

Advance Planning

For End-of-Life Issues



One of the most confusing and conflicting times for many of us is the period surrounding the death of a family member. There are many tasks and decisions to handle – from end-of-life healthcare decisions to arranging for the disposition of bodily remains, from funeral arrangements to handling unpaid bills – all when emotions and stress are high, and time and energy may be low.

These issues are not minor and can be very complicated if there hasn't been adequate advance planning. This Guidebook is designed to help you proactively create a plan for your family so they can handle arrangements surrounding your death. By working through a few details before they're needed, you may help reduce uncertainty, defuse conflicts and provide guidance for your family at a time when they need it most.

We hope you find this Guidebook to be a valuable first step to help you resolve your concerns.

Sincerely,

ARAG Customer Care Team

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Glossary

Durable Power of Attorney. Written authorization to act on someone else's behalf in financial or property matters.

Fiduciary. A person under obligation to act in another's interest to the exclusion of the fiduciary's own interest.

Health Care Power of Attorney. Written instructions that specify health decisions and actions to be taken in the event that a person is no longer able to make decisions due to illness or incapacity.

Living Will. A written authorization document stating an individual's preferences for healthcare and end-of-life care if severely disabled or suffering terminal illness.

Pay on Death Account. An arrangement created when a person deposits money in his or her own name in a bank account which is made payable to another on the death of the named account holder. This is also known as a "transfer on death account."

Personal Representative/Executor – A person appointed to carry out the terms of a will.

Pre-need Arrangement. Written instruction regarding goods or services that are paid for in advance of need. Generally refers to goods or services that are needed for final disposition of bodily remains.

Transfer on Death Account. See "pay on death account."

Trustee. Someone appointed to hold onto property for the benefit of another.

The Value of Planning Ahead

You may have prepared a Will or Trust that reflects how you want personal and financial matters handled upon your death. In addition to these important documents, you may want to consider additional planning that will guide and give authority to those you appoint to make decisions in the final days before or shortly after your death.

While considering these issues may bring up a range of emotions for you, it's important to do so while you are healthy and thinking clearly. You may spare your family from having to make difficult decisions, often on short notice and in a state of emotional distress by choosing an agent to act for you, documenting your preferences, and discussing your intentions.



Creating Advance Directives

Choose an Agent. We each have the right to make health care decisions for ourselves, even if those decisions will hasten our deaths. Too often, key health care decisions need to be made when someone is no longer able to make a decision or communicate intent. Preferences stated in Living Wills are often vague, and in many states only come into play when death is imminent (i.e., within a matter of days or weeks). Using an Advance Directive is often a stronger option because it can give you the flexibility to define your preferences and the assurance of having them followed.

Document Your Preferences. An Advance Directive allows you to appoint someone to make health care decisions for you and to offer specific guidance to that person regarding your end-of-life care decisions. This document is commonly known as a “Health Care Power of Attorney” although it may have a different title in your state.

When you appoint someone to make serious health care decisions, you obviously need to decide what you really want done in that critical time. This is an opportunity for you to think through important questions such as:

- ✓ What loss of function would make life too burdensome?
- ✓ What procedures would be simply out-of-bounds to have to endure?
- ✓ What values guide my health care decision-making?

Discuss Your Intentions. Understanding what is right for you is only the start: you need to share those insights and values with those you appoint to act on your behalf. Anyone involved in carrying out your intentions needs to understand you, how you’d decide and commit to acting for you in light of that shared understanding.

If you don’t express preferences for health care or end-of-life treatments in an advance directive or appoint an agent to make those decisions for you, then

the law in each state determines who makes those decisions for you when you are unable to make them yourself. Typically, state law sets an order in which family members will receive authority. State law also specifies the procedure for confirming each family member's authority and suggests the procedure for resolving indecision among family members within the same level of priority.

An Attorney's Front Line Perspective

"By facing these hard issues yourself, while you can do so clearly and can express your decisions in advance and in writing and can select a trusted agent to act for you, you will spare your family the anguish of making difficult decisions, often on short notice, when they find themselves in an atmosphere of emotional turmoil. With preparation on your part, you can help mitigate the possibility of intra-family disputes arising over care decisions and troubling, demanding, and tricky legal decisions for your family."

