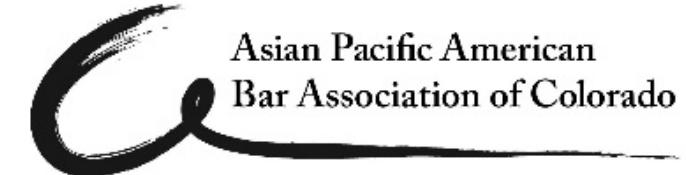




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# Dealing With the New Norm in Basic Estate Planning During the COVID Pandemic

Presented by

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# Agenda

## **Dealing With the New Norm in Basic Estate Planning During the COVID Pandemic**

- Introductions
- Financial/General Durable Power of Attorney
- Medical Power of Attorney
- Advance Health Care Directive (Living Will)
- Declaration of Last Remains
- Questions & Answers

# **Financial/General Power of Attorney**

- **What is a Financial/General Power of Attorney?**
  - Governed by Uniform Power of Attorney Act, C.R.S. § 15-14-701 et seq.
  - Allows an individual to designate a legal representative (agent) to handle their financial decisions on their behalf while alive.
  - Your agent can manage your finances—bills, real estate, bank accounts, taxes, insurance, loans—if you are incapacitated.
  - Only valid while alive; ends at your death.

# Financial/General Power of Attorney

- **How to choose an agent**
  - Designate someone you know and trust, such as a family member or friend, or;
  - Designate a professional fiduciary, typically an attorney, accountant, or trust officer.
    - Most MVL clinic clients cannot afford this option.

## **Financial/General Power of Attorney**

- **Special considerations**

- Does the Power of Attorney become effective immediately or does it only become effective upon incapacitation (“Springing” Power of Attorney)?
- Designate a successor agent.
- Avoid adding family members to bank accounts.

- **Validity Requirements**

- Adult 18 years of age or older
- Capacity
- Signed

**Financial/General  
Power of Attorney**

- **Best Practices**

- Although only the principal's signature is required under Colorado law, it is best to get this document notarized. The principal's signature is presumed valid if the document is signed in the presence of a notary.
- For MVL clinics, MVL will arrange for a notary.
- Provide a copy to your designated agent and any successor agents.
- Provide copies to your bank(s), other financial institutions, or property manager/facility director.

## Financial/General Power of Attorney

# Financial/General Power of Attorney

- **Completing the Form**

- Name of client (Principal)
- Name of Agent
- Name of Successor Agent
- Name of Second Successor Agent
- Initial subjects covered by agent's authority
- Special Instructions – i.e. springing power
- Name of conservator
- Name of guardian



MVL Financial POA Form.pdf

# Medical Power of Attorney

- **What is a Medical Power of Attorney?**
  - Governed by Colorado Patient Autonomy Act, C.R.S. § 15-14-503 et seq.
  - Allows an individual to designate a legal representative (agent) to handle their health care decisions on their behalf while alive.
  - Your agent can make medical decisions for you if you are incapacitated.
  - Only valid while alive; ends at your death.

- **How to choose an agent**
  - Designate someone you know and trust, such as a family member or friend, or
  - Designate a professional fiduciary.
    - Most MVL clinic clients cannot afford this option.
  - Ensure your designated agent understands your wishes and is comfortable advocating for you – discuss your health care directives with your designated agent.

# Medical Power of Attorney

# Medical Power of Attorney

- **Special considerations**

- Does the Power of Attorney become effective immediately or does it only become effective upon incapacitation (“Springing” Power of Attorney)?
  - If choosing “Springing,” complete a HIPAA Authorization form for family/friends to be able to access medical information even if not incapacitated.
  - MVL provides HIPPA Authorization forms to its clinic clients.
- Designate a successor agent.

# Medical Power of Attorney

- **Validity Requirements**
  - Adult 18 years of age or older
  - Capacity
  - Signed

# Medical Power of Attorney

- Best Practices

- Although only the principal's signature is required under Colorado law, it is best to get this document notarized and witnessed. The principal's signature is presumed valid if the document is signed in the presence of a notary and two witnesses.
- For MVL clinics, MVL will arrange for a notary and witnesses.
- Provide your designated agent and any successor agents with a copy.
- Provide your doctor with a copy.

