



*Life Planning Documents for
Transgender Communities*



Transgender Law Center



Transgender Law Center

Transgender Law Center (TLC) is the largest national trans-led organization advocating for a world in which all people are free to define themselves and their futures. Grounded in legal expertise and committed to racial justice, TLC employs a variety of community-driven strategies to keep transgender and gender nonconforming people alive, thriving, and fighting for liberation.

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INTRODUCTION

The staff of Transgender Law Center knows that this can be a scary time for our community, with many people worrying about their health and what might happen if they become ill. To help people to prepare in case they are impacted by COVID-19, or any other medical issues, we have prepared this document explaining basic information about steps you can take to ensure that your identity will be respected, your loved ones will be able to see you¹, and your wishes are carried out even if you are unable to communicate them yourself.

We hope that this information is helpful to you and your loved ones during this uncertain time. As always, it is best to contact an attorney, if possible, to receive legal advice specific to your circumstances, as this guide only provides general information. If you have questions, please reach out to Transgender Law Center's Legal Information Helpdesk for more information at: transgenderlawcenter.org/legalinfo.

¹This may not be enforceable in times of pandemics. Hospitals are allowed to limit or cancel visitation for adult patients.

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WHAT IS IT	ADVANCE DIRECTIVES	LIVING WILL	HOSPITAL VISITATION DIRECTIVE	FINANCIAL POWER OF ATTORNEY	MEDICAL POWER OF ATTORNEY (ALSO KNOWN AS HEALTH CARE PROXY OR AGENT)
What does it do?	A category of documents allowing you to plan for your care and health if you are too ill to speak for yourself.	Explains your wishes for health care, decision making power, and end of life care.	Allows loved ones who aren't legally family to visit you in the hospital.	Designates a person to pay your bills and take care of your finances.	Allows a particular person to make health care decisions for you.
Why is this important to TGNC people?	Ensures your health wishes and gender identity are respected, and that chosen individuals can visit and make decisions for you.	Sets up a plan for your gender identity and wishes to be respected even when you cannot self-advocate.	Ensures loved ones who are not legally related can visit you in the hospital.	Ensures chosen person, rather than biological family, makes these financial decisions.	Ensures quick decisions can be made related to your health and that a person you trust, makes them.
Legal requirements? **	Your signature, two witness' signatures, possible notarization ++	Your signature, two witness' signatures, possible notarization ++	Your signature and the signatures of two witnesses	Your signature, two witness' signatures, possible notarization ++	Your signatures, two witness' signatures, possible notarization ++
Where can I find samples?	AARP Examples ##	Rocket Lawyer Example ##	Rocket Lawyer Example ##	Eforms Example ##	Eforms Example ##

** The requirements for each document may vary from state to state. TLC encourages you to speak with your health care providers and an attorney in your area to ensure your documents are properly completed and tailored to your specific circumstances.
 ++ Many states have electronic notarization laws which allow notarization without the notary and the people signing being in close, physical proximity.
 ## Transgender Law Center does not endorse any of the linked forms or the associated websites; these are only listed as examples for informative purposes.

ADVANCE DIRECTIVES

What are advance directives and why are they important for transgender people?

Advance directives are legal documents that explain your wishes if you become seriously ill, incapacitated, or pass away. They refer collectively to the appointment of a medical power of attorney, and living wills (see, below for more in depth information about both). They may also include instructions about your wishes for the disposition of your remains. They can be especially helpful to trans people because they can grant power to chosen family, who may not otherwise legally be able to see you or ensure you receive the care you want. Advance directives can also help ensure your gender is respected, even when you cannot advocate for that yourself. If you are put on life supporting care that prevents you from communicating or become unconscious, these kinds of documents can tell people what kind of care you want, how your financial affairs should be managed, and can ensure that people know your pronouns and name, even if you have not legally changed it. If you pass away, they can explain how you want to be dressed and spoken about, as well as explain how your property should be divided. Different types of advance directives are explained in the following sections.

Why is it helpful to prepare advance directives?

