

Advanced Care Planning

November 15, 2025



Tom Polito
and
Caitlyn Ebert

About LawNY



Legal Assistance of Western New York, Inc. (LawNY)® was formed in 2004 by the merger of three legal services organizations, including Monroe County Legal Assistance Center, and now serves the residents of 14 counties in Western New York through 7 regional offices.

LawNY Rochester has been providing legal services, training, and outreach in Monroe County since 1968.

Programs and Services

Housing

Fair Housing

Reentry

Consumer Protection

Health



Senior Law Issues

Victims of Crimes

Legal Services for Veterans

Public Benefits Issues

Planning Tools

During Life

- Power of Attorney
- Health Care Proxy
- Living Wills
- Medical Order for Life-Sustaining Treatment
- Do Not Resuscitate Order

After Death

- Disposition of Remains
- Wills
- Beneficiary Forms
- Pay on Death

Power Of Attorney

What is a Power of Attorney?

- Allows you to name someone who can make certain financial and legal decisions on your behalf.
- The Power of Attorney does not cover medical decisions.
- Most commonly used to ensure bills are paid if you cannot (for any reason) physically make payments.
- Who is involved:
 - Principal = You
 - Agent = The person you want to help you
- Must use specific language/form

How is a Power of Attorney created?

- Consider what you want your agent to be able to do on your behalf.
- Discuss your financial wishes/decisions with the person you want to be your agent.
- Select the powers and privileges you want your agent to have, and what limits you want to place on those powers.
- You and your agent need to sign the document. You will need witnesses and a notary.

What if my agent does something with my POA that I don't want?

- You can name a “monitor” to oversee your agent(s) or place restrictions on agents that require two or more agents to act together.
- You can stop the POA (called “revoking”) at anytime, for any reason, as long as you are still able to make decisions for yourself.
- If money or items have been taken without permission and used for something other than your best interest, you can seek legal help.
 - Call the police
 - Gather proof of what the money was used for
 - Contact Lifespan or a similar agency
 - Contact a legal services organization
 - Go to court (Small Claims Court hears cases with \$5,000 or less at issue in the City of Rochester).
- If you can't make decisions, Adult Protective Service and court intervention might be needed to stop the agent.

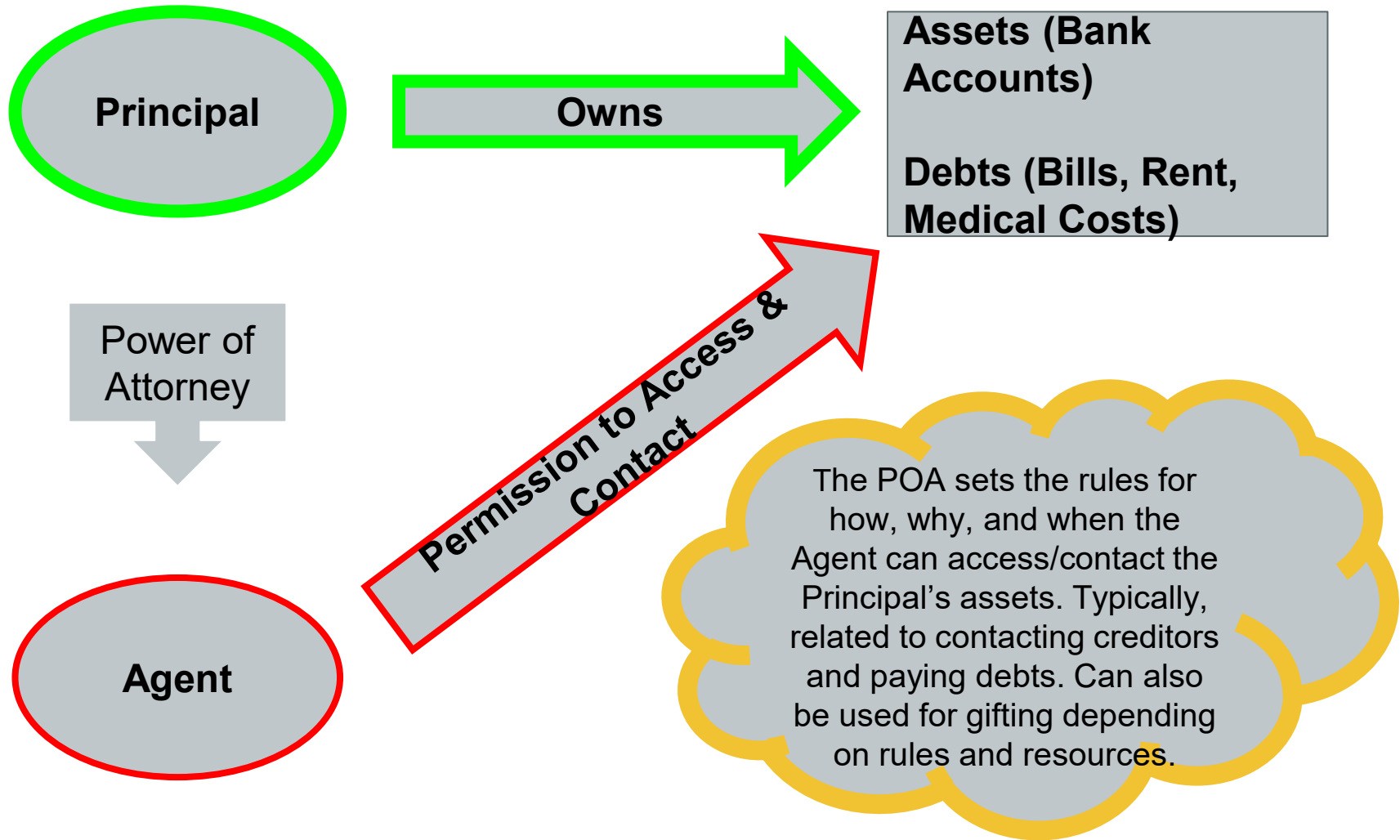
What should I keep in mind?

