



# HEALTH CARE POWER OF ATTORNEY AND LIVING WILL

(A.R.S. §§ 36-3201-3224, 36-3231, and 36-3261-3262)

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## WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is a legal document through which you give another person the legal authority to act for you. This person is also known as an *attorney-in-fact* or *agent*.

All Powers of Attorney fall into one of two categories: General Powers of Attorney or Special Powers of Attorney.

## WHAT IS A HEALTH CARE POWER OF ATTORNEY?

A Health Care Power of Attorney is a type of Special Power of Attorney. It allows you to guide your physician should you become incapacitated and designate one person to make all decisions relating to your health care. This includes full power to give or refuse consent to all medical, surgical, hospital, and any other related health care, when your wishes are unknown.

## DO I NEED A HEALTH CARE POWER OF ATTORNEY?

Most states, including Arizona, appoint health care agents for persons unable to make their own decisions, who do not have a Health Care Power of Attorney. This is similar to the law of intestate succession for persons who die without a will. The law appoints an agent and legally authorizes that person to make health care decisions on your behalf. By Arizona statute, the following individuals are appointed as health care agents; if such a person does not exist, the “next person in line” is appointed:

1. Your spouse, unless you are legally separated.
2. An adult child, if there is more than one, a majority of the available adult children.
3. Parent(s).
4. A domestic partner of an unmarried person.
5. A sibling.
6. A close friend who shows a special concern for you, is familiar with your health care views, and who is willing and able to become involved in your health care and to act in your best interest.

Before having a Health Care Power of Attorney drafted, you should consider your preferences and discuss them with family and friends. Considerations may include your views on death, whether you would be willing to be totally dependent on the care of others, the role of family finances, health conditions that would make living personally intolerable, and how artificial life support would affect the dying process.

## WHAT ABOUT DECISIONS ON LIFE-SUSTAINING TREATMENT?

You have two options regarding decisions to withhold or withdraw life-sustaining treatment in the event you have a terminal condition or are in an irreversible coma or persistent vegetative state. First, you may permit your agent, designated in a Health Care Power of Attorney, to make the decision for you. Second, you may make your own decision to **withdraw** life-sustaining treatment in a terminal condition beforehand by executing a Living Will.

## WHAT IS A LIVING WILL?

A Living Will guides or controls the health care treatment decisions that can be made on a person's behalf. Living wills are often used to direct a physician to remove life-sustaining treatment if you are in a terminal condition or persistent vegetative state. You may execute a living will instead of a health care power of attorney, but a healthcare power of attorney is best to address all possible contingencies.

Keep in mind that:

1. The choices you make in a Living Will will be in effect **only** if you are unable to make and communicate your own health care decisions at the time.
2. Health care providers are obliged to provide **comfort care**, regardless of what you state in a Living Will or Health Care Power of Attorney.
3. You may **revise** or **revoke** your Living Will or Health Care Power of Attorney at any time by a written revocation of a health care directive or a written statement to disqualify a surrogate; orally notifying the surrogate or a health care provider; making a new health care directive; or any other act that demonstrates specific intent to revoke a surrogate.

## WHAT ELSE DO I NEED TO KNOW:

A Health Care Power of Attorney or Living Will, executed outside Arizona, but within the United States, is still valid under Arizona law; if it was valid in the jurisdiction when drafted and only to the extent that it does not conflict with the criminal laws of Arizona. It is not necessary to execute a new document in Arizona, simply because it was executed in another state. You should, however, periodically review these documents and update them as needed to ensure that they continue to reflect your wishes.

Your health care provider or insurance company cannot require you to execute a Health Care Power of Attorney or Living Will, or prohibit you from doing so as a condition for the provision of medical care or insurance. An insurer cannot refuse to pay for health care services under your policy because the decision to use the services was made by your health care agent.

If you die following the withholding or withdrawing of any medical care pursuant to your health care agent's decision, your death will not constitute a homicide or suicide and will not invalidate an insurance policy or annuity.

The base legal office drafts Health Care Powers of Attorney and Living Wills at no cost to all active duty, dependents, retired members and their dependents and reserve members in Title 10 status. For information contact the legal office at (623) 856-6901.

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