



# Estate Planning Seminar

**Cornell Law School**

Presented by students in the Estate Planning Practicum:  
Emily Gust, Sarah Marshall, Leslie Irwin, Jenny Guo



# Today's Agenda

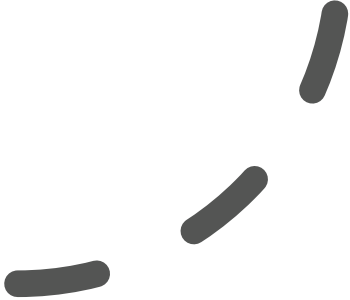
- What an Estate Plan is and why it is important
- What a Will does (not) contain
- How to create an Estate Plan that protects you and your family
- What disability documents you should have
- WORKSHOP**: create your Health Care Proxy and Living Will



# What is an Estate Plan?

Why is it important?  
What will happen without  
one?

# Topics in This Section

- What is in an **Estate Plan**?
  - What happens if you do not have a **Will**?
  - What happens if you do not have a **Health Care Proxy** and/or **Living Will**?
  - What happens if you do not have a **Power of Attorney**?
  - Q&A
- 



# What is in an Estate Plan?

*An Estate Plan is more than just a Will!*

## Attorney-Created Documents

**Last Will and Testament**

**Power of Attorney**

## Self-Created Documents

**Beneficiaries on Accounts**

**Living Will**

**Health Care Proxy**

**Memoranda for Family and Friends**





# What happens if you do not have a Will?

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1

Single  
No children

2

Single  
Children

3

Married  
Children

4

Married  
No children



# What happens if you do not have a Will?

1

Single, no children

2

Single, children

3

Married, children

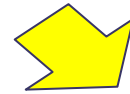
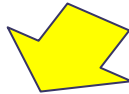
4

Married, no children

Parents



Siblings  
(and issue)



Maternal Grandparents  
(and issue)

+

Paternal Grandparents  
(and issue)



# What happens if you do not have a Will?

1

Single, no children

2

Single, children

3

Married, children

4

Married, no children

Children  
(and issue)



Parents



Siblings  
(and issue)



Maternal Grandparents  
(and issue)

+

Paternal Grandparents  
(and issue)





# What happens if you do not have a Will?

1

Single, no children

2

Single, children

3

**Married, children**

4

Married, no children

**Spouse**

\$50,000 + 50% of balance

+

**Children  
(and issue)**

50% of balance

**Parents**

**Siblings  
(and issue)**

**Maternal Grandparents  
(and issue)**

+

**Paternal Grandparents  
(and issue)**

Note that this is what happens under NY laws, other states may have different laws of intestacy.



# What happens if you do not have a Will?

1

Single, no children

2

Single, children

3

Married, children

4

Married, no children

Spouse



Parents



Siblings  
(and issue)



Maternal Grandparents  
(and issue)

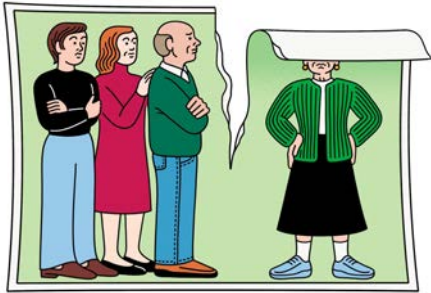


Paternal Grandparents  
(and issue)

# What happens if you do not have a Will?

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## Financial Considerations



Estranged  
family members



Children with different  
financial needs



Siblings > parents

# What happens if you do not have a Will?

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## Other Considerations



Family heirlooms



Pets



Ease of administration



# So What?

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***WORST CASE SCENARIO***



# What happens if you do not have a HCP?

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**Health Care Proxy (HCP):** name an agent to make medical decisions for you when you are unable

## Without a Health Care Proxy:

- Closest family member makes the decisions for you
- Family members may disagree on medical treatments
- Your wishes may not be followed



# What happens if you do not have a Living Will?

## **Living Will:** Directives for end-of-life care

### **Without a Living Will:**

- Your end-of-life care wishes may not be followed
- Your health care agent may not know your exact wishes for end-of-life care