Benefits

- Allows you to control who can make decisions about your finances.
- Can help you avoid guardianship and representative payees.
- Can help keep you in your home if you require long term care.
- Allows you to keep sole ownership in accounts, while enabling someone else access to assist you.

Things To Be Careful Of

- Who you select as agent: sometimes agents act badly
- Gifting: how much do you give during the year
- Medical: those decisions are in a separate document
- Timing: takes effect when signed, not when you lose “capacity”



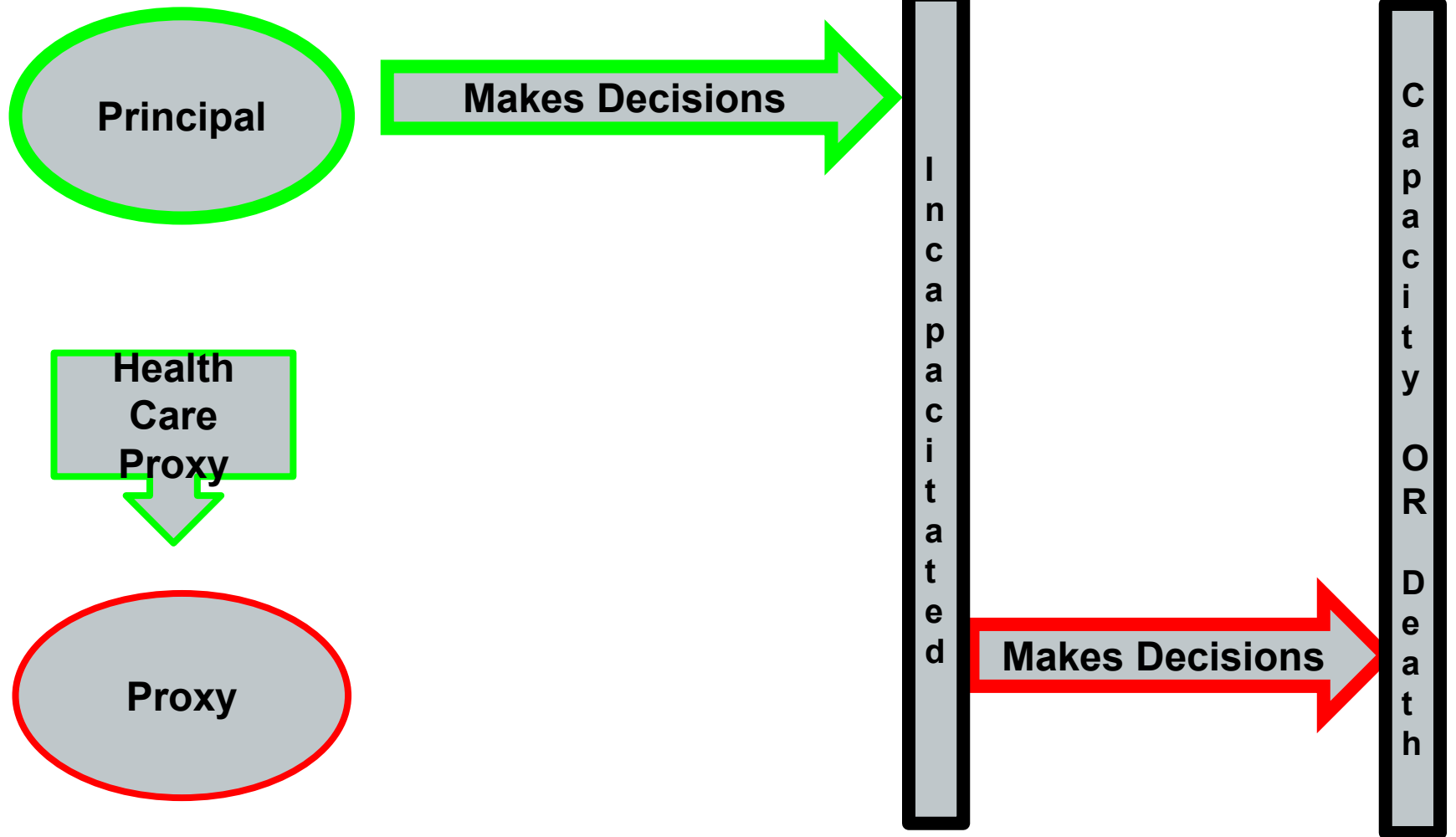
Health Care Decisions

What do I use for health decisions?

- There are multiple ways to document and express your health-related decisions:
 - Health Care Proxy
 - Living Will
 - Medical Orders for Life-Sustaining Treatment
- They are used in different situations and have different uses/powers

What is a Health Care Proxy?

- Health Care Proxy (“HCP”) forms give someone the ability to make medical decisions on your behalf any time you are unable to make your own medical decisions (not just at the end of life).
- May include some information on how you want the Proxy to make decisions, but primarily used to pick your Proxy.
- Medical providers usually have copies and/or will create them with patients during routine appointments or before complex treatments (surgeries or other times anesthesia is used).



What is a Living Will?

- A Living Will lets you state your wishes about medical care in the event that you develop an irreversible condition that prevents you from making your own medical decisions.
- It becomes effective if you become **terminally ill, permanently unconscious or minimally conscious**.
