



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

Healthcare Decisions

Wills, Financial POAs & Advanced Medical Directives

Monique Nettleford-Bruce, Esq.

Maryland Legal Aid

April 23, 2021

Department of Citizen Services – Carroll County
Virtual Open House for the Bureau of Aging & Disabilities

AGENDA

I will review these three main areas:

1. **Wills** (main document)

2. **Financial Power of Attorney**

Who will decide your financial decisions

3. **Advanced Medical Directives**

Who will enforce your medical decisions



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

Wills

Let's go over the basics.



MARYLAND
LEGAL AID

Advancing
Human Rights *and*
Justice for All

What is a Will?

*A will is a written legal document that states what **you** want done about various topics after you die.*

A will can include directives on:

- Funeral Provisions
- Distribution of assets
- Guardianship of minor children
- Selecting a Personal Representative
- Payment of Taxes



Why Do I need a Will?

If you die without leaving a valid will:

- Money and other property you own at death will be divided and distributed according to Maryland "intestate succession" laws.
- These laws divide all property between a few close relatives according to a set formula, and completely exclude, more distant relatives, friends and charities.



Why Do I need a Will?

These laws may not reflect your wishes.

- ❖ If you are married and have no children, Maryland law requires your spouse to share your property with your parents.
- ❖ There is even less protection for unmarried couples. Intestate succession law does not grant an unmarried partner any property.



Why Do I need a Will?

NOTE: Intestate succession laws do not deal with the question of who will take care of minor children if both parents die or if the surviving parent is unavailable, leaving it up to the courts and social service agencies to appoint a guardian.



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

Will Requirements

“The Last Will and Testament”

- Must be 18 or over and **legally competent**
- Must be in **writing**, be signed by the testator, and be attested and signed by at least 2 witnesses in the presence of the testator. (We recommend 3 witnesses).
 - No digital witnesses!



Will Requirements

“The Last Will and Testament”

- Can be revoked or amended (called a “**codicil**”)
- Optional = A will *can* be notarized, but not required.



Personal Representative

The person who will be in charge of wrapping up all your affairs

- Will open the probate estate if necessary
- Obtain and file your death certificate
- Distribute your assets to named beneficiaries



Examples of Distribution of Assets

Specific Bequest:

- “To my daughter, Anne, I leave my engagement ring.”
- “To my friend Sam, I leave a cash bequest of \$10,000.”

Disposition of Real Property/Personal residence:

- “I wish to leave my residence, located at 100 Main Street, Baltimore, MD 21212, to my daughter, Pam.”

Disposition of Tangible Personal Property

- “I leave my personal property to my descendants, to be divided among them equally”



Disposition of Residuary Assets

Per Stirpes - EACH child/family branch gets the same share

- “I leave the remainder of my estate to my descendants, *per stirpes*”
- “To my children, by right of representation.”



Per Stirpes Example

A and B have 3 children – C, D, and E.

Each child will get $\frac{1}{3}$.

Let's say C has 2 children, F and G.

If C dies before A and B, then F and G will get her $\frac{1}{3}$ share divided between them, leaving $\frac{1}{6}$ each (which is $\frac{1}{3}$ divided by two). D and E will each get $\frac{1}{3}$.



Disposition of Residuary Assets

Per Capita/Pro Rata - Each NAMED person gets an equal share.

➤ “To my children in equal shares.”



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

Per Capita/ Pro Rata Example

A and B have 3 children – C, D, and E.

Let's say C has 2 children, F and G.

C, D, E, F, and G will all get $\frac{1}{5}$ share because it will be divided equally.

If C dies before A and B, then D, E, F, and G will each get $\frac{1}{4}$.



Probate & How to Avoid It

Probate is the process of opening, validating, and closing an estate.

This process can be expensive (especially for low income individuals)

Maryland allows for a speedy, small estate administration if under \$50k.

- Petition filed with Orphans Court (in jurisdiction where testator resided).
- A Personal Representative is appointed and empowered to distributed the assets in the estate.
- The Personal Representative pays the debts of the estate, distributes assets of the estate, reports to the court what he or she did, and closes the estate.



Probate & How to Avoid It

NOTE: Assets that pass by beneficiary *or* are not owned **only** by you are not considered part of the estate and therefore not subject to the probate process.



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

Probate & How to Avoid It

Example of how probate can be avoided:

- Payable on Death (POD) beneficiaries can inherit a bank account that was designated to them.
- Use form provided by your bank or credit union.



