Is an HECM loan expensive?
There are significant costs associated with an HECM. They include FHA mortgage insurance, closing costs, interest, and loan service costs. The longer a homeowner keeps an HECM, the lower the total annual loan costs (TALC) will be, because they will be spread over a greater number of years. On the other hand, the longer an HECM is held, the higher the amount of interest will be, because the amount of principal advanced will usually be higher.

Should the homeowner obtain counseling before obtaining an HECM?
As mentioned above, HUD requires that a homeowner obtain consumer information from a HUD-approved counseling source. In addition, because of the complexity of reverse mortgages, a homeowner should consult with an experienced attorney before obtaining a reverse mortgage.

Are there web sites or toll free telephone numbers from which homeowners can obtain information about HECM loans or other reverse mortgage loans?
If you do not have access to a computer at home or work, access can be obtained at your local public library, and the library staff will gladly assist you in accessing the Internet.
- HUD’s web site: http://www.hud.gov/groups/seniors.cfm
- National Reverse Mortgage Lender’s Association web site: http://www.reversemortgage.org/
- National Reverse Mortgage Lenders Association consumer information: (866) 264-4466
- AARP consumer information: (800) 209-8085
- AARP Reverse Mortgage web page: http://www.aarp.org/revmort/
- HUD Housing Counseling Clearinghouse: (800) 569-4287

Reverse mortgage documents are complex and can be confusing. Consequently, anyone contemplating a reverse mortgage should consult and be counseled by an experienced attorney who is completely independent of the mortgage lender. It is essential that the homeowner or mortgagor understands the contract and its disadvantages, as well as its advantages, before signing.

PLANNING FOR THE FUTURE
DIVORCE AND THE ELDERLY
When an older client divorces, all of the issues set forth in this handbook must be considered, as well as other factors unique to the marital relationship. The first step is to obtain a lawyer. A domestic relations or divorce lawyer should be selected, using the criteria provided elsewhere in this handbook for selecting a lawyer. When you meet with your lawyer, if you are overwrought or upset, it is also advisable to have a relative or friend accompany you to the lawyer’s office, but to preserve attorney-client privilege, you alone should meet with the lawyer in private. You should first discuss the fee arrangement to assure that you will be able to afford that particular lawyer. If you cannot afford the fee, you should contact your local legal aid office.

You must be completely honest with your lawyer. You will need to know your monthly living expenses, the family income, all assets and how titled, whether there are any agreements between you and your spouse, existing medical insurance, whether there are social security or other retirement benefits and whether or not they are in pay status, and the names and status of all credit accounts, including utilities. If you do not have this information, your lawyer will help you obtain it.

If you are interested in learning more about divorce, you may go to the Virginia State Bar website at http://www.vsb.org/site/publications/divorce-in-virginia/.
REAL ESTATE TRANSFERS

Many senior citizens who own real estate, especially those who are retired, attempt to sell or give away their property for various reasons. Some persons want the additional income. Other persons want to help their families avoid paying heavy estate taxes on the property after they die. These people are usually people with sufficient assets to be subject to federal estate taxes. For 2013, the exemption amount is $5.12 million for each person (which adjusted for inflation will probably be $5.25 million). The exemption amount is now permanent and is not scheduled to change in the future, except as adjusted upward for inflation; however, senior citizens who wish to transfer their property for any reason, or change a title in any way (for example, by adding a name to a deed), should consider several things before doing so:

