption.) However, the estate tax will be reinstated on January 1, 2011. Many people expect that the tax laws will change before 2010.

For persons who have substantial assets, estate tax planning often involves making some gifts during one’s lifetime, leaving property to charity, and for married persons, taking advantage of the exemption from tax in the estate of each spouse. However, such planning can be quite complex and subject to many technical rules, and you should consult with your attorney or accountant so that the tax consequences of any action you intend to take can be fully explained to you.

State Inheritance Tax

In June 1982, California abolished its gift and inheritance taxes. (If you reside in a state other than California, the state transfer taxes may differ.)

Income Tax Returns

The Internal Revenue Service has the right to audit income tax returns for a period of three years after the filing date. Your tax return records should be kept for at least that period.

A record of all taxable income and deductions for the current taxable year (or for the prior year, if such return has not yet been filed) should be kept. It may be important for your estate to file an income tax return in the year of your death (see below).

Fiduciary Income Tax Returns

Fiduciary income tax returns are those that are filed by an executor, administrator or a trustee.

A decedent's estate is liable for income taxes on money earned by the decedent during the year of death and for any income earned on the estate's assets before they are distributed. Thus, the beneficiaries or executor must file a **final income tax return** for the decedent's last year. Also, the decedent's estate is itself a taxpayer and may need to file tax returns while it is in existence.

The foregoing is only a general discussion of what are very complicated subjects. Additional resource information is available in the Bibliography. Any tax planning should be done with the assistance of an attorney or accountant.



PART III: FUNERAL ARRANGEMENTS

Commentary

This section of the Estate Planning booklet is much harder to read for some individuals than the previous Section. We have tried to present basic information to help you make decisions. We also have tried to be practical, and we hope the presentation will both add knowledge and prove beneficial.

Pre-Planning

Share your thoughts and wishes about your funeral arrangements with your family and include them in the planning. Planning in advance for one's own or a family member's funeral can have several positive benefits. Many people feel a great sense of relief in knowing that their wishes for a funeral or memorial service will be carried out. It also can spare survivors indecision, and in some cases, save them additional financial burden.

Name a spokesperson who will know your wishes and be able to make the necessary final arrangements. Other people who can be especially helpful in the discussion are your pastor, the director of the funeral agency you select or the memorial society you belong to.

Pre-planning with your clergy and your family can help incorporate the religious and social dimensions of your life into a service that is appropriate for you and your family. Your clergy is also able to provide supportive counseling and bereavement care to your family.

Belonging to a memorial society can often be helpful. A memorial society is a non-profit organization formed to obtain dignity, simplicity, and economy in funeral arrangements through pre-planning. They generally charge modest membership fees and provide information and counsel. Many have helpful agreements with funeral directors.

If cremation is a concern, you should make your thoughts known to your family members. This should be done by way of written instructions as opposed to verbal instructions. If you need information with respect to cremation of your remains, you can call a local funeral director, a Memorial Society or Cremation Society listed in your telephone directory.

Pre-planning with a funeral director that you and your family have chosen can also be more helpful than many people realize. Your funeral director will assist in handling many matters coincident to death such as service arrangements, obituary notices, death certificates, arranging facilities for family and

friends to gather, obtaining a cemetery plot for burial, and managing other activities necessary for burial, cremation, bequeathal to a medical school, and out-of-state transportation, where necessary.

For Multiple Marriage Situations And Blended Families

As multiple marriages and blended families become more common, burial decisions can be more complicated. A majority of states give the surviving spouse the right to make burial decisions, followed by the deceased's adult children, adult grandchildren, parents and siblings. Religious affiliation and history of military service may also play a role in the decision-making. Cremation makes interment in multiple sites easier for some families. It is recommended that you contact your local funeral home about your state's laws. Even if your state won't recognize your written preferences, it is helpful to have them in writing so that your loved ones are aware of your intentions.

Types of Services

In general there are basically **two forms of services**—a funeral service or a memorial service. A funeral service, by definition, is held in the presence of the body and sometimes includes a viewing. A memorial service is one held without the body present. It is generally less expensive. Decide with your family which kind of service you want, taking into consideration costs, personal preferences, as well as cultural and religious beliefs.

You may wish to request more information on costs and on the timing of burial, cremation or bequeathal to a medical school. Either the memorial society or your funeral director will be able to give you the details on procedures required and the costs involved. Burial is generally the most expensive procedure. If you are a service veteran or spouse of a veteran, or a member of a fraternal lodge, remember to find out what death benefits are available to you. (see page 22-23)

Low Cost Funerals

The average cost of today's traditional funeral is \$7,000 while a basic cremation is \$600 to \$1,000. This is a cost which many families can ill afford, especially if their resources have been drained after a lengthy illness. There are low cost, simple alternatives to the more elaborate and expensive arrangements.

Funeral and Memorial Societies can offer low cost funerals, burials, or cremations. Be aware that some of these societies do not help with obituaries, planning memorial services, making service folders or use of a facility to hold a service. There are approximately 200 such societies in the U.S. and Canada. They are non-profit groups formed to promote dignity, simplicity, and



economy in funeral arrangements through pre-planning. The Societies charge modest membership fees (approx. \$25 for an individual) and provide information and advice on funeral arrangements at a reasonable cost, a savings of several hundred dollars in most cases. For more information, contact your local society or the Federal Trade Commission www.ftc.gov/bcp/online/pubs/services/funeral.htm.

Laws regarding funerals and burials vary from state to state. Be sure to know which goods or services are optional and which are required by law. For California, consult the State of California, Department of Consumer Affairs website: www.dca.ca.gov/cemetery (and funeral information).

The Federal Trade Commission (FTC) regulations require that all funeral charges must be itemized (including the details such as cost of the organist, registration book, etc.).

Funeral directors may also offer the same service at the same cost as one of the Societies. You may wish to contact a local funeral home to determine this. If you need help with obituaries, memorial folders, or a memorial service, a Society may not work for you.