# Medical Power of Attorney

- Completing the Form
  - Name of client (Principal)
  - Name of Agent
  - Name of Successor Agent
  - Name of Second Successor Agent
  - Initial effective date
  - Limitations/Additional Directions



MVL Medical POA Form.pdf

# The Impact of COVID-19

## The impact of COVID-19 on basic estate planning

- Individuals should protect themselves and their families by executing Financial/General and Medical Powers of Attorney ***while they still have capacity.***
- Once incapacitated, an individual cannot execute POAs.
- A family member or loved one cannot act on someone's behalf without the POAs.
- Guardianships and Conservatorship require court action, time and money.

# The Impact of COVID-19

## **The impact of COVID-19 on women**

- Men are more likely to die from COVID-19 than women.
- Women are often caretakers in their households, frequently providing substantial financial support for their families.
- When women become incapacitated, her wellbeing, along with the health and stability of her family, can be compromised.
- Women can protect themselves and their families by executing Financial/General and Medical Powers of Attorney.

# Advance Health Care Directive (Living Will)

- **What is a Living Will?**
  - It is a legal declaration that gives an adult the ability to decide whether life sustaining procedures be withheld or withdrawn if he or she has a terminal condition or is in a persistent vegetative state.

# Advance Health Care Directive (Living Will)

- **What is a Living Will?**

- The declaration also permits:
  - Decision maker to decide on artificial nourishment and hydration.
  - Designate an individual whom the attending physician may speak to.

- **What is a Living Will?**
  - Governed by the Colorado Medical Treatment Decision Act
    - Colorado Revised Statutes §15-18-101 et seq.

# Advance Health Care Directive (Living Will)

# Advance Health Care Directive (Living Will)

- **What are the requirements for a valid Living Will?**

- Adult 18 years of age or older.
- Decisional capacity.
- Signed in the presence of two witnesses.
- Notary is optional but does not affect the validity of the declaration.

# Advance Health Care Directive (Living Will)

- **What are the requirements for a valid Living Will?**
  - If a person is unable to physically sign the declaration:
    - Can be signed by another person in declarant's presence and at his/her direction
    - Can't be attending physician or another physician
    - Can't be employee of physician or healthcare facility
    - Can't be person who has claim against declarant's estate
    - Can't be person who knows or believes is a beneficiary under declarant's will or heir at law.

# Advance Health Care Directive (Living Will)

- **Is there a way out once the Declaration has been made?**
  - Revocation: oral, written, burn, tear, obliterate, or destroy.
  - Allow agent under Power of Attorney to change the decision of Declarant



MVL Living Will Form 2021.pdf

# Declaration of Last Remains

- **What is the Declaration of Last Remains?**
  - Allows a person to be in control of how his or her last remains will be disposed and what type of ceremonial services he or she desires.
  - Disposition of Last Remains is governed by Colorado Revised Statutes §15-19-101 et seq.

- **What is your desire and intent?**

- You get to dictate the disposition of your last remains and your ceremonial arrangements, including
  - Cremation, burial or entombment
  - Appoint person to direct the disposition of your last remains
  - Funeral or memorial service
  - Appoint person to direct ceremonial arrangement

## Declaration of Last Remains

# Declaration of Last Remains

- **How detailed do you want to be?**
  - Where and how to be buried? (Ex. Viking Burial)
  - What to do with your ashes? (Ex. Ashes in Lake)
  - What type of ceremonies do you want? (Ex. Viking ceremony)

# Declaration of Last Remains

- **What requirements need to be met?**
  - Signed and dated
  - May be notarized or witnessed by one adult witness
  - Revocation may be made in writing or by burning, tearing, canceling, obliterating, or destroying the declaration with the intent to revoke such declaration



MVL Declaration of Disposition of Last Remains 2021.pdf

# Questions?

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# Volunteer Opportunities

In collaboration with the CWBA and the APBA, MVL will be offering two *virtual* Power of Attorney Clinics during the month of February, serving low-income seniors at residential facilities in Denver. You can volunteer in the comfort of your own home or office!

Please complete a sign-up form at <https://www.denbar.org/Metro-Volunteer-Lawyers/Sign-Up-Form> or contact Anne Zogg at [azogg@denbar.org](mailto:azogg@denbar.org) or 303-837-1551 for more information.



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