Chris G.
Dunedin, Florida

Organ Donation. If you are considering donating organs or tissues after death, be sure to take the appropriate steps to ensure your intentions are known and followed. You can indicate that you want to be a donor in the following ways:

- ✔ Register with your state's donor registry. Check the list at [OrganDonor.gov](https://www.organdonor.gov).
- ✔ Designate your choice on your driver's license.
- ✔ Sign and carry a donor card. Cards are available from [OrganDonor.gov](https://www.organdonor.gov).

It's also important to tell your family that you want to be a donor. Hospitals seek consent from the next of kin before removing organs, although this is usually not required if you're registered with your state's donor registry. The best way to ensure that your wishes are carried out is to put them in writing. Include your wishes in your Living Will, as well as on your driver's license.

You also can make a statement that you do not wish to donate organs. Again, an Advance Directive avoids forcing your family to make a decision for you without knowing your preferences or intentions. Most states have adopted the Uniform Anatomical Gift Act of 2006; the text of that Act can be found at: [http://uniformlaws.org/Act.aspx?title=Anatomical%20Gift%20Act%20\(2006\)](http://uniformlaws.org/Act.aspx?title=Anatomical%20Gift%20Act%20(2006))

Pre-Planning For Funeral Arrangements

Planning for a funeral and burial or cremation involves personal, and often costly, decisions. While many people put general instructions about funerals in their Wills, these instructions generally provide little guidance. In smaller estates, the personal representative designated to carry out those instructions rarely gets formal authority from a court to carry out those instructions.

What does a funeral cost?

According to the National Funeral Directors Association the average cost of an adult funeral in the US reached \$6,560 in 2010. This does not include any of the costs for matters outside the funeral itself.¹

¹National Funeral Directors Association, General Price List Survey, 2010

Pre-plan. Pre-need arrangements offer an opportunity for you to specifically define how you want your remains handled, what ceremonies you want and how much you are willing to spend. There is a great variety in such arrangements, the costs, and the safeguarding of your pre-payments.

Your pre-need arrangement is where to document your choice if you prefer that your remains be cremated. *If a preference for cremation is not documented, some states require the written consent of the surviving spouse; if there is no surviving spouse, then of all surviving children in order for cremation to happen.*

If you don't pursue pre-need arrangements, you still can create written instructions regarding your preferences for bodily disposition. An increasing number of states have laws that allow you to give written instructions that name an agent to carry

out your instructions and that are binding on your family. You will need to keep funeral and disposition costs in mind when creating your instructions since whatever you choose is subject to the ability of your estate to pay for them.

Pre-pay. One advantage of funeral pre-payment is that the arrangements you prefer will not create an expense for your family, as long as they follow your intentions.

Ultimate financial responsibility for the costs of bodily disposition and funeral arrangements will fall on the person who makes those arrangements with the service providers. Typically that expense can be charged to and paid out of the estate if there is an estate opened and enough assets. However, the laws of the state where expenses are incurred should also be considered since those laws may assign responsibility for costs.

Consumer protection for funeral expenses

The Federal Trade Commission created a consumer protection rule relating to funeral services, contracts, and pricing disclosures. The Rule, and supporting materials can be found at: <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/funeral-industry-practices-rule>

Specifically, the FTC's Funeral Rule gives consumers the right to:

- Buy goods and services separately. Consumers do not have to buy a pre-packaged arrangement.
- Receive price information on the telephone without giving a name or contact information.
- Receive a list of all items and services offered and the cost of each.
- See a separate container price list. (Outer burial containers are not required by law, but may be required by the cemetery.)
- Receive a written statement showing what's being purchased and its cost.
- Receive a written description of any legal, cemetery or crematory requirement that requires the consumer to buy specific goods or services.