Financial Power of Attorney (POA)

Who will handle your finances



MARYLAND
LEGAL AID

Advancing
Human Rights *and*
Justice for All

Financial Power of Attorney Basics

*Agent is named to act as the **attorney-in-fact** of the principal.*

Depending on the POA, the agent will be granted broad powers to make financial decisions on behalf of the principal:

- Includes power to sell property, file taxes, continue benefits, make claims, etc.
- Agent has a fiduciary duty to act in the best interest of the principal.



Financial Power of Attorney Basics

Powers can be immediate or springing:

- **Immediate**: Upon filing the document with a bank or giving the agent an original of the document, the agent will be able to make decisions on the principal's behalf
- **Springing**: Principal must be deemed incompetent or incapacitated for agent's powers to "spring" into being.

* A power of Attorney is easily revoked by putting the revocation in writing.



Statutory POA Form

- Provided as a form by Maryland (Attorney General's website)
- Must be accepted by a bank/financial institution doing business in Maryland
- Covers mostly financial provisions



Quick View

§17–202.

“MARYLAND STATUTORY FORM

PERSONAL FINANCIAL POWER OF ATTORNEY

IMPORTANT INFORMATION AND WARNING

You should be very careful in deciding whether or not to sign this document. The powers granted by you (the principal) in this document are broad and sweeping. This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent’s authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

You need not grant all of the powers listed below. If you choose to grant less than all of the listed powers, you may instead use a Maryland Statutory Form Limited Power of Attorney and mark on that Maryland Statutory Form Limited Power of Attorney which powers you intend to delegate to your attorney-in-fact (the Agent) and which you do not want the Agent to exercise.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

You should obtain competent legal advice before you sign this power of attorney if you have any questions about the document or the authority you are granting to your agent.



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

Quick View

DESIGNATION OF AGENT

This section of the form provides for designation of one agent.

If you wish to name coagents, skip this section and use the next section ("Designation of Coagents").

I, _____ ,

- 1 -

(Name of Principal)

Name the following person as my agent:

Name of Agent: _____

Agent's Address: _____

Agent's Telephone Number: _____

DESIGNATION OF COAGENTS (OPTIONAL)

This section of the form provides for designation of two or more coagents. Coagents are required to act together unanimously unless you otherwise provide in this form.



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

Revocation of POA

You can revoke it at any time!

MARYLAND POWER OF ATTORNEY REVOCATION

This form is use for the revocation of power of attorney/advanced directive:

X- Health Care Powers

X- Financial Powers

I, JOHN DOE, hereby immediately revoke the Personal Financial Power of Attorney that I previously executed on October 15, 2018, which appointed JANE DOE as my agent, and JILL DOE as my alternate successor agent; I also hereby immediately revoke the Advance Directive executed on August 2, 2018 appointing JANE DOE as my Primary Healthcare Agent.

I hereby notify said agent(s) and any other interested persons and institutions that all portions of said documents are revoked.

This revocation takes effect immediately. A photocopy has the same effect as an original.

This revocation was signed the ____ of _____, 20__.

Signature of Principal _____

Print Name _____

NOTARY ACKNOWLEDGMENT



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

Sincere consideration:

Who should I choose to be my POA?

- ✓ Pays close attention to detail.
- ✓ An understanding of duties & a commitment to taking duties seriously.
- ✓ An understanding of finances/business.
- ✓ The ability to collaborate with attorneys, accountants, and other parties, if necessary.
- ✓ Someone you trust - understands your values, and will do their best to act in your best financial and legal interest.



Advanced Medical Directives

Who will enforce your medical decisions



MARYLAND
LEGAL AID

Advancing
Human Rights *and*
Justice for All

Maryland Advanced Directive

1. **Names the agent(s)** who will help you enforce medical decisions in the event that you cannot make them yourself.
2. **States your needs and preferences.** Check boxes that you want enforced in the event that you are incapacitated.
3. The form is **8 pages** and very detailed. (Packet is 18 pages).



Maryland Advanced Directive

The form can be accessed on the Attorney General's Website:

<https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/AdvanceDirectives.aspx>

Document **must** be notarized!