# So What?

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***WORST CASE SCENARIO***



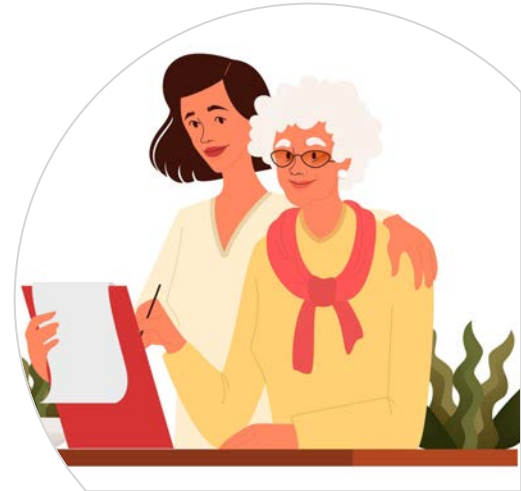


# What happens if you do not have a POA?

**Power of Attorney (POA):** An agent to make financial decisions when you are disabled

## Without a Power of Attorney:

- Your family will be unable to access your funds
- It may takes a very long time to access your bank accounts
- Financial obligations will go into default





# So What?

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***WORST CASE SCENARIO***

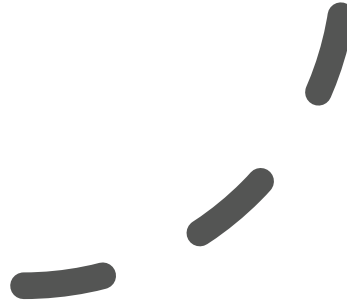
**Questions?**



# What is a Will?

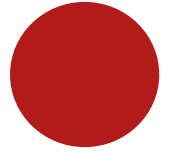
What does it do?  
What does it NOT do?

# Topics in This Section

- What property passes by a Will
  - How property passes by a Will
  - Important people in your Estate Plan
  - Q&A
- 

# What property passes by a Will?

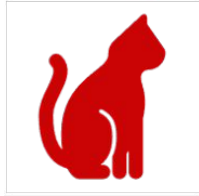
- Probate property
  - Property that has no joint owner or named beneficiary
- What are some examples of probate property?
- What are some examples of NON probate property?



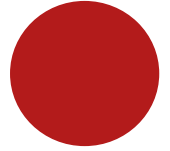
# What about pets?



Who would you  
want to care for  
your pet?



Trusts for pets



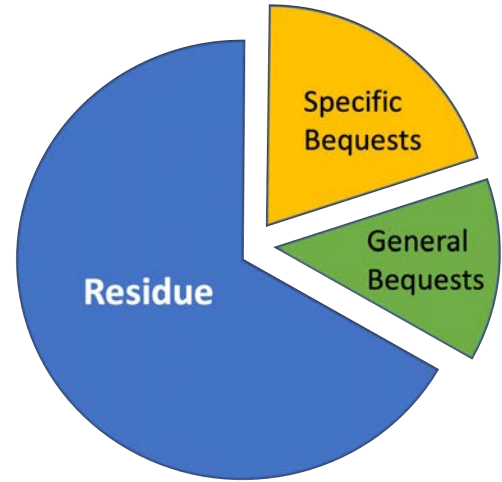
# Types of bequests in a Will



**Specific  
Bequests**



**General  
Bequests**



**Residue**



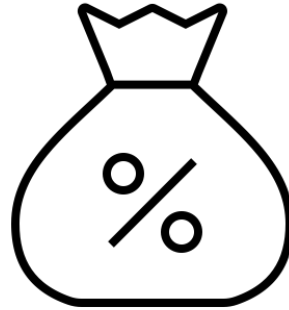
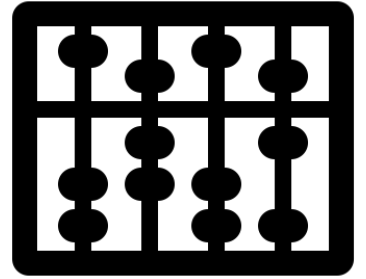
# Testamentary Trusts

