LEGAL AID SERVICES OF OKLAHOMA
WILL QUESTIONNAIRE

Make-A-Will Workshop:
What to Bring to the Will Clinic

- ✓ **LASO Intake Sheet (*This document can be found in your folder.)***
- ✓ **LASO Will Questionnaire (*This document can be found in your folder.*)**
- ✓ **Any additional information not already included on the above forms including:**
  - **Beneficiary Information**

    It is important to include your beneficiaries' full names, addresses and other contact information, a Social Security number, and the birth certificate or adoption papers for any minor children you have. While many people have this information memorized, especially if their beneficiaries are their own children or other close relatives, bringing the documents can help ensure you and your attorney do not make a mistake.

  - **Asset Information**

    Bring copies of the paperwork related to your assets. These include documents like a copy of the deed to your house or other real estate, the title to your vehicles, and bank statements or other papers related to your retirement or other investments. If you own rare or valuable personal property, you may also wish to bring paperwork from an appraiser that indicates the property's value, especially if you wish to leave specific items to a certain beneficiary.

  - **Debt Information**

    Along with the information about your assets, you will also want to bring documents related to your major debts, if any. For instance, bring documents related to your mortgage, car loans, student loans or consumer debt. Your attorney will use this information to figure out approximately how much your net estate is worth, which will help you decide who should distribute the estate. It will also allow you to develop a clear financial picture so you can begin paying down your debts while you are still alive, allowing you to leave more assets to your beneficiaries.

  - **Contact Information for Your Executor and Guardian**

    Your executor, or personal representative, is the person responsible for managing your estate after you are gone. You may name your executor in your will. Most people choose someone close to them whom they trust, such as their spouse, an adult child or a parent or sibling. If you have minor children, you will also want to name a guardian for them in your will. When preparing your will, your attorney will need the contact information for the people you have chosen as your executor or as guardian for your children, including their names, addresses and phone numbers.

ESTATE PLANNING FREQUENTLY ASKED QUESTIONS

What are some common terms related to wills?

Intestacy. Intestacy means dying without a will or a trust. Intestacy is actually an involuntary method of estate planning because dying without a will or a trust means that you have given the state the right to decide who is to receive your property.

Last Will and Testament. A last will and testament is your direction to the probate court explaining who you want to take authority over your property and how you want your property to be distributed at death. It is also the document used to name a guardian for minor children.

Joint Tenancy with Rights of Survivorship. One of the ways to own property is as joint tenants with rights of survivorship. Bank accounts or real estate may be co-owned and co-controlled by joint tenants while you are alive and well. Your property, if titled this way, passes without probate to the surviving joint tenant at your death.

Beneficiary Designation. Life insurance benefits, annuities, individual retirement accounts, qualified retirement plans and pension plans pass to named beneficiaries at your death. Beneficiary designations override any instructions you may give for disposing of these assets in your will or living trust. Generally, these assets do not pass through probate.

Power of Attorney. A power of attorney is often used as a "disability" planning tool. Authority to control, manage, and distribute property while you are living is given in a power of attorney to another person, or "agent." A "durable" power of attorney is in effect while you are well and remains effective even if you become incapacitated. A power of attorney is no longer valid at your death and the agent loses authority to act on your behalf when you pass away.

Gifts. Giving assets away prior to death can be a valuable part of an estate plan if it is accomplished with appropriate professional advice.

Living Trusts. You can use a living trust to manage your property while you are alive and well, provide directions to others if you become mentally disabled, and distribute your entire estate according to a comprehensive plan without the need for probate.

What happens if I die intestate?

The laws of all states provide a method for distributing property after death. These Laws of Intestate Succession provide that your assets will pass partly to your spouse (if you are married) and the remainder to your children. If you are single and have no children, the estate will pass to your parents or, if they are deceased, to your siblings. The laws provide that your estate will stay in your bloodline unless you have no blood or legally adopted relatives, in which case your estate will pass to the state. That means if you die intestate and you intend to leave something to friends, distant relatives, charities or churches, that will not occur without an estate plan in place.

By not doing estate planning, you give up the right to make the choices of distribution for your estate. Perhaps, for example, you do not want to leave your estate to your children equally, or perhaps you want certain specific items to go to specific people. Or, although it may be your intention that your estate pass equally to your children, you may not intend for them to have their share of the estate at age 18. However, they will receive it at that time if you do not have a Last Will and Testament or Living Trust.

If I already have a will, do I need additional estate planning?