Reviewing and Updating Beneficiary Designations

While pre-planning and written instructions are extremely helpful to those who will carry out your instructions, it is essential to know how your beneficiary designations are stated on financial accounts and insurance policies. **In cases where the beneficiary designation differs from other written instructions you have given, the beneficiary designation is generally honored.**

For example, consider a life insurance policy that lists a primary and contingent beneficiary. If the primary beneficiary dies before you and the beneficiary designation is not updated, the contingent beneficiary will have to provide proof of the primary beneficiary's death.

Keeping your written estate plan aligned with beneficiary designations will eliminate a lot of costly inconvenience for your family and ensure that your intentions are followed. Review accounts such as 401(k)s, bank accounts, security accounts, certificates of deposit and IRAs to see if they have any provisions for how these accounts will be distributed at death and if those statements are still correct. You also need to review your life insurance policies and annuity contracts, so the beneficiaries you want are correctly identified.

Accessing Financial Accounts

At some point, whether due to age, illness or an accident, you could become physically or mentally incapable of handling your financial affairs, such as paying bills or making deposits. Preparing for this possibility could bring you some measure of comfort now and simplify a complicated situation for your family in the future. Here are some options and their advantages and disadvantages.

Using a Durable Power of Attorney. You can appoint someone as your agent in a Durable Power of Attorney. After proving his or her authority to act, the agent can access accounts. This agent's authority and access to the accounts ends at your death.

Designating an Account as a Power of Attorney Account. You can title accounts in your name and list your agent's name as Power of Attorney on that account. This permits both you and your agent access to the accounts even if you are incapacitated. Your agent's right of access ends at your death.

Setting Up a Joint Account. You can set up a joint account in your and your agent's name so that your agent could freely access the account both before and after your death. As a joint account, your agent is free to treat the account as his or her own after your death. If this is an account you want available only for post-mortem and pre-probate costs, you may want to consider keeping only sufficient funds available for those purposes (e.g. \$5,000).

Creating a Revocable Trust. You can create a Revocable Trust that names you as the trustee and your agent as a successor trustee upon your incapacity or death. Arrange at your financial institution to hold the account in your Trust name so your trustee can access the account as needed for the purposes of the Trust, including handling financial obligations arising prior to, from your, and after your, death.

If you haven't made adequate arrangements, the state may appoint a guardian or conservator to handle your financial affairs if you can no longer do so. Not only are these proceedings costly and time consuming, the guardian or conservator that is appointed may not be the same as who you would have chosen yourself.

Managing Debt and Other Obligations

Nearly everyone will leave behind some lifetime debts, whether a home, credit cards or end-of-life hospital or hospice expenses. Here are some important issues to understand regarding your debts and obligations, what you can do to manage them proactively, and what you may wish to communicate to your family in advance.

Many people wonder if their surviving family members will inherit personal responsibility for debts (especially if they receive contacts from collection agencies). And, if they have no responsibility, how do they need to handle payment on debt prior to opening your estate?

The basic rule on responsibility is that your lifetime debts are your responsibility or the responsibility of your estate. Either the probate personal representative/executor or the trustee of your revocable trust is responsible for paying debts in the course of, and in accordance with the rules of, the state's probate or trust administration procedures.

Who's responsible for debt?

Lifetime debts are not the personal responsibility of your surviving family members. Some debts, however, may become a surviving family member's personal responsibility if they held joint obligations, such as a loan made by both you and the surviving family member; or a credit card issued to you but also used by the surviving family member.

State laws create a system of exemptions and debt priorities which affect how much of your property may be used to satisfy debts and which kinds of debts get a higher payment ranking. If there are not enough funds or property in the estate to satisfy all or any of the debts, especially debts not secured by collateral (e.g., debts on credit cards, or for services), those debts will be uncollectible.

While debt collectors may potentially contact surviving family members, the estate bears responsibility for payment (if non-exempt assets are available).

If contacted, family members are within their rights to decline to assume any responsibility or make any payments. If collection contacts continue, family members may want to consider consulting an attorney to pursue options to end the contact.