- Trusts for children
- Supplemental needs trusts
- Trusts for spouse or significant other



# Estate Tax

- Federal Estate Tax
  - Federal Exclusion Amount 2022: \$12,060,000
- State Estate Tax
  - Varies by state
  - Not every state has one
  - New York State Exclusion Amount 2022: \$6,110,000
- Number will be adjusted for inflation



# Important People in Your Estate Plan



**Executor**



**Trustee**



**Guardian**



# Executor

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- Carries out the directions in your Will
- Responsibilities:
  - Collecting assets
  - Paying debts
  - Filing tax returns
    - Filing final income tax returns
    - Filing estate tax returns (if applicable)
    - Paying estate tax (if applicable)





# Trustee

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- Manages property in a trust for the named beneficiaries
- Responsibilities:
  - Investing trust funds
  - Paying out trust funds to beneficiaries
  - Filing the trust's income tax returns



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# Guardian

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- Caring for your minor children
- Makes decisions about your children's development and welfare



# Next Steps

- Have a discussion with each person
  - How are they involved?
  - What responsibilities come with each role?
  - What concerns do they have?
- Make sure they are willing and able to perform the responsibilities
- Have at least one successor for each role



**Questions?**





*Have some refreshments!*

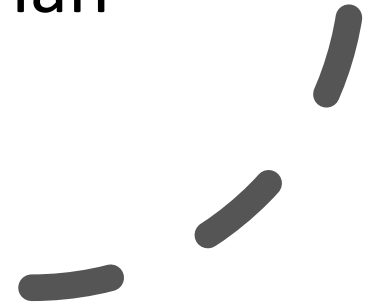


# How to Create an Estate Plan

that protects you and  
your family

# Topics in This Section

- Conversations with family
- Coordinating Will and Will  
Substitutes
- Updating your Estate Plan



# Starting the Conversation

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# Starting the Conversation

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**Step 1: Think About What Matters to You**

**Step 2: Plan Your Talk**

**Step 3: Have Your Talk — Tips**

**Step 4: Keep Talking**

<https://theconversationproject.org>



# Listing and Dividing Assets

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## Assets Commonly Included in the Will

**Real Property**

**Tangible Personal  
Property**

**Individual Bank Accounts**



# Listing and Dividing Assets

## Assets Commonly Included in the Will

**Real Property**

**Tangible Personal  
Property**

**Individual Bank Accounts**

## Assets That Pass by Beneficiary Designation

**Retirement and Life  
Insurance**

**Pay-on-Death Accounts**

**Assets Held Jointly**



# Coordinating Will Substitutes

**Will Substitutes:** Assets that pass to a designated beneficiary or a joint owner

## Pros:

- Beneficiary receives the asset directly and quickly
- Avoids costs and delays of probate
- Avoids New York creditor period







# Coordinating Will Substitutes

**Will Substitutes:** Assets that pass to a designated beneficiary or a joint owner

## Cons:

- Must be updated separately from the Will
- Must be coordinated with the Will



## Life Insurance

- Benefit paid in lump sum

## Pay-on-Death Accounts

- Certain bank and brokerage accounts
- Account transferred to named beneficiary

## Retirement Accounts

- 401k, IRA, pension plan
- Benefits paid out over time — consider income tax consequences

# Assets Held Jointly

## Jointly held assets: assets held equally with others

- Real property, bank, and brokerage accounts
- Property is not controlled by the Will—passes by law to the survivor





# Updating Your Estate Plan

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## **Your Estate Plan should be reviewed:**

- Every 5 years
- After any major life change: marriage, divorce, birth of a child, death in the family, change in financial circumstances, etc.