Advance directives are useful for many trans people because state laws generally only give the power to make decisions about health care to biological family and married spouses and hospital boards. The people we trust the most with our care and how we are remembered if we pass away may not fall into these categories, so creating advance directives can allow people to choose who will make decisions for us ahead of time. In some states, an appointed health care agent is legally empowered to make more decisions than your legal next of kin absent such an appointment. Advance directives can also ensure that trans people's correct name, pronouns, and gender presentation are respected even when it is difficult or impossible for trans people to advocate for this themselves. Because of this, having advance directives can be useful to trans people, especially in times when people's health status may rapidly change.

Where can I find sample advance directive documents?

The laws for what is required for these documents vary by state, so there is no standardized form that can be used for everyone. Generally, these forms spell out your plans for who should make health care decisions for you, what kind of care you want, and other ways you want to be treated if you are unable to speak for yourself. To create these documents, you will generally need at least two adult witnesses who are not related to you by blood or marriage and who would not inherit from you, should you die. You may also need to notarize these forms, depending on your state. This can often be done at a bank, many of which remain open with reduced hours, during the COVID-19 pandemic. Many states also have electronic notarization laws which allow notarization without the notary and the people signing being in close proximity. You can find sample forms for your state through AARP's website by clicking on your state in the link here: <https://www.aarp.org/caregiving/financial-legal/free-printable-advance-directives/>. While these are not trans-specific, they do provide a sense of what is needed in your state.

ADVANCE DIRECTIVES CAN ALSO ENSURE THAT TRANS PEOPLE'S CORRECT NAME, PRONOUNS, AND GENDER PRESENTATION ARE RESPECTED EVEN WHEN IT IS DIFFICULT OR IMPOSSIBLE FOR TRANS PEOPLE TO ADVOCATE FOR THIS THEMSELVES.

What should I do once I have set up my advance directives?

You should tell loved ones that you have plans in place for your care should you become sick and unable to communicate your wishes yourself, and explain the documents that you have created to them. Discuss protocols for contacting loved ones with the person or people named in your advance directives to make sure they have a plan in place. You should also distribute copies to close loved ones and others who may be involved in your future care, and keep a copy for yourself in a safe, accessible place. It is common for people to have a copy of these documents, clearly marked, on their refrigerator or attached to their front door. First responders will often look for them there. There is also a national registry where you may register your advance directives which become electronically available. The registry sends you a card to keep in your wallet that will refer first responders to your documents online.

LIVING WILL

What is a living will?

A living will is a written statement that explains what your wishes are if it becomes more difficult or impossible to speak for yourself (for example, if you are unconscious, develop a mental disability that impairs your ability to communicate or make decisions). A living will is a legally binding document, which means that by law your wishes must be followed.

Examples of things that might be included in a living will are: what health care you want; style of dress; and funeral arrangements. This information is usually given to your health care providers, assisted living personnel, and funeral directors. A living will also gives you the option to name a friend or family member who can make health care decisions for you when you're not able to do so. You can also name someone for this independently of making a living will. This will be addressed in the following section on granting medical power of attorney.

Why would you need a transgender-specific living will?

Transgender people have requests for living wills that may not be part of standard living wills. For instance, a living will can allow you to make clear what pronouns and name should be used for you (even if your name has not been legally changed). It can explain how you want to be dressed and groomed in a hospital, assisted living facility, or funeral home. A living will that makes your wishes clear can prevent a family member from making a decision for you that is different from what you want.

Although you can find model living will papers online, those examples do not include sections for trans-specific needs. For this reason, you will want to ensure you include these directions in the living will that you draft. For example, you can add sections that say,

“ I direct that medical staff should respect my identity as a transgender woman by only using the pronouns she, her, and hers when referring to me and ensuring that, when gendered attire is available, I am dressed in women’s clothing.”

“ I direct my medical proxy to speak with hospital staff and ensure that [name] is used when referring to me in accordance with my nonbinary gender.”

“ I direct medical staff to continue with my regimen of hormone therapy as long as it does not seriously interfere with any other necessary medical care.”

What happens if you don't have a living will?

If you don't have a living will or other legal document that expresses your wishes, healthcare providers or a funeral director will have to use their own judgement or the wishes of your family members. If a close family member doesn't support your transition, they may be able to order the provider or director to do something that you don't want to do (for example, have you dressed in men's clothes even if you're a trans woman). However, if you have a living will, the provider or director must follow the instructions you include in it (so long as they are appropriate).