- You state when, how, and if you wish to receive specific treatments.
- “Treatments” means medications, surgeries, and other interventions, including: resuscitation, ventilators/respirators, feeding tubes, antibiotic courses, and pain management.

HCP and Living Will: What should I keep in mind?



**Talk to your
doctor before
making treatment
decisions for a
living will.**

Benefits

- Allows you to control who can make decisions about your health and express what you want to happen.
- Both documents **ONLY** effective when you don't have capacity
- Takes some of the pressure off of the decision-maker, especially if family members disagree.

Things To Be Careful Of

- Who you select as Proxy: make sure the person you pick knows what you want.
- Wishes: it is important to understand and update these documents
- Does not cover financial/insurance
- Timing: takes effect when signed, but not usable by the Proxy until you lose "capacity"
- Living Will comes into play when your condition is critical.

What is a Medical Order for Life-Sustaining Treatment?

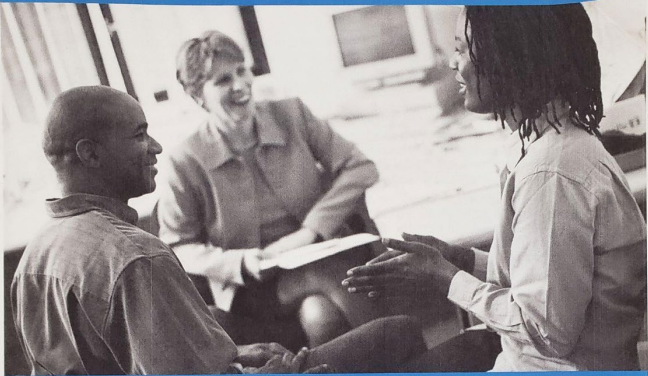
- A Medical Order for Life-Sustaining Treatment (“MOLST”) is similar to a Health Care Proxy and Living Will. However, it contains medical orders, signed by a doctor, instead of just expressing wishes.
- **Completed by a doctor; part of your medical chart.**
- Becomes effective and usable when it is created, meaning the orders that are in the MOLST apply right away (not only when patient loses capacity).
- Once it is signed, it must be honored by providers.
- Generally used when a patient has a terminal condition, lives in a nursing home, or receives in-home care services.

