

Estate Planning for Native Americans

May 20, 2021

Cina Littlebird, Staff Attorney, Native American Unit
Jen Yogi, Managing Attorney, Native American Unit



Northwest Justice Project

nwjustice.org

Find free information and court forms at:
washingtonlawhelp.org



Washington
LawHelp

OVERVIEW OF TODAY'S PRESENTATION

- About Northwest Justice Project (NJP)
- Estate planning
 - Wills
 - Advance Directives: Health Care Directives & Powers of Attorney
- Protections for vulnerable adults
- Self-help resources
- How to access NJP's services
- Questions? (please feel free to ask throughout!)



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**NJP provides FREE
civil legal aid to eligible people with low incomes**

Examples of civil (non-criminal) legal Issues

Family safety and security

parenting plans, protection orders

Housing stability

foreclosure prevention, eviction defense

Protection of income

Social Security Disability, TANF, etc.

Access to medical care or benefits

Money and Debt issues

protection from debt collection abuse, fraud

Employment issues

lost wages, discrimination, workplace safety

Education rights

special education, discrimination

Other basic needs and protections

NJP also has specialized units and projects serving:

- **Veterans**
- **Farmworkers**
- **Native Americans**
- **Victims of crime**
- **Survivors of domestic violence**
- **People over 60 years old**
- **Western State Hospital patients**



Northwest Justice Project

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- Based on size of household
- The maximum annual income level is 125% of the Federal Poverty Income Guidelines; up to 200% FPL in some circumstances

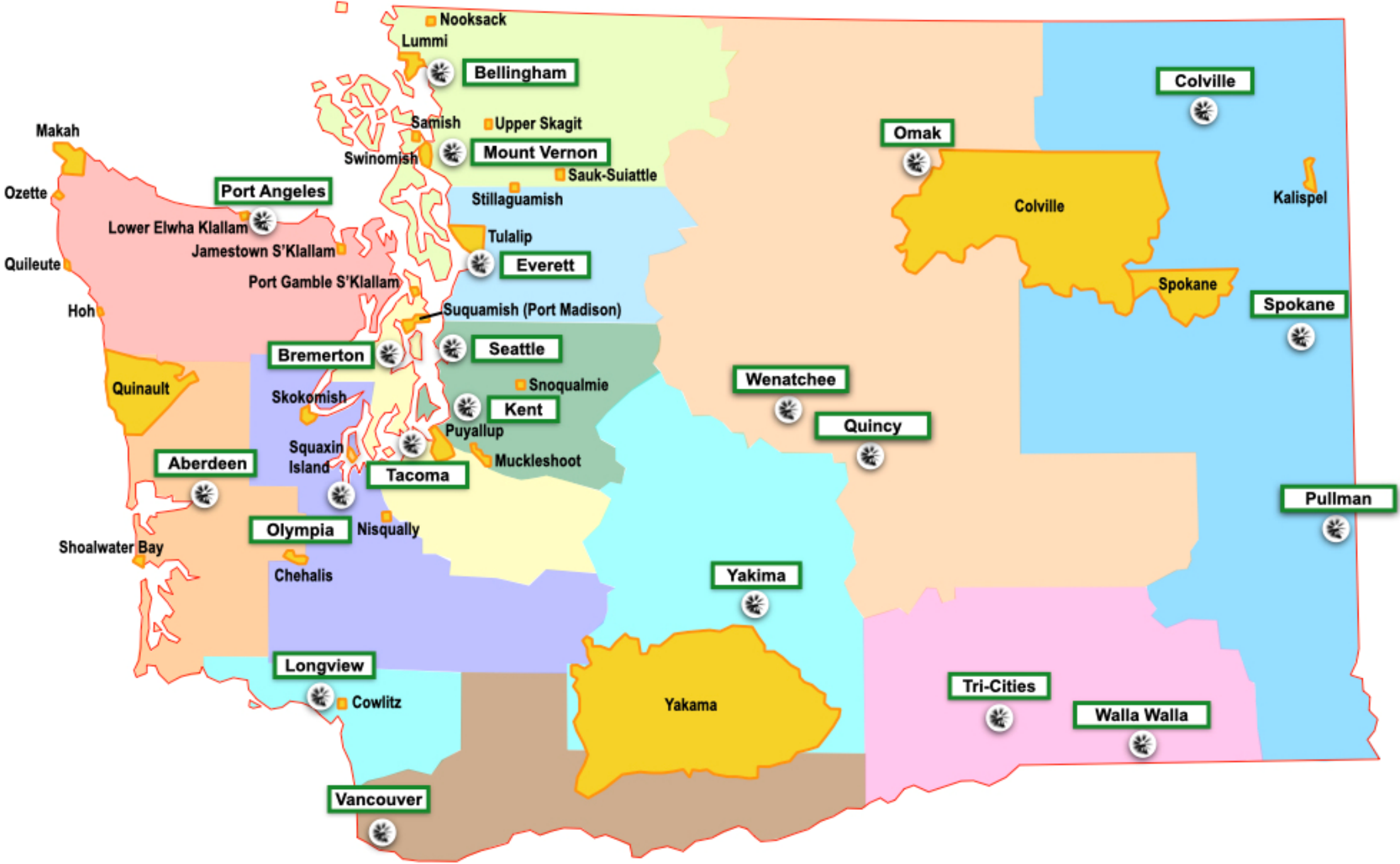
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VOCA



