

# Sempre Avanti!

...always forward



Summer 2009

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## Welcome to Sempre Avanti!

Welcome to our quarterly newsletter, *Sempre Avanti!* *Sempre Avanti* is the Italian phrase for “**always forward**”. We chose this title because estate planning and long-term care planning involve planning for your future...planning forward. This is what we do best at Creighton Law Offices.

The goal of *Sempre Avanti!* is to highlight and describe various estate planning topics, including revocable living trusts, wills & testaments, powers of attorney for financial and health care matters, and planning for retirement benefits.

We encourage you to develop and establish an estate plan NOW or to review the estate plan you already have in place to see

if any documents need to be updated due to changes in the law or in your personal circumstances.

Creighton Law Offices specializes in providing estate planning services to individuals and married & unmarried couples. We work closely with our clients and listen carefully to their goals & objectives regarding the disposition of their property, both during their lifetimes and after their deaths. We then customize estate planning documents that incorporate and effectively address those goals & objectives while minimizing, as much as possible, the estate, gift and other taxes that are triggered by the transfer of property to their

loved ones. Whether a client's estate planning objectives are fairly straightforward or very complicated, we can draft the documents that will accomplish his or her estate planning objectives, both during life and after death.

Planning one's estate is not a task that, once completed, is never again necessary. Estate Planning is a lifelong PROCESS. We are here to guide you through this process.



*Sempre Avanti! Always Forward...*

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## What to expect...

Each quarterly newsletter will cover an important estate planning topic. We hope to provide you with easy-to-understand explanations and useful information that you can share with your family, friends, and advisors. In this issue, we explore the useful-

ness of **Advance Health Care Directives** and explain why this often overlooked document is among the most important of estate planning documents. Future topics will define and describe wills & testaments, revocable living trusts, powers of attorney

for property management, beneficiary designations (for retirement assets, life insurance, etc.), probate, trust administration, and the duties and responsibilities of Trustees. Your feedback is always welcome!

## Advance Health Care Directives: What are They?

An **Advance Health Care Directive (AHCD)** allows you to specify your wishes regarding your future medical care and to appoint someone to express your wishes at any time when you are incapacitated and unable to communicate with your medical providers. The document establishing the **AHCD** is typically divided into two sections: a **"living will"** portion, in which you set forth your wishes regarding



the course your medical treatment should take in specific situations; and a **"health care agent"** portion, in which you appoint one or more individuals to act (in a fiduciary capacity) on your behalf to make health care decisions based on your wishes.

The importance of the **AHCD** is often overlooked or minimized. Yet consider the cases of **Teri Schiavo** (of the US) and **Eluana Englaro** (of Italy), two young women who were in persistent vegetative states for many years, and whose personal and very painful stories riveted the public's

attention. In both cases, the young women neglected to put their wishes regarding medical care in writing prior to incapacity, leaving the courts struggling to determine what each would have wanted regarding her medical care & under what circumstances life sustaining measures should be withdrawn. Simply put, the **AHCD** is among the most crucial of estate planning documents. By having an **AHCD** in place, you can prevent the difficult situation of your loved ones—and the courts—having to "guess" your wishes regarding your medical care & resuscitative measures.

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*Simply put, the AHCD is among the most crucial of estate planning documents...*

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## What Are the Advantages of Having an AHCD?

There are many advantages to having an **AHCD** in place. **First**, your **AHCD** gives you the option of choosing a Health Care Agent to make health care decisions for you, rather than having a court appoint a *surrogate decision-maker*—who does not know you—to make such health care decisions. **Second**, your **AHCD** is a **private** legal document and need not be shared with others

(although you should provide a copy of your **AHCD** to all of the Agents you have designated to serve on your behalf and all of your medical providers). **Third**, an **AHCD** is inexpensive to create. An **AHCD** can be executed without court intervention. All that is needed to properly execute an **AHCD** are you, the Principal, and *either* two unrelated witnesses (who witness that you appear to

have sufficient capacity to sign your **AHCD**) or a notary public (who acknowledges your signature). **Finally**, a physician or other health care provider who follows your Health Care Agent's instructions regarding your health care is protected from civil liability, criminal prosecution, and professional discipline. This makes it more likely that your wishes will be honored.