If I want to allow a friend or family member to make my decisions, who should I choose?

When you create a living will you will have the ability to name someone, usually a friend, family member, or a partner, as the person who can make medical decisions for you when you are unable to do it for yourself. This person is called your health care proxy. You can also name someone as your health care proxy separately from a living will, a process that will be addressed in the following section on granting medical power of attorney.

If you do choose to name someone as your agent, the person you name should be someone you trust to act as your advocate in a hospital and/or funeral home setting. This is probably going to be a person you would trust to represent your wishes and your gender identity. You can also name another person as your "alternative health care proxy" in case that the person you name as your health care proxy is not available.

What if you don't know anyone who could be your health care proxy?

You do not need to name someone as a health care proxy for your living will to be valid. Any instructions you put in your living will are supposed to be followed whether you have a health care proxy or not. Having a health care proxy allows for someone to make sure those wishes are followed, but it is not required. It is probably better not to name anyone as your health care proxy than to name someone who is not comfortable with your wishes or who does not respect your gender identity.

If you do not list someone as your health care proxy, you should think ahead about how to get your health care provider and/or funeral home director a copy of your living will. If you have a primary care physician, make sure they have a copy in your files. If you are pre-planning your funeral, make sure the funeral home has a copy in your records. Otherwise, make sure a good friend or a service provider, even if they are not your health care proxy, has a copy and knows to share it with the doctors or funeral home in case you are incapacitated.

How do you make sure your family doesn't interfere with your wishes?

Using a living will to express your wishes gives healthcare providers, assisted living personnel, and funeral home staff the power to follow your directions, even if your blood relatives, spouse, or registered domestic partner try to argue otherwise. Another way to make sure that particular people you have a legal relationship with are not able to make decisions for you is to specifically name them in the section entitled, "People That Should Have No Authority."

USING A LIVING WILL TO EXPRESS YOUR WISHES GIVES HEALTHCARE PROVIDERS, ASSISTED LIVING PERSONNEL, AND FUNERAL HOME STAFF THE POWER TO FOLLOW YOUR DIRECTIONS, EVEN IF YOUR BLOOD RELATIVES, SPOUSE, OR REGISTERED DOMESTIC PARTNER TRY TO ARGUE OTHERWISE.

Do you need a lawyer to complete a living will?

No. However, if you want to use an attorney, a number of private lawyers do provide these services. If you would like a list of your attorneys in your area, please let us know. Although the Transgender Law Center is not a legal referral service, we are able to provide names of attorneys who have indicated to us that they are trans-friendly and can write living wills.

What do I need to do in order to make sure that my living will is valid?

To make your living will valid, you will need two people to act as witnesses to your signature on the living will. These two people need to watch you sign the living will and sign it themselves.

Generally, anyone over 18 years old can act as a witness, though there are some important exceptions. Your witnesses should not be anyone you are assigning your decision-making power or anyone you would leave an inheritance. Your witnesses should also not be: related to you by blood or by law, financially responsible for your medical care, your doctor or an employee of your doctor, someone who has a legal claim against you, or an employee of a health facility in which you are a patient.

What if I created a living will and I now want to change the information in my living will?

You can “revoke,” or cancel, your living will at any time by creating a signed document that says you are revoking that will. It may be helpful to destroy the original, revoked will as well. If you revoke your living will, be sure to let your health provider and any agents know. If you’ve drafted a new living will, remember to give them a copy to replace your old one.

HOSPITAL VISITATION DIRECTIVE

What is a hospital visitation directive?

A hospital visitation directive is a document that describes who can (and cannot) visit you in the hospital. It has a narrower scope of content than a living will, only describing your desires for visitation.

Can I enforce hospital visitation if visitation is not allowed at the hospital due to Covid-19?

Hospitals can limit and/or not allow visitation in hospitals during times of emergencies and pandemics. Although historically this is very rare, many hospitals right now are limiting or not allowing any visitors to patients due to Covid-19.

Why are hospital visitation directives useful?