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The NAU offers free legal services in cases:

- Involving state agencies' policies and practices that have had disproportionate, harmful impacts on Native communities;
- Involving Indian trust property;
- That strengthen tribal sovereignty and self-governance; &
- Involving the civil collateral consequences arising from being a victim of crime.

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- May include burial directives
- May designate a guardian for minor children



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- You own trust or non-trust property
- You want to decide how to leave your property among your relatives and friends
- You are the parent or guardian of minor children and want to name someone to care for them after you pass



WHAT DO YOU NEED TO MAKE A WILL?

- You are over age 18
- You are “competent” to make a Will (know what you own and who you want to give it to)
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- Notary is optional but good practice
- Your signature and date



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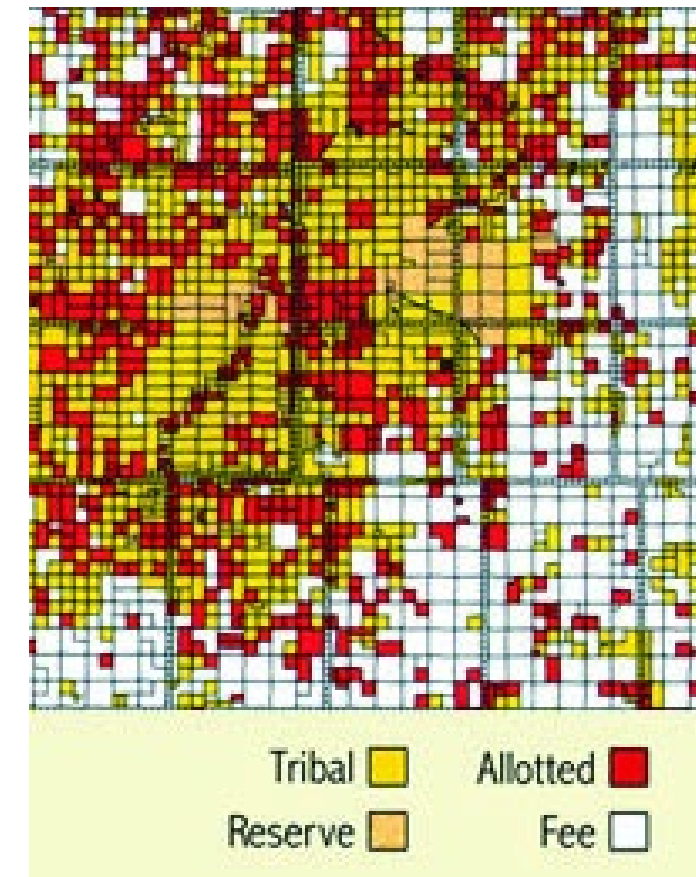
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- changes in your relationships or family
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A NOTE ABOUT HOMES ON TRUST LAND



- Permanent improvements are often located on individual trust property or on tribally-owned land that has been assigned to certain individuals or families through tribal law.
- Some tribal members have lease-purchase agreements that allow them to designate a successor to the contract.
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Questions about Wills?