- If you deed your property to a child or someone else as a gift, you may not be eligible for Medicaid coverage for long-term nursing home care for some period of time, depending on the value of the property, and the terms of the transfer.
- If you deed your house to a child or someone else and do not keep your name on the deed, that person can force you to move out of your house.
- If you want to add another name to your deed so that each of you has an equal share and the right of survivorship, the deed must be explicit. For example, the deed must say, “As joint tenants with right of survivorship,” or if the other person named in the deed is your spouse, the deed must say, “As tenants by the entirety with the right of survivorship.”
- If you add another name to your deed so that each of you becomes a joint tenant with right of survivorship, or you are tenants by the entirety with the right of survivorship, remember that you cannot sell the property later without the other person’s permission. Also, upon your death, the property automatically will belong to the other person if that person has survived you, regardless of what you may provide in your will.
- If you want to give your property to another, but keep the right to live in it for the rest of your life, your deed to the other person must specifically reserve a “life estate” to you or the right to live on and use the property for your lifetime.
- Depending on the value of the property transferred, you may be making a gift which will require you to pay gift taxes or to use up part of your lifetime gift tax exemption.
- If you have equity value in your property because its value exceeds the unpaid mortgage and any other liens against the property, you may borrow against the equity by obtaining a “home equity loan.” You will be required to put a mortgage on your property. Many of these programs allow you to borrow and repay the loan as your needs permit, as long as the loan balance never exceeds a certain limit. A less common way to borrow against your equity is the “reverse mortgage” (See Housing, Reverse Mortgages). If you have equity value in your property, you can borrow against this equity and receive monthly income. You will have to put a mortgage on your home. The loan fees, interest rates, restrictions, and fees paid to professionals (e.g., attorneys, appraisers, and surveyors) can vary widely. Before entering either a home equity loan or a reverse mortgage, make sure you have a complete understanding of all the costs and rules.
- If you cosign or guarantee a note for a relative or friend, the lender may enforce the note against you. If the note is not paid, the lender may attempt to take your house. This is especially true if you have, by means of a deed of trust or mortgage, put up your house as security for the other person’s loan.
- If you have lived in your home for two of the last five years, up to $250,000 ($500,000 for couples) of the profit from the sale of the house may be excluded from the calculation of your income for federal income tax purposes. Because the rules and calculations are technical, you should check with your tax advisor before selling your house.
- You should consult an attorney knowledgeable in real estate before you do anything that may affect your interest in your home or other real property.
PROBATE AND ESTATE ADMINISTRATION

Probate

The term “probate” is often used to generally refer to the process of administering an estate. By definition, probate is the legal process of proving before the proper court that a document offered as the last will and testament of a deceased person is authentic. The original will must be presented to the clerk, who reviews the document to confirm that it meets the requirements under Virginia law for a valid executed and properly proven will, and, if valid, the will is approved for recordation by the clerk. During probate, assets are gathered and applied to pay debts, taxes, and the expenses of estate administration. The remaining assets are distributed to the deceased person’s beneficiaries under the will. A personal representative (an executor or an administrator) qualifies before the circuit court or the circuit court clerk to handle the administration of decedent’s estate.

Only “probate” assets will pass under the decedent’s probate estate. Probate assets generally include those assets that are owned solely in the decedent’s name or jointly with another and which are not transferred to another at death by contract or operation of law. Non-probate assets include such assets as life insurance payable to another, pensions and other retirement accounts payable to another, accounts payable on death to a named beneficiary, and any property owned with another who has survivorship rights. Real estate located outside of Virginia is not a Virginia probate asset. It is important to note that a decedent’s ownership of real property in another state may require the necessity of probate proceedings in multiple states.

If an estate is worth more than $15,000, the clerk of the court will assess a tax based on the estimated value of the decedent’s real estate in Virginia and personal property owned by the decedent, such as cash, bank accounts, furniture, stocks and bonds etc. (excluding certain assets such as life insurance, IRAs and retirement accounts and benefits which pass to a named beneficiary other than the estate), this amount is called a “probate tax” and is different from the “estate tax” discussed below. The probate tax is a small tax that must be paid at the time of probate.

The Virginia Small Estates Act provides procedures for a decedent’s assets to be transferred without the necessity of qualifying a personal representative when the decedent’s entire personal probate estate is $50,000 or less.

You should consult a qualified attorney if you have questions about probate costs and whether probate should be avoided or used in your estate plan.

Estate Planning

The term “estate planning” refers to the organizing and ordering of an individual’s property, called an “estate,” so that it is transferred at death to the beneficiaries of an individual’s choice in the most efficient manner. Estate planning also may involve planning for an individual’s possible disability. It involves a coordinated effort by you and your professional advisors (attorney, accountant, insurance agent, financial advisor, certified financial planner, and others) to minimize death taxes and expenses of death or disability, and to provide for your beneficiaries in the way that you intend. An effective estate plan is accomplished through the preparation of certain legal documents and devices such as wills, trusts, powers of attorney, and advance medical directives.