Most states have a licensing board that regulates the funeral industry. You may wish to contact the board in your state for more information or help, or any of the organizations listed below. Or, you may also call your local Funeral and Memorial Society. Local societies provide speakers and workshops.

Financial Resources

County Assistance. Arrangements for transportation and preparation of the body, burial or cremation in a county facility for a person determined to be indigent (without funds or responsible relatives) are made by a mortuary located in the county of legal residence and by the office of Public Administrator. In some cases, the County Coroner may be called to pick up the body. Burial expenses for indigent individuals are commonly paid for by the county, to the extent allowed by the County Board of Supervisors. However, the application for County Assistance must be applied for and approved by the Office of the Coroner or Public Administrator prior to any funeral arrangements. It should also be noted that supplementation to that amount authorized by the County is not allowed.

Social Security. Death benefits are available under some conditions to the survivors of persons who were covered by Social Security. These benefits must be formally applied for. Phone your local Social Security office.

The spouse of the deceased may be entitled to a lump sum death benefit of \$255, provided the deceased was covered by Social Security in his or her own right. If no spouse survives, the lump sum death benefit is not available to apply against the burial expenses. Children entitled to survivor's benefits may also be eligible for the death benefit.

Payment Plans. You may wish to establish a special account to assist with funeral expenses. This may take the form of a bank account, insurance program or other savings plan. Funeral directors can be helpful in determining costs and discussing available financial planning alternatives.

Other. Other death benefits are provided by trade unions, fraternal organizations, life insurance, the Veterans Administration, credit unions and Workers' Compensation. It is beneficial to list these so that families do not overlook available options.

Consumer, Funeral & Advocacy Resources

American Association of Retired Persons (AARP)

601 E Street, NW
Washington DC 20049
1.888.OUR AARP or 1.888.424.3410
www.aarp.org

Non-profit, nonpartisan organization serving older Americans. Two of its many publications include "Funeral Goods and Services" and "Prepaying for Your Funeral"—available free by writing to the address above or email member@aarp.org. The AARP website also provides funeral-related information.

Council of Better Business Bureaus, Inc.

4200 Wilson Blvd., Suite 800
www.bbb.org
Arlington, VA 22203
1.703.276.0100

Private, nonprofit organizations that promote ethical business standards and voluntary self-regulation of business practices. BBB's website offers information about pre-need funeral planning.

Cremation Association of North America

401 North Michigan Avenue
Chicago, Illinois 60611
1.312.644.6610
www.cremationassociation.org

An association of crematories, cemeteries and funeral homes that offer cremations and funerals.



Department of Veterans Affairs

U.S. Department of Veterans Affairs
 National Cemetery Administration
 810 Vermont Avenue, N.W.
 Washington, D.C. 20420
 1.800.827.1000
www.cem.va.gov

Assists with information on the VA's national and state cemeteries; headstones and markers; military funeral honors; and other burial benefits.

Federal Trade Commission

Consumer Response Center
 600 Pennsylvania Avenue, N.W., Room H-130
 Washington DC 20580
 1.877.382.4357
www.ftc.gov

Funeral planning information or for complaints about a funeral home.

Funeral Consumers Alliance, Inc. (FCA)

1.800.765.0107
www.funerals.org

A non-profit, non-denominational funeral education and advocacy organization with nearly 1254 affiliates distributed throughout the country. FCA can assist with finding local memorial societies and provides educational materials, as well.

International Cemetery and Funeral Association

107 Carpenter Drive Drive, Suite 100
 Sterling, VA 20164
 1.800.645.7700
www.icfa.org

A nonprofit association of cemeteries, funeral homes, crematories and monument retailers that offer informal mediation of consumer complaints through its Cemetery Consumer Service Council. Website provides information and advice under "Consumer Resources."

Jewish Funeral Directors of America Seaport Landing

150 Lynnway, Suite 506
 Lynn, MA 01902
 1.781.477.9300
www.jfda.org

An international association of funeral homes serving the Jewish community.

Monument Builders of America

136 South Keowee Street

Dayton, Ohio 45402

1.800.233.4472

www.monumentbuilders.com

Non-profit organization of companies that design, sell and maintain burial and cremation monuments.

National Funeral Directors and Morticians Association

3951 Snapfinger Parkway, Suite 570

Decatur, Georgia 30035

1.800.434.0958

www.nfdma.com

A national association primarily of African-American funeral providers.

National Hospice and Palliative Care Organization

1731 King Street, Suite 100

Alexandria, Virginia 22314

1.703.837.1500

www.nhpco.org • www.caringinfo.org

Caring Connections

1.800.658.8898 • Multilingual line 1.877.658.8896

A program of the National Hospice and Palliative Care Organization (NHPCO), focuses on improving care at the end of life.

- Provides free resources and information to help people make decisions about end-of-life care and services before a crisis occurs.
- Helps people connect with the resources they need, when they need them.
- Brings together community, state and national partners working to improve end-of-life care.



Grief Resources on the Internet

AARP

www.aarp.org

Family, home and legal advice and support.

The Compassionate Friends

www.compassionatefriends.org

Assists families toward the positive resolution of grief following the death of a child of any age and provides information to help others be supportive.

Hospicenet

www.hospicenet.org

Articles for families and individuals facing a life threatening illness.

The Centering Corporation

www.centering.org

This is a non-profit organization dedicated to providing education and resources for the bereaved.

Law Help California

www.lawhelpcalifornia.org

Provides low-income Californians with easy online access to basic legal resources and attorney information.

Finding lowest cost bereavement airfares

www.drvoyageur.com/bereave-tips.html

www.wholesale-fares.com

www.Cheapoairfare.com

PART IV: AUTOPSY; BODY, ORGAN AND TISSUE DONATIONS

Information Regarding Autopsy

In some cases, an autopsy is more valuable to physicians and researchers than bequeathal to a medical school. This can be discussed with those wishing to donate bodies. The personal physician can assist with decisions concerning autopsy.