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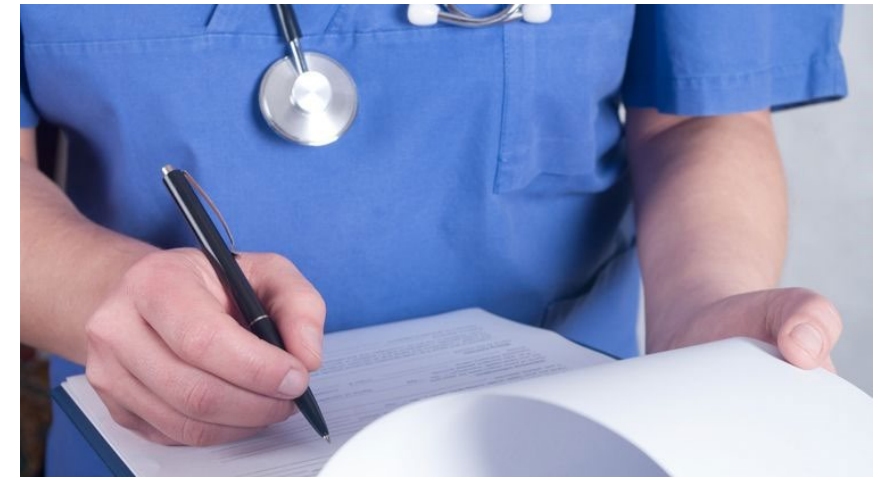
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HEALTH CARE DIRECTIVES

- Health care directives allows you to state what kind of medical treatments you do or do not want if you are terminally ill or permanently unconscious and cannot make decisions for yourself
- Simple form most can fill out on their own
- It must be either notarized *or* signed in front of two witnesses who are not related to the person making the directive, will not inherit from that person, and are not their medical providers



POWER OF ATTORNEY DOCUMENTS



- Power of Attorney means authorizing someone else (the “agent”) to make decisions for you.
- You can authorize someone to make legal decisions about your property, finances, or healthcare.
- A POA is *durable* if it continues to be in effect after you become incapacitated.



POWER OF ATTORNEY DOCUMENTS

- A POA can be revoked by the principal at any time (unless the principal has lost capacity).
- A POA must be signed and dated, and must be notarized or otherwise authorized or signed before two disinterested witnesses (not care providers; unrelated to principal)
- POA ends upon death



Questions about advance directives?



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HOW CAN THE CIVIL LEGAL SYSTEM ADDRESS ELDER ABUSE?

- Tribal law: Many tribes have government agencies and laws protecting elders and vulnerable adults. These laws may contain provisions for protection orders, and also ensure that any actions taken to protect elders are consistent with the elder's custom and/or traditional beliefs.
- State law: Washington State has protections for vulnerable adults, including Adult Protective Services and protection orders. The vulnerable adult OR an interested person on their behalf may file for a "Vulnerable Adult Protection Order" in Superior Court.



ADDITIONAL RESOURCES



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Helpful information about the law in Washington.

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Get Legal Help

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Family & Safety



Divorce/Separation
Domestic Violence
Parenting Plans/Custody
More issues

House & Apartment



Eviction
Tenant's rights
Vouchers, Subsidies, Rent Assistance
More issues

Money & Debt



Bankruptcy
Car Issues
Debt collection
More issues

Employment



Employment rights
Unemployment benefits
Workers' compensation

Seniors



Alzheimer's / Dementia
Planning for Death
Power of Attorney

Health



Coronavirus (COVID-19)
Medicaid / Medicare
Medical bills

Washington Forms Online



Do-It-Yourself Forms

Most Popular

Coronavirus (COVID-19) Info
COVID-19: Get Legal Help
Coronavirus (COVID-19): You cannot be evicted during the crisis unless...

Help Us Improve

Take Our Survey



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THANK YOU!

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Health Care Directive (or “Living Will”)

What is a Health Care Directive?

It is a form that lets you say what kind of medical treatments you do or do *not* want if you are terminally ill or permanently unconscious and cannot make decisions for yourself. A Health Care Directive also lets you write down your health care values.

What are health care values?

