

Directive

Estate Planning & Trusts

Advance Care Directives

FAQs



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WHAT IS AN ADVANCE CARE DIRECTIVE?

Advance care directives ('Directives') are known by many names including advance health directives, advance medical directives and living wills.

Directives provide family members, friends, enduring guardians and medical professionals with an unambiguous statement of your intentions and preferences regarding medical intervention and treatment. This can assist in discussions between family members and also with medical professionals.

It should be noted that Directives are only a fall back provision for such time as you are unable to directly make and communicate your own decisions.

Whilst a Directive is not necessarily legally binding many health care professionals are prepared to act on your Directive to the extent that they are able to do so.

WHO CAN MAKE AN ADVANCE CARE DIRECTIVE?

Generally speaking, anyone person over 18 years of age who has the legal capacity to understand the nature and effect of the document can create a Directive.

WHAT CAN THE DIRECTIVE INCLUDE?

A common misperception is that Directives merely outline the circumstances in which life-sustaining treatment should not be provided.

Directives can actually be used to cover a far wider array of topics ranging from positive statements consenting to/requesting reasonable treatments to negative declarations refusing/limiting certain actions.

Examples of the scope of Directives include:

- Setting out treatment preferences based on religious, moral or other grounds;
- Specifying how extensive treatment should be in given circumstances. i.e. if the a condition is 'terminable' or 'irreversible';
- Establishing a decision-maker who should be consulted when deciding upon medical treatment;
- Citing other non-medical factors that should be considered.

SHOULD I MAKE A DIRECTIVE?

There is no set answer for when or if a Directive should be created and much will depend on your particular circumstances and values.

Directives are commonly made once a person has been diagnosed with a chronic or terminal illness where medical decisions have become an immediate reality. However, many healthy adults wish to set out their desires governing future treatment as part of general estate and care planning.

WHO SHOULD I INVOLVE IN THE PROCESS?

You might consider including your general practitioner (and any specialist medical practitioner who knows your medical history) in the process of creating your Directive. We recommend that you provide your treating doctor with a copy of the Directive.

The involvement of a health care professional can aid understanding of the issues and medical terminology. It can also improve your awareness of potential treatments and prognoses in order for you to make informed decisions.



IS A DIRECTIVE THE SAME AS AN APPOINTMENT OF ENDURING GUARDIAN?

A Directive is different to an appointment of Enduring Guardian in that it does not provide a legal mechanism for an appointee to make decisions on your behalf. A Directive is a device that sets out your direct wishes which can be implemented should you not have legal capacity at the time the medical intervention or treatment is required.

You should consider creating a Directive at the same time as you appoint your Enduring Guardians so that your instructions are clear and unambiguous. It is vital to create a structure in which your Directive and appointment of enduring guardian compliment rather than contradict each other.

For the above reasons we recommend that you include your Enduring Guardians in the process of creating your Directive and ensure that they are fully aware of and understand your directions.

WHO IS THE 'PERSON RESPONSIBLE'?

This term used to be commonly referred to as 'the next of kin' and is the person whom the health care professionals will approach for consent should you be incapacitated.

Your 'person responsible' will differ depending on your circumstances but generally speaking the hierarchy is as follows:

1. Your Enduring Guardian (provided they have an express power to consent to medical and dental treatment);
2. Your spouse or de facto spouse;
3. Your carer or person who arranges care on a regular, unpaid basis;
4. A close friend or relative.

WHEN SHOULD I REVIEW MY DIRECTIVE?

It is vital that you keep your Directive current and up to date. A vague and historic Directive is much less persuasive than a current Directive written by an informed person who specifically refers to their current conditions and anticipated deterioration.

We suggest you review your Directive at the same time as reviewing your Will or sooner if your health circumstances change.

HOW CAN TEECE HODGSON & WARD ASSIST?

If you require further information or advice concerning the above please contact Richard Neal, Deborah Linwood or John Maitland using the following contact details.

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This Information sheet is intended to provide general information about current law relating to Advance Care Directives. It is not intended to be comprehensive or to provide any specific legal and / or tax advice and should not be acted or relied upon as doing so.

Professional advice appropriate to a specific situation should always be obtained.

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