An individual may authorize an autopsy in his Will or in another written instrument (Section 7113 Health and Safety Code). The family still needs to make funeral arrangements.

In a criminal situation, the family cannot deny an autopsy if it is being considered by the coroner. If the individual, prior to death, makes a religious objection, providing that religion does not condone autopsy, an autopsy will not be conducted providing this is not a criminal case, and the decedent's religion does in fact object to autopsy. If there are other circumstances where the family objects, they may contact the coroner.

Body, Organ and Tissue Donations

Since transplants can further scientific knowledge or provide hope to people with organ failure, some persons express a desire to "will" their bodies to science, or donate vital organs and tissues after death. We suggest you contact schools of medicine, your local hospital social service department, and/or donor banks for information (see list below).

Applications for body donations are *completed prior to death* and filed with the appropriate school.

If you are interested in donating your organs, tissues or body, there are several steps to take:

- Indicate your wish on your drivers license
- Carry an organ donor card
- **Discuss your decision with family members and loved ones (next of kin may be asked for consent at time of death)**

Procedures for Body Donations

Medical schools reserve the option to accept or decline donations, depending upon their need at the time of death. If the body is "willed" and accepted by the medical school, funeral arrangements may still need to be made. Some medical schools will dispose of the remains or, if desired, will return them to the family at a future time.



At the time of death, the medical school will advise the family on how the body should be handled and transported, what type if any embalming is required, and how to take care of the legal papers.

Arrangements will vary depending on the medical school and whether a funeral service in the presence of the body is held before relinquishment to the school.

Procedures for Organ and Tissue Donations

Not all medical and dental schools have a body and/or organ donation program. To determine if one does, however, inquire at the institution to which you wish to make your donation, or go to www.med.ufl.edu/anatbd/usprograms.html.

Some universities work directly with transplant banks and organizations instead of operating their own donation programs. Transplant banks provide donor cards for individuals interested in making a donation of body and/or organ(s) to science and education. They also will provide information regarding transportation of the decedent, associated costs, and other related instructions. Write for application forms, complete and return them to the appropriate department as directed. Carry the card in your wallet. No payment may be made in connection with a body donation. This policy is in accordance with State laws and all institutions accepting human remains must comply with it.

“Gift of Life Program”

A Uniform Anatomical Gift Act has been enacted in every state and allows individuals to authorize donation of various tissues and organs for transplants upon their death. In California, the Department of Motor Vehicles supplies donor stickers which may be affixed to the back of your driver’s license or identification card to alert quickly family or medical personnel of your wishes at the time of death. The “Gift of Life Program” stickers do not apply to persons leaving their bodies to medical schools. It is also important to let family and physician know in writing about the patient’s wish to donate.

There are no age limitations on who can donate. (*The deciding factor is a person’s physical condition, not age.*) Persons under 18 years of age must have parent’s or guardian’s consent. Even if the patient has authorized use of his/her organs for transplant, the family’s permission will still be sought. If the family agrees, the family and the medical personnel will proceed with the organ donation. Removal of donated organs does not produce disfigurement and does not interfere with customary funeral or burial arrangements. These arrangements remain the responsibility of the family or persons in charge of the estate.

Time is very important in tissue and organ transplantation. Most organs need to be transplanted within a few hours after removal from the donor.

Notes: The costs related to tissue and organ donations are paid for by the recipient usually through insurance, Medicare or Medicaid. All major religions support tissue and organ donations. Organ donation do not prohibit an open casket funeral.

There are numerous organizations to contact regarding organ and tissue donations. A few are listed here:

Organ Procurement Organizations

**US Dept. of Health and Human Services
Division of Transplantation, Office of Special Programs,
Health Resources and Services Administration**
www.organdonor.gov

This site is devoted to providing information and resources on organ donation and transplantation issues and to promote organ and tissue donation awareness.

National Marrow Donor Program

3001 Broadway NE, Suite 500
Minneapolis, MN 55413-1753
1.800.MARROW.2 (1.800.627.7692) or www.marrow.org
NMDP facilitates bone marrow and blood stem cell transplants for patients with life-threatening diseases.

Scientific Registry of Transplant Recipients

315 W. Huron, Suite 260
Ann Arbor, MI 48103
1.800.830.9664
www.ustransplant.org
Supports ongoing evaluation of scientific and clinical status of solid organ transplantation in U.S.

United Network for Organ Sharing

1.888.894.6361
www.unos.org
The organ transplant community is joined under a nationwide umbrella: The United Network for Organ Sharing (UNOS), a nonprofit charitable organization.



Eye Banks

Eye Banks accept eyes for cornea transplants regardless of the patient's age, blood type, or whether the patient wore glasses. The corneal transplant is effective in restoring sight in 90% of the most common corneal diseases. Transplants cannot cure all vision defects, nor is it possible to transplant the entire eye. There are some medical situations, however, which make this donation impossible. To pledge your eyes, call or write the nearest eye bank. Contact the Eye Bank Association of America to receive a list of eye banks in the U.S.

Eye Bank Association of America

1015 Eighteenth St. NW, Suite 1010

Washington DC, 20036

1.202.775.4999

www.restoresight.org

Provides a list of eyebanks in the U.S.

PART V: WHAT TO DO WHEN DEATH OCCURS

Introduction

Depending on where the person has died, his/her financial resources, the circumstances surrounding the death, and whether there are responsible and available relatives, there are specific guidelines to follow. If the body is destined for a medical school, please refer to section IV, page 35. A checklist of things to be done after a death occurs has been included on page 41.

When Death Occurs at Home

If a family member, friend or hired caretaker is present when an individual dies, call the patient's physician or physician's office to report the death. If the person is under the care of a hospice, the hospice usually has a 24-hour telephone service and can be called. Hospice personnel are extremely helpful at the time of death. They can be contacted for assistance and guidance in the necessary procedures at that time.