They are your wishes and preferences for health care, including your religious, ethical and personal preferences for care. They should guide health care decisions made for you when you cannot make decisions for yourself in **all** situations, not just if you are terminally ill or permanently unconscious. Some examples of what you can include are:

- “I’m worried about having the feeling of choking. Please do anything you can to relieve me of that stress.”
- “I can tolerate a low level of pain – balance pain with keeping my brain clear.”
- “Quality of life is more important to me than getting a lot of medical care.”
- “What matters to me most is being in a hospital with excellent care.”
- “The ability to be in the outdoors is what makes life worth living for me. If my health condition prevents me from being outside at all, then I would no longer want to live.”
- “It is important to me to be able to recognize my family and say goodbye.”
- “I want to spend my last days at home.”
- “In my religion, we . . . (describe your religious traditions regarding health care).”
- “I love jazz music and would like to listen to it whenever possible.”

Does my Health Care Directive form say *who* will make decisions for me?

No. You will also need a Durable Power of Attorney form. A power of attorney form lets you choose a trusted friend or relative to help you with your health care decisions. You can find Durable Power of Attorney forms at: WashingtonLawHelp.org.

Can I still make my own decisions?

Yes. You can still make your own health care decisions if you are capable. You can also change or cancel your directive at any time.

Does my Health Care Directive form need to be notarized?

You should sign your Health Care Directive form in front of a notary. If you cannot find a notary, you can sign in front of two “disinterested” witnesses.

What should I do after I sign it?

You should give it to your medical provider, your health care agent, and a trusted friend or relative. You should also ask your local hospital if they will put it on file for you.

Are there other kinds of directives?

Yes. There are health care directives that let you say what kind of care you want if you have a mental health disability or dementia. You can find these other directives at: WashingtonLawHelp.org.

What if I need legal help?

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CLEAR and 211 will conference in free interpreters when needed.

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It is not intended as a substitute for specific legal advice.

This information is current as of May 2020.

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Health Care Directive of

[My Name]

I am of sound mind and body and voluntarily execute this health care directive. If I cannot make decisions for myself about life sustaining medical treatment, my relatives, friends, agents and medical providers should fully honor every part of this directive. If any part of this directive is invalid, the remainder should be honored. I revoke any health care directives I have signed in the past.

1. **Withhold or Withdraw Treatment.** If my attending physician diagnoses me with a **terminal condition**, or if two physicians determine that I am in a **permanent unconscious condition**, and if my physician(s) determine that life-sustaining treatment would only artificially prolong the process of dying, the following treatment should be withheld or withdrawn from me:

(check all that apply)

- Artificial nutrition
- Artificial hydration
- Artificial respiration
- Cardiopulmonary Resuscitation (CPR), including artificial ventilation, heart regulating drugs, diuretics, stimulants, or any other treatment for heart failure
- Surgery to prolong my life or keep me alive
- Blood dialysis or filtration for lost kidney function
- Blood transfusion to replace lost or contaminated blood
- Medication used to prolong life, not for controlling pain
- Any other medical treatment used to prolong my life or keep me alive artificially

2. **Comfort Care and Pain Medication.** If I appear to be experiencing pain or discomfort, I want treatment and medications to make me comfortable, even if my medical providers believe it might unintentionally hasten my death.

3. **Health Care Institutions.** If I am admitted to a hospital or other medical institution that will not honor this directive due to religious or other beliefs: (1) my consent to admission is not implied consent to treatment, and (2) I want to be transferred as soon as possible to a hospital or other medical institution that will honor my directive.

My Name: _____

My Date of Birth: _____

4. **Changes and Revocation.** I understand that I can change the wording of this directive before I sign it. I also understand that I can revoke this directive at any time.

5. **Health Care Values:** The following wishes and preferences should guide all decisions made about my care:

My Name: _____

My Date of Birth: _____

My Signature

Date

Notarization (preferred)

State of Washington
County of _____

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, signed above, and acknowledged that the signing was done freely and voluntarily for the purposes mentioned in this instrument.

Date

Signature of Notary
NOTARY PUBLIC for the State of Washington.
My commission expires _____.