# Updating Your Estate Plan

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## Storing Your Estate Plan:

- Store all important documents in a safe and secure location
- Communicate location of important documents with important persons in your estate plan




# Further Resources

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- Estate Planning Practicum, Spring 2023
- Estate Planning Attorneys in Ithaca:
  - Bousquet Holstein PLLC: 607-273-5800
  - Coughlin & Gerhart LLP: 607-269-7173
  - Michael R. May: 607-272-3484

**Questions?**

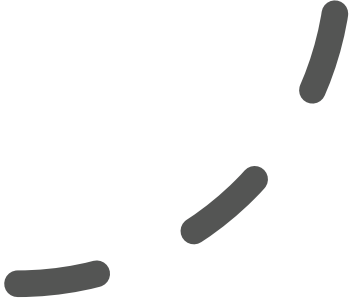


# What Disability Documents should you have?

Power of Attorney; Health Care Proxy; Living Will



# Topics in This Section

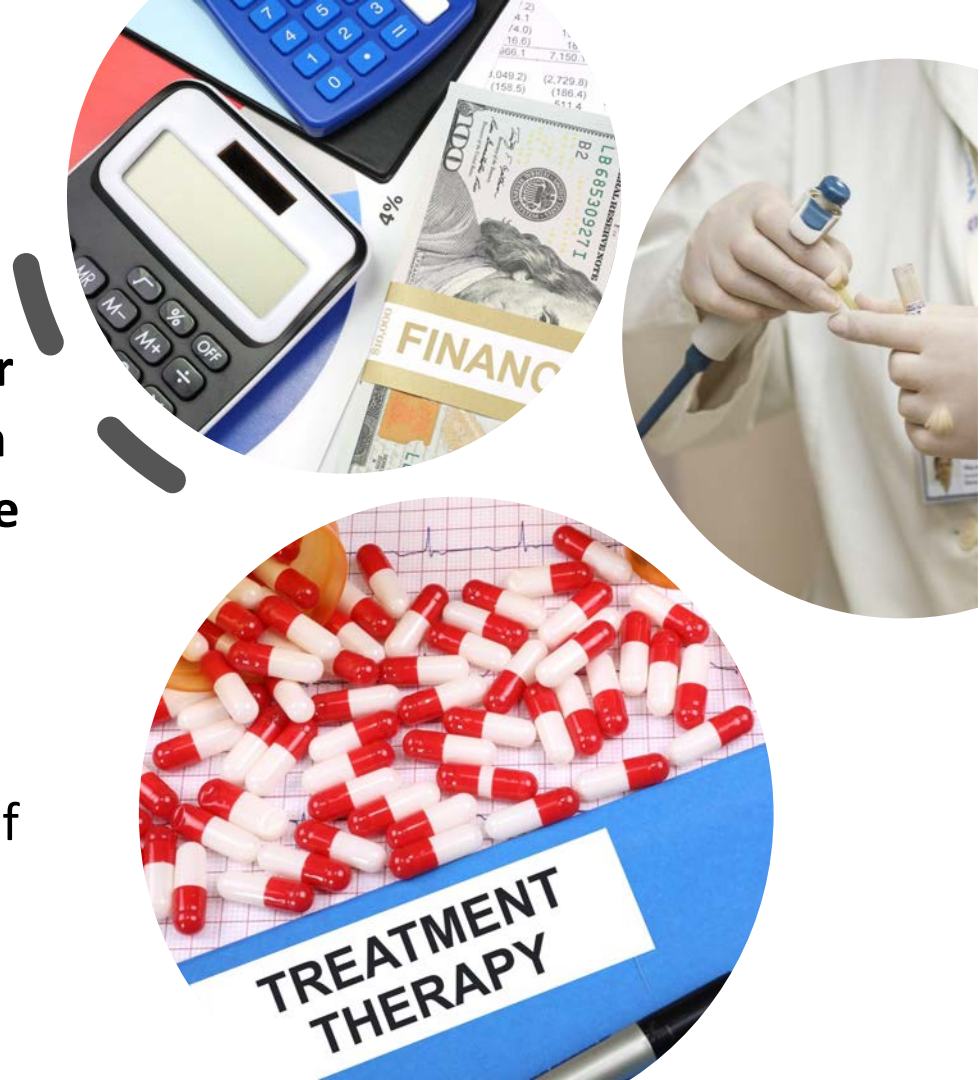
- What is a Power of Attorney (POA)?  
How to set it up?
  - What is a Health Care Proxy (HCP)?  
Do you need one? How to set it up?
  - What is a Living Will and how to  
make one?
  - Q&A
- 

# POA, HCP, Living Will...

## What are these?

Both POA and HCP authorize **another person** to act on your behalf: POA on **financial matters**, HCP on **health care matters**.