If death is **expected** or is the result of a long-term or terminal illness, you may wish to discuss death-at-home issues with your doctor, home care nurse or social worker. This is where the Advance Health Care Directive becomes a major issue, and home health agencies need to know of "No Code" status (or "Do Not Resuscitate") (see pages 13-14).

Call the county coroner's office if the death is **unexpected**, if the person had not been treated by the attending physician within the past 20 days, or if there is any other reason for the coroner to be notified, i.e., trauma involvement, death due to unnatural causes, etc., or if the person was terminally ill and had not been seen by a doctor within 20 days. The physician needs to discuss the situation with the coroner. Depending on the situation, the coroner may waive the examination. The county coroner or the attending physician can prepare a death certificate.

If the family is unsure of the procedure, the family should call the coroner. The coroner will assist in calling the mortuary if required, but the family needs to select the mortuary first.

If the physician or the family wishes an autopsy, the physician will instruct the family on what to do. If an autopsy is not requested, the physician will advise the family to call the mortuary of its choice if there is no need to contact the coroner. If the coroner is contacted, it is appropriate to make sure that the mortuary is aware the coroner is involved so that the mortuary can interface with the coroner, making arrangements for the release of the body and obtaining physician authorization to sign the death certificate.



A county coroner can also be called if you are unsure of what procedures to follow. Coroners' offices have 24-hour telephone services.

If a person dies at home and is under the care of hospice, the hospice nurse can pronounce the death. If not under hospice care, the police are usually called and upon their arrival they notify the coroner and the funeral home. Often times, families will call the paramedics, fire department or ambulance service without realizing that a body cannot be transported once the person has been pronounced dead. (An emergency ambulance cannot be used to transport a body after the pronouncement of death except in very rare situations.) In rare cases, if an ambulance is later used to transport the body, a transport fee is charged. Mortuaries will provide transportation as part of their regular services.

Waiting for the authorities or medical personnel can be a very difficult time. You may wish to call a relative or friend to be with you.

Deceased Persons Without Immediate Family

In situations where there are patients without family members and consequently without heirs or executors legally able to act in relation to funeral arrangements and the affairs of the deceased, it is necessary to communicate with the Office of the Public Administrator in your county (see your local telephone book for the number). That agency will often assume responsibility for funeral arrangements and disposition of the property of the deceased. If there are resources that may be used to meet the cost of funeral arrangements, that agency will use such resources accordingly and will work out burial with an independent mortuary; otherwise, County cremation through a mortuary will be authorized.

Death in a Foreign Country

Many individuals upon learning that they have a terminal illness make that dream trip that they had always wanted to take before they die. However, there are many complications which can result if death occurs abroad. Anyone going abroad should carry in his/her passport funeral instructions to be followed in the event of death. United States Consuls and Embassies can provide information about transportation, legal issues, and so forth.

Many people with terminal illnesses set up what is known as a **pre-need** with a funeral home (this means they have met with the funeral director, provided him or her with the vital statistic information, discussed service information, and signed a release which the funeral home keeps on file) or they have set up a trust

with a funeral home (this includes all of the above, with the addition of prepaying). Before they leave on a trip, the individual should notify the funeral home of their general travel plan. At that time they may also update information that may have changed and sign a release (if they have not already done so.)

Checklist of Things to be Done at the Time of Death

- ___ Call physician/physician's office and/or coroner/mortuary. Notify next of kin, if not present at time of death. Do *not* call paramedics (911).
- ___ Obtain copy(s) of death certificate. The funeral/mortuary representative will arrange for death certificates to be signed by a physician, file it with the proper county authority, and provide additional copies to the family (6-8 copies of the certificate are usually needed).
- ___ Select pallbearers and notify. (Avoid men with heart or back difficulties, or make them honorary pallbearers.)
- ___ Call and meet with the funeral/mortuary representative to make arrangements for type of service. They will also ask for information about the deceased, including social security number, place and date of birth, most recent address of employment, and parents' names and their places of birth. The representative will also help with completion of the death certificate, permit of disposition filed with the county where the death occurred before you can bury, cremate, or move a body, selection of casket, obtain obituary information and get it into the newspapers, coordinate florist, cemeteries, churches, clergy, etc.
- ___ Check with the mortuary representative concerning the time and date availability at mortuary and/or religious facilities before finalizing the time and date.
- ___ Decide on time and place of funeral or memorial service(s).
- ___ Collect information for the obituary. Include age, place of birth, cause of death, occupation, college degrees, memberships held, military service, outstanding work, list of survivors in immediate family. Give time and place of services. Deliver in person, phone or fax to newspapers. Some mortuaries will give assistance with these arrangements. This information will have to meet newspaper deadlines. Include memorial gift designation, if any, in the obituary. (*Most newspapers will charge for printing of the obituary.*)
- ___ Decide on appropriate memorial to which gifts may be made (for example, a church, library, school, or a charity.)



- ___ Make list of immediate family, close friends and employer or business colleagues. Notify each by phone, providing information about the services.
- ___ Assign person to stay in family home at time of service for security reasons.
- ___ Arrange for members of family and close friends to take turns answering door or phone, keeping careful record of calls.
- ___ Arrange hospitality for visiting relatives and friends.
- ___ Arrange appropriate childcare.
- ___ Coordinate the supplying of food for the next days.
- ___ Consider special needs of the household, such as cleaning, etc. which might be done by friends.
- ___ Notify lawyer and estate executor.
- ___ Plan for disposition of flowers after the funeral service. (Some people place the flowers at the cemetery, while others give them to hospitals, rest homes, etc.)
- ___ Prepare list of persons to be notified by letter and/or printed notice.
- ___ Prepare list of persons to receive acknowledgements of flowers, calls, etc. Send appropriate acknowledgements. (Can be written notes or printed acknowledgements.)
- ___ Check carefully all life and casualty insurance and death benefits including Social Security, credit union, trade union, fraternal, military, etc. Check also on income for survivors from these sources.
- ___ Notify insurance companies, including automobile insurance, for immediate cancellation and available refund.
- ___ Check promptly on all debts and installment payments. Some may carry insurance clauses that will cancel them. If there is to be a delay in meeting payments, consult with creditors and ask them for more time before the payments are due.
- ___ If deceased was living alone, notify utilities and landlord, and tell post office where to send mail. Take precaution against thieves.
- ___ Please refer to pages 16 to 27 about procedures for settling the estate, including insurance benefits, credit liabilities, etc.
- ___ It will be helpful to keep a record of notes/actions/calls, etc. in a 3-ring binder or notebook during this difficult and busy time.