Statement of Witnesses (alternative)

On _____, the declarer of this document signed it in my presence. I believe the declarer is able to make health care decisions, to understand this document, and to have signed it voluntarily.

- I am not related by blood or marriage to the declarer.
- I am not now entitled to receive any portion of the declarer's estate, either by will or by operation of law, or as a result of any claim against the declarer.
- I am not the declarer's attending physician or an employee of that physician or of a health facility in which the declarer is a patient.

Witness 1

Witness 2

Signature

Signature

Print Name

Print Name

Address

Address

My Name: _____

My Date of Birth: _____

Health Care Directive Contact Information

My name – first, middle, last	
My date of birth	My primary care medical provider
My phone number	My email address
My mailing address	

I have a Durable Power of Attorney form that lets someone else (my “agent”) make health care decisions for me if I am not able.

My health care agent’s name	
My agent’s relationship to me (e.g. friend, partner, spouse, sister, etc.)	
My agent’s phone number	My agent’s email address

My alternate health care agent’s name	
My alternate agent’s relationship to me (e.g. friend, partner, spouse, sister, etc.)	
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My Name: _____

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Glossary

Here are some terms you may find helpful when reading a health care directive:

- **Attending Physician:** the physician selected by, or assigned to you and who has primary responsibility for your treatment and care.
- **Disinterested Witness:** a person who is not related to you, will not inherit from you, and is not your medical provider.
- **Life-sustaining treatment:** any mechanical or artificial medical intervention that, when applied to a person diagnosed with a terminal condition or a person in a permanent unconscious condition, would only prolong the process of dying. Life-sustaining treatment does not include medication or medical intervention necessary to alleviate pain only.
- **Permanent unconscious condition:** an incurable and irreversible condition; a condition where a person has no reasonable probability of recovery from an irreversible coma or a persistent vegetative state according to reasonable medical judgment.
- **Physician:** a person licensed under Washington State physician and osteopathy laws.
- **Revoke:** to cancel.
- **Terminal condition:** an incurable and irreversible condition caused by injury, disease, or illness, that will cause death within a reasonable period of time according to accepted medical standards, and where the application of life-sustaining treatment serves only to prolong the process of dying.

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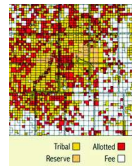
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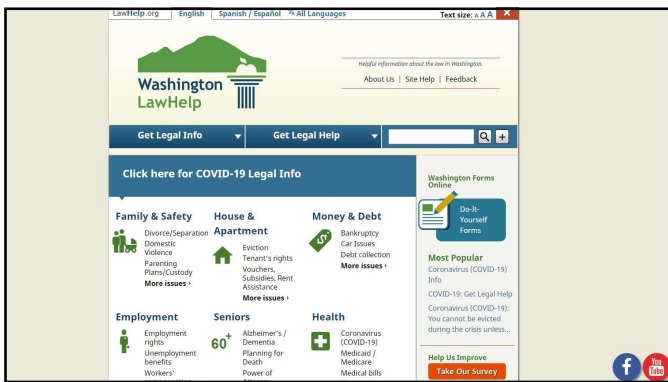
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The screenshot shows the Washington LawHelp website with a navigation bar, a search bar, and a main content area with several category tiles. The categories include Family & Safety (Divorce/Separation, Domestic Violence, Parenting Plans/Custody), House & Apartment (Eviction, Tenant's rights, Vouchers, Subsidies, Rent Assistance), Money & Debt (Bankruptcy, Car Issues, Debt collection), Employment (Employment rights, Unemployment benefits, Workers'), Seniors (Alzheimer's / Dementia, Planning for Death, Power of Attorney), and Health (Coronavirus (COVID-19), Medicaid / Medicare, Medical bills). There is also a 'Most Popular' section for Coronavirus (COVID-19) and a 'Take Our Survey' button.

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Durable Power of Attorney Documents

What is a power of attorney document?

A power of attorney document lets you choose a trusted friend or relative to help you with your finances and/or health care decisions. After you sign it, the person you choose will take the power of attorney document to your medical providers, bank, school, and other places to make decisions and sign contracts just as if he or she were you.

The trusted friend or relative you choose to help you with your finances and/or health care decisions is called your “agent.”

Do I need to sign my document in front of a notary?

