



Southwest Virginia  
Legal Aid Society, Inc.  
**SVLAS**

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# About Us?

- ◆ 501 (c) (3) Non-Profit Private Law Firm
- ◆ WE offer FREE Civil Legal Services
- ◆ WE offer our services to low-income residents within our service area of Southwest Virginia
  - ◆ Eligibility based on the Federal Poverty Guidelines
  - ◆ WE also have Asset Limitations



# Service Area for SVLAS

- Castlewood Field Office Service Area
- Marion Field Office Service Area
- Christiansburg Field Office Service Area



# Service Area Offices

- **CHRISTIANSBURG FIELD OFFICE**

- ◇ 155 Arrowhead Trail, Christiansburg, VA 24073
- ◇ 1-800-468-1366, (540) 382-6157, fax (540) 382-5981
- ◇ *Serving the City of Radford and Floyd, Giles, Montgomery, and Pulaski Counties*

- **CASTLEWOOD FIELD OFFICE**

- ◇ 16932 West Hills Drive, PO Box 670, Castlewood, VA 24224. Intake Office
- ◇ 1-866-455-8716, (276) 762-9354, fax (276) 762-9356
- ◇ *Serving the City of Norton and Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise Counties*

- **MARION FIELD OFFICE**

- ◇ 227 West Cherry Street, Marion, VA 24354. Administrative Office
- ◇ 1-800-277-6754, (276) 783-8300, fax (276) 783-7411
- ◇ *Serving the Cities of Bristol (VA only) and Galax and Bland, Carroll, Grayson, Smyth, Washington, and Wythe Counties*



# Centralized Intake Unit



Toll free:  
18882012772



[www.svlas.org](http://www.svlas.org)

# LEGAL ISSUES IN OLDER AGE

- ◇ IT IS ESSENTIAL TO SEEK THE ADVICE OF AN ATTORNEY FOR SPECIFIC ESTATE PLANNING PURPOSES!
- ◇ Today is just general information and should not be considered legal advice for your specific situation



# The Key to Estate Planning is to PREPARE before it is too late

## A. **Power of Attorney (may not be necessary if you have someone else on your bank account & you don't own property)**

### i. **Can assist with financial decision-making:**

1. To receive, collect, and sue for all sums of money, dividends, interests, and other interests in property on my behalf.
2. To invest, maintain, manage, control, disburse, and expend all my money and property as the persons holding my power of attorney deems necessary. This power includes, but is not limited to, administering my banking accounts, making deposits or withdrawals, or acting as a signatory on any banking or other monetary accounts.
3. To use my money and property for my general support and care, including medical and any other special care necessary.
4. To exercise in all respects any power or right with respect to all my property as fully as I myself could, including the sale of my property, both real and personal.

## Power of Attorney continued...

- i. AGENT acts on Principal's behalf, not to forward his/her own interests
  - 1. The Agent's duty is like a board of director of corporation—Agent can be sued and personally liable for violating that duty BUT since there is no formal oversight of the Agent, someone will have to catch the Agent violating this duty before it can be stopped;
  - 2. It is best to name ONE agent, co-agents can cause major problems since equal authority, but you should choose/name an alternative agent as a back-up in case the primary agent is unavailable at the time action is needed



## Power of Attorney continued...

- i. BEWARE OF INTERNET VERSIONS...they may include language that makes it difficult to revoke the POA if it should need to be revoked, it may not address appropriately the effect any incapacity or disability may have on the POA, and/or it may not comply with the laws of the state in which you live;
- ii. BEWARE of greedy children, nieces, nephews, etc.—as long as you have capacity, be sure to check on any actions the POA is taking on your behalf to be SURE it is “ON YOUR BEHALF”

# Living Will

- i. Simply declares IN ADVANCE what treatment you (the patient) want/don't want regarding end-of-life decisions
- ii. Without such a document that is IN the doctor's/hospital's possession, doctors and nurses will do everything medically necessary to keep you (him/her) alive, including hooking you (him/her) up to machines;
- iii. Usually available for free from retirement communities, nursing homes, and hospitals;
- iv. Once executed, be sure that all your (the patients') doctors, etc. have a copy of the original and that the hospital most likely to receive the patient has a copy on file



# Advanced Medical Directive

- i. Combines Living Will and Health Care Power of Attorney into ONE document BUT doesn't usually indicate which treatment the patient wants/doesn't want...it presumes that the patient has communicated that to the Agent and that the Agent will follow his/her wishes and/or his/her best interests;
- ii. Best to name ONE Agent...same problems discussed previously with co-agents AND to name ONE back-up agent;
- iii. Again, once executed, be sure that all the patients' doctors have a copy of the original and that the hospital most likely to receive the patient has a copy on file and/or register in the Virginia Department of Health's Advanced Directive Registry ([Advance Health Care Directive Registry – Commissioner](#)).