Wills are important tools of estate planning, and are crucial for parents who have minor children. Guardians for your minor children are named in your will. A will informs the probate court of your desires for disposition of property you own individually at the time of your death. Having a professionally prepared will is preferable to doing no planning or a do-it-yourself will. There are, however, a number of disadvantages to using a will as your primary estate planning tool. If you have a will, or want to use a will as your primary estate planning strategy, you should know that:

- A will guarantees that your estate will be distributed through a court-administered probate proceeding.
- A will can result in expense and time delays before probate is complete and all inheritances are received.
- A will can be challenged in the probate proceeding by unhappy relatives.
- A will becomes part of the probate court files which are open to public inspection by anyone who wants to know about your affairs.
- A will provides no planning or direction to guide your family if you become mentally incapable of handling your financial affairs.
- If you own real estate in more than one state, multiple probates may be required if you use a will to dispose of your property.
- A will does not control the distribution of all your property. Life insurance proceeds, retirement benefits, and annuities pass by beneficiary designation. Jointly titled property passes to the co-owner. These types of assets do not pass according to the terms of your will. This can create problems if your will is inconsistent with your beneficiary designations and the way your bank accounts and real estate are titled.
- A will may not be effective if you move to or own property in another state.

Can I prepare my own will without a lawyer?

Oklahoma Law allows an individual to prepare a last will and testament that will be legally valid if the entire document is written out entirely in the handwriting of the decedent; dated; signed by the decedent; and clearly states that it's the decedent's will. Legal Aid Services of Oklahoma strongly advises against the preparation of wills or other legal documents without the help of a lawyer.

If all of my property is jointly-owned with my spouse or loved ones, why do I need further estate planning?

There are a number of drawbacks to relying on jointly-owned property as your primary estate planning tool:

- Jointly owned property can pass to unintended heirs, particularly in the event of the death of both joint tenants.
- On the death of one spouse, all control of property passes to the surviving spouse, who might be subject to emotional influence from children or a second spouse.
- In second marriages, assets that are jointly titled between the spouses pass to the surviving spouse and may never benefit children from the first marriage.
- Joint tenancy does not avoid probate. The probate proceeding is merely delayed until the death of the second joint tenant.
- Joint tenancy does not accomplish any estate tax planning.

What is the best way to handle beneficiary designations on life insurance and retirement benefits?

Most people will pass substantial wealth to their loved ones in the form of life insurance, annuities and retirement plans. These assets are controlled by beneficiary designations, not by your will or your trust. Consequently, it is

important to review beneficiary designations and keep them current to assure that these assets will pass to the right people, in the right way, at the right time. Common problems with beneficiary designations include:

- Beneficiary designation forms have been filled out incorrectly or have become outdated.
- Multiple and contingent beneficiaries are often designated for life insurance, annuities, and retirement benefits. In naming beneficiaries, assumptions are made about who will die first. If deaths occur in an unanticipated order, assets may not pass as you intended.
- When children are named as beneficiaries or contingent beneficiaries, they will receive all of the property outright at age 18. Prior to that age, a conservator will have to be appointed by the court to hold these assets

Do I need a new will if I change residences from one state to another?
Possibly. You need to have an attorney in the new state review your will to be sure that it conforms to that state's laws.

What if I own property in more than one state?
Generally, your estate is governed by the state in which you reside at the time of your death. Thus, a valid will drawn in your state will most likely control the distribution of assets in another state.

Who can I name as my estate executor?
You can name anyone you desire to act as executor of your will and estate. That person's duties are to probate the will and distribute the assets according to the dictates of the will. Unless otherwise stipulated, many states require an out-of-state executor to post a bond. Some require that the bond be equal to the value of the estate. If you use a professional executor, there will be a fee involved. This can vary from an hourly fee to a percentage of the estate value. Any such fees should be clearly spelled out in a contract and attached to the will or trust

What if I change my mind after I make a will?
You can change your will through the use of a codicil. The codicil is subject to the same laws of probate, so it is important that it be drafted properly. Attach all codicils to the original will and store them together. Remember that only the original will or codicil is probated, so protect them carefully

Do wills expire with time?
No. But sometimes changes in family circumstances (births, deaths, marriages and divorces, for example) make changes in one’s estate plan wise. Your estate plan documents should be reviewed and updated from time to time.

What is a living trust?
A trust is a legal contract to manage someone's assets, before and after death. There are two basic types of trusts: a living trust and a testamentary trust. A living trust is drafted and implemented while the assignee is still living. Within a living trust is another division: the living trust can be either revocable or irrevocable. If it is revocable, the assignee reserves the right to modify the trust as long as the assignee is alive. If the trust is irrevocable, the trust cannot be changed once in force, nor can the property assigned to the trust be recovered by the donor. A testamentary trust becomes valid when the person dies.