You should sign your Durable Power of Attorney document in front of a notary. If you cannot find a notary, you can sign it in front of two “disinterested” witnesses instead. However, notarization is preferred, especially for a Durable Power of Attorney for Finances.

What should I do after I sign it?

After you sign your documents, make two copies. Give the original document to your agent, give one copy to your alternate agent, and keep the second copy for yourself.

Can I change my Power of Attorney documents and choose a new agent?

You can revoke (cancel) your power of attorney document at any time with a written notice to your agent. A sample “Notice of Revocation” is included in this packet. You can also give a copy of this written notice to your medical providers, bank, school, and other places that might accept the old power of attorney document.

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Durable Power of Attorney for Finances for

_____ [My Name]

1. **Agent.** I choose _____ as my Agent with full authority to manage my finances.
2. **Alternate.** If _____ is unable or unwilling to act, I choose _____ as my Agent with full authority to manage my finances.
3. **My Rights.** I keep the right to make financial decisions for myself as long as I am capable.
4. **Durable.** My Agent can use this power of attorney document to manage my finances even if I become sick or injured and cannot make decisions for myself. This power of attorney document shall not be affected by my disability.
5. **Start Date.** This power of attorney document is effective: (check one)
 - Immediately.
 - Only if my medical provider signs a letter saying I cannot make decisions for myself.
6. **End Date.** This power of attorney document will end if I revoke it or when I die. If my spouse or domestic partner is my Agent, this power of attorney document will end if either of us files for divorce in court.
7. **Revocation.** I revoke any power of attorney for finances documents I have signed in the past. I understand that I may revoke this power of attorney document at any time by giving written notice of revocation to my Agent.
8. **Powers.** My Agent shall have full power and authority to do anything as fully and effectively as I could do myself, including, but not limited to, the power to make deposits to, and payments from, any account in my name in any financial institution, to open and remove items from any safe deposit box in my name, to sell, exchange or transfer title to stocks, bonds or other securities, and to sell, convey or encumber any real or personal property. My agent shall also have the following **special powers**: (check all that apply)
 - create, amend, revoke, or terminate a living trust
 - make gifts of my money or property

- create or change my rights of survivorship
- create or change my beneficiary designation(s)
- delegate some authority granted in this document to someone else
- waive my right to be the beneficiary of an annuity or retirement plan
- create, amend, revoke, or terminate my community property agreement
- tell a trustee to make distributions from a trust just as I could

9. **No Power to Agree to Pre-Dispute Binding Arbitration.** My Agent does not have the power to agree to pre-dispute binding arbitration or any other process involving my person or property that limits my right to a jury, to sue for money, or to join a class action.
10. **Accounting.** My Agent shall keep accurate records of my finances and show these records to me at my request.
11. **Nomination of Guardian.** I nominate my Agent as the guardian of my estate for consideration by the court if guardianship proceedings become necessary.
12. **HIPAA Release.** I authorize my healthcare providers to release all information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to my Agent.

My Signature

Date

Notarization

State of Washington
County of _____

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, signed above, and acknowledged that the signing was done freely and voluntarily for the purposes mentioned in this instrument.

Date

Signature of Notary
NOTARY PUBLIC for the State of Washington.
My commission expires _____.

Durable Power of Attorney for Health Care for

[My Name]

1. **Agent.** I choose _____ as my Agent with full authority to manage my health care.
2. **Alternate.** If _____ is unable or unwilling to act, I choose _____ as my Agent with full authority to manage my health care.
3. **My Rights.** I keep the right to make health care decisions for myself as long as I am capable.
4. **Durable.** My Agent can still use this power of attorney document to manage my affairs even if I become sick or injured and cannot make decisions for myself. This power of attorney shall not be affected by my disability.
5. **Start Date.** This power of attorney document is effective on the day I sign it.
6. **End Date.** This power of attorney document will end if I revoke it or when I die. If my spouse or domestic partner is my Agent, this power of attorney document will end if either of us files for divorce in court.
7. **Revocation.** I revoke any other power of attorney for health care documents I have signed in the past. I understand that I may revoke this power of attorney document at any time by giving written notice of revocation to my Agent.
8. **Powers.** My Agent shall have full power and authority to do anything as fully and effectively as I could do myself, including the power to make health care decisions and give informed consent to my health care, refuse and withdraw consent to my health care, employ and discharge my health care providers, apply for and consent to my admission to a medical, nursing, residential or other similar facility that is not a mental health treatment facility, serve as my personal representative for all purposes under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended, and to visit me at any hospital or other medical facility where I reside or receive treatment
9. **Mental Health Treatment.** My Agent is not authorized to arrange for my commitment to or placement in a mental health treatment facility. My Agent is not authorized to consent to electroconvulsive therapy, psychosurgery, or other psychiatric or mental health procedures that restrict physical freedom of movement.
10. **No Power to Agree to Pre-Dispute Binding Arbitration.** My agent does not have the power to agree to pre-dispute binding arbitration or any other process involving my person or property that limits my right to a jury, to sue for money, or to join a class action.

