



BET TZEDEK

JUSTICE FOR ALL

Advance Planning & Estate Issues for Low-Income Seniors

Presented by:

Nicholas Levenhagen, Esq.

nlevenhagen@bettzedek.org

Bet Tzedek's Services

- Bet Tzedek uses direct legal services, impact litigation, community outreach, and legislative advocacy to assist low-income individuals throughout Los Angeles County
- Elder Justice Team
 - Advance Planning & Public Benefits
 - Elder Abuse Restraining Order Clinic
 - Elder Financial Abuse Litigation (Civil & Probate)
 - Real Estate Fraud Litigation
 - Holistic Approach: Social Worker & Forensic Center

Advance Planning

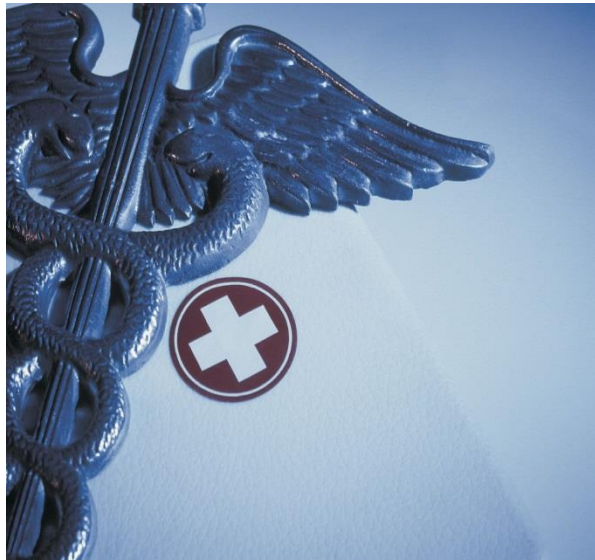
Planning for the Future

- Advance Planning Tools
 - ✓ Advance Health Care Directive
 - ✓ Letter of Intent for I/DD clients
 - ✓ Durable Power of Attorney for Finance
 - ✓ Wills
 - ✓ Living Trusts
 - ✓ Transfer on Death Deeds
 - ✓ Special Needs/Pooled Trusts
- Planning can help protect someone's wishes, make things easier for loved ones during incapacity or death, avoid intestacy issues, and prevent conservatorships.



Advance Health Care Directives

What is an Advance Health Care Directive?



Legal document recording your health care wishes now and appointing another person as your medical decision maker, in case you are unable to make decisions for yourself in the future

California Probate Code §§
4700, 4701

An Advance Health Care Directive is also known as...

- “Durable Power of Attorney for Health Care”
- “Advance Directive”
- “Living Will”
- “Health Care Proxy”

What are the main components of an Advance Directive?

- 1) The appointment of an agent and two alternate agents.
- 2) Instructions for health care treatment preferences.

Who decides when a person lacks capacity?



The client's primary care physician will determine when they are unable to make decisions about their health care (unless the client specifies someone else on the Advance Directive).

Agents

Appointing a Health Care Agent

Who CAN be an agent:

- Any adult who is NOT the client's physician or an employee of a health care facility where the client receives care.

Who SHOULD be an agent:

- A person that is trusted by the client and who knows of the client's personal values and beliefs.
- Typical agents:
 - ✓ Family members
 - ✓ Spouses
 - ✓ Partners
 - ✓ Close friends

CALIFORNIA POWER OF ATTORNEY FOR HEALTH CARE AND HEALTH CARE DIRECTIVE

**NOTE: COMPLETION OF THIS FORM IS ONLY THE FIRST STEP.
YOU SHOULD DISCUSS YOUR WISHES IN DETAIL WITH YOUR DESIGNATED AGENT(S).**

- WITH THIS FORM YOU MAY DO ANY OR ALL OF THE FOLLOWING:
 1. NAME AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT.
 2. INSTRUCT DOCTORS AND OTHER HEALTH CARE PROFESSIONALS HOW YOU WOULD LIKE TO BE TREATED IF YOU ARE HURT OR SERIOUSLY ILL AND UNABLE TO TELL THEM YOUR WISHES.
- READ THE FORM CAREFULLY. CROSS OUT ANY PROVISION YOU DO NOT WANT.
- THIS FORM REVOKES ANY PRIOR DIRECTIVES YOU HAVE MADE.
- AFTER YOU COMPLETE THIS FORM SIGN AND DATE IT. TWO WITNESSES OR A NOTARY MUST ALSO SIGN AND DATE IT.