Wills

A will is a written signed document in which an individual (known as a testator) states directions for the distribution of assets at death. A valid will can avoid Virginia’s intestacy laws, which may be contrary to one’s intentions. The will appoints an executor who is responsible for the estate administration. Further, a will can reduce estate administration costs by relieving the executor of needing to obtain a
costly surety bond, and may provide for the appointment of guardians for minor children and trust(s) for the protection of beneficiaries and/or to minimize estate taxes.

The provisions of a will only affect the disposition of the individual’s probate estate. Many assets are transferred at death outside of the probate estate and without regard to the terms of the will. Assets owned jointly, with right of survivorship by two or more individuals, are automatically owned by the surviving individual(s) at the death of one owner. Bank accounts and certificates of deposit may be designated “POD” (payable on death) to a specified named beneficiary. Similarly, investment accounts may include a “TOD” (transfer on death) direction naming an owner at death. Life insurance and annuity policies provide for named beneficiaries, as do most retirement accounts (pension, profit-sharing accounts, 401(k)s, and IRAs).

**Preparation of Your Will**

With some minimal advance planning, a will can be relatively simple to have prepared. If you are at least 18 years old, and if you are not of unsound mind, you may make a will. You must possess what is called “testamentary capacity,” that is, you must be capable of recollecting your property, the natural objects of your bounty and their claims upon you, know the business about which you are engaged and how you wish to dispose of your property. In Virginia, the signing of a will generally must be witnessed by two competent persons, who must sign the will in front of the testator. Virginia law allows you to prepare your own handwritten will, known as a “holographic” will, however, there are requirements to make this type of document valid. It is recommended that you consult an attorney to help you prepare your will because improper will planning can cause needless expense and may result in your will being invalid.

The following steps will help you in the preparation of your will, prior to meeting with an attorney:

1. List the family, friends and/or organizations to which you wish to leave property. The list should include the full names and, preferably, addresses of each recipient.

2. List all the properties you own and how they are titled. Make the list according to categories of property:
   a. Real property, such as land or home;
   b. Tangible personal property—for example, cars, household furniture, jewelry, art, etc.;
   c. Intangible personal property, such as bank accounts, stocks, and bonds;
   d. All other assets that you own, such as life insurance, jointly titled property, IRAs, annuities, pension plans, etc., so that your attorney can advise you how to have a coordinated estate plan.

3. Decide how your property will be divided among your chosen recipients. For example, you may want to have your property split equally among your children.

4. Think about whom you would like to serve as executor and/or trustee to administer your estate and distribute your assets. You may choose your surviving spouse, or in the event that your spouse is not alive or able, another family member or friend; or perhaps a bank or other corporate fiduciary, such as a trust company.

**Changing Your Will**

Just as important as completing a will and estate planning documents on a regular basis. This is especially true if and when your circumstances change significantly. For example, you may need to change your will if you move to a new state, or marry, remarry, or divorce, or if there is any other major change in your personal or financial situation.

You can change your will by making a new will or signing an amendment, known as a “codicil,” to your existing will. If you wish to revoke your previous will, you should destroy it after execution of the new one in order to avoid the confusion produced by the existence of more than one will. You should be careful not to write on a current or existing will. Erasing or marking through parts of a will may
invalidate the entire will or have other undesirable consequences. If you need to amend the will, use a codicil or have a new will drafted.

There are restrictions in changing or preparing your will. You cannot disinherit your surviving spouse unless you have a valid marital agreement allowing you to do so. When a will exists, the surviving spouse can “elect” a share of the estate, which results in the spouse receiving a share of the estate in an amount determined by Virginia law. This is called the Augmented Estate Election.

Dying Without a Will

If you die without a will, you are said to have died “intestate.” If you have not left a valid will or trust, or have not transferred your property in some other way, state law will determine how your property will be distributed. An administrator will be appointed to collect your assets, pay expenses, debts, and taxes collectible against you and your estate, pay your funeral and burial expenses, and then distribute the remainder of your possessions to persons specified under state law. If the decedent is survived by both a spouse and one or more descendants who are not descendants of the surviving spouse, then the surviving spouse is entitled to one-third of the estate, and the descendants, as provided by law, are entitled to the balance. If the decedent is survived by the surviving spouse only, or by both the surviving spouse and descendants who are also descendants of the surviving spouse, then the surviving spouse is entitled to the whole estate.

There is a common misconception that married couples do not need to create wills. When one spouse dies, the property he or she owns jointly, with the right of survivorship, will pass to that person, outside of probate. However, there may be unintended consequences due to unknown heirs or circumstances. Also, when the surviving spouse dies, problems arise because there is no longer a joint owner of the property.