## For How Long Is an AHCD Valid?

Since 1994, California law has provided that, once executed, your **AHCD** remains valid and in effect for the rest of your life (regardless of your future mental capacity), unless you expressly revoke it or have indicated within the **AHCD** itself that it will expire on a specific date. Prior to 1994, a health care directive (known at that time as a **Durable Power of Attorney for Health Care**) remained valid for only seven (7)

years. Thus, if you executed a health care directive before 1994, it is likely that the directive has **expired** and you should execute a new **AHCD** as soon as possible. Even if your **AHCD** remains valid for the rest of your life, you should review it periodically to determine if a revision is needed. Ask yourself questions such as these: "Have the Agents I've named moved out of the area? Has any Agent I've named



*passed away or become incapacitated? Has my own mind changed with regard to any of the powers stated in my AHCD, like life support?"* If you answer **YES** to any of these questions, you should update your **AHCD**.

## What Powers Does My Health Care Agent Have?

In exercising authority under your **AHCD**, your Health Care Agent has great responsibility to act on your behalf. **First** your Health Care Agent must act consistently with *your wishes* regarding the administration of medical treatment as you expressed in the **AHCD** or that you have made known to the Health Care Agent at any time. If your desires are not known, your Health Care Agent must act in your best interests. Your *personal values* would be considered when determining what would be in your best inter-

est. **Second**, your Health Care Agent has the power to give consent, refuse to give consent, or withdraw already given consent to any health care service or procedure. California law specifically includes the right of a Health Care Agent to provide, withhold, or withdraw artificial nutrition & hydration. In other words, California law authorizes your Health Care Agent to make health care decisions for you to the same extent that you could make those health care decisions if you had the capacity to do so.

In addition, the **AHCD** provides direction to your Health Care Agent with regard to, for example, the disposition of your remains after your death, the authorization of an autopsy, and the donation of all or part of your body for transplant, education, or research purposes.




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*What happens if you find yourself in a hospital emergency room and your Agent is either not with you or does not have a copy of your AHCD with him/her?*

*Public and private document registration systems have been established to address such a scenario. Once your AHCD has been registered with one of these services, a medical provider can obtain a copy of your AHCD by calling the service or obtaining information (or even a copy of your AHCD) from the service's website. For more information, contact DocuBank*

*([www.docubank.com](http://www.docubank.com) or (866) 362-8226) or the California Secretary of State ([www.sos.ca.gov/ahcdr](http://www.sos.ca.gov/ahcdr) or (916) 653-3984).*

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## Are There Any Limitations on My Agent's Powers?

Your Health Care Agent's powers are not unlimited. For example, the **AHCD** would not give your Health Care Agent the power to commit you to a



mental health treatment facility, or to authorize (on your behalf) convulsive treatment, or psychosurgery, sterilization, or an abortion. California law provides that the authority of your Health Care Agent under your **AHCD** becomes effective only upon a determination that you lack mental capacity, unless your **AHCD** provides otherwise. Moreover, if

you object to any treatment or object to withholding or withdrawing any treatment, and if you understand the consequences of making such objections, nothing can be given, withdrawn, or withheld over your objections regardless of any provision of the **AHCD**.

## Who May I Appoint as My Health Care Agent?

You can appoint almost any adult to serve as your Health Care Agent. You can choose a member of your family (e.g., your spouse or adult child), a friend, or someone else you trust. You can also appoint one or more "alternate Agents" who can act if the person you select as your initial Health Care Agent is unavailable or unwilling to make a decision. It is crucial that you talk to the people you plan to appoint

as your Health Care Agents to be sure that they understand your wishes and agree to accept this responsibility. Your Health Care Agent will be immune from any liability so long as s/he acts in good faith on your behalf.

The law permits you to appoint more than one person to act jointly as your Health Care Agents. However, we **strongly recommend** that you name only

**one** person to act on your behalf at any one time. If you appoint two or more people as co-Health Care Agents, and if they disagree about a health care decision, one of the important purposes of your **AHCD**—to identify clearly who has



authority to speak for you—will be defeated.



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the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matter addressed by this communication.



**Creighton Law Offices** is located in San Mateo, California & specializes in providing exemplary estate planning, trust administration, probate & long-term care planning services to its clients. If you would like additional copies of this newsletter, or know someone who would benefit from receiving this newsletter directly, contact **Alison Moon** or **Faye Simpson** at (650) 344-0700. Thank you for your attention.



**Sempre Avanti  
Daffodil**

**Bet you didn't know...**

*The daffodil is the March birth flower and the 10th wedding anniversary flower. A gift of daffodils is said to ensure happiness. Always remember to present daffodils in a bunch—the same legends that associate this cheerful flower with good fortune warn that when given as a single bloom, a daffodil can foretell misfortune.*