Obtain a FREE Advance Care Planning Guide at Compassionandsupport.org

Includes forms for:

- Health Care Proxy
- Living Will
- MOLST
- DNR

Community-wide End-of-life /Palliative Care Initiative



Community Conversations on Compassionate Care

Advance Care Planning

Know your choices, share your wishes:
Maintain control, achieve peace of mind,
and assure your wishes are honored.

Excellus 


Compassion and Support
at the End of Life
CompassionAndSupport.org

Excellus BlueCross BlueShield is a nonprofit independent licensee of the BlueCross BlueShield Association.

What to Do With Your Documents

- Keep a copy for yourself in a secure place.
- Do not put them in a safe deposit box or place that would keep others from accessing them
- Give a copy to your HCP, PCP, specialists, your primary hospital
- If you enter a hospital or nursing home, have copies of your documents placed in your medical record



Disposition of Remains

What happens to my body after I die?

- In many cases, the “next-of-kin” is responsible for making decisions on things like organ donation & funeral/burial arrangements.
- Who is my next-of-kin?
- What can I do next?
 - Talk to your next-of-kin about your wishes
 - Make a plan to name someone specific



- Spouse or domestic partner
- Any adult child
- Either parent
- Any adult sibling
- Guardian
- Any adult heir
- Executor
- A close friend or other relative
- Public administrator
- Anyone willing to act

Disposition of Remains Form

- There is a New York State DOH form that can be completed ahead of time that explains who you want to make decisions about your funeral, burial, and remains.
- It can offer detail on specific instructions you have.

If you want to leave your body to science, contact the school or hospital you would like to receive your body. They have their own processes and forms on how that donation is documented.

NEW YORK STATE DEPARTMENT OF HEALTH
Bureau of Funeral Directing

Appointment of Agent to Control Disposition of Remains

I, _____
(Your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by _____
(Name of agent)

With respect to that subject only, I hereby appoint such person as my agent with respect to the disposition of my remains.

SPECIAL DIRECTIONS:
Set forth below are any special directions limiting the power granted to my agent as well as any instructions or wishes desired to be followed in the disposition of my remains:

Indicate below if you have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law for funeral merchandise or service in advance of need:

☐ No, I have not entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.
☐ Yes, I have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

(Name of funeral firm with which you entered into a pre-funded pre-need funeral agreement to provide merchandise and/or services)

AGENT:

(Name)

(Address)

(Telephone Number)

SEE OTHER SIDE ►

DOH-523 (DFTS) Page 1 of 2

Wills & Probate

What is a Will?

- Document that lists your family and friends and the property you would like to give them after you die.
- “Property” includes things like:
 - A home
 - Furniture, clothing, household items
 - Tools and equipment for a trade or craft
 - Money and bank accounts
- Things that are owned jointly or have a beneficiary named generally do not pass through a will.
- Decisions about your funeral and burial should NOT go in a will.



How is a Will created?



- You make a decision on what you have and who you would like to give it to:
 - Family, friends, charities, etc; can be an individual (Ann) or a group (Daughters)
 - Specific item (Mother's necklace) or groups of items (all jewelry)
- Decide who you want to be “in charge” of your estate, this person is called the executor/administrator.
- Know the names and addresses of your family members and the people you want to receive gifts.
- The will must be signed by you, witnesses, and a notary public.
- Recommended (but not required) to execute under supervision of an attorney.

Do I need a will?

- If you own real estate,
or
- Your assets add up to more than \$50,000
or
- You don't want NY state to determine who inherits your estate
or
- You want certain family members to receive certain bequests for sentimental reasons
or
- You wish to choose the person who will be in charge of your estate



You should probably make a Will.

How is a Will used?



