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How to Develop Effective End-of-Life Plans

By [Philip Moeller](#)

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Retaining control over life decisions and maintaining dignity as the end of life approaches are top priorities for nearly everyone. These objectives can be achieved by good planning and the preparation of the proper directives under your state's laws. These safeguards have been greatly improved in many states in recent years. Still, experts say, few seniors have the right tools to make sure their end-of-life wishes are followed by family members and caregivers.

People often think of such matters only when they or a family member are seriously ill. But if a stroke, dementia, or another incapacitating event occurs, it may be too late. If people cannot make decisions for themselves and do not have directives or a power of attorney in place, decisions may be made for them that they would never have agreed with if they had been able to decide.

Michael A. Kirtland, an elder care attorney in Colorado Springs, Colo., says there are two ways to make sure your final wishes are followed: one is through legal documents, and the second is by communicating your wishes to anyone who might be involved in carrying out those wishes should you become incapacitated.

"Everybody ought to have either a will or revocable living trust," he says, with the preferred document depending largely on applicable state law. "Everybody ought to have a medical power of attorney ... and everybody should have a living will." Elder care lawyers in other states interviewed by *U.S. News* were not always in favor of living wills. But they all advocated a power of attorney for healthcare reasons, also called a healthcare proxy in some states. And some attorneys said they also recommended a separate power of attorney for property matters in addition to a healthcare proxy.

"A lot of these documents have different names in different states," says Wendy Sheinberg, who practices on Long Island. In New York, the power of attorney cannot be used to make medical choices, she says, so a healthcare proxy is needed. "The healthcare proxy becomes effective at the time when you are unable to make medical decisions for yourself." However, the proxy is not limited to end-of-life situations. A living will, by contrast, does speak to end-of-life decisions, she explains. As such, it may include very specific wishes in the event a patient's condition is terminal and they are unable to speak for themselves.

The healthcare proxy, or power of attorney, leaves more specific decisions in the hands of the healthcare agent or advocate who you designate as your proxy. For this reason, attorneys say, you should find someone (usually a family member) you trust who either agrees with your

wishes, or at least promises to carry them out. Often, the agent is required to sign the healthcare proxy as well, to acknowledge an understanding and acceptance of his or her role.

The first, and often hardest, step toward creating final directives, experts agree, is having an extended conversation about how you want to be treated at the end of your life. Elder law attorneys say they may devote many hours to helping people not only select the right healthcare advocate, but open up and seriously think about how they want to end their life. The discussion usually begins between spouses and spreads to other family members. But in the case of an older parent whose spouse has died, an adult child often triggers the discussion.

"They are very hard conversations to have, and they are important to have," Sheinberg says. "This can't be over the phone. You have to sit down with these people and say, 'I trust you, I love you, and I'd like you to be the person to make medical choices for me.' You have to really sit there and have that conversation." Family dynamics often make choosing the best advocate difficult, and a spouse or child simply may not agree with a person's final wishes or be able to carry them out when the time comes.

"In discussing your desired medical choices with the person who you ultimately name as agent, it is important not just to tell them what choice you would like made, but to also explain your decision-making process and what values you consider important in formulation that decision," she adds. "Understanding a principal's decision making process can be helpful if the agent later confronts a situation that they did not specifically explore ... The goal of these documents is to empower someone else to make the decisions you would make for yourself but for the incapacity, having a deep and heartfelt conversation about these things goes a long way toward meeting that goal."

"Clients have weird thought processes that lead them to choose particular healthcare agents," says Will Lucius, an elder law attorney who works at Paul A. Sturgul Law Offices in Hurley, Wisc. "Rather than selecting an agent that can make can and will actually follow the person's wishes, clients often choose their agents in order of priority by age or who is in close proximity. These choices, while convenient, can often lead to individuals being selected as an agent who are simply not the most appropriate person."

Gregory S. French, an elder law attorney in Cincinnati and president of the National Academy of Elder Law Attorneys, says he favors separate powers of attorney documents for healthcare and property because they require different attributes in an effective agent. "I often find the best advocate for care and well-being may not be the best person to manage finances, and vice versa," he says.

"The sad cases I see are people with debilitating conditions, and they wait and wait and wait," says Kirtland. "If people would come to me as their health issues are first discovered by their physicians ... then I can provide some help." If they wait until their decision-making abilities are compromised, however, they may not even be able to execute advance directives, and key decisions will be taken out of their hands.

"When their spouse is suffering from advanced dementia and they're looking at the door of a nursing home," Lucius notes, "they're not terribly interested in having a will or doing estate planning. They're trying to figure out how to come up with \$7,000 a month to afford the nursing home."

"I don't think you can ironclad final-care wishes," sums up Howard Krooks, who practices elder law in Boca Raton, Fla. "I think you can state what you want but then [you have to] cross your fingers. It's a question of whether the healthcare providers are on board with what you say you want done." The medical profession's goal to preserve and extend life may still be in conflict with end-of-life wishes.

"I think that that is starting to get stripped away, and the concept of dying with dignity is starting to take hold," Krooks says. "But it's going to take some time."