Wills and Life Insurance

Life insurance policies in no way take the place of creating a will. As previously discussed, life insurance is a nonprobate asset; however, if your policy is payable to your estate after death, the proceeds will be a probate asset and will be distributed according to your will, or the laws of intestacy, if you have no will. If the policy benefits are payable to a beneficiary other than your estate, such as a spouse or other relative, your will has no effect on the distribution.

Joint Tenancy Ownership as a Will Replacement

Joint tenancy ownership is where two or more people hold title to an asset together. However, unlike other forms of joint ownership, upon the death of one of the owners the entire interest passes automatically to the surviving joint tenants. Actually, the full name for joint tenancy is Joint Tenancy with Right of Survivorship (JTWROS). Right of survivorship means that whoever dies last owns the whole property; in Virginia, the instrument creating the joint tenancy must clearly state that it is with right of survivorship. Because property in joint ownership with survivorship does not pass through probate, some people may be tempted to use joint ownership with survivorship to distribute their estates with the idea of sparing their families the expense and delay of probate proceedings. Joint ownership can complicate your affairs while you are still living, however, since control over jointly held property is limited. Joint ownership gives another person equal control over your property. Adding names to a title or deed may negatively affect your eligibility for tax credits and government benefits. Also, it may contradict your plan for division at death. Before considering joint ownership in your estate plan, you should consult your attorney for advice and assistance.
Revocable Living Trusts

A revocable trust is a document created by an individual (the “grantor” or “trustor”) for the purpose of managing the grantor’s assets. The trust agreement appoints a trustee who holds title to the trust property and performs the management of the trust. The grantor, alone or with the grantor’s spouse, typically serves as trustee of the trust as long as he or she is competent to do so. Since the trust is revocable, the grantor can change any of the trust terms or revoke the trust during his or her lifetime.

At the grantor’s death, or in the event of the grantor’s incapacity, the trust becomes irrevocable. If the grantor was serving alone as trustee, a successor trustee is appointed according to the terms of the trust agreement. The successor trustee then is responsible for distributing the trust assets, or retaining the assets in trust, as directed by the trust agreement. The assets that are held or received by the trust can remain in trust indefinitely, subject to certain tax and other limitations. Therefore, the grantor can keep a trust in place for a spouse, children, grandchildren, or great-grandchildren.

Many people prefer living trusts because the terms of the trust do not become public at the grantor’s death, and the assets held in the living trust do not pass through probate. If you are interested in using a living trust in your estate plan you should seek the advice of an attorney to draft a trust instrument that suits your particular needs and circumstances.

Estate Taxes

On January 2, 2013, the President signed the American Taxpayer Relief Act of 2012 (ATRA2012), which makes the following significant changes regarding the United States Estate and Gift Tax and the Generation-skipping Transfer Tax laws: (1) The exemption (“basic exclusion amount”) for Estate and Gift Taxes was made permanent at $5,000,000, adjusted for inflation to $5,120,000, and although the 2013 inflation adjustment has not yet taken place, it is anticipated that the 2013 inflation adjustment will bring the exemption to $5,250,000; (2) The portability provision between spouses, which allows a surviving spouse to use the predeceased spouse’s unused exclusion amount, was also made permanent. Bear in mind that the portability election must be made by the predeceased spouse’s executor in the manner prescribed by law; (3) The maximum Estate and Gift Tax rate is 40 percent; (4) The exemption for the Generation-skipping Transfer Tax remains at $5,000,000, as adjusted for inflation. Under current law, each person in the United States has a credit or exemption (basic exclusion amount) that can be used to offset federal estate tax at death, meaning that, if your estate at the time of your death is less than the exemption, no federal estate taxes will be due. In deciding whether your estate is greater than or less than the exemption, the government includes everything you own, even the face value of your life insurance policies.