What is the advantage of a trust, if any?
A trust is not a public document, like a will, and it does not require probate, thus ensuring privacy. Trusts tend to be more difficult to challenge than wills. A trust can come into effect during your lifetime, and manage your property if you are temporarily or permanently disabled.

Can a trust be changed like a will?
Yes. If your trust is revocable you can change or revoke it entirely. If it is irrevocable, you may be limited in what, if any, changes you might make.

If I'm leaving something to a minor, must I make the minor's parent(s) the trustee?
No. You may appoint any adult(s) that you consider capable and trustworthy.

Does having a trust mean I don't need a will?
No! A revocable living trust may be considered the principal document in an estate plan, but a will should accompany a revocable living trust. This type of will, referred to as a "pour over" will, names the revocable living trust as the principal beneficiary. Thus, any property which the settlor failed to transfer to the trust during his or her lifetime is added to the trust upon the settlor's death and distributed to (or held for the benefit of) the beneficiary according to the trust instructions.

The settlor may not be able to transfer all desired property to a revocable living trust during the settlor's lifetime. For example, the probate estate of a person who dies as a result of an auto accident may be entitled to any insurance settlement proceeds. These settlement proceeds can only be transferred from the estate to the trust pursuant to the terms of a will. Without a will, the proceeds would be distributed to the heirs under the Oklahoma laws of descent and distribution.

Additionally, nominations for guardian of minor children can only be accomplished with a will, not a revocable living trust.

What does it mean to "fund" a trust?
In order for a Revocable Living Trust to function properly, it's not enough for the Trustmaker to simply sign the trust agreement. After the agreement has been signed, the Trustmaker must "fund" his or her assets into the trust. A trust will not operate unless property is placed into it.

Types of assets such as bank accounts; non-IRA and non-401(k) investment and brokerage accounts; stocks and bonds held in certificate form; and real estate, are funded into a Revocable Living Trust by changing the owner of the asset from the Trustmaker's individual name into the name of the trust. In the case of real estate, for example, this could be done by a deed from the Trustmaker individually to the Trustmaker as Trustee of the Trust.

For assets such as personal effects without a legal title (jewelry, art work, antiques and the like); monies owed to you (personal loans that you've made and mortgages that you've taken back); royalties, copyrights and patents; certain types of oil, gas and mineral rights; and partnership interests and membership interests in limited liability companies, these types of assets are funded into a Revocable Living Trust by assigning ownership rights from the Trustmaker's individual name into the name of the trust.

What is a "spendthrift trust"?
A spendthrift trust is a specific type of irrevocable trust created for the benefit of a recipient, usually because he or she is unable to manage money and spending prudently. This trust type permits an independent trustee to have full authority to make all determinations as to how the trust's funds will be expended for the benefit of the recipient or beneficiary. A huge advantage of the spendthrift trust is that creditors of the beneficiary of the trust usually cannot access nor attach the trust's funds. This is because the funds in a spendthrift trust are not under the beneficiary's control (they are under the control of the independent trustee, instead). For this reason, spendthrift trusts are popular estate-planning tools, particularly for those aging parents who have worked hard to build their estates to a sizeable level and may find their children or heirs are unable to manage money responsibly.

What Are the Biggest Advantages of a Spendthrift Trust?

If an irrevocable trust contains a spendthrift provision, the trust will prevent creditors of the beneficiary from attaching the interest of the beneficiary in that spendthrift trust before the interest is distributed to the ultimate beneficiary. The creditors at issue are existing, as well as future creditors of the beneficiary. The trust interest is usually cash or some other form of property. Irrevocable trusts, if they are prepared well and contain the appropriate legal text, will contain spendthrift provisions even when the recipients or beneficiaries are not technically considered spendthrifts. The reason for this precautionary measure is because a spendthrift provision is able to protect both the trust and the trust's beneficiary if the beneficiary is sued and a creditor tries to attach the beneficiary's property interest in the trust.

DPOA'S, ADVANCE DIRECTIVES, AND GUARDIANSHIPS FREQUENTLY ASKED QUESTIONS

What is an "incapacitated person" for guardianship purposes?

A person who is impaired by reason of:

1. mental illness as defined by Section 1-103 of Title 43A of the Oklahoma Statutes;
2. mental retardation or developmental disability as defined by Section 1-818.2 of Title 63 of the Oklahoma Statutes;
3. physical illness or disability;
4. drug or alcohol dependency as defined by Section 3-403 of Title 43A of the Oklahoma Statutes; or such other similar cases, **and**

Whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said person:

1. lacks the capacity to meet essential requirements for his physical health or safety, or
2. unable to manage his financial resources.