My name is: _____

also known as/formerly known as: _____

In this document I appoint an agent. That agent will make health care decisions for me in the future, if and when I no longer have the capacity to make my own health care decisions. My primary care physician will determine when I am unable to make my own health care decisions.

OPTIONAL: I want my agent's authority to make health care decisions for me to take effect immediately.
Initial here if this statement reflects your desires:

Part 1 - NAMING YOUR AGENT (If you do not have an agent, please proceed to Part 2 on page 3.)

Do not select any of the following persons as your agent or alternate agent:

- Your primary physician.
- An employee or operator of the health care institution, community care facility, or residential care facility where you receive care (unless you are related to that person).

AGENT

Name: _____

Address: _____
City State Zip

Phone: () Alt. Phone: () Email: _____

1st ALTERNATE AGENT (If Agent is not reasonably available to make a health care decision for me.)

Name: _____

Address: _____
City State Zip

Phone: () Alt. Phone: () Email: _____

What kind of health care decisions would my agent make for me?

- Wide range of decisions, including:
 - Choosing or discharging health care providers or institutions
 - Accepting or refusing medical treatments, tests, procedures, medication
 - Receive information, authorize release of information
 - Agent can never overrule your known wishes
 - Post death authority including disposition of remains and authorizing autopsy
- PC § 4683

2ND ALTERNATE AGENT (If Agent and 1ST Alternate Agent is not reasonably available to make a health care decision for me.)

Name: _____

Address: _____
City State Zip

Phone: () Alt. Phone: () Email: _____

AGENT'S AUTHORITY

Except as limited by this document, my agent will have authority to make all health care decisions for me. This authority includes, but is not limited to, the authority 1) to accept or refuse treatment, nutrition and hydration, 2) to choose a particular physician or health care facility, and 3) to receive, or consent to the release of, medical information and records.

Agent's Post Death Authority: My agent is authorized to donate all or part of my body, to authorize an autopsy and/or determine the disposition of my remains. The agent's actions must be consistent with my will or trust, and with any arrangements which I have made. (Cross this out if you do not wish your agent to have this authority.)

Agent's Authority Under HIPAA & CMIA: My agent shall be my personal representative under HIPAA and legal representative under CMIA and shall have the same rights to inspect, obtain and disclose my protected health information as I have.

AGENT'S OBLIGATIONS

1. My agent shall make decisions for me in accordance with this power of attorney, other instructions I make in this form and my personal wishes, to the extent my agent knows them. If my wishes on a subject are not known, my agent shall make health care decisions for me consistent with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known by my agent.
2. My agent shall provide a copy of this advance health care directive to any health care provider or facility that takes on responsibility for my care.

NOMINATION OF CONSERVATOR

If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated.

Initial here if this statement reflects your desires:

Must the agent follow the client's health care instructions?

- YES – The agent must follow all instructions and wishes to the best of his or her knowledge.
- Remind the client that it is important to discuss their wishes with the agent and alternative agents!

What if the client does not wish to appoint an Agent?

- The client can still have an Advance Directive.
- Instead of appointing an agent, the client can make specific written instructions to his or her health care provider for future health care following the loss of capacity.

Health Care Instructions

The Instructions

- Standard instructions for end of life health care
 - Typical end-of-life wishes
 - May also add individual instructions: For example: Are there medical treatments you wouldn't want under any circumstances?
- Physician must follow your instructions so long as they know of your AHCD and it expresses your wishes clearly
- No wrong choice!

Part 2 - HEALTH CARE INSTRUCTIONS I make the following health care instructions to my agent, or to my health care provider if my agent is not reasonably available or I do not have an agent:

I do not want efforts made to prolong my life and I do not want life-sustaining treatment to be provided or continued:

- (1) If I am in an irreversible coma or persistent vegetative state; or
- (2) if I am terminally ill and the use of life sustaining procedures would serve only to artificially delay the moment of my death; or
- (3) under any other circumstances where the burdens of treatment outweigh the expected benefits.

In making decisions about life sustaining treatment under (3) above, I want my agent or health care provider to consider the relief of suffering and the quality of my life as well as the extent of the possible prolongation of my life.

Initial here if this statement reflects your desires:

I authorize all treatments to prolong my life for as long as possible.

Initial here if this statement reflects your desires:

Other instructions/authorizations:

REVOCAION OF PREVIOUS DOCUMENTS: I revoke any previously-executed Power of Attorney for Health Care, Individual Health Care Instruction, or Natural Death Act Declaration.

