

PLANNING FOR THE FUTURE OF YOUR FARM

Legal tools and strategies for farm transition planning

THE HEALTH CARE POWER OF ATTORNEY AND ADVANCE DIRECTIVES

Health care decisions like deciding whether to have a medical procedure, remain on life support, or donate body organs are challenging, but what if you are incapacitated and unable to make those decisions? Or what if you have wishes for your funeral and burial that you want carried out? There are several legal documents that can address these needs. Ohio law allows you to use a Health Care Power of Attorney, Living Will Declaration, Anatomical Gifts Declaration, Donor Registration, and Statement of Funeral Arrangements to give “advance directives” about your health care and death arrangements. These are important documents that ease burdens for both you and your loved ones.

THE HEALTH CARE POWER OF ATTORNEY

A Health Care Power of Attorney (POA) is a legal document that gives the person you appoint—your “agent”—the power to determine your health care needs. Ohio law provides that, unless you express otherwise in the POA, your agent may make health care decisions to the same extent you could if you were able to do so. For example, your agent could set up appointments, choose treatment, communicate with your doctors, or decide where to obtain long term care. The Health Care POA may also include special instructions about “life support” that authorize your agent to refuse artificial or technology supplied nutrition or hydration if you are in a permanently unconscious state. Alternatively, you may have a separate Living Will Declaration that further addresses end-of-life care, discussed below. Under Ohio law, a Health Care POA begins only if your doctor determines that you have lost the “capacity” to make informed health care decisions. You may revoke or change your Health Care POA prior to death, and it extinguishes upon death.

Ohio Living Will Declaration

[R.C. §2133]

[Full Name]

[Birth Date]

This is my Living Will Declaration. I revoke all prior Living Will Declarations signed by me. I understand the nature and purpose of this document. If any provision is found to be invalid or unenforceable, it will not affect the rest of this document.

I am of sound mind and not under or subject to duress, fraud or undue influence. I am a competent adult who understands and accepts the consequences of this action. I voluntarily declare my direction that my dying not be artificially prolonged. [R.C. §2133.02 (A)(1)]

I intend that this Living Will Declaration will be honored by my family and physicians as the final expression of my legal right to refuse certain health care. [R.C. §2133.03(B)(2)]



This work is supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture. It is provided for educational purposes only, is not legal advice, and is not a substitute for the need to consult with a competent attorney licensed to practice in the appropriate jurisdiction.

THE LIVING WILL DECLARATION

You may determine your end-of-life care through a Living Will Declaration. The declaration directs your doctor to provide only comfort and pain management care and allow you to die naturally if you are in a terminal condition or a permanently unconscious state. Your doctor is not to administer life-sustaining treatment, CPR, artificially or technologically supplied nutrition or hydration, or take any actions that postpone your death. The declaration also authorizes your doctor to issue a "Do Not Resuscitate Order."

According to Ohio's Rights of the Terminally Ill Act, a Living Will Declaration is valid only if you are either in a terminal condition, which means an irreversible, incurable, and untreatable condition from which there is no recovery and death is likely to occur without life-sustaining equipment, or in a permanently unconscious state, which means an irreversible condition in which you are permanently unaware of yourself or your surroundings. Two doctors must examine you and agree that you are in a terminal condition or permanently unconscious state. A Living Will Declaration also directs the

attending doctor to make reasonable efforts to notify at least one of three contact persons listed in the document of the determination.

ANATOMICAL GIFTS DECLARATION AND DONOR REGISTRY

Gifting body organs and tissues is also a difficult end-of-life decision to leave to your loved ones. A few options are available to make your decision known in advance and relieve stress and discord among your survivors. If you wish to make gifts of body organs and tissues, it's possible to do so in the Living Will Declaration or Health Care Power of Attorney documents explained above. Ohio and all other states also maintain a separate "donor registry system" that makes your wishes known in a medical emergency. The Ohio Bureau of Motor Vehicles oversees the registration, allowing for immediate recognition on your driver's license that you authorize donations of body organs or tissues.

DISPOSITION OF REMAINS, FUNERAL ARRANGEMENTS AND BURIAL OR CREMATION

Ohio law allows you to appoint a person who can determine what happens to your body after your death, referred to as the "right of disposition." The appointment may grant a person the right to arrange for anatomical gifts, determine the location, manner, and condition of your funeral, and make burial, cremation, and similar decisions. You may also identify the source of funds to be used to pay for arrangements. Ohio law states that a person who acts according to the appointment cannot be held liable for following your preferences. Many courts and organizations provide a form for this type of appointment.

COMMUNICATE YOUR PLANS

Let others know about your Health Care Power of Attorney and advance directives so that the documents are used if a medical or end-of-life situation arises. Give copies to those you've appointed as agents and to your doctors, attorney, and religious advisor, and keep copies with your other important records. Discuss your decisions with family and close friends. Not knowing what you would want can create stress at a very difficult time, and communicating your wishes in advance will likely reduce that stress. Even if others don't agree with your decisions, sharing them beforehand could minimize the potential of conflict, misunderstandings, or a legal battle among family members.

RESOURCES AND REFERENCES

Ohio Revised Code Chapter 1337, Power of Attorney <https://codes.ohio.gov/ohio-revised-code/chapter-1337>

Ohio Revised Code Section 2108.70, Assignment of rights regarding disposition of remains

<https://codes.ohio.gov/ohio-revised-code/section-2108.70>

Ohio Revised Code Chapter 2133, Uniform Rights of the Terminally Ill Act

<https://codes.ohio.gov/ohio-revised-code/chapter-2133>

AUTHORS OF THE PLANNING FOR THE FUTURE OF YOUR FARM SERIES

Peggy Kirk Hall and Robert Moore, Attorneys
OSU Agricultural & Resource Law Program
State University Extension

Evin Bachelor and Kelly Moore, Attorneys
Wright & Moore Law Co. LPA Ohio
Delaware, Ohio

Find all our **Planning for the Future of Your Farm** resources at <https://go.osu.edu/farmplanning>

We completed this project with the generous financial support of the **USDA National Agricultural Library** and the **National Agricultural Law Center**, in partnership with **OSU Extension**.

Planning for the Future of Your Farm is a project of the **OSU Agricultural & Resource Law Program**. We are an OSU Extension program providing objective and timely legal research on agricultural issues affecting Ohio. Find us at:



farmoffice.osu.edu



@OhioAgLaw



aglaw@osu.edu



@OhioAgLaw



614.688.0466



farmoffice.osu.edu/blog