What happens in a guardianship proceeding?

In a guardianship the court appoints a person (the guardian) to control the person and/or estate of the ward. A guardianship deals with non-financial decisions such as where the ward lives and what type of medical care the ward gets. The words "guardian" and "conservator" have different meanings in different states. The person who is called a guardian in Iowa is sometimes referred to as a "conservator of the person" in other states. A person who is called the conservator in Oklahoma might be called the "guardian of the estate" somewhere else.
In Oklahoma, guardianships and conservatorships differ in that conservatorships are usually agreed proceedings. Guardianship procedures are often adversary procedures.

What's an "adversary proceeding?

Unless agreed to by the ward, a guardianship may only be imposed on the ward only after the person(s) bringing the guardianship action have proven that the ward is incapacitated and that the guardianship is necessary. A potential guardian must also prove that it would be in the ward's best interest that he or she be appointed rather than someone else. Oklahoma law deems guardianship to be a serious limitation of a person's liberty and personal autonomy. Therefore, certain rights must be observed. A potential ward may be entitled to a trial, appointed counsel, the right to call and confront witnesses, and the right to present evidence on his or her behalf. In addition, a *guardian ad litem* – a neutral person looking after the ward's best interests – may be appointed by the court.

May co-guardians be appointed? If so, how many can there be?

Co-guardians may be appointed. There are no legal restrictions about the number of co-guardians that the court may appoint for one ward. Normally one and no more than two co-guardians should be appointed. This is because with more people it is difficult to get decisions made and come to an agreement. The guardians will have to work together and agree on an action. However, the court could direct that decisions could be made by only one of the guardians. A person who is not a resident of Oklahoma can be a guardian. A non-resident guardian would usually be required to serve with a resident guardian. However, the court can decide, for good cause shown, that the non-resident may serve alone.

What are the ongoing legal duties and responsibilities of a guardian?

- In general, the guardian must know about the ward's physical and mental status, be familiar with the ward's needs and be available to carry out all of the powers granted by the court. To carry out these responsibilities, the guardian should be actively involved in:
- Planning for services (usually done in conjunction with service providers, case managers, and funding personnel);
- Ensuring that the services provided meet the needs of the ward;
- Making informed decisions by weighing the risks and benefits to the ward and the ward's preferences, if known.
- The guardian must report annually to the court. The report includes information regarding the ward's current mental and physical condition, and present living arrangements. The report also includes a summary of the professional services provided to the ward, a description of the guardian's visits with and activities on behalf of the ward, and a recommendation as to whether or not the guardianship should continue.

What is the scope of authority of a guardian?

The court will grant the guardian only the specific powers necessary to protect and supervise the ward. The guardian must exercise that power in a way that will maximize the ward's self-reliance and independence. The guardian must exercise that power consistent with the authority granted by the court.

A guardian may:

- Make decisions about care, comfort, and maintenance (food, clothing, shelter, health care, social and recreational activities, training, education);
- Place reasonable time, place, and manner restrictions on the communication, visitation, and interaction between an adult ward and another person;
- Give necessary consents for and ensure that the ward receives needed professional care;
- Take reasonable care of personal property;
- Ensure the ward receives necessary emergency medical services.

A guardian may do the following with prior court approval:

- Change the ward's permanent residence to one that is more restrictive of the ward's liberty;
- Upon showing of good cause, deny all communications, visitation, or interaction by the adult ward with a person with whom the adult ward wants to have contact or with a person wanting to have contact with the adult ward.
- Arrange to provide major elective surgery or any other non-emergency major medical procedure (certain dental and health procedures are specifically excluded from this requirement);
- Consent to the withholding or withdrawal of life sustaining procedures

When does a guardianship end?

Modification

At times a ward may not need as much decision-making help. The court may modify a guardianship to allow the ward to make more decisions. The court also may modify a guardianship to allow the guardian to make more decisions for the ward. In a proceeding to modify, the court must make specific findings when deciding whether the powers of the guardian should be increased or decreased. This decision must be based on the evidence presented and must support the powers given to the guardian.

Termination

A guardianship ends when the ward dies or when a minor reaches the age of majority. A guardianship may also end when the court decides that the ward is no longer incompetent or that the guardianship is no longer necessary for any other reason.

POWERS OF ATTORNEY

What is a durable power of attorney?

Normal Powers of Attorney end if and when the principal (person granting the power) becomes incompetent. Yet many people do Powers of Attorney for the sole purpose of designating someone else to act for them if they cannot act for themselves. It is precisely when persons can no longer do for themselves that a Power of Attorney is most valuable.