This advance directive ("AD") complies with the Virginia Healthcare Decisions Act. You are not required to use this form to create an AD. If you choose to use a different form, you should consult with an attorney or your health care provider to be sure the different form will be valid under Virginia law.

As long as it is signed and witnessed (on page 3), you may complete any or all of the parts of this AD that you want. Cross out or leave blank any parts that you do not want to use.

Your AD is turned on only when you are found to be unable to make informed decisions about your care. That finding must be made by (a) your attending physician and (b) a second physician or clinical psychologist (or, if you're in a coma or otherwise unconscious, you're your physician) after they personally examine you. Your AD is turned off when a physician examines you and finds that you are able to make informed decisions again. (There is an option to have your AD turned on by just one professional for the sole purpose of agent consent to admission to a mental health care facility. See Power 5 on page 2 for more details.)

These are the powers that your agent will have.

You may cross through any powers that you do not want to give your agent.

If you have questions about what the powers mean, the "What it means to give powers to your health care agent" sheet may be helpful. It can be found on the [VirginiaAdvanceDirective.org](http://VirginiaAdvanceDirective.org) website.

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## VIRGINIA ADVANCE DIRECTIVE FOR HEALTH CARE to Appoint a Health Care Agent

I, \_\_\_\_\_ (date of birth: \_\_\_\_\_) make this advance directive in case I am not able to make health care decisions for myself. This advance directive says what I do want and what I do not want for my health care.

### Section 1: Health Care Decision Maker (My "Agent")

#### A. Who I Pick to be My Agent

I appoint \_\_\_\_\_ to make health care decisions for me when I cannot make those decisions myself.

First agent's contact information:

Ph. No. (home): \_\_\_\_\_ (cell): \_\_\_\_\_

Ph. No. (work): \_\_\_\_\_ Email: \_\_\_\_\_

Home Address: \_\_\_\_\_

I also pick a person to be my agent if the first person I picked is not available, able or willing to act as my agent. My back-up agent is \_\_\_\_\_.

Back-up agent's contact information:

Ph. No. (home): \_\_\_\_\_ (cell): \_\_\_\_\_

Ph. No. (work): \_\_\_\_\_ Email: \_\_\_\_\_

Home Address: \_\_\_\_\_

My agent will have full power to make health care decisions for me based on this advance directive. My agent will have this power only during a time when I am not able to make informed decisions about my health care.

I want my agent to follow what I have written in this advance directive. My agent may also be guided by information that I have given my agent in other ways, such as in conversation. If my agent cannot tell what choice I would have made, then my agent should choose what he or she believes to be in my best interests.

I want my agent and health care providers to communicate with me and consider my views even when I am unable to make my own decisions and the agent has the power to make decisions for me.

#### B. What My Agent Can Do On My Behalf

My agent will have power....

1. To consent to or refuse consent to or withdraw consent to any type of health care, treatment, surgical procedure, diagnostic procedure, and medication.

This may include use of a breathing machine, tube feeding, IV fluids, or CPR. It also includes higher than recommended doses of pain-relieving medication in order to relieve pain. This applies even if the medication carries the risk of addiction or of unintentionally hurrying my death.

2. To ask for, receive and review oral or written information about the health care decisions that need to be made. This includes medical and hospital records. My agent can also allow this information to be shared with others as needed to carry out my advance directive wishes.

3. To hire and fire my health care providers.

#### Power 5 option:

Virginia law lets you authorize your agent to make the decision about admission to a mental health care facility on the basis of just one professional examining you and determining you cannot make an informed decision. Any other treatment decisions beyond admission to a mental health care facility will still require the usual determination process by (a) your attending physician + (b) a second physician or clinical psychologist. If you want to include this part of Power 5, you need to check the box.

Power 9: If you have any specific instructions about visitation, you can attach additional pages to this AD. Note: other laws and regulations may limit an agent's power to make visitation decisions.

You may add any additional details about the powers (e.g., "My agent may not fire Dr. Smith"). Note: any attached page with instructions must be signed and witnessed, too.