Additional information is available in the Bibliography.

PART VI. OTHER THOUGHTS

A Gift of Words

You can also leave your loved ones a very special gift of continuity by tape recording a family history. Think of how much you know about these people you love and how much richer their lives will be with a personal history.

The Difference

“The only difference between the healthiest of us and the sickest of us is a matter of time. Each of us is willing to entertain the thought of our death only for a brief moment, and then we go on because we are in the business of living. We hold on dearly to life; we recognize it as the true gift that it is.

Actually, we are the students of death all of our lifetime as we experience endings, separations and losses through graduation, new jobs, illness, moving to another place, and the death of friends. These become our teacher when we are willing to ask what it is that we can learn from them to enhance our living today.” (Source: “If the Trolley’s in Sight,” 1980.)



PART VII. BIBLIOGRAPHY

Resources

Inclusion in this book is not an endorsement by CPIC. Many of the descriptions are provided by the publisher. Additional resources are available from your community library or from agencies that focus on a particular health problem or issue.

NOLO Press

950 Parker Street, Berkeley, Ca 94710 1.800.728.3555
www.nolo.com

Offers self-help legal software, books, forms and downloads. This includes personal record keeping documents and software, wills, living trusts, powers of attorney, living wills (healthcare directives), authorizations and agreements, child and elder care forms, documents for your executor, tax saving strategies and probate information.

Grieving and Preparation for Dying

A Grief Observed by C. S. Lewis, Harper, San Francisco, 2001.

Written as he mourned the loss of his wife, this book is a thoughtful and honest reflection on the fundamental issues of life, death, and faith.

Graceful Passages—audio set containing 2-CDs. A 56 page book is available separately.

1.888.242.6608

www.gracefulpassages.com

Messages and music offering emotional healing for facing life-threatening illness and grieving a loved one. Messages spoken by Elisabeth Kubler-Ross, Ram Dass, Thich Nhat Hanh, Rabbi Zalman Schachter-Salomi, Arun and Sananda Ghandi, Jyoti, Very Rev. Alan Jones, Tu Weiming, Lew Epstein and Fr. Maximillian Mizi.

Jane Brody's Guide to the Great Beyond: A Practical Primer to Help You and Your Loved Ones Prepare Medically, Legally, and Emotionally for the End of Life by Jane Brody, Random House, 2009.

Offers insights and advice with a light touch of humor on coping with the issues surrounding the end of life. Includes pertinent questions and provides checklists of things that patients and family members may want to ask; extensive resources.

Sacred Dying: Creating Rituals for Embracing the End of Life by Megory Anderson and Thomas Moore; Marlowe & Co, 2003.

A testimonial and handbook for creating a dignified, peaceful, and more sacred end to life, Includes prayers and poems from various traditions; personalized and creative rituals to bring a sense of peace, reconciliation and acceptance; how to address “unfinished business” and much more.

The End-of-Life Handbook: A Compassionate Guide to Connecting with and Caring for a Dying Loved One by David B. Feldman and Stephen Andrew Lasher Jr.; New Harbinger Publications, 2008.

Guidance and support for making the often difficult decisions associated with death and dying. Addresses both the emotional and psychological issues and the practical and medical realities typically dealt with at this time. Written by a psychologist and a medical doctor who are passionate advocates for quality end-of-life care.

Tuesdays with Morrie by Mitch Albom. Knopf Publishing Group. Reprinted 2005.

A man reconnects with his college professor after nearly twenty years, in the last months of the older man’s life. A thoughtful and insightful true story.

Children and Parents

Another Morning: Voices of Truth & Hope from Mothers with Cancer by Linda Blachman; Seal Press, 2006.

A book about the healing power of telling and recording life stories and legacies. Addresses how mothers go on living and raising children after dealing with their own cancers.

Badger’s Parting Gifts by Susan Varley; William Morrow & Co., 1992.

Describes Badger’s death and how his friends transform their grief by seeing how Badger lives on in the “parting gifts” he’s left them. Ages 4-up.



The Fall of Freddie the Leaf by Leo Buscaglia, Henry Holt & Company, 2002.

The simple story of how Freddie and his companion leaves change with the passing seasons, finally falling to the ground with a winter's snow. An inspiring allegory illustrating the delicate balance between life and death.

The Journey Through Grief and Loss: Helping Yourself and Your Child When Grief is Shared, by Rob Zucker, MA, LCSW. St. Martin's Griffin, 2009.

A look at grieving from adult and children perspectives; suggestions for addressing family differences to loss and grief.

Motherless Daughters: The Legacy of Loss by Hope Edelman, Da Capo Press, 2006.

A study of the effects on daughters of their mothers' deaths; personal perspectives and stories included.

PART VIII: APPENDIX

Advance Health Care Directive

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For a small fee copies of the Advance Health Care Directive Kit may be obtained from CMA Publications at 1.800.882.1CMA, or www.cmanet.org

Many physicians, clinics and hospitals also provide copies of the Advanced Health Care Directive at no cost to the patient.

The document may change from year to year. Be sure you have a current form.