To remedy this inconsistency, the law created a Durable Power of Attorney that remains effective even if a person becomes incompetent. The only thing that distinguishes a Durable Power of Attorney from a regular Power of Attorney is special wording that states that the power survives the principal's incapacity. Even a Durable Power of Attorney, however, may be terminated under certain circumstances if court proceedings are filed. Most Powers of Attorney done today are durable.

Must a person be competent to sign a Power of Attorney?

Yes. At the time the Power of Attorney is signed, the principal must be capable of understanding the document. Although a Power of Attorney is still valid if and when a person becomes incompetent, the principal must understand what he or she is signing at the moment of execution. That means a person can be suffering from dementia or Alzheimer's disease or be otherwise incompetent sometimes but as long as they have a lucid moment and are competent at the moment they sign the Power of Attorney, it is valid even if they do not remember signing it at a later date. At the time it is signed, the principal must know what the Power of Attorney does, whom they are giving the Power of Attorney to, and what property may be affected by the Power of Attorney.

Who may serve as a Power of Attorney Agent?

Any competent person eighteen years of age and older can serve as an agent. Certain financial institutions can also serve. There is no course of education that agent must complete or any test that Agent must pass. Because a Power of Attorney is such a potentially powerful document, agents should be chosen for reliability and trustworthiness. In the wrong hands, a Power of Attorney can be a license to steal. It can be a big responsibility to serve as an agent.

It is possible to appoint more than one person power of attorney. For example, if a person has two children, one of whom works in the medical field and the other in banking, the principal might want to give the first child more power over health care and the second to be given more financial ability.

The power of attorney may be granted to anyone the principal feels is most trustworthy and most capable to carry out the duties involved. It need not be a relative. In fact, for example, a person may feel their best friend is more responsible or capable than their spouse or children to serve. They have every legal right to appoint that friend.

It is also possible to appoint someone as a "supervisor" or "overseer" in the power of attorney documents. For example, suppose a principal appointed all four of her children as her agents. A dispute arises, and the children are evenly split. The supervisor may be given the limited authority to break the tie, or mediate the dispute. Oklahoma power of attorney law is flexible. Powers of attorney can be shaped to the needs of the individual principals and their families.

ADVANCE DIRECTVE (LIVING WILL)
FREQUENTLY ASKED QUESTIONS

What is an Advance Directive?

An Advance Directive is actually several types of documents: Power of Attorney for Health Care, Living Will, DNR Bracelets and Financial Power of Attorney. These are documents that legally tell in writing either who you would wish to make your health care decisions for you in the event that you are unable to do so, or provide guidance to your physicians regarding how you would wish your health care be decided in the event that you have a terminal condition or are in a persistent vegetative state.

An Advance Directive expresses your personal wishes and is based upon your beliefs and values. When you make an Advance Directive, you will consider issues about life-sustaining procedures such as ventilation, feeding tubes or other procedures you wish or may not wish in the event you are in a terminal condition or persistent vegetative state. An Advance Directive does not include decision-making for mental health issues or treatment.

Who can make an Advance Directive?

In Oklahoma if you are 18 years of age or older, are able to make decisions, and of "sound mind", you can make an Advance Directive.

Why should I make an Advance Directive?

An Advance Directive speaks for you when you are unable to do so and directs your wishes regarding health care decisions. It may relieve your family from the burden of guessing what you would want because it tells others the care and treatments you do or do not want and/or who will make health care decisions for you when you cannot express your wishes.

How do I make an Advance Directive?

You can complete an Advance Directive form available from most health care providers or can be obtained from the Attorney General's website. You can also have one prepared by your attorney in connection with your general estate plan.

What is a Living Will?

A Living Will is that part of your Advance Directive that informs your physician that you want to die naturally if you develop an illness or injury that is terminal or you are in a persistent vegetative state. It allows you to tell the physician what your medical treatment preferences would be in the event you are near death or in a persistent vegetative state.

A Living Will allows you to refuse treatment or machines which keep your heart, lungs or kidneys functioning when they are unable to function on their own. You can relate your choices about feeding tubes and other life sustaining procedures in this document.

A Living Will goes into effect only when two physicians, one of whom is your attending physician, agree in writing that you are either near death and are unable to understand or express your health care choices, or are in a persistent vegetative state that cannot be reversed. The implementation of a Living Will becomes the responsibility of your physician, not your family.