A Living Will is a legal document for **you** to detail the **type and level of end-of-life care** you want to receive if you are unable to make decisions or communicate your wishes.





## POWER OF ATTORNEY

Authorize someone to act on your financial matters

Death



## WILL

Detail how you would like to distribute your property after death

+

## HEALTH CARE PROXY

Authorize someone to act on your health care matters



## LIVING WILL

Detail how you would like to receive medical treatment



End-of-life care

## TYPICAL ESTATE PLANNING DOCS



A red and white toy house with a grey roof and a set of keys on a dark surface. The house is a two-story model with a gabled roof. The front facade is white, and the side wall is red. There are several windows with white frames. In front of the house, a set of keys with a silver ring and a white keychain is lying on a dark, reflective surface. The background is a blurred indoor setting with a window.

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# Power of Attorney (POA)

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- POA is often used for paying your bills when you are not able.
- Durable v. Springing
  - A **Durable POA** takes effect on signing.
  - A **Springing POA** comes into effect only if and when you become incapacitated.

- 
- You can delegate specific powers to your agent.

Some of the common responsibilities are:

- Buying and selling property
- Filing your taxes
- Managing bank accounts and investments
- Paying bills and debts
- Collecting Social Security or other income
- Handling insurance by either buying or changing policies
- Making gifts (optional)



# How to set up your POA

## FIND THE RIGHT FORM

State laws vary. Check online or ask a local attorney for the form that works in your state.

## PICK THE RIGHT PERSON

The person should be trustworthy and able, but need not be an attorney. You can have a single agent with(out) a successor or two people acting severally or jointly.

AGENT/ATTORNEY-IN-FACT

TALK

JURISDICTION

SIGN AND NOTARIZE

## SIGN AND NOTARIZE

After you and your agent sign the form, keep it in a safe place.

## TALK TO YOUR CANDIDATE

Talk to the person before you name them, make sure they are okay with acting on your behalf. Your agent is entitled to reimbursement for reasonable expenses incurred on your behalf.



# How to set up your POA

## STEP 1: PICK THE RIGHT PERSON

- You can name anyone who is not a minor or otherwise incapacitated. The best choice is someone you trust.
- You can have a single agent or two acting severally or jointly. We recommend that you name a successor.



# Hypo: Who should Tom pick?

Tom, a widower with 3 grown children, needs to choose his power of attorney.

**Peter** is married, lives in Hong Kong with his wife, is financially successful and is unlikely to have children.

**James** is not married, has struggled with opioid addiction in the past and is financially unstable.

**Steven** lives locally, is married, and has 2 minor children.





# Who should Tom pick?



**Peter**



**James**



**Steven**

# How to set up your POA

## STEP 2: TALK TO YOUR CANDIDATE

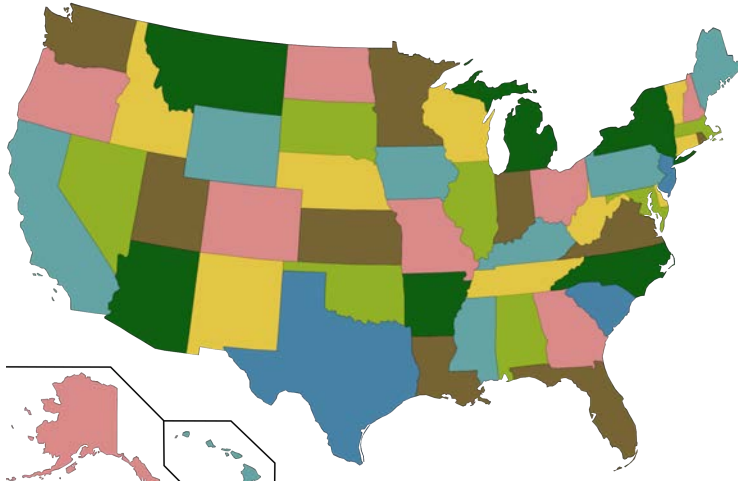
- Make sure your agent is comfortable with acting on your behalf.
- Your agent is entitled to reimbursement for reasonable expenses incurred on your behalf.