Part C lets you give your agent the power to consent to treatment that you say "no" to. This power applies only if you cannot make informed decisions. If you do not want to give your agent this power, you can skip or cross through Part C.

This power has two parts:

1. You can give your agent the power to consent over your objection to inpatient mental health admission and/or
2. You can give your agent the power to consent over your objection to other health care.

You can also exclude specific treatments that you always want to be able to object to.

**IMPORTANT:** You need to have one of the licensed professionals listed in the box sign this page to make Part C legally binding. Before signing, the professional will check to see if you understand the consequences of giving your agent the powers described on this page. If you are not completing Part C, you do not need to have this page signed.

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4. To consent to my admission to or transfer to a hospital, hospice, nursing home, assisted living facility or other health care facility, and to authorize my discharge from any such facility.
5. To consent to my admission to or transfer to a mental health care facility when it is recommended by my health care providers, and to authorize my discharge from any such facility.  
The admission can be for up to the maximum time permitted by current law. At the time I made this advance directive the maximum was ten (10) calendar days.  
☐ Power 5 option: My agent may exercise this power after one of the following professionals determines that I am not able to make an informed decision about admission: an attending physician, a psychiatrist or clinical psychologist, a psychiatric nurse practitioner, a clinical social worker, or a designee of the local community services board who is trained to assess capacity.
6. To continue to act as my agent as long as I am unable to decide for myself, even if I state that I want to fire my agent.
7. To consent to my participation in any health care study if the study offers the chance of therapeutic benefit to me.  
The study must be approved by an institutional review board or research review committee according to applicable federal or state law.
8. To consent to my participation in any health care study that aims to increase scientific understanding of a condition that I may have or to promote human well-being, even though it offers no direct benefit to me.  
The study must be approved by an institutional review board or research review committee according to applicable federal or state law.
9. To make decisions about visitation when I am admitted to any health care facility.  
☐ I have attached visitation instructions that my agent must follow to this advance directive.
10. To take any lawful actions needed to carry out these decisions. This may include signing releases of liability to medical providers or other health care forms.

#### C. What My Agent Can Do Over My Objection

When I am not able to make informed decisions about my health care, I may say "no" to treatment that I actually need. If my agent and my physician believe that treatment is medically appropriate, my agent has the power:

- ☐ 1. To consent to my admission to a mental health care facility as permitted by law, even if I object.  
\_\_\_\_\_ and/or
- ☐ 2. To consent to other health care that is permitted by law, even if I object.  
This authority includes all health care except for what I have written in the next sentence or elsewhere in this document. My agent does **not** have the authority to consent to \_\_\_\_\_ over my objection.

I am a licensed: ☐ physician, ☐ clinical psychologist, ☐ physician assistant, ☐ nurse practitioner, ☐ professional counselor, ☐ clinical social worker. I am familiar with the person who has made this advance directive for health care. I attest that this person is presently capable of making an informed decision and that this person understands the consequences of the special powers given to his/her agent by this Subsection C of this advance directive.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name and Address \_\_\_\_\_

### Section 2: Organ Donation

☐ I donate my organs, eyes and tissues for use in transplantation, therapy, research and education. I direct that all necessary measures be taken to ensure the medical suitability of my organs, eyes or tissues for donation.

OR

☐ I donate my whole body for research and education.

**If you want to be an organ donor, check only 1 box and initial the line.**

If you want to be an organ donor, you may also use this space to write any specific instructions you wish to give about organ donation.

You can also register or change your directions on the donor registry: [www.DonateLifeVirginia.org](http://www.DonateLifeVirginia.org).

### Section 3: Required Signatures

**Right to Revoke:** I understand that I may cancel all or part of my AD at any time that I am able to understand the consequences of doing so.

**Affirmation:** I am signing below to show that I understand this document and that I made it voluntarily.

Date \_\_\_\_\_ Signature \_\_\_\_\_

The above person signed this advance directive in my presence.

Witness Signature \_\_\_\_\_ Witness Printed \_\_\_\_\_

Witness Signature \_\_\_\_\_ Witness Printed \_\_\_\_\_

*It is your responsibility to provide a copy of your advance directive to your health care providers. You also should provide copies to your agent, close relatives and/or friends.*

In addition to sharing hard copies, you are encouraged to store your advance directive in Virginia's free Advance Directive Registry located at the Virginia Department of Health website: <https://www.connectvirginia.org/adr/>.