What is a Power of Attorney for Health Care?
The Power of Attorney for Health Care is a document in which you appoint another person (a "health care agent") to make health care decisions for you in the event you are not capable of making them for yourself. When you complete this document, you give authority to your health care agent to make a wide range of decisions for you, such as whether or not you should have an operation, receive certain medications, have a feeding tube placed or be placed on a life support system. In some areas of health care, your health care agent is not allowed to make decisions for you unless you give him or her specific authority in these areas when you complete the form. These areas are admission to long-term care facilities, limitations on mental health treatment, healthcare decisions for pregnant women, pregnancy care and provision of a feeding tube.

Because your health care agent (HCA) will make decisions for you based upon what he or she knows about you and thinks is best for you, it is important to choose someone who knows you well and will honor your wishes.
It is important to discuss your treatment preferences with your health care agent. You can include specific instructions about the type of treatments you want or do not want (such as surgery or tube feedings) when you complete the form.

A Power of Attorney for Health Care goes in effect only when two physicians, or a physician and a psychologist, agree in writing that you can no longer understand your treatment options or express your health care choices to others.

What is the difference between a Living Will and Power of Attorney for Health Care?
A Living Will goes into effect only when your death is very near or when you are in a persistent vegetative state and have no cognitive abilities to make medical decisions. It deals only with the use or non-use of life sustaining measures.

A Power of Attorney for Health Care also goes into effect when you can no longer make health care decisions (incapacitated), but you do not have to be close to death or in a vegetative state. The Power of Attorney for Health Care allows another person to speak for you and make health care decisions for you that are not limited to life-sustaining measures. The type of decisions this person can make depends upon the extent of authority you give when you complete the form.

Aren't advance directives only for old people?
While more elderly people use advance directives, everyone over the age of 18 should have one. Younger adults actually have more at stake, because, if stricken by serious disease or accident, medical technology may keep them alive but insentient for decades. Some of the most well-known "right to die" cases arose from the experiences of young people (e.g., Karen Ann Quinlan, Nancy Cruzan) incapacitated by tragic illnesses or car accidents and maintained on life support.

Should I have both a Living Will and a Power of Attorney?
It is not legally necessary to have both a Living Will and a Power of Attorney for Health Care. If you do have both documents, you should make sure they do not conflict. If they do conflict, a health care provider will follow the instructions of a Power of Attorney for Health Care. In general, it is better to have a Power of Attorney for Health Care rather than a Living Will. We recommend both and that the two compliment and reinforce each other.

Does an advance directive mean "Do not treat"?
An advance directive can express both what you want and don't want. Never assume it simply means "Do not treat." Even if you do not want treatment to cure you, you should always be kept reasonably pain free and comfortable.

Q: How is the Advance Directive different from a Do-Not-Resuscitate (DNR) Consent?

A: A DNR consent form deals only with the subject of cardiopulmonary resuscitation (CPR) in the event of a cardiac or respiratory arrest. In such a document, a person can state that the person does not consent to the administration of CPR in the event the person's heart stops beating or the person stops breathing.

Q: If I sign an Advance Directive how am I protected from a misjudgment by a physician?
A: Oklahoma law requires that both your attending physician and another physician who has examined you determine that you are incapable of making an informed decision regarding your health care, including the provision, withholding or withdrawal of life-sustaining treat-ment. This determination has to become part of your medical record.

What if I change my mind?
You can cancel or replace a Living Will or a Power of Attorney for Health Care at any time. The different ways you can do this are explained on the forms you complete when you make the documents. This includes executing a written statement that is signed and dated by you which states your intent to revoke the document, verbalizing this intent in the presence of two witnesses or creating a new Power of Attorney for Health Care document.

Does my health care provider have to follow my Advance Directives?
Some health care providers and physicians may have policies or beliefs which prohibit them from honoring certain Advance Directives. It is important to discuss your Advance Directives with these people to make them aware of your wishes and to determine if they will honor your Advance Directives. If a physician or provider is unwilling to honor your wishes, the physician or provider must make a good faith effort to refer you to a physician or provider who will meet your needs.

What happens if I don't make an Advance Directive?
You will receive care if you do not make an Advance Directive. However, there is a greater chance you will not receive the types of care and treatments you want if you have not made an Advance Directive.
If you cannot speak for yourself and have not made an Advance Directive, a physician will generally look to your family, friends or clergy for decisions about your care. If the physician or health care facility is unsure, or if your family is in disagreement about the decision, they may ask a court to appoint a person (guardian) who will make decisions for you. You or your family members may be responsible for making arrangements for these legal services and the fees to appoint a guardian.

Where should I keep my Advance Directive?
You should keep your Advance Directive in a readily accessible place where family/friends can locate it. You should make sure your family members, physician and your lawyer, if you have one, know you have made an Advance Directive and know where it is located. Bring a copy of this document with you when you go to clinics or hospitals.