# How to set up your POA

## STEP 3: FIND THE RIGHT FORM



- State laws vary. Check online or ask a local attorney for the form that works in your state.
- Generally, a POA that is valid when signed will be valid even if you move. But you should still review your estate plan for any update.



# How to set up your POA

## STEP 4: SIGN AND NOTARIZE



- Many states (including NY) require the POA to be notarized.
- After you and your agent sign the form, keep it in a safe place.
- The successor need not sign the form until the first agent is unable to act.



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# Health Care Proxy (HCP)

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- The HCP is often used when you are temporarily incapacitated and unable to make decisions.
- To make or not is your **personal choice**. HCP may not be for everybody.
- Your agent can act if you are disabled. You can change or revoke your HCP at any time.

# How to set up your HCP

## FIND THE RIGHT FORM

State laws differ. You can find the right form in your state on [nhpco.org/advancedirective](http://nhpco.org/advancedirective).

## KNOW YOUR WISHES

What kind and level of medical treatment you would like to receive? What is your religious and personal preference?

KNOW YOUR WISHES

TALK

JURISDICTION

SIGNATURE

## SIGN THE FORM

You may need two witnesses or have it notarized. Keep it in a safe place and give a copy to your agent.

## PICK AND TALK TO YOUR CANDIDATE

Pick the right person, ideally someone who lives nearby and honors your wishes. Note that in NY you cannot have two people acting together. Have a conversation with your candidate.



# How to set up your HCP

## STEP 1: KNOW YOUR WISHES

- Ask yourself: What are my concerns about medical treatments? What are my religious and personal preferences? If my health situation worsens, where do I want to be?
- Find more on <https://theconversationproject.org>





# How to set up your HCP

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## STEP 2: PICK YOUR AGENT AND TALK TO THEM





# Hypo: Who should Joy pick?

Joy, a married mother of 2 grown children, needs to choose her proxy.

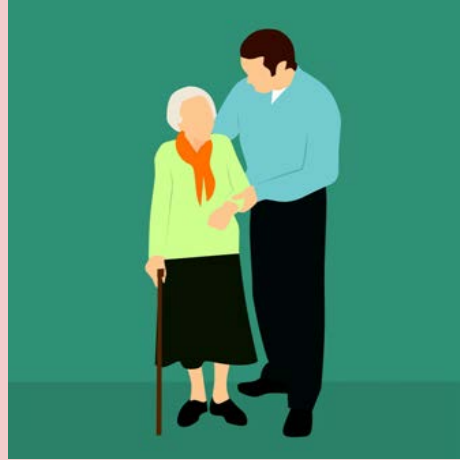
**Her husband** tells her, “I could never unhook you from anything. I will hold your hand for 20 years even if you’re too sick to respond.”

**Her son** says, “Got it, Mom — I know you don’t want any extreme measures to save your life. I’ll never let anyone hook you up.”

**Her daughter** says, “I hear what’s important to you, and I know any choice I would make should depend on your prognosis and chances for recovery.”



# Who should Joy pick?





# How to set up your HCP

## STEP 2: PICK YOUR AGENT AND TALK TO THEM

- Pick the right person, ideally someone who lives nearby and would honor your wishes.
- Make sure your agent is willing to act on your behalf.
- Note that in NY you cannot have two people acting together.





# How to set up your HCP

## STEP 3: FIND THE RIGHT FORM

- You can find the right form at <https://www.caringinfo.org/planning/advance-directives/by-state/>.
- Some states recognize other states' HCPs while others don't. You should consider having HCPs in each state in which you spend significant periods of time.