SIGNATURE OF PRINCIPAL (Sign and date form here in front of witnesses or a notary.)

Date: _____ Signature: _____
(If principal is not physically able to sign, he or she can instruct another person to sign the principal's name, if signature is done in the principal's presence.)

STATEMENT OF WITNESSES

This document must either be notarized, or signed by two witnesses. If the principal (the person appointing the agent) currently resides in a nursing facility, this document also must be witnessed by a representative of California's Long-Term Care Ombudsman Program. If the two-witness method is chosen, the Ombudsman Program representative may serve as one of the two witnesses, or may serve as a third witness. If the notarization method is chosen, the Ombudsman Program representative serves as a separate witness. Certain individuals cannot serve as witnesses. Those rules are set forth in the following witness statements.

What is meant by Life Sustaining Procedures?

- These *may* include: medical devices put in you to help you breathe, food and/or fluid supplied by a medical device (IV/Feeding Tube); CPR; major surgery; blood transfusions; kidney dialysis; and antibiotics.
- If you have specific questions about life sustaining procedures, it is advised that you speak with your doctor.

Must the physician follow the client's health care instructions?

Physicians and other health care providers are legally obligated to follow these instructions if:

1. They know that the client has an Advance Directive.
AND
2. It expresses the client's wishes clearly.

*Remind the client to inform their primary care physician and other medical providers of his or her wishes.

Making an Advance Directive VALID

1. The client must sign and date the Advance Directive.

AND

2. The document must be either notarized *OR* witnessed by **two** individuals.

Witnesses: Cannot be the agents and cannot be the client's health care provider, employee of the health care provider, or employee of a community or residential care facility.

Is the Advance Directive valid everywhere?

- The Advance Directive that you sign in California is valid in California.
- Other states may NOT recognize a legally executed California Advance Directive.
- California, however, DOES recognize legally executed Advance Directives from other states.

Can an Advance Directive be revoked or changed?


The client may revoke any portion or all of the Advance Directive at any time.

- Must communicate the intent to revoke.
- The client should inform all agents and health care providers of any changes.
- Signing a new Advance Directive form generally revokes any previous Advance Directive.

An Advance Health Care Directive is different from a “POLST” and a DNR

- *POLST: Physicians Orders for Life Sustaining Treatment*
- *DNR: Do Not Resuscitate Order*
 - Actionable medical orders completed by a health care professional.
 - AHCD does not stop paramedics from giving CPR- no legal effect on emergency medical personnel

POLST – www.capolst.org

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY							
 <p>EMSA #111 B (Effective 4/1/2011)</p>	<p>Physician Orders for Life-Sustaining Treatment (POLST)</p> <p>First follow these orders, then contact physician. This is a Physician Order Sheet based on the person's current medical condition and wishes. Any section not completed implies full treatment for that section. A copy of the signed POLST form is legal and valid. POLST complements an Advance Directive and is not intended to replace that document. Everyone shall be treated with dignity and respect.</p>						
	<table border="1"> <tr> <td>Patient Last Name:</td> <td>Date Form Prepared:</td> </tr> <tr> <td>Patient First Name:</td> <td>Patient Date of Birth:</td> </tr> <tr> <td>Patient Middle Name:</td> <td>Medical Record #: (optional)</td> </tr> </table>	Patient Last Name:	Date Form Prepared:	Patient First Name:	Patient Date of Birth:	Patient Middle Name:	Medical Record #: (optional)
	Patient Last Name:	Date Form Prepared:					
	Patient First Name:	Patient Date of Birth:					
Patient Middle Name:	Medical Record #: (optional)						
<p>A CARDIOPULMONARY RESUSCITATION (CPR): <i>If person has no pulse and is not breathing. When NOT in cardiopulmonary arrest, follow orders in Sections B and C.</i></p> <p>Check One</p> <p><input type="checkbox"/> Attempt Resuscitation/CPR (Selecting CPR in Section A <u>requires</u> selecting Full Treatment in Section B)</p> <p><input type="checkbox"/> Do Not Attempt Resuscitation/DNR (Allow Natural Death)</p>							
<p>B MEDICAL INTERVENTIONS: <i>If person has pulse and/or is breathing.</i></p> <p>Check One</p> <p><input type="checkbox"/> Comfort Measures Only Relieve pain and suffering through the use of medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. <i>Transfer to hospital <u>only</u> if comfort needs cannot be met in current location.</i></p> <p><input type="checkbox"/> Limited Additional Interventions In addition to care described in Comfort Measures Only, use medical treatment, antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid intensive care.</p> <p><input type="checkbox"/> <i>Transfer to hospital <u>only</u> if comfort needs cannot be met in current location.</i></p> <p><input type="checkbox"/> Full Treatment In addition to care described in Comfort Measures Only and Limited Additional Interventions, use intubation, advanced airway interventions, mechanical ventilation, and defibrillation/ cardioversion as indicated. <i>Transfer to hospital if indicated. Includes intensive care.</i></p> <p>Additional Orders: _____</p>							
<p>C ARTIFICIALLY ADMINISTERED NUTRITION: <i>Offer food by mouth if feasible and desired.</i></p> <p>Check One</p> <p><input type="checkbox"/> No artificial means of nutrition, including feeding tubes. Additional Orders: _____</p> <p><input type="checkbox"/> Trial period of artificial nutrition, including feeding tubes. _____</p> <p><input type="checkbox"/> Long-term artificial nutrition, including feeding tubes. _____</p>							



