

**MONTANA  
LEGAL GUIDE TO  
LONG-TERM CARE PLANNING**



**2012 - 2013**

## RESOURCES

Internet Resources	Montana only: <a href="http://www.montanabar.org">www.montanabar.org</a> ; <a href="http://www.montanalawhelp.org">www.montanalawhelp.org</a> ; Montana Law Libraries: (State) <a href="http://www.lawlibrary.mt.gov">www.lawlibrary.mt.gov</a> ; (U of M) <a href="http://www.umt.edu/law/library/">www.umt.edu/law/library/</a> ; Nationwide: <a href="http://www.findlaw.com">www.findlaw.com</a> ; <a href="http://www.freeadvice.com">www.freeadvice.com</a> ; <a href="http://www.findlegalhelp.org">www.findlegalhelp.org</a> ; <a href="http://www.nolo.com">www.nolo.com</a> ; <a href="http://www.law.cornell.edu/topics/">www.law.cornell.edu/topics/</a>
American Civil Liberties Union (ACLU)	1-406-443-8590 - The office does not routinely assist individuals, but focuses resources on cases affecting groups. <a href="http://www.aclumontana.org">www.aclumontana.org</a>
Citizens Advocate Office	1-800-332-2272 - Helps with problems or complaints related to state agencies. <a href="mailto:www.citizensadvocate@mt.gov">www.citizensadvocate@mt.gov</a>
Montana Consumer Protection	<a href="http://www.doj.mt.gov/consumer">http://www.doj.mt.gov/consumer</a> ; 1-406-481-6896. Assists with consumer problems relating to complaints with vehicles, telemarketers, etc. and educates consumers about their rights.
Crime Victim Compensation Program (CVC)	1-406-444-3653 or 1-800-498-6455 <a href="http://www.doj.mt.gov/victims/victimcompensation.asp">www.doj.mt.gov/victims/victimcompensation.asp</a> ; CVC provides direct services to victims and processes claims for compensation for innocent victims injured or killed as a result of a crime.
Domestic Violence	1-888-404-7794 - MLSA Domestic Violence Intake provides legal assistance to victims of domestic violence.
Aging Services Legal Division	John McCrea at 1-800-332-2272, or if you would prefer, you can e-mail your request to: <a href="mailto:jmccrea@mt.gov">jmccrea@mt.gov</a> Legal Resources: Legal Guide to Long Term Care Planning; Power of Attorney Made Easy; Advance Directive Made Easy; Consumer Debt Made Less Difficult; Tenant Rights
Adult Protective Services	1-800-551-3191; <a href="http://www.dphhs.mt.gov/sltc/services/APS/">www.dphhs.mt.gov/sltc/services/APS/</a> protects older persons from abuse and neglect
Montana Human Rights Bureau	1-406-444-2884 or 1-800-542-0807 <a href="http://www.erd.dli.mt.gov/humanright/hrhome.asp">www.erd.dli.mt.gov/humanright/hrhome.asp</a> Receives and investigates complaints of discrimination.
Landlord-Tenant Issues/Housing & Discrimination Resources	See internet site for information on all housing issues: <a href="http://www.montpirg.org">www.montpirg.org</a> Montana People's Action Housing Hotline 1-406-243-2907 or 1-888-345-7474. Answers questions about landlord-tenant problems.

Disability Rights Montana	1-800-245-4743 - Provides information and referral services, representation by professional advocates and training and publications on the rights of people with disabilities. <a href="http://www.mtadv.org">www.mtadv.org</a> ; 406-449-2344 Voice/TDD
Montana Attorney General's Office	215 N. Sanders, PO Box 201401, Helena MT 59620-1401 1-406-444-2026
Montana Office of Consumer Affairs	1424 Ninth Avenue, Helena MT 59601-4503 1-406-444-4312
Office of Disciplinary Counsel	1-406-442-1648 - Investigates claims of ethical violations by lawyers.
People's Law Center	P.O. Box 5046, Helena, MT 59604, 1-406-443-3896, The People's Law Center handles social security disability cases (SSI and SSDI), Bozeman/Billings: 866-650-9013; Helena/Butte/Missoula: 800-406-5567; Great Falls/Havre: 800-406-5560.
Public Service Commission	1-406-444-6199 - Assists with complaints regarding utility companies.
Montana Legal Services	Help Line 1-800-666-6899 Free civil legal assistance for low income persons. <a href="http://www.montanalawhelp.org">www.montanalawhelp.org</a>
State Law Library of Montana	215 North Sanders, Helena, MT 59620-3004 1-406-444-3660, <a href="http://www.lawlibrary.mt.gov">www.lawlibrary.mt.gov</a>
University of Montana School of Law	1-406-243-4311, Fax 1-406-243-2576, <a href="http://www.umt.edu/law">www.umt.edu/law</a>
Veteran's Administration	Veteran's Administration Center: 1-406-442-6410 <a href="http://www.montana.va.gov">www.montana.va.gov</a>
State Auditor's Office	Senior Fraud Protection Network 1-800-332-6148
DPHHS - Senior and Long Term Care	1-800-332-2272
Montana State Bar	1-406-442-7660