- After your death, and after locating your will, the person named as executor generally goes to the Court to open your estate. This is called Probate.
- The executor gains access to bank accounts & sorts property for what should be gifted and what should be sold.
- The executor waits for creditors/debts that need to be paid, and brings disputes to the Court.
- Once these things are done, the executor gives out the gifts.
- Probate can take 6 months - 1 year, or longer

When should I change my will?



Does not need to be changed:

- Not required to update
- Willed property will update when the court reviews (ie. old home will be replaced with property at a new address)
- A predeceased heir's gift is likely to be passed on to their heirs, or gifted through a "residuary" clause depending on the circumstances/will text.

Should be changed:

- Family dynamics change so you want to change who receives a certain gift
- You want to make sure someone specific gets the gift you planned to leave someone who predeceased you
- You feel you were pressured or forced into making certain gifts and do not really want those individuals to receive them

Is the Executor required to probate the Will?



It depends!



-If all significant assets are transferred outside of probate (i.e. by deed, trust beneficiary designation, joint ownership), it may not be necessary

Or

-If you do not own real property and your estate is worth less than \$50,000, your next of kin can use Small Estate or Voluntary Administration, or distribute some assets informally among family members.

Small Estate/Voluntary Administration

- Eligible if assets equal $\leq \$50,000$, does not include real property.
- Can be done with or without a will.
- If there is a Will, the Executor = Voluntary Administrator. If no Will, closest relative can be named the Voluntary Administrator.
- Filing fee = \$1.00
- Administrator files Small Estate Affidavit, along with death certificate + list of relatives, assets and debts.
- Surrogate's Court issues a certificate for each asset listed in the papers; Voluntary Administrator then must then collect and distribute.



What should I keep in mind?

Benefits of a will

- A durable and flexible document
- Allows you to be very specific with gifts and who you do or do not want to give things to
- Especially useful if there are gifts for: minor children, beneficiaries with disabilities, and/or beneficiaries with addiction/spending problems
- Recommended if you own real property (such as a home)

Things To Be Careful Of

- Has to go through the courts/probate
- Probate may be expensive and can take a long time (at least 7 months)
- Creditors have an opportunity to submit debts to the court
- Should not include instructions about funeral, burial, organ donation, donation of body to science, or similar decisions.

Non-probate transfers

Transfer by Deed

- When Real property is owned by 2 individuals as joint tenants with rights of survivorship or as tenants by the entirety (if the two people are married) the property immediately goes to the surviving owner/spouse
- This process would happen by operation of law and would not require any action by the surviving owner/spouse.



Transfer by Trust

- New York trust laws allow you to provide loved ones with the right to your property through various types of trusts. Whether it is through an express, lifetime, or charitable trust, this type of estate planning assures you that certain people, organizations, and/or pets will be the beneficiaries of your property. (<https://www.findlaw.com/state/new-york-law/new-york-trusts-laws.html>)
- In many ways a Trust is like a Will but it avoids difficult probate issues if created properly

Transfer to Beneficiary

- Bank accounts, retirement accounts, and life insurance policies use a form that allows you to name someone who gets the money in the account after you die.
- Each organization uses their own form.
- Generally, free to list a beneficiary.
- Can name one or more person (make sure these are up to date!)
- Can leave them equal shares or different amounts (as long as 100% is distributed)
- Beneficiaries receive the funds after submitting death certificates and requested forms.
- Creditors cannot claim funds before beneficiaries.

Other non-probate means of transfer

- Vehicles
- Section 5-3.1 of the Estates, Powers and Trusts Law allows the Department of Motor Vehicles to issue an affidavit for a surviving spouse, duly appointed guardian or surviving minor child to gain ownership of an automobile upon an individual's death.
- Link: <https://dmv.ny.gov/files/mv3491pdf>

How does someone access my apartment after I have passed?

If you reside in an apartment and are not in need of a will, you may want to speak to your landlord about making sure that you have someone on file to access your apartment upon your passing.

In apartment complexes, they may have a special form for you to complete.

With a private landlord, this may mean a lease addendum or letter that they keep on file.



CONTACT US

HON. MICHAEL A. TELESKA CENTER FOR JUSTICE
ONE WEST MAIN STREET, SUITE 400, ROCHESTER, NY 14614

2520

2559

PHONE: (585) 325-

FAX: (585) 325-

www.lawny.org