Also, as discussed previously, there is an unlimited amount that can be left to a person’s spouse free of estate tax (there are special considerations and requirements if the surviving spouse is not a United States citizen). However, if a person simply leaves all the assets to his or her spouse, the benefits of estate tax planning may be lost. The estate tax planning objective for a married couple is to make sure that they receive the benefit of two exemption amounts, the exemptions of each spouse. Often, this is accomplished by creating a Family Trust (also referred to as a credit shelter trust, exemption trust, or bypass trust), which becomes effective at the death of the first spouse. Implementation of the plan requires that the couple’s financial and investment assets are appropriately titled in order to fund the Family Trust. The ATRA2012’s making each person’s basic exclusion amount $5,000,000, as adjusted for inflation, and with portability between spouses having also been made permanent by ATRA2012, estate tax planning has been made less complicated for most taxpayers.

Concerning the Virginia Estate Tax, legislation enacted by the 2006 General Assembly repealed the Virginia estate tax for the estates of decedents whose date of death occurred on or after July 1, 2007. It appears that the provisions of ATRA2012 will result in the Virginia Estate Tax not returning, unless the
Virginia General Assembly and the Governor decide otherwise. If you are concerned about estate tax planning you should consult an attorney for advice and assistance.

**SETTLING AN ESTATE/ADMINISTERING A TRUST**

**Settling an Estate**

When you qualify as an executor on a testate estate, or as an administrator on an intestate estate, the clerk of the circuit court will provide you with a set of instructions and forms regarding your duties as executor or administrator. As a public service, the Virginia Bar Association has prepared *A Guide to the Administration of Decedents’ Estates in Virginia*, which is somewhat dated, but which, as a public service, is available at http://www.hooklawcenter.com/legal_information/admin_guide.pdf. Many commissioners of accounts provide informational websites as a public service; for example, the website of the commissioner of accounts of the Henrico County Circuit Court may be found at http://www.henricocommissionerofaccounts.com. You can search online to determine whether your local commissioner of accounts has a website for the public. The following is a short list of the typical duties of an executor (some may not apply to every estate, and the duties of an administrator of an intestate estate will differ somewhat, but the instructions and forms provided by the clerk will guide you; be very careful in administering an intestate estate to identify correctly the persons who are the intestate decedent’s heirs who are entitled to the intestate estate).

1. Make an appointment with the probate clerk at the circuit court. Determine from the clerk whether witnesses to the will must attend the probate, and whether surety is required on your bond as executor. Probate the will in the circuit court and qualify as executor. Obtain certificates of qualification, which evidence your authority as executor.

2. Gather and safeguard all assets of the estate and insure that the assets are properly accounted for, and that estate funds are prudently invested during the period of estate administration. Also, you should review all fire and casualty insurance policies on any real estate in the probate estate to determine whether the limits of coverage are adequate and to determine that the policies are in force.

3. Provide notice of probate to all heirs listed on the list of heirs that was filed at the court, and to all beneficiaries under the will. This must be done within thirty days after probate.

4. Prepare and file an accurate estate inventory with the commissioner of accounts regarding the probate estate. The due date of this inventory is four months after the date of probate and qualification in the circuit court.

5. Apply to the Internal Revenue Service or a taxpayer identification number (EIN) for the estate and use it on all estate accounts and on the estate’s United States and Virginia Fiduciary Income Tax Returns. Go to the IRS website at http://www.irs.gov for instructions regarding obtaining the EIN.

6. Before paying bills, be sure to determine that the estate is not insolvent (an insolvent estate is one in which the obligations exceed the value of the assets); if the estate is insolvent, consult with an experienced estate attorney. Maintain a continuous account on all receipts and disbursements of the probate estate, and identify and satisfy the creditors, insuring that for each disbursement there are a canceled check and a sub-voucher (for example, an invoice or bill). The due date for the first accounting is sixteen months from the date of probate and qualification.

7. File United States and Virginia individual income tax returns for the decedent.

8. File the estate’s United States and Virginia Fiduciary income tax returns for each year that the estate is under administration. You may elect for the estate to be on a fiscal year basis; otherwise, it will be on a calendar year basis.
9. File the estate’s United States estate tax return if the gross estate for estate tax purposes exceeds the exemption amount for the year of death. This return, if due, will be required to be filed and the taxes, if any, paid within nine months after the date of death.

10. Have the commissioner of accounts take debts and demands against the estate. This may be done after you have prepared and submitted an interim account to the commissioner of accounts; this is a first step toward protecting yourself against unknown claims against the estate and against personal liability.

11. Have a show cause against distribution entered in the circuit court where the will was probated. This may be done after the commissioner of accounts has taken debts and demands against the estate and after six months have elