

ADVANCED DIRECTIVES IN NEW YORK

“Always consult with your New York Estate planning attorney to ensure that an advance directive you plan to execute includes the correct language to ensure that it will achieve the intended result.”



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SERVING NASSAU COUNTY, SUFFOLK COUNTY, AND WESTCHESTER COUNTY



During the course of a single day you make hundreds, maybe even thousands, of decisions. Some decisions are small, seemingly inconsequential, decisions while others are life altering. Each decision, however, is yours to make. Shouldn't you have the same ability to make decisions with regard to end-of-life medical treatment? Likewise, you should be able to decide now who will make important healthcare related decisions for you should you be unable to make them yourself one day. Fortunately, the law in the State of New York does allow you to do all of that; however, you must execute the appropriate advance directives to ensure that your wishes are honored. Always consult with your New York Estate planning attorney to ensure that an advance directive you plan to execute includes the correct language to ensure that it will achieve the intended result. In the meantime, however, a basic understanding of the different advance directives available may be helpful.

WHY EXECUTE AN ADVANCE DIRECTIVE?



An advance directive offers you the ability to decide right now what medical treatment you authorize, or explicitly decline, should you face a serious medical condition or be incapacitated at some point in the future. You also have the ability to appoint a proxy, or agent, who can make healthcare decisions for you should you be unable to make them yourself. In the absence of advance directives, it becomes unclear who will make decisions for you and what those decisions will be. All too often, well-meaning family members end up in a court battle over who will be granted the right to make decisions for an incapacitated individual. Not only will this waste time and money but may cause a rift in the family that will never entirely heal.

TYPES OF ADVANCE DIRECTIVES

In the State of New York an individual has the ability to execute three different types of advance directives, including:

- **Living Will** –allows you to express your wishes with regard to end-of-life medical treatment you wish to authorize or expressly reject. For example, you may accept or refuse:
 - Intravenous nutrition or hydration
 - Blood transfusions
 - Life support measures
 - Dialysis
 - Artificial respiration
 - Cardiopulmonary resuscitation (CPR)
 - Antibiotics
 - Pain medication
 - Organ donation
- **Healthcare Proxy** –allows you to appoint someone to be your “proxy” or “agent” to make health care decisions on your behalf if you are unable to make them yourself. Your physician must decide that you are incapable of making decisions yourself before your proxy/agent can step in and exert control. You may give your proxy/agent as much, or as little, authority as your wish. To limit your proxy’s authority you must expressly do so in the healthcare proxy form you execute by indicating exactly what authority your proxy will have. Your healthcare proxy cannot overrule decisions you made in your Living Will.

- **Do Not Resuscitate** – a DNR order allows you to direct emergency rescue personnel and other healthcare workers **not** to initiate cardiopulmonary resuscitation (CPR), that is, emergency treatment to restart your heart or lungs when your heartbeat or breathing stops. The difference between a DNR and a Living Will is that a DNR order works “on the spot” if emergency personnel arrive at your home and there is no time to determine if a Living Will exists. New York law recognizes two forms of a DNR – a Hospital DNR and a Non-Hospital DNR. A Hospital DNR works when you are in a health care facility, including a nursing home or other long-term care facility. If you still live at home, however, you should execute a Non-Hospital DNR.

ARE THERE LIMITS TO THE AUTHORITY GRANTED IN AN ADVANCE DIRECTIVE?

Yes! First, the authority granted in any advance directive is limited by the authority you expressly grant. Given the sensitive nature of an advance directive the law defers to you and your wishes when you executed an advance directive whenever possible. In addition, the decision to withdraw or withhold life sustaining treatment requires a second doctor’s opinion about your condition before your proxy can exercise the right to withhold or withdraw treatment. A family member or facility may also petition a court to override decisions made by your proxy. In that case, the court will ultimately make the decision.

AFTER YOUR FORMS ARE EXECUTED



Once you have executed your advance directive forms you need to make sure the appropriate people are aware they exist. Your estate planning attorney should retain a copy of the forms as should your treating physician(s). Likewise, your proxy/agent should have a copy of your Healthcare Proxy form as well as your Living Will to ensure that decisions you made in your Living Will are not contradicted by the proxy/agent.

Registering your Living Will online is also an option. If you executed a DNR form it should be kept in an easily accessible place in your home. You may wish to tape a note on the refrigerator or somewhere else that emergency personnel are likely to see letting them know you have a DNR form in the home.

Finally, take the time to sit down and discuss your wishes with your healthcare proxy. Don't assume that he/she knows what your wishes are with regard to end-of-life decisions. Though it may be a difficult decision, you appointed the individual because you trust him/her to make difficult



decisions for you. Don't make the job any more difficult than it already is by making your proxy guess at your wishes.

If you have decided to execute one or more advance directives in the State of New York be sure you consult

with your New York estate planning attorney to ensure that the forms contain the required language to guarantee your wishes will be honored when the time comes.

Caring Connections, [Advance Directive Planning for Important Health Care Decisions](#)

New York State Bar Associations, [Living Wills and Health Care Proxy Forms](#)

State of New York Office of Attorney General, [Planning Your Healthcare in Advance](#)

About the Attorneys



Saul Kobrick

Saul Kobrick is an attorney licensed to practice law in the State of New York and the owner, senior partner and founder of The Law Offices of Kobrick & Moccia. Mr. Kobrick is licensed to practice law in all courts of New York State, as well as in the Federal District Courts for the Southern and Eastern Districts of New York. He is a member of the New York State Bar Association as well as a member of the American Academy Estate Planning Attorneys. Mr. Kobrick is also a member of the National Academy of Elder Law Attorneys.

Experience

Prior to founding his Garden City Law Firm in 1992, Mr. Kobrick has for many years, practiced law both as a Sole Practitioner, and in partnership in New York City. His practice focuses on elder law, wills, trusts and estate planning. Mr. Kobrick provides quality Estate Planning and Elder Law services to residents of Nassau County, Westchester County and Suffolk County.



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Experience

Mr. Moccia joined the Law Firm in 2006. As a law clerk and became partner in January of 2015. Mr. Moccia speaks regularly to residents of Nassau County, Suffolk County, and Westchester County about estate planning, wills, trusts, and Medicaid planning.

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