

## **The Law and You New Advance Directives for 2008 Part II**

This month's column continues the discussion of the new advance directives for 2008.

To briefly review, Senate Bill 75 from the 2007 Legislative Session dramatically revises Utah's Code governing advance directives.

The new "Advance Health Care Directive Act" ("Act") is found in Sections 75-2a-101 thru 124, Utah Code Annotated, and it became effective on January 1, 2008.

The Act provides an "Optional Form" to use. It can be found at § 75-2a-117, Utah Code Ann. The Form is divided into four Parts:

Part 1 allows you to name another person to make health care decisions for you when you cannot make decisions or speak for yourself. You can expressly identify the name and address of your agent. You can also approve or limit some powers of your agent.

Part 2 allows you to record your wishes about health care in writing. This part is similar to the former "Living Will." However, you can now state your wishes with respect to the powers your agent may make regarding end of life decisions for you. There are four options under Part 2, and you must select one of the four.

Part 3 tells you how to revoke the form. This part simply lists the various ways that you can revoke your directives.

Part 4 makes your directive legal. This part requires your signature in the presence of a witness but it doesn't require a notary. The witness must not be (a) related to you; (b) entitled to any portion of your estate; (c) financially responsible for your medical care; (d) a health care provider for you; and (e) your primary or alternate agent.

Getting hold of the "Form" is not quite so easy, since the Act is not easily accessible and the "form" set forth in the Act is not in a convenient format. However, others have constructed their own forms that are substantially similar to the Optional Form found in the Act.

The Center on Aging at the University of Utah has a direct link to download the Form in pdf format. From your browser, enter the following URL address: [aging.utah.edu/directives](http://aging.utah.edu/directives)

This will bring you to a page where you can then select "*Instructions and Form.*" Clicking there will produce a pdf document that contains 19 pages, 15 of which comprise instructions and 4 pages comprise the "Form."

The Form is generally self-explanatory, but it isn't for the faint of heart. As you can imagine, with 15 pages of instructions and information before you actually get to the Form, there is a lot to digest.

I have also constructed my own Form. Although it is 6 pages long, I believe it is a bit more clear and also avoids any ambiguity regarding the nomination of a guardian.

You can obtain a copy of my Form by going to my web site at “[utahattorney.com](http://utahattorney.com)” and selecting “End of Life Issues” under the heading of “Elder Law” on the home page or selecting the Elder Law tab and then scrolling down to End of Life Issues. With a single click, you can easily obtain the *Utah Advance Health Care Directive Form* and print it.

Again, doing this yourself requires some patience and willingness to carefully read each part of the Form.

Since this Form is new, the Legislature will undoubtedly be tweaking it during the next legislative session. You should keep an eye out for changes to it. Nonetheless, the one you complete will be valid until revoked, even if changes in the Act are made by the Legislature.

After reviewing the Form, you may feel uncomfortable about completing the Form yourself. If so, you might consult with an Elder Law Attorney to help you. To locate an Elder Law Attorney, check with the National Academy of Elder Law Attorneys at (520) 881-4005, or your local Yellow Pages.