I Have a Will! What's Next?

Congratulations on taking the important step of executing a will. You might have, even, executed a Power of Attorney or Advanced Directive. No matter what documents you had prepared today, you have taken an important step toward the security of estate planning. Now, you might have questions about what to do next.

Keep your Documents Safe

Keep your documents, particularly the originals, in a safe place such as a safe or file box. Make sure that your chosen safe place is one that you will remember, in case you need to make changes to the documents. It is very important to keep the original version of the documents, especially your will, because probate courts require the original version of the will to proceed.

Keep a Trusted Person Informed

You should also keep a trusted family member or friend informed about where the documents are being kept. By keeping another person informed of the location of the documents, that person will be able to quickly find the documents when they are needed. In that same vein, it is also important for those trusted persons to have copies of the estate planning documents so that they may more easily perform any tasks requiring the will.

Perform Follow-Up Tasks

The attorney may indicate to you that there are some tasks that you will have to complete, in addition to the documents. For example, if you have a bank account whose funds you would like to pass to someone else at your death, the attorney will suggest that you complete a Payable-on-Death form or POD at your bank. With this form, the bank will automatically recognize the transferred ownership of the funds upon your passing without the need for a will to be presented or other possibly lengthy proceedings. This can only be accomplished if the form is completed prior to death and is on file with your bank.

Therefore, if the attorney has specified any other tasks for you to complete after executing the documents, it is imperative that you do so. If you do not, you may risk the validity and, thereby, the intended effectiveness of the documents.

Make Changes as Necessary

The estate planning documents that you have executed indicate your desires as they are situated today. Those wishes will inevitably vary. Whether it is the birth of a child or grandchild or divorce, these events may cause you to have different requests regarding the distribution of your assets upon your death. A likely consequence of not making these changes can be an omitted grandchild or a former spouse being chosen as the executor of your estate. Therefore, it is vital that you make changes as they become necessary in order to have the document express your most current wishes.

From: Massachusetts Estate Planning and Elder Law
Blog by Leanna Hamill, Attorney at Law

Title: Why Am I In the Waiting Room?

If you bring your parent to an appointment with an elder law attorney, you might want to bring a good book or your knitting. This is because you may be sitting in the waiting room for most of the meeting.

The American Bar Association explains why in their pamphlet Why Am I Left in the Waiting Room?, which outlines the "Four C's" of elder law ethics that lawyers are required to follow:

Client Identification: The most important thing for an attorney to convey in the initial meeting is "who is my client." This needs to be made clear to everyone in the room. The "family unit" or "the situation" cannot be my client. If you bring your mother in to have her Will drafted, your mother is my client. Even if you are paying the bill. Even if you made the appointment. Even if she tells me in our meeting that she wants to disinherit you.

Conflicts of Interest: Lawyers must avoid conflicts of interest. Many times, the parents and the children will have different interests in the outcome of a situation. It may be in the best interest of the child for the parents to gift them large sums of money, or a house. However, it may not be in the best interest of the parents to make these large gifts when they may need the resource to provide for their own care and standard of living. An attorney could not represent the children and the parents in this situation.

Confidentiality: A lawyer must keep information and communications between her clients and her confidential. I cannot share any information with my client's family unless they give me specific permission to. Sometimes, an adult child will call me to find out where things are in the process, or question why their parent made a certain decision. I cannot share this information with the child, and they would be better served to ask their parent directly, or, in some cases, mind their own business.

Competency: Many times a child will want to accompany their parent or parents into the meeting because they think their parent won't understand what is going on, or they are afraid their parent will leave out important information. However, assessing the client's capacity if part of getting to know the client. By meeting privately with the client, I am able to find out if they can explain the problem or express what they need. If someone else is in the room answering the questions, I have a hard time determining if my client understands.

There may be times where I meet with my client privately, and then they ask if their child can come back in the room so that I can explain to them what the plan is. This is fine, since it is done after the meeting with my client and it is with my client's permission.

These rules make a lot of sense if you think about it - a Will or Power of Attorney can be challenged if the client was under undue influence when it was signed. This might be of special concern to families where one child is the primary caregiver of the parent, and the primary beneficiary under their Will. By staying in the waiting room, you are less likely to be accused of exerting undue influence over your parent.

So, feel free to call and make the appointment for your parent, and even drive them here. Just don't feel slighted when I ask you to wait in the waiting room. I promise there will be interesting things to read.

Quick Guide For Advance Directives (Living Wills)

What Is An Advance Directive?