Advance Health Care Directive

Including Power of Attorney for Health Care Decisions
California Probate Code Sections 4600-4805

MY HEALTH CARE WISHES

This form lets you give instructions about your future health care. It also lets you name someone to make decisions for you if you can't make your own decisions. It's best if you fill out the whole form, but, as long as it is signed, dated and witnessed or notarized properly, you may choose only to appoint an agent (section 1) or provide health care instructions (section 5). If there is anything in this form you do not understand, read the booklet that comes with this form and the italicized instructions on the form, or ask your physician, other health care professional or an attorney for help. You may also review additional information and instructions concerning advance health care directives on the California Medical Association's website, www.cmanet.org. Internet access is available at your local public library.

1. APPOINTMENT OF HEALTH CARE AGENT

Option A. I, _____ do wish to appoint a health care agent.
(Print your full name and date of birth)

If you choose to name an agent, check the box next to Option A, print your name and date of birth where indicated, then go to Page 2 and fill in the name and contact information of the person(s) (your agent and alternate agent(s)) you wish to make health care decisions for you if you are unable to make them for yourself. You may appoint alternate agents in case your first appointed agent is not willing, able or reasonably available to make these decisions when asked to do so.

Your agent may NOT be:

- A. Your primary treating health care provider.
- B. An operator of a community care or residential care facility where you receive care.
- C. An employee of the health care institution or community or residential care facility where you receive care, unless your agent is related to you or is one of your co-workers.

If you choose to name an agent, you should discuss your wishes with that person and give that person a copy of this form once completed. You should make sure that this person understands your wishes and the responsibility of being your agent for health care decisions, and is willing to accept that responsibility.

OR

Option B. I, _____ do not wish to appoint an agent at this time.
(Print your full name and date of birth)

If you choose not to name an agent, check the box next to Option B, print your name and date of birth where indicated, draw a line through the remainder of this Section, as well as through Section 2, then continue to Section 3.

I hereby appoint as my agent to make health care decisions for me:

Name (agent's name): _____ E-mail: _____

Address: _____ City: _____ State: _____ Zip: _____

Home Phone: (_____) _____ Work Phone: (_____) _____

Cell Phone/Pager: (_____) _____ Fax: (_____) _____

I understand this appointment will continue unless I revoke it as explained in Section 3.

If I revoke my agent's authority or if my agent is not reasonably available, able or willing to make health care decisions for me, I appoint the following person(s) as my alternate agent(s) to make health care decisions for me, listed in the order they should be asked:

OPTIONAL: 1st alternate agent:

Name (agent's name): _____ E-mail: _____

Address: _____ City: _____ State: _____ Zip: _____

Home Phone: (_____) _____ Work Phone: (_____) _____

Cell Phone/Pager: (_____) _____ Fax: (_____) _____

OPTIONAL: 2nd alternate agent:

Name (agent's name): _____ E-mail: _____

Address: _____ City: _____ State: _____ Zip: _____

Home Phone: (_____) _____ Work Phone: (_____) _____

Cell Phone/Pager: (_____) _____ Fax: (_____) _____

2. AUTHORITY OF AGENT

Your agent must make health care decisions that are consistent with the instructions in this document and your known desires. It is important that you discuss your health care desires with the person(s) you appoint as your health care agent, and with your doctor(s). If your wishes are not known, your agent must make health care decisions that your agent believes to be in your best interest, considering your personal values to the extent they are known.

If my primary physician finds that I cannot make my own health care decisions, I grant my agent full power and authority to make those decisions for me, subject to any health care instructions set forth below. My agent will have the right to:

- A. Consent, refuse consent, or withdraw consent to any medical care or services, such as tests, drugs, surgery, or consultations for any physical or mental condition. This includes the provision, withholding or withdrawal of artificial nutrition and hydration (feeding by tube or vein) and all other forms of health care, including cardiopulmonary resuscitation (CPR).**
- B. Choose or reject my physician, other health care professionals or health care facilities.**
- C. Receive and consent to the release of medical information as permitted by HIPAA and the California Confidentiality of Medical Information Act.**
- D. Donate organs or tissues, authorize an autopsy and disposal of my body, unless I have said something different in a contract with a funeral home, in my will, or in some other written method.**

I understand that, by law, my agent may not consent to committing me to placing me in a mental health treatment facility, or to convulsive treatment, psychosurgery, sterilization or abortion.

I understand that I can authorize my agent to begin making health care decisions for me:

- 1) Immediately upon my signature and witnessing of this document; or

OPTIONAL: My signature in this box signifies that I want my agent's authority to make health care decisions for me to start now, **even though I am still able to make them for myself.** I understand and authorize this statement as proved by my signature here:

- 2) Only when I become unable to make such decisions for myself.

OPTIONAL: My signature in this box signifies that I want my agent's authority to make health care decisions for me to start **only when I become unable to make such decisions for myself.** I understand and authorize this statement as proved by my signature here:

3. PRIOR DIRECTIVES REVOKED

I revoke any prior Power of Attorney for Health Care or Natural Death Act Declaration.

You may revoke any part of or this entire Advance Health Care Directive at any time. To revoke the appointment of an agent, you must inform your treating health care provider personally or in writing. Completing a new California Medical Association Advance Health Care Directive will revoke all previous directives. If you revoke a prior directive, notify every person, physician, hospital, clinic, or care facility that has a copy of your prior directive and, if you execute a new one, distribute copies of your new form to those persons or entities you then deem appropriate.

4. COPIES

My agent and others may use copies of this document as though they were originals.

Your agent may need this document immediately in case of an emergency. You should keep the completed original and give copies of the completed original to (1) your agent and alternate agents, (2) your physician(s), (3) members of your family and others who might be called in the event of a medical emergency, and (4) any hospital or other health facility where you receive treatment. Instruct your agent(s), family, and friends to provide a copy of your Directive to your physician(s) or emergency medical personnel on request.