Hospitals can limit visitation to people who are legally recognized as family when someone is incapacitated. Therefore, it can be helpful to draft a hospital visitation directive in advance to ensure that all of your loved ones are able to see you. Many trans people have chosen family who are very important to them and may not be legally recognized as family. By listing those people on your hospital visitation directive, you can ensure that they will be able to see you if you become ill and hospitalized.

How do I make a hospital visitation directive?

Though state law varies, generally, you or an attorney will need to draft a form, and you and two witnesses will need to sign it. The requirements for witnesses are the same as the ones listed at the end of the previous section on living wills. While you may want a hospital visitation directive tailored to your specific circumstances, you can create a general sample form at this link: <https://www.rocketlawyer.com/document/hospital-visitation-authorization.rl#/>

POWER OF ATTORNEY DOCUMENTS

What is a power of attorney document?

Power of attorney documents allow people to give trusted individuals the ability to make decisions on their behalf. These documents can be tailored to only grant the power to make specific kinds of decisions and can either take effect when they are signed or when the person granting the power is incapacitated.

What kinds of powers are given through these documents?

There are two main areas where power of attorney is granted: health care and finances. We will refer to these as 'Medical Power of Attorney' and 'Financial Power of Attorney.' These two types are explained in the following subsections.

Once these documents are signed, what do I do?

You should distribute copies of these documents to the people who would be granted the power of attorney. You should also keep a copy for yourself in a safe place where it can be easily found if you cannot get it yourself or are unable to communicate. Some people pin copies of these documents to their refrigerators or other places that are easy for first responders to see. Make sure that loved ones know that you have these plans in place and how to get a copy of the documents.

MEDICAL POWER OF ATTORNEY AKA Health Care Proxy

What is medical power of attorney aka health care proxy?

Granting someone medical power of attorney gives the designated person the authority to make health care decisions on your behalf. This person is sometimes referred to as a health care proxy. A medical power of attorney document gives someone you trust the ability to oversee your medical care and ensure that your wishes are followed.

Do I make just one person my health care proxy?

Normally, only one person is named as a health care proxy at a time, so they are able to quickly make decisions. However, it is common to name others as 'alternates' in case your first proxy is unavailable. You should check with the person you want to appoint that they are willing and able to carry out your wishes before appointing them.

How do you assign a health care proxy?

Each state has its own laws on requirements for health care proxies and advance directives in general. You can find a list of states' information on the National Hospice and Palliative Care Organization's website here: <https://www.nhpco.org/patients-and-caregivers/advance-care-planning/advance-directives/downloading-your-states-advance-directive>

You can also find a downloadable document here: <https://eforms.com/power-of-attorney/medical/>

Generally, you will need a legal document explaining that you are granting this power to a specific person. You and at least two adult witnesses must sign this document. Some states do not permit these witnesses to be related to you by blood or marriage or to be someone who would inherit from you, should you die. Other states may require you to have these documents notarized, something that can be done at some banks (many of which remain open, if with reduced hours, during Covid-19). Many states also have electronic notarization laws which allow notarization without the notary and the people signing being in close, physical proximity. Additionally, some hospitals do not permit their employees to act as such witnesses, so it is best to prepare these documents before you are hospitalized.

Why are medical power of attorneys important for transgender people?

If a person does not designate a medical power of attorney aka health proxy, if that person becomes incapacitated and unable to express what types of treatment they would like, biological family will be given the decision of what medical care is provided. This means the decision making power could be given to a close family member doesn't support your transition or doesn't agree with you desired medical care.

FINANCIAL POWER OF ATTORNEY

What is financial power of attorney and why is it useful?

Financial power of attorney allows you to appoint someone to make financial decisions for you if you are unable to do so yourself. These decisions can be as basic as using your money to pay your bills and taxes while you are incapacitated so that you do not fall behind on payments. Having someone who is able to easily access your money is also helpful for being able to pay for medical care.

How do I grant financial power of attorney?

As with the other advance directives, the requirements vary by state. Generally, the document must be signed by you and witnesses, who are subject to the same requirements as the medical power of attorney, in front of a notary public. You can find an example of a basic form tailored to your state here: <https://eforms.com/power-of-attorney/general/>