If you have stored your advance directive in the Registry, initial here: \_\_\_\_\_

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# Last Will and Testament

- i. Is a will even necessary?
  - ◇ Will IS necessary if beneficiaries are to be someone OTHER than relatives and/or next of kin;
  - ◇ Will IS necessary if division of property/money/etc. is UNEQUAL among relatives, etc.;
  - ◇ Will IS necessary if a trust needs to be set up for a beneficiary that is too young to handle an inheritance;
  - ◇ Will IS necessary if you would like to name a guardian for minor or otherwise dependent children;
- ii. Will should specify who the **Executor** should be, how much his/her fee will be and whether surety on his/her bond is necessary;
- iii. Will cannot completely disinherit a spouse;
- iv. Will cannot alter a named beneficiary of an asset (e.g., POD accounts, jointly held accounts, provisions in Deeds, etc.);
- v. Will cannot change how property held jointly with right of survivorship passes;
- vi. Will does not become EFFECTIVE until you are dead, so instructions on things you want done before you are dead cannot be enforced...
  - ◇ Use a POA, pass property and hold life estate, make your own funeral arrangements, etc. if you want things to be done prior to your death.

# WHY Estate Planning?

- ◆ Reasons to have an Estate Plan. Estate Planning is not just for the wealthy. Having the proper documents, beneficiary designations, asset titling and agency appointments in place is important for every adult and essential for those who:
  - a. Have minor or disabled children;
  - b. Have ever been divorced;
  - c. Are married to someone they don't trust to manage money;
  - d. Acquired any assets prior to being married;
  - e. Have a "black sheep" in the family;
  - f. Have parents with either "not enough" or "too much" money;
  - g. Have a family that is prone to disagreements or doesn't communicate well;
  - h. Are not married to his or her partner;
  - i. Have a medical condition (or foresee having a medical condition) requiring hospitalization; or
  - j. Want to distribute their assets in any manner "outside the statute." (See Virginia Code Section 64.2-200 for intestate succession)
- **Virginia Code has very specific requirements for BOTH the drafting and witnessing of these types of documents...so while we do want everyone to make their own decisions about what they need and how they want it, they are best served by an attorney who can help them make an informed decision; who can be sure that he or she has capacity to both make the decisions and execute proper documents; can make sure that he/she isn't being coerced/threatened into the action; and can make sure that the documents conform with the law and will have the desired/intended effect.**



# Capacity

1. **Testamentary Capacity** (Capacity to enter into a Will):
  1. recollects his/her property;
  2. recollects the natural objects of his/her bounty and their claims upon him;
  3. knows the business in which he is engaged; and
  4. knows how he wishes to dispose of his property.
2. **Capacity to enter into a Contract** (POA's/Advanced Medical Directives): must have the **capacity to understand the nature and consequences of one's actions and of the transaction in question**. Unless a person has been adjudicated incapacitated, there is a rebuttable presumption that every **adult** has capacity to enter into contracts.



**What happens if no estate planning has been done OR if the person waits until he/she no longer has capacity to make the decisions we've discussed:**

If you are INCAPACITATED during your lifetime:

- a. Court action must be initiated by someone to get a **Court-appointed Guardian**. A Guardian makes decisions about the PERSON
  - i. Guardians must file annual reports to DSS detailing the steps taken to ensure his/her well-being
  - ii. usually costs the person and/or his/her family around \$2K
- b. Court action must be initiated by someone to get a **Court-appointed Conservator**. A Conservator makes decisions about the person's FINANCES, assets and property
  - i. Conservators must file an initial accounting and then annual reports with the Commissioner of Accounts
  - ii. fees must be paid to the Commissioner of Accounts to review all reports
- c. Joint accounts: require no documents or court-involvement to give the joint account holder access to your money to pay bills, etc.
  - i. BEWARE: not keeping track of all money in this account until the person needing care is no longer capable could lead to theft, etc.—caretakers can also watch bank account statements

# RESOURCES

- ◆ [www.fivewishes.org](http://www.fivewishes.org)
- ◆ [Healthcare Decisions Day](https://vsb.org/site/site/news/healthcare-decisions.aspx)  
(<https://vsb.org/site/site/news/healthcare-decisions.aspx>)
- ◆ [Guardianship & Conservatorship | Virginia Judicial System](https://selfhelp.vacourts.gov/node/19/guardianship-conservatorship)  
[Court Self-Help](https://selfhelp.vacourts.gov/node/19/guardianship-conservatorship)  
(<https://selfhelp.vacourts.gov/node/19/guardianship-conservatorship>)



# Questions