5. HEALTH CARE INSTRUCTIONS

You may, but are not required to, state your desires about the goals and types of medical care you do or do not want, including your desires concerning life support if you are seriously ill. If your wishes are not known, your agent must make health care decisions for you that your agent believes to be in your best interest, considering your personal values. If you have a serious medical condition or terminal illness and have identified your specific health care wishes in a POLST form signed by your physician, you can make reference to your POLST below. If you do not wish to provide specific, written health care instructions in your Advanced Health Care Directive, draw a line through this Section.

The following are statements about the use of life-support treatments. Life support or life-sustaining treatments are any medical procedures, devices or medications used to keep you alive. Life-support or life-sustaining treatments may include: medical devices put in you to help you breathe; food and liquid supplied artificially by medical device (IV/feeding tube); cardiopulmonary resuscitation (CPR); major surgery; blood transfusions; kidney dialysis; and antibiotics.

Sign either of the following general statements about life support or life-sustaining treatments if one accurately reflects your desires.

If you wish to modify or delete either statement or to write your own statement instead, you may do so in the space provided on the next page, or on a separate sheet(s) of paper (one lined, separate sheet is included in this kit). You must date, sign, and attach any additional pages to this Directive.

If you have a fully executed POLST form that identifies your specific health care wishes, you may initial the last option indicating such.

OPTIONAL: If I am suffering from a terminal condition from which death is expected in a matter of months, or if I am suffering from an irreversible condition that renders me unable to make decisions for myself, and life-support or life-sustaining treatments are needed to keep me alive, then:

A. I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and that my physician(s) allows me to die as gently as possible. I understand and authorize this statement as proved by my signature here:

OR (cont. on next page)

B. I want my life to be prolonged as long as possible within the limits of generally accepted health care standards. I understand and authorize this statement as proved by my signature here:

OPTIONAL: Other or additional statements of medical treatment desires and limitations:

OPTIONAL: I have added _____ page(s) of specific health care instructions to this Directive, each of which is signed and dated on the same day I signed this Directive.

OPTIONAL: I have a fully executed POLST dated _____ that identifies my specific health care wishes as indicated by my initials here: _____

For additional Advance Health Care Directive options, go to the California Medical Association's website at www.cmanet.org.

6. ORGAN AND TISSUE DONATION

I wish to be an organ and tissue donor. I understand and authorize this statement as proved by my signature here:

I have registered my decision to be a donor with Donate Life California Organ and Tissue Donor Registry through
 my driver's license and/or **signed up online www.donatelifecalifornia.org**

**Only ID/DLs with donor designations issued after July 2006 have been added to the Donate Life California Registry. All ID/DLs issued prior to this date must register their decision online www.donatelifecalifornia.org or at next ID/DL renewal.*

*Organ and tissue donation represent one of the greatest gifts that an individual can make. **A clear statement of your intent, such as the information that follows, will help to make sure that your intentions regarding organ and tissue donations are honored.** Be sure to communicate these intentions to your family members, loved ones, and physician(s).*

For more information on organ and tissue donation, contact Donate Life California at 866-797-2366 or at info@donatelifecalifornia.org.

8. STATEMENT OF WITNESSES

This Advance Health Care Directive will not be valid unless it is either: (1) signed by two qualified adult witnesses who are present when you sign or acknowledge your signature; or (2) acknowledged before a notary public in California. If you use witnesses rather than a notary public, the law prohibits using the following as witnesses: (1) the persons you have appointed as your agent or alternate agent(s); (2) your health care provider or an employee of your health care provider; or (3) an operator or employee of an operator of a community care facility or residential care facility for the elderly. Additionally, at least one of the witnesses cannot be related to you by blood, marriage or adoption, or be named in your will, or by operation of law be entitled to any portion of your estate upon your death.

Special Rules for Skilled Nursing Facility Residents

If you are a patient in a skilled nursing facility, you must have a patient advocate or ombudsman: (1) sign as a witness; and (2) sign the Statement of Patient Advocate or Ombudsman that follows. You must also have a second qualified witness sign this Directive or have this document acknowledged before a notary public.

I declare under penalty of perjury under the laws of California: (1) that the individual who signed or acknowledged this Advance Health Care Directive is personally known to me, or that the individual's identity was proven to me by convincing evidence; (2) that the individual signed or acknowledged this Advance Health Care Directive in my presence; (3) that the individual appears to be of sound mind and understanding, no duress, fraud, or undue influence; (4) that I am not a person appointed as agent by this Advance Health Care Directive; and (5) I am not the individual's health care provider nor an employee of that health care provider, nor an operator or employee of an operator of a community care facility or a residential care facility for the elderly.

FIRST WITNESS:

Print Name: _____

Signature: _____

Date: _____ **Residence Address:** _____

SECOND WITNESS:

Print Name: _____

Signature: _____

Date: _____ **Residence Address:** _____

AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION:

I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this Advance Health Care Directive by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

Signature: _____ Date: _____

FOR SKILLED NURSING FACILITIES: STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

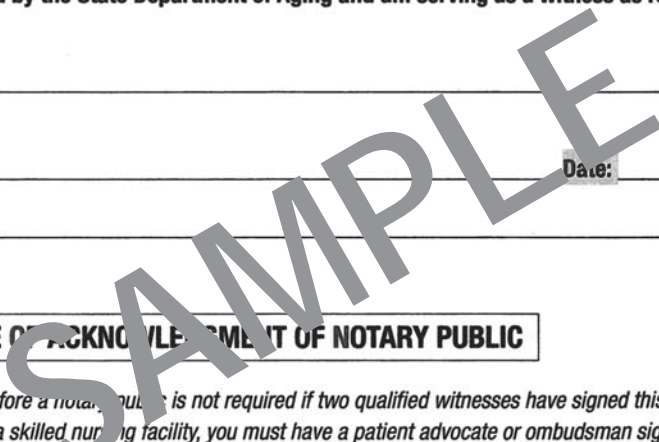
If you are a patient in a skilled nursing facility, a patient advocate or ombudsman must sign the Statement of Witnesses above, and must also sign the following declaration:

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and am serving as a witness as required by Probate Code 4675.