# How to set up your HCP

## STEP 4: SIGN THE FORM



- Some states require having two witnesses, others may require the form to be notarized.
- After you sign the form, give a copy to your agent. Give your agent's name and contact information to your primary care doctor.



# Living Will

- A Living Will only comes into play when one faces a life-threatening condition and is unable to communicate their wishes. In all states, this is determined by medical professionals.
- Things to consider
  - Terminal illness
  - Permanent vegetative state
  - Pain management

# How to set up your Living Will

## FIND A FORM THAT WORKS IN YOUR STATE

State laws vary. Check online or ask a local attorney for the form that works in your state.

## KNOW YOUR WISHES

Would you prefer to undergo any and every treatment available in the interest of prolonging your life? Would you rather prioritize your comfort and convenience?

KNOW YOUR WISHES

DRAFT

JURISDICTION

SIGNATURE

## SIGN THE FORM

After you sign the form, keep it in a safe place and give a copy to your doctor.

## DRAFT YOUR DOCUMENT

You can identify the circumstances in which you want life-saving care and what types of care you would like. You can also indicate if you wish to donate organs and tissues after death.

**Questions?**





# WORKSHOP

Create a Health Care  
Proxy  
and a Living Will

# Top of the page

## HEALTH CARE PROXY

I, *Your full legal name*, of *Your full address (do not abbreviate)*,  
do hereby appoint the following individual as my health care agent ("agent"):

### PRIMARY APPOINTMENT

Name: *Your agent's full legal name* Home Phone: *If applicable*  
Cell Phone: *Your agent's number*  
Address: *Your agent's full address (do not abbreviate)*

to make any and all health care decisions for me which I, myself, could make in person while competent and possessed of health care decision-making capacity. This proxy shall remain in effect indefinitely.

# Middle of the page

## ALTERNATE APPOINTMENT

If the person named above is unable, unwilling or unavailable to act as my health care agent, then I hereby appoint the following individual:

Name: Successor's full legal name

Home Phone: If applicable

Cell Phone: Successor's number

Address: Successor's full address (do not abbreviate)

This health care proxy shall take effect if and when I become unable to make my own health care decisions.

# Bottom of the page

My agent may give informed consent for health care decisions on my behalf and, as my Personal Representative under the Health Insurance Portability and Accountability Act of 1996, receive my protected health information and authorize the disclosure and use of my protected health information as provided in 45 CFR Part 164.

Dated: May 1, 2022

Signature: Your signature

Printed: Your name (printed)

# Top of the page

## LIVING WILL

TO MY FAMILY, all physicians, hospitals and other health care providers and any court or judge:

I, *Your full legal name*, of *Your full address (do not abbreviate)*  
(name) (address)

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declare that after thoughtful consideration, I have decided that I wish to forego all life-sustaining treatment if I shall in the future sustain substantial and irreversible loss of mental capacity AND

- (a) I am unable to eat and drink without assistance, and tubes or other artificial means are required to feed me, and it is highly unlikely that I will ever be able to eat and drink without artificial feeding.

OR

- (b) I have an incurable or irreversible condition which is likely to cause my death within a relatively short time.

# Bottom of the page

I direct that my family, all physicians, hospitals and other health care providers and any court or judge honor my decision not to artificially extend my life by mechanical means, and if there is any doubt as to whether or not life-sustaining treatment is to be administered to me after I have sustained substantial and irreversible loss of mental capacity, such doubt is to be resolved in favor of withholding or withdrawing such treatment. I direct that my treatment be limited to measures to keep me comfortable and to relieve pain, including any pain that might occur by withholding or withdrawing treatment. These directions express my legal right to refuse treatment. I intend my instructions to be carried out, unless I have rescinded them in a new writing or by clear indication that I have changed my mind.

Dated:     **May 1**    , 2022

Signature:     ***Your signature***    

Printed:     ***Your name (printed)***

**THANK YOU!**