

Communicate Your Wishes: Advanced Healthcare Directives


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What is an Advanced Healthcare Directive?


An Advanced Healthcare Directive (“AHD”) is a legal document providing instructions for your personal care and/or healthcare decisions when you are not capable of making those decisions yourself. An important part of a comprehensive wealth plan, an AHD is variably referred to, depending on the jurisdiction, as a:

- Living will
- Representation agreement
- Health care directive
- Personal directive
- Power of attorney for personal care
- Protection mandate

What are the benefits of an AHD?

 **Peace of mind.** An AHD provides some certainty that your wishes, beliefs and values regarding your personal and/or healthcare are followed when you no longer have capacity to make those decisions yourself.

 **Streamlined decision-making.** Where the AHD is kept on file in a hospital or healthcare facility, it provides clear instructions to healthcare professionals and prompt access to the authorized decision-maker. Significant delays and/or different treatment may occur in the absence of an AHD, as the substitute decision-maker according to provincial/territorial legislation (often a spouse or parent) must be determined, located and then verified in order to make decisions on your behalf.

 **Preserved family harmony.** It’s not unusual for family members to have different views on the best course of treatment for a loved one, which can result in strained relationships, delayed decisions or even legal action. By communicating your wishes, beliefs and values clearly and appointing a decision maker(s) in advance, you can help to minimize potential family conflict.

How does an AHD work?

The person creating the AHD (commonly referred to as the “Maker”) instructs a lawyer to draft the AHD, including two key elements:

- 1 The “**Directive**” outlining instructions relating to medical treatment that is to be administered or not administered in certain circumstances; and
- 2 The “**Appointment**” of a specific person to make those decisions as their substitute decision maker (commonly referred to as the “Proxy”).

It is important to note that the substitute decision making power only comes into effect when the Maker loses capacity. This power can never be exercised by the Proxy while the Maker still has capacity to make their own decisions.

What should I consider when selecting my Proxy?

This type of planning starts with considering your beliefs, values and wishes regarding your future healthcare treatment. Your chosen Proxy should be someone who shares these beliefs and values and someone whose judgement you trust. Other characteristics you may desire in a Proxy include:

- Trustworthy and diligent
- Demonstrates sound judgement
- Willingness to act in this role
- Has the respect of other family members
- Ability to make decisions under pressure
- Able to understand healthcare professionals
- Accessible on short notice
- Shares or understands your healthcare beliefs

Since an AHD only covers healthcare decisions, there is no requirement (or even preference) for your Proxy to have any financial literacy. You can name a separate person to deal with your property and finances under a different document known as a Power of Attorney (“POA”). There is no requirement for your Proxy to be the same person named in your POA. It should also be noted that corporate trustees are not authorized to accept a position as Proxy for an AHD.

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Best practices for AHDs



Make it a component of a larger wealth plan

An AHD should be drafted in consultation with your broader wealth plan and other estate planning documents such as your will and any POAs. Working with a lawyer who specializes in wills and estates will help ensure your AHD is aligned with other wealth documents.



Review your AHD and beware of potential for revocation

This varies between provincial/territorial jurisdictions; however, life events that could lead to AHD being revoked include divorce, separations, and marriages. You may also want to review your designated Proxy/ies every few years to ensure that you and your Proxy/ies remain aligned with respect to your wishes.



Communicate your intentions

Given this document takes effect when you do not have capacity, you will not be in the position to let people know that it exists when you need it. Don't shy away from difficult conversations – it is important to clearly communicate your wishes with your doctor, your Proxy/ies and family, and to make them aware that this document is in place before you lose capacity.



Create a separate AHD for each jurisdiction where you spend time

If you spend significant time in different jurisdictions throughout the year, it may be prudent to explore having separate AHDs in place to account for jurisdictional differences.



Distribute multiple copies

Unlike a will, it's possible to have multiple original copies of your AHD. Who would you want to have a copy of this document if you lost capacity? Your doctor, Proxy/ies and any dedicated healthcare facility are likely a good place to start. Consider carrying a card in your wallet or purse that indicates this document exists, where it can be found, and who should be contacted.

For more information about AHDs and how they fit into a broader estate plan, please consult with the Wellington-Altus Advanced Wealth Planning Group.



Advance requests for medical assistance in dying (“MAiD”) are not currently permitted in Canada. Instructions in an AHD to administer MAiD are not valid and cannot be legally followed.



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