11. **Accounting.** My Agent shall keep accurate records of my financial affairs and show these records to me at my request.
12. **Nomination of Guardian.** I nominate my Agent as the guardian of my person for consideration by the court if guardianship proceedings become necessary.
13. **HIPAA Release.** I authorize my healthcare providers to release all information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to my Agent.

My Signature

Date

Notarization (preferred)

State of Washington
County of _____

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, signed above, and acknowledged that the signing was done freely and voluntarily for the purposes mentioned in this instrument.

Date

Signature of Notary
NOTARY PUBLIC for the State of Washington.
My commission expires _____.

Statement of Witnesses (alternative)

On _____, the declarer of this document signed it in my presence. I believe the declarer is able to make health care decisions, to understand this document, and to have signed it voluntarily.

- I am not related to the principal by blood, marriage, or state registered domestic partnership.
- I am not a home care provider for the principal nor do I provide care at an adult family home or long-term care facility in which the principal resides

Witness 1

Witness 2

Signature

Signature

Print Name

Print Name

Address

Address

Revocation of Durable Power of Attorney
for

Finances

Health Care

I, _____, hereby revoke the Durable Power of Attorney I gave to

_____.

My Signature

Date

Notarization

State of Washington

County of _____

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, signed above, and acknowledged that the signing was done freely and voluntarily for the purposes mentioned in this instrument.

Date

Signature of Notary

NOTARY PUBLIC for the State of Washington.

My commission expires _____.

Glossary

Here are some terms you may find helpful when reading a power of attorney document:

- **Agent:** the trusted person you choose to help you with your finances or health care.
- **Beneficiary:** the person who gets money or property. For example, if you have life insurance and you die, the person who gets the insurance money is called a beneficiary. The person who gets money or property from a trust is also called a beneficiary.
- **Beneficiary Designation:** the part of a contract that says who should be the beneficiary. For example, the beneficiary designation in a life insurance policy is the part that says who will get the money after you die.
- **Binding Arbitration:** a process for resolving legal disputes with a company outside of a court. Usually, arbitration limits your right to a jury trial, limits the amount of money you can be awarded, and prevents you from bringing a class action lawsuit against the company. Also, arbitrators are usually picked by the company.
- **Community Property Agreement:** a written agreement between a married couple or domestic partners that says when one dies, all of their property will automatically go to the other.
- **Durable:** “Durable” means your document still has legal power and agent can keep helping you even if you become sick or injured and cannot make decisions for yourself.
- **Disinterested Witness:** a person who is not a health care provider in your home or long-term care facility or related to you by blood, marriage or state registered domestic partnership.
- **Notary (or Notary Public):** a person who is licensed by the State to witness signatures on documents. You must sign your power of attorney document in front of a notary who will also sign the document and place an official notary stamp on it.
- **Personal Property:** things like cash, stocks, jewelry, clothing, furniture or cars.
- **Real Property:** buildings and land.
- **Revoke:** to cancel.
- **Rights of survivorship:** a written agreement between people who own property together. The agreement says when one co-owner dies, the other co-owner(s) automatically gets the property.
- **Trust:** a written agreement where money and property is owned by a trust and managed by one person (trustee) for the benefit of another person or people (beneficiary or beneficiaries). Usually you need to hire a lawyer to set up a trust.
- **Trustee:** the person who manages a trust.