What should the client do after completing the Advance Directive?

1. Make his or her personal wishes and values known to agents, family members, and health care providers.
2. Provide copies of the Advance Directive to agents, family members, and health care providers. Keep a list of every person and facility that has a copy.
3. Keep a wallet card with the agent's information.

Durable Power of Attorney for Financial Matters

California Uniform Statutory Form Power of Attorney

- Statutory Form Power of Attorney (Probate Code § 4401) allows you to grant an agent the authority to manage your finances.
 - This may include bank accounts, real property, insurance, tax matters, legal matters, or other financial transactions.
- Durable so it will remain effective if incapacitated.
- Effective immediately or only upon incapacity.
- Multiple agents
 - Consecutive
 - Joint
 - Separate

Financial Elder Abuse

- Powers of Attorney for Financial Matters can be important planning tools.
 - Paying bills, maintaining property
 - Preventative tools to protect against elder abuse
- However, these documents must be handled cautiously as they can also be tools for abuse.



POWER OF ATTORNEY FOR FINANCES

I, _____ appoint _____, as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

INITIAL

- _____ (A) Real property transactions.
- _____ (B) Tangible personal property transactions.
- _____ (C) Stock and bond transactions.
- _____ (D) Commodity and option transactions.
- _____ (E) Banking and other financial institution transactions.
- _____ (F) Business operating transactions.
- _____ (G) Insurance and annuity transactions.
- _____ (H) Estate, trust and other beneficiary transactions.
- _____ (I) Claims and litigation.
- _____ (J) Personal and family maintenance.
- _____ (K) Benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service.
- _____ (L) Retirement plan transactions.
- _____ (M) Tax matters.
- _____ (N) ALL OF THE POWERS LISTED ABOVE.

YOU DO NOT NEED TO INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

This power of attorney shall take effect upon my incapacity. My incapacity shall be determined by my primary care physician in writing.

THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become incapacitated.

Signed this _____ day of _____, 2004

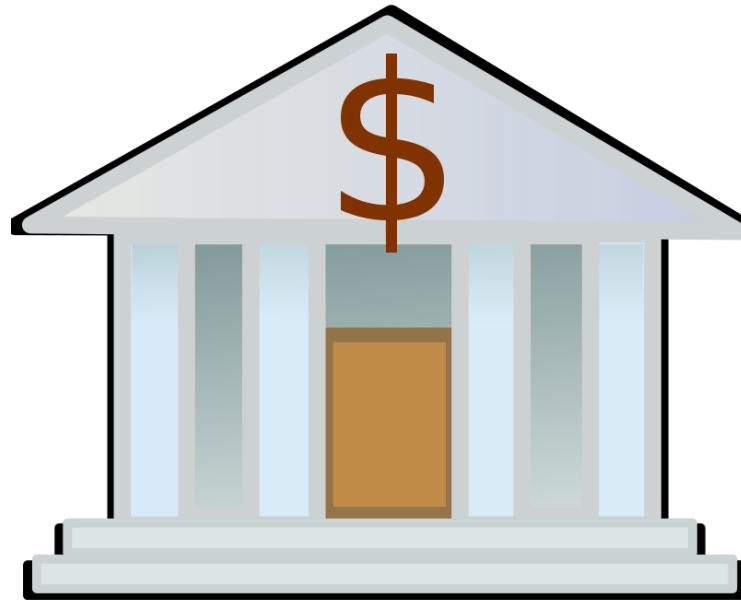
_____ (your signature)

_____ (your social security
number)

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Other POAs

- Banks
- Financial Institutions



Statutory Wills

What is a Will?