Print Name/Title: _____

Address: _____ Date: _____

Signature: _____



9. CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

Acknowledgment before a notary public is not required if two qualified witnesses have signed this Directive in Section 8. If you are a patient in a skilled nursing facility, you must have a patient advocate or ombudsman sign the Statement of Witnesses and the Statement of Patient Advocate or Ombudsman in Section 8, even if you also have this form notarized.

State of California)
County of _____,)

On _____, before me, _____,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

***EVIDENCE OF IDENTITY:** The following forms of identification are satisfactory evidence of identity: a California driver's license or identification card or U.S. passport that is current or has been issued within five years, or any of the following if the document is current or has been issued within 5 years, contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number: a foreign passport that has been stamped by the U.S. Immigration and Naturalization Service; a driver's license issued by another state or by an authorized Canadian or Mexican agency; an identification card issued by another state or by any branch of the U.S. armed forces, or for an inmate in custody, an inmate identification card issued by the Department of Corrections. If the principal is a patient in a skilled nursing facility, a patient advocate or ombudsman may rely on the representations of family members or the administrator or staff of the facility as convincing evidence of identity if the patient advocate or ombudsman believes that the representations provide a reasonable basis for determining the identity of the principal.

*Additional forms can be purchased from: CMA Publications, 1201 J Street, Suite 375, Sacramento, CA 95814-2905
Phone: 1-800-882-1262 • Fax: 916-551-2035 • Internet: www.cmanet.org.*

SAMPLE

PART IX: GLOSSARY

Advance health care directive—a document which enables an individual to appoint a health care “agent” to make decisions about medical care if the individual is unable to make these decisions by him/ herself. It enables an individual to state his/her wishes about refusing or accepting life-sustaining treatment in any health care situation. (This was formerly known as the Durable Power of Attorney for Health Care.) Each state regulates the use of the advanced health care directive differently.

Affidavit—a sworn statement in writing made especially under oath or on affirmation before an authorized magistrate or notary public.

Assets—the property of an individual.

Beneficiary—the person or institution designated to receive the income or assets of a trust, estate, insurance policy, etc.

Bond—a promise, usually made by an insurance company for a fee, to reimburse the estate for any loss suffered because an executor, trustee or other fiduciary fails to carry out his duties.

Codicil—modification or supplement to a Will.

Community property— property acquired/earned by either spouse during a marriage except by gift or inheritance.

Conservatorship—a court proceeding to appoint and supervise a manager (the “conservator”) for the financial and/or personal care of an adult (the “conservatee”) who is unable to care for him or herself.

Decedent—a deceased person (one who is no longer living).

Durable power of attorney—a written document in which the principal designates another person to act on his/her behalf in matters requiring legal action; remains effective even after principal becomes incompetent or unable to make health care decisions for him/herself. The power terminates at time of death of principal.

Durable power of attorney for health care—a written document in which the principal can authorize another person to make decisions regarding the principal’s health care. The advance health care directive has replaced it. (*A Durable Power of Attorney for Health Care executed before 1992 has expired and should be replaced by the Advance Health Care Directive.*)

Estate—the real and personal property that is the subject of a trust or probate proceeding.

Fiduciary—of or relating to a holding of something in trust for another.

“Gift of Life Program”—program which allows individuals to authorize the donation of various tissues and organs for transplant upon their death.

Guardian—one who has the care of the person or property of a minor.

Holographic Will—A handwritten Will, signed and dated by the author.

Hospice—care for the terminally ill; emphasis on quality of life; may be provided at home, in a hospital or in specialized hospice inpatient facility; respite care and support services are usually provided for the family.

Intestate—without a Will.

IRA (Individual Retirement Account)—a retirement fund to which an individual may generally make a contribution up to a specific amount each year (\$3,000 at the time of this printing); contributions may be deductible; earnings are non-taxable until you withdraw; cannot withdraw without penalty before age 59 1/2, but must commence fund withdrawal by age 70 1/2.

Joint tenancy—one form of ownership of property; on the death of one joint tenant, the surviving tenant or tenants become owner(s) of the entire property by operation of law regardless of the terms of the Will of the deceased tenant.

Keogh plan—a retirement plan for self-employed persons.

Letters testamentary—a legal document establishing the authority of an executor.

Living trust—a trust created during one’s lifetime.

Obituary—a notice of a person’s death usually with a short biographical account.

Personal property—belongings/valuables and any other property that is not real property.

Power of attorney—a written document that authorizes another person to act on one’s behalf in matters requiring legal action. It terminates upon death of the “principal” or on the incompetence of the principal, unless it is a durable power of attorney.



Probate—the court supervised legal proceeding during which the Will is proved, decedent’s assets are collected, debts and taxes paid, and the balance of property distributed in accordance with the Will or laws of intestate succession.

Real property—land and any buildings on it. Also called real estate.

Roth IRA—a form of individual retirement account; contributions are not tax deductible but withdrawals can be income tax free if certain requirements are met.

Safe deposit box—a box (as in the vault of a bank) for safe storage of valuables.

Sole ownership—to have or hold property under the person’s name only.

Springing durable power of attorney—a durable power of attorney that becomes effective only after the principal becomes incompetent.

Tenants in common—one form of ownership of property; on the death of one tenant in common, his share passes according to his Will or the laws of intestacy.

Testate—having made a valid Will.

Trust—a fiduciary relationship created when one person (the trustee) is given property to hold, administer and distribute for the benefit of beneficiaries.

Universal Donor Law—Uniform Legislation allowing individuals to authorize donation of various tissues and organs for transplant upon the individual’s death.

Will—a legal document in which a person directs for the disposition of his/her estate (real and personal property) after death.

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