# TABLE OF CONTENTS

## INTRODUCTION

### CHAPTER I - POWER OF ATTORNEY

Explanation of Power of Attorney _____	1
Statutory Form Power of Attorney _____	3
Durable Power of Attorney for Health Care _____	9
Revocation of Power of Attorney _____	12

### CHAPTER II - ESTATE PLANNING

Explanation of Estate Planning _____	1
Beneficiary Deeds in Montana _____	3
Beneficiary Deed _____	14
Checklist for Estate Planning _____	17
Estate Planning Sheet _____	23
Sample Will _____	34
Declaration of Homestead Exemption _____	40

### CHAPTER III - LIVING TRUST

Explanation of Revocable Living Trust _____	1
Montana Seniors Beware _____	5
Uses and Abuses of a Revocable Trust _____	9

### CHAPTER IV - ADVANCE DIRECTIVES

Explanation of Montana's Declaration of Living Will _____	1
Declaration of Living Will documents _____	4
Revocation of Living Will _____	6
Montana Rights of the Terminally III Act _____	7
Do Not Resuscitate _____	16

### CHAPTER V - GUARDIANSHIP & CONSERVATORSHIP

## **DISCLAIMER**

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This Legal Guide was compiled by the DPHHS Aging Services Division Legal Service Developer Program. This publication is not intended to be a substitute for legal advice. Rather, it is designed to help families become better acquainted with some of the devices used in long-term planning and to create an awareness of the need for such planning. Future changes in laws cannot be predicted and statements in this narrative are based solely on those laws in force on the date of publication.

We recommend that you seek legal advice for all your planning needs.

# INTRODUCTION

Montanans face numerous choices. This is especially true in their retirement years. Life can become complicated. However, through proper planning, every person will be able to prepare for these changes in life.

This manual provides a layman's understanding of various legal documents and explanations of their uses. These documents are important components in planning for your future. It is important, however, to seek competent legal advice for your estate planning.

The manual is divided into five sections:

1. POWERS OF ATTORNEY
2. ESTATE PLANNING
3. LIVING TRUSTS
4. ADVANCE DIRECTIVES (LIVING WILLS)
5. GUARDIANSHIP AND CONSERVATORSHIP.

## **PART I. POWERS OF ATTORNEY**

One of the most cost effective ways to make certain your decisions regarding health, medical treatment, domicile, and business affairs are followed is through the use of a power of attorney. This document allows you to identify another person to make financial and/or health care decisions in the event you are unable to do so.

You are able to decide and control the amount of authority you give to another person. You do not need a lawyer or a Court order to make a legally binding power of attorney.

1. Montana statutory form Power of Attorney; and
2. Durable Power of Attorney for Health Care and Medical Treatment.

The first power is primarily a financial power of attorney. It allows you to delegate authority to another to make financial, banking, real estate, and insurance decisions or you.

There are two different powers of attorney provided in this manual:

The first power allows you to delegate authority to another to make financial, banking, real estate, and insurance decisions for you. It also allows you to determine whether you want the power to be durable, meaning that it is enforceable after you have become incompetent.

The second power allows you to delegate decision-making authority to another for your health and medical care and treatment. This power of attorney is also very important, especially when you are unable to make decisions for yourself.

A third document is a revocation of the power of attorney. This document allows you to revoke or “take back” the authority you have given to a person if you later wish to do so.

## **PART II. ESTATE PLANNING**

We have heard the statement there are two certainties in life: death and taxes. Estate planning allows you to determine how and to whom you will disperse your assets after you have died. You also have the ability to decide who will administer your estate and how the administration will be performed.