- A legal document, drafted or executed in accordance with state law, that becomes irrevocable upon death.
- In a Will, the client may designate who will receive his or her assets at death.



What is a Statutory Will?

- California “fill in the blanks” will form, governed by California Probate Code Section 6240.
- Provides simple instructions for distributing assets after death.
- Designed only for California residents age 18 or older and of sound mind.

What can the client do with a Statutory Will?

- Designate beneficiaries of personal residence.
- Designate beneficiaries of all personal effects.
- Provide specific gifts of cash.
- Designate beneficiaries of remaining assets.
- Designate guardian(s) for minor children.
- Designate executor(s).

Beneficiaries

Individuals or entities who will receive assets as specified in the Will, such as:

- Family members
- Friends
- Domestic partner
- Spouse
- Charitable organization

Executor

A person or institution named in the Will and appointed by the probate court who:

- Collects and manages assets.
- Pays debts, expenses, and any taxes that might be due.
- Distributes assets to the beneficiaries in accordance with the provisions of the Will, in a manner approved by the court.

Guardian for minor children

A nominee designated to have the responsibility to care for minor children if the client and spouse die before the child attains 18 years of age.

***The nominee must be approved by the court. The court usually gives deference to the nomination.

Custodian

A "custodian" is a person designated to manage assets for someone (including a child) who is under the age of 25 and who receives assets under a Will.

- The custodian manages the assets and pays as much as the custodian determines is proper for health, support, maintenance, and education.
- The custodian delivers what is left to the person when the person reaches the age chosen (from 18 to 25).
- No bond is required of a custodian.

Are there different kinds of Wills?

- There are handwritten Wills, typewritten Wills, attorney-prepared Wills, and Statutory Wills.
- All are valid if done precisely as the law requires.
- The client should see a lawyer if the client does not want to use a Statutory Will.

Does a Will give away all assets?

NO. Some “nonprobate” assets are not covered by a Will, such as:

- Life insurance
- Retirement plans, such as a 401(k) or an IRA
- Assets owned as joint tenants
- “Transfer on death” or “pay on death”
- Living trusts
- Spouse’s or registered domestic partner’s half of community property

What is required to complete a Statutory Will?

- **Testamentary Capacity** – The client must understand:
 - ✓ What property he or she owns
 - ✓ What he or she intends to do with the property through this will, and
 - ✓ Who his or her natural heirs are (such as spouse, children, etc.)
- **Witnesses** – The client must sign and date the Statutory Will in the presence of 2 witnesses. The 2 witnesses must also sign and date the document for it to be valid.

When should a Will be changed?

A person should seek the advice of a lawyer and make a new will when:

- 1) Marriage or divorce;
- 2) Establishing or terminating a domestic partnership;
- 3) There are any major changes in the family (such as births and deaths);
- 4) The value of assets significantly increases or decreases;
- 5) A person wants to change the guardian or executor previously nominated.

What should the client do with a completed Statutory Will?

- After the client and witnesses sign the Will, it should be kept in a safe place.
- The client should tell trusted family members where the Will is kept.



Review: Other Planning Tools

- Revocable Living Trust
- Transfer on Death Deed

*These documents should be completed with the assistance of an attorney.



What happens if someone dies *without* a Will?

- Dying without a will is called “intestate.”
- If a person dies without a will, assets in his or her name alone will be divided among the spouse, domestic partner, children, or other relatives according to state law.

Intestacy Laws in California (Simplified)

- Not Married
 - Children/issue, equal shares
 - Parents/issue (siblings, nieces, nephews)
 - Grandparents/issue (aunts, uncles, cousins)
 - Next of kin in equal degree (more distant cousins)
- Married
 - Community property to spouse
 - Separate property
 - 0 kids: $\frac{1}{2}$ to spouse, $\frac{1}{2}$ to parents/issue
 - 1 kid: $\frac{1}{2}$ to spouse, $\frac{1}{2}$ to kid/issue
 - 2+ kids: $\frac{1}{3}$ to spouse, $\frac{2}{3}$ to kids/issue

Other Small Estate Issues

- Small estate affidavits

- Banks
- DMV



- Office of the Public Administrator

- Disposition of Remains
- Disposition of Property
- Unclaimed Property

THANK YOU !