It is a written document that communicates what you want your health care providers to know if you ever become unable to express your wishes coherently. With an advance directive, you may:

- decide in advance whether to select or decline life-sustaining treatment,
- appoint one or more trusted representatives (called a "health care proxy") to make decisions on your behalf,
- donate body parts or your entire body for transplantation or research, and
- give other instructions about your health care, such as opting for hospice care or asking for a specific level of pain management care.

A written advance directive is the safest and most effective way to make your wishes known, to legally empower your doctors to follow your directions, and to give the people you select the authority to act on your behalf.

How Does An Advance Directive Work?

In the event that your attending physician and one other doctor determine that you are incapacitated, an advance directive can be used to empower others to carry out your choices and make health care decisions on your behalf. Without a legal document such as an advance directive, your spouse or other family members may not be able to participate in decisions about your care.

Why Create An Advance Directive Now?

It is important to complete an advance directive while you still have the mental capacity to make decisions. Once a person is unable to make medical decisions and needs and an advance directive, it is too late to complete one.

Even if you have told others your health care wishes, Oklahoma law does NOT automatically recognize the authority of spouses or other family members to make health care decisions for you if you are ever not able.

When Will My Advance Directive Take Effect?

If you never experience an injury or illness that prevents you form making and communicating your own decisions, your advance directive will never go into effect.

Your advance directive will **ONLY** take effect if your attending physician and another doctor both determine you are no longer able to make medical decisions due to lack of capacity.

Can Doctors Go Against My Wishes?

Oklahoma law requires physicians and other health care providers to promptly inform if they are not willing to or able to comply with your advance directive.

What Is A Health Care Proxy?

Your health care proxy is the person who will have the authority to make all health care decisions that you would make if you were able. Your health care proxy will be able to access your medical information and talk with your doctor about treatment options. She or he may consent to or refuse tests or treatments. Your health care proxy may also admit you to a health care facility or select your physician.

How Do I Choose A Health Care Proxy?

Your health care proxy must be at least 18 years old and of sound mind. She or he should be someone you trust, who knows you well, and who will honor your wishes. Often, a spouse or adult child is appointed.

However, you may choose anyone you want, including other family members or friends. It is also important to have an alternate in the event that your health care proxy in case the person you choose is unwilling or unable to carry our your wishes.

In order to prevent disputes among those who care about you, make sure your proxies know your wishes and understand the values that guide your decisions and talk to everyone who will be concerned about your treatment.

Can A Health Care Proxy Defy My Wishes?

Your health care proxy and any alternates are required to follow the instructions you gave unless you specify otherwise. She or he must also honor what is otherwise known about your treatment wishes.

Can I Write Specific Wishes About My Care?

You can personalize your advance directive by writing specific wishes and instructions, such as:

- Pain Management– specify the level and type of pain management care you would like to receive
- Time Limit on Treatment– allow life-sustaining treatment to be continued for a specific or reasonable period of time to allow for the possibility of recovery and authorize its withdrawal after that time has lapsed.
- Authorization of Hospice– request that you be placed on hospice as soon as it becomes appropriate.
- Refusal of Hospitalization– express wishes to receive care at home or pass away at home, if possible.
- Particular Procedures– authorize or decline particular medical procedures or treatments, such as antibiotics, blood transfusions, or dialysis.
- Quality of Life– describe what an acceptable quality of life is to you in order to guide your health care proxy and doctors. This statement should be based on your individual views about a life worth living.
- Exceptional Circumstances– detail precise circumstances when you would want medical treatment to extend life for a limited time even when recovery is not possible, such as to allow time for religious rite or family members to arrive.
- Pregnancy– In the event that you are pregnant and incapacitated, you will be provided life-sustaining treatment unless you specifically authorize in your own words that such treatment should be withheld or withdrawn even if you are pregnant.

When Should I Review My Advance Directive?

Review your advance directive every few years, especially after a major life change, such as the death of a loved one, divorce, or diagnosis of a serious medical condition.

What If I Change My Mind?

You can revoke, or cancel, all or parts of your advance directive at any time in any way that indicates your intention to revoke, including tearing, crossing out, or destroying the form.

It is best to document your revocation by writing “I Revoke” across each page and keeping it in your records. Tell everyone who has a copy that it has been revoked and ask her or him to destroy her or his copies.

Tell your attending physician that you revoked your advance directive and to make your revocation part of your medical record.

Creating a new advance directive automatically revokes your old one. Remember to give copies of your new advance directive to your physician, health care proxies, and attorney.

The best way to make changes to an advance directive is to complete a new form. **DO NOT ALTER THE ORIGINAL DOCUMENT.** Making changes to the original document may cause confusion and could even invalidate the document.