This section provides a common checklist of items you should think about when you are engaged in estate planning. This checklist will be helpful when working with your attorney. It provides an overview of your present estate and your intent for distribution of assets upon your passing.

The second document is an example of a simple Last Will. You must be careful in drafting a Last Will. We recommend you seek the assistance and consultation of an attorney licensed to practice law in Montana. You can draft and execute a Last Will without an attorney. However, there are certain legal principles that you may not be aware of that might prevent you from achieving the result you wanted.

Your Last Will must be dated and signed by you. If you have typed your Last Will, you must also have two adults who are not beneficiaries of your estate witness your signing of the Last Will.

Finally, you should make certain that a copy of your Last Will is available to your personal representative (administrator) so that he/she knows what your intent is after you have passed away.

The third document is used and filed while you are alive. It is known as the Montana Homestead Exemption form. Montana law allows you to declare a homestead exemption. If the form is completed and recorded in the Clerk and

Recorders' Office in the county in which you live and where you own your home, the form will protect a portion of your "homestead" from creditors' claims. It does not protect you from mortgages, Medicaid liens, or construction liens. The homestead is the home in which you live. It includes your dwelling (permanent structure or mobile home) and the land and improvements legally defined as "appurtenances" to the land. There are limitations on homestead exemptions. The explanation following the Declaration of Homestead will provide you with the additional information.

### **PART III. LIVING TRUSTS**

Montanans have become increasingly interested in establishing a "living trust" for their estate. The living trust is a legal document that is effective while you are alive. It provides a legal means for transfer of your assets into a trust, to be managed by a trustee for the beneficiaries designated in the trust agreement. A beneficiary can include yourself. Upon your passing, the trustee can transfer your assets according to the instructions in the trust. This can be done without any probate.

The second section is an article prepared by the former Dean of the Montana School of Law. He cautions individuals to be careful before they engage in the creation of a revocable living trust. The living trust document can be expensive and may not necessarily save you money in a probate. If the assets are not transferred properly into the trust, it may not achieve what you had desired - the avoidance of probate and additional costs.

We urge you to contact your local licensed attorney if you are seriously considering creating a trust. We caution you not to utilize "financial firms" or "trust organizations" who sell you a trust package. You may want to contact the Montana Attorney General's office, the Montana Insurance Commissioner or the Office on Aging to get additional information before you pay out any monies to a trust company.

### **PART IV. ADVANCE DIRECTIVES - LIVING WILLS**

Montana law allows you to make a "living will." This living will is called a Declaration of Living Will, and it allows a legally competent adult to instruct his/her physician to withhold or withdraw life-sustaining procedures if he/she is

in a terminal condition and unable to make medical treatment decisions. You are also able to designate another person to make these end-of-life decisions for you.

An explanation of the Living Will in Montana and a copy of the Montana Rights of the Terminally Ill Act follow. We have also provided a copy of the "Living Will" or "Declaration" forms. The Living Will must be witnessed by two adults. Once you have completed the form, you should make it available to your physician and local hospital so they may place it in your medical records.

You have the ability to revoke the Living Will at any time. We have provided you a form to revoke your Living Will if you should choose to do so.

## **PART V. GUARDIANSHIP AND CONSERVATORSHIP**

It is frightening to think that there could come a day when we are unable to care for ourselves or handle our own finances. However, it is reassuring to know that there are certain legal safeguards in place to protect us if we do become incapacitated. These safeguards include court appointed guardianships and conservatorships.

Montana law defines a guardian as one who is legally empowered and charged with the duty of taking care of another whom, because of age, intellect, or health, is incapable of managing his or her own affairs. A conservator is defined as one who is appointed by a district court to manage the affairs of a protected person who, because of age, intellect, or health, is incapable of managing his or her own property.

This section provides a detailed description of the responsibilities, roles, and limitations for guardians and conservators; the rights of the alleged incapacitated person; and the procedure followed by the court when a petition is filed for the appointment of a guardian or conservator.

## **CONCLUSION**

If you should have any questions or desire to discuss these documents or legal issues further, please feel free to contact:

- Your local Area Agency on Aging at 1-800-551-3191; or  
the State Office on Aging at 1-800-332-2272.

If you would like to receive additional information on any topics in this publication, please feel free to also contact your

**Local Extension Office -**

(in the yellow pages under county government)

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