Debts Secured by Collateral. Debts that are secured by collateral (such as mortgages or car loans) present a special issue because the collateral might be important to either the estate or to the surviving family members. A family member's voluntary payment of an installment or two in the period prior to opening the estate can prevent foreclosure or repossession. Such payments would be the family member's claim for reimbursement on the estate.

Anyone contemplating such a payment needs to determine if the estate will want to retain this property or if there is a different, specifically named beneficiary for this property. Before making a payment, your family will want to consider if it is worth it to spend funds for something that may be surrendered or passed directly to another.

In addition, keep in mind that any obligation with a security interest in collateral actually involves two separate things:

- the debt itself (represented by a promissory note or installment contract)
- the security interest (represented by a mortgage on realty or a security interest lien on personal property).

A family member making a payment does not become obligated on the debt but merely is ensuring that there is no basis for taking action under the security interest.

If the collateral needs to be insured, it may be possible to maintain the insurance with the estate's formal fiduciaries or with the person who will acquire the collateral.

Unsecured Obligations. If you have an unsecured obligation relating to your residence or another place where you have kept assets, your surviving family members may want to make payments on them in order to protect those assets for eventual estate handling. For example, if you lived in an apartment and had valuable furniture, art or collectibles, continuing to pay the rent would preserve the holding area for those assets. Similarly, making utility payments or keeping alarm services active may protect the residence and property from burglary or damage from cold or heat.

If any family member does make voluntary payments, he or she needs to indicate to the payee, in writing, that making a payment does not indicate an intent to assume personal responsibility. Further the family member needs to keep full records of payments made, and should advise and be directed by formal fiduciaries once the estate is opened.

Contacting Service Providers. If you have entities that provide services to your properties (such as utility services or property maintenance) these entities will likely continue to provide services until they are told to discontinue them or a scheduled payment is missed.

In the post-death, pre-estate administration period, if you don't otherwise make funds accessible to pay these service providers, one or more of your surviving family members will need to make payment, with the expectation that they would be repaid from the estate.

In your planning documents, it may be helpful to detail for your surviving family members what services are necessary to preserve the assets of the estate or to fulfill continuing responsibilities, until the estate is administered.

- Services that are unnecessary may be canceled according to the service contract.
- Services that are necessary to protect the property, especially if now vacant, or services required under contracts, could be continued. Payments for services need to be properly documented for reimbursement.

Obligations Due to a Lawsuit. If you were involved in a lawsuit at the time of death, your surviving family members will need to notify your attorney (if represented). If you were not represented, then your surviving family members may need to consider contacting an attorney to protect the your interests and the interests of the estate, at least until formal fiduciaries are appointed.

Handling Income

In addition to addressing expense questions, you may have different sources of income that need to be stopped or redirected to the estate or beneficiary.

Shareholder or Partnership Deposits. If you are a key shareholder, member or partner of an entity such as a corporation or limited liability company, then you may need to put into a governing document a provision that provides for how the entity needs to adjust for your death; a direct successor may be named, but more likely the estate will be involved.

Savings, Checking and Investment Payouts. If you are the sole owner of any savings, checking, or investments accounts, your surviving family members will be denied access to funds in those accounts. The institutions will look instead to the estate fiduciaries.

Examples of how you could set up your accounts.

- Provide for ownership in accounts to pass to someone outside of your Will by using a “pay on death” or “transfer on death” option. Those funds will pass to named beneficiaries upon death.
- Make the account a joint account with survivorship rights to another family member.

Governmental Benefit Payments. In your planning materials, it's important to list governmental payments such as Social Security benefits, Veterans benefits, unemployment or workers compensation that would typically end at death. Surviving family members need to notify the payor of the fact and date of death. This will prevent improper payments that would otherwise have to be returned.

Private Entity Payments. If you were receiving payments from private entities such as annuity payments, structured settlement payments, dividends or interest payments, rents, or loan repayments, surviving family members will need to notify the payor of the fact and date of your death. This will prevent improper payments that would otherwise have to be returned.