MARYLAND
LEGAL AID

Advancing
Human Rights *and*
Justice for All

How to Recognize the Form

MARYLAND ADVANCE DIRECTIVE: PLANNING FOR FUTURE HEALTH CARE DECISIONS

By: _____ Date of Birth: _____
(Print Name) (Month/Day/Year)

Using this advance directive form to do health care planning is completely optional. Other forms are also valid in Maryland. No matter what form you use, talk to your family and others close to you about your wishes.

This form has two parts to state your wishes, and a third part for needed signatures. Part I of this form lets you answer this question: If you cannot (or do not want to) make your own health care decisions, who do you want to make them for you? The person you pick is called your health care agent. **Make sure you talk to your health care agent (and any back-up agents) about this important role.** Part II lets you write your preferences about efforts to extend your life in three situations: terminal condition, persistent vegetative state, and end-stage condition. In addition to your health care planning decisions, you can choose to become an organ donor after your death by filling out the form for that too.

→ You can fill out Parts I and II of this form, or only Part I, or only Part II. Use the form to reflect your wishes, then sign in front of two witnesses (Part III). If your wishes change, make a new advance directive.

Make sure you give a copy of the completed form to your health care agent, your doctor, and others who might need it. Keep a copy at home in a place where someone can get it if needed. Review what you have written periodically.

PART I: SELECTION OF HEALTH CARE AGENT

A. Selection of Primary Agent

I select the following individual as my agent to make health care decisions for me:

Name: _____

Address: _____

Telephone Numbers: _____
(home and cell)

B. Selection of Back-up Agents (Optional; form valid if left blank)

1. If my primary agent cannot be contacted in time or for any reason is unavailable or unable or unwilling to act as my agent, then I select the following person to act in this capacity:

Name: _____

Address: _____

Telephone Numbers: _____
(home and cell)

2. If my primary agent and my first back-up agent cannot be contacted in time or for any reason are unavailable or unable or unwilling to act as my agent, then I select the following person to act in this capacity:

Name: _____

Address: _____

Telephone Numbers: _____
(home and cell)

C. Powers and Rights of Health Care Agent

I want my agent to have full power to make health care decisions for me, including the power to:

1. Consent or not to medical procedures and treatments which my doctors offer, including things that are intended to keep me alive, like ventilators and feeding tubes;
 2. Decide who my doctor and other health care providers should be; and
 3. Decide where I should be treated, including whether I should be in a hospital, nursing home, other medical care facility, or hospice program.
4. I also want my agent to:
- a. Ride with me in an ambulance if ever I need to be rushed to the hospital; and
 - b. Be able to visit me if I am in a hospital or any other health care facility.

*THIS ADVANCE DIRECTIVE DOES NOT MAKE MY AGENT
RESPONSIBLE FOR ANY OF THE COSTS OF MY CARE.*



How to Recognize the Form

PART II: TREATMENT PREFERENCES ("LIVING WILL")

A. Statement of Goals and Values (Optional: Form valid if left blank)

I want to say something about my goals and values, and especially what's most important to me during the last part of my life:

B. Preference in Case of Terminal Condition (If you want to state what your preference is, initial one only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that my death from a terminal condition is imminent, even if life-sustaining procedures are used:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

>>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

>>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

C. Preference in Case of Persistent Vegetative State (If you want to state what your preference is, initial one only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that I am in a persistent vegetative state, that is, if I am not conscious and am not aware of myself or my environment or able to interact with others, and there is no reasonable expectation that I will ever regain consciousness:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

>>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

>>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

D. Preference in Case of End-Stage Condition (If you want to state what your preference is, initial one only. If you do not want to state a preference here, cross through the whole section.)

If my doctors certify that I am in an end-stage condition, that is, an incurable condition that will continue in its course until death and that has already resulted in loss of capacity and complete physical dependency:

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

>>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

>>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.



Example:

“If my doctors certify that my death from a terminal condition is imminent, even if life-sustaining procedures are used:”

1. Keep me comfortable and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

>>OR<<

2. Keep me comfortable and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

>>OR<<

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.



Questions?

How to reach me:

Monique Nettleford-Bruce, Esq.

Maryland Legal Aid

(240) 575-5771

mnbruce@mdlab.org



MARYLAND
LEGAL AID

Advancing
Human Rights *and*
Justice for All

Thank you!

For legal assistance, reach out to our
Midwestern Office in Frederick, MD:

**22 South Market Street, Suite 11
Frederick, MD 21702**

**(301) 694-7414
(800) 679-8813 (Toll Free)**



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**