Some payments (such as dividends, interest, rents, loan repayments, etc.) are obligations of the payors that will continue after death even if the beneficiary of those payments is someone other than yourself. While access to bank accounts may be blocked, those accounts can likely continue to receive deposits. If a surviving family member receives a payment, it could be safely direct-deposited into the account, with proper documentation of the source so that the funds can be traced for later distribution to a specific beneficiary.

If you receive payments on an obligation that is held jointly with a surviving family member, or with an artificial entity (such as a corporation or limited liability company), then the proper handling depends on how the ownership of the obligation is stated. If it is reasonably clear that the obligation is one which remains, at least in part, as one you own, then the payment is the property of the estate to the extent of your ownership.

Trust Payments. If the payment reflects an asset held by a Trust you set up, then the payment can be given to the currently acting trustee of the Trust holding the asset. Once a formal estate fiduciary has been authorized, the safest course for your family for handling the payments is to consult with the fiduciary and generally redirect all payments which were yours, either solely or jointly.

In general, payments are best seen as property of the estate, not the property of surviving family members, at least until the legal proceedings for handling the estate begin and proper distribution can be made.

Conclusion

Dealing with the reality of our own mortality is a conflict as old as time. Along with the real personal struggle, it also can trigger a range of difficult and potentially contentious legal matters and expenses. The law offers some framework for settling those matters and allocating those expenses for the family. One of the greatest gifts you can leave to surviving family members is to invest some time and attention and specify how you want those matters and expenses handled when they become necessary.



Let us help you

If you need additional help or guidance, ARAG is here for you. Simply contact a Customer Care Specialist who can help you understand the benefits available to you. For more information:



Visit the Education Center at:
ARAGLegalCenter.com, call
1-800-247-4184 or email
Service@ARAGLegal.com







Preparing to Meet Your Attorney

If you decide to consult an attorney about your legal matters, we suggest you complete the following worksheet prior to your meeting. By preparing this information ahead of time, you have the opportunity to clearly think through your needs and the attorney will have the necessary information to provide you with the highest level of legal service.

Start by thinking about your current situation, the communications you have received and any history you have about the legal matter. Summarize your legal needs in a few sentences. Use this as a starting point when you make your first phone call to an attorney.

Checklists

The following checklists can help you organize your personal information and create a plan for communicating your intentions. Doing so helps ensure your wishes will be honored, and may help ease stress for your family at a difficult time.

Task Checklist

- Draft legal documents such as a Will, Living Will, Health Care Power of Attorney, and/or Durable Power of Attorney.
- Review beneficiary designations on insurance policies and 401(k) plans to ensure they're current and aligned with your intentions.
- Review bank accounts and make sure funds will pass at death as you intend. Talk with people you've chosen as agents and executor of your estate. Make sure they understand your wishes and agree to act on your behalf.
- Discuss your preferences with family members. Make sure they know your intentions, who is appointed to take various responsibilities, and where documents are located.
- Schedule a regular review date to ensure all of your plans remain current.

Pre-Planning Checklist

- Prepare the following information and/or instructions regarding memorial services and/or burial or cremation.
- Cemetery, columbarium or niche name, lot number, location
- Name and contact information for funeral home, funeral director, church or synagogue and personal friends
- Organ donor records/instructions
- Instructions regarding burial or cremation
- Special wishes for the ceremony
- Pre-paid funeral policy

Resources for More Information

The following websites were used as resources in developing this guidebook and provide additional information.

Uniform Law Commission: uniformlaws.org

U.S. Department of Health and Human Services: OrganDonor.gov

Uniform Anatomical Gift Act: uniformlaws.org/Act.aspx?title=Anatomical%20Gift%20Act%20%282006%29

National Funeral Directors Association: www.nfda.org

Federal Trade Commission (Specifically, rules relating to funeral services and consumer protections in this area): <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/funeral-industry-practices-rule>

Government Accountability Office (Specifically, Report GAO 03-757 and Report GAO 12-65): gao.gov/products/GAO-03-757 and gao.gov/products/GAO-12-65

Funeral Consumers Alliance: funerals.org

¹National Funeral Directors Association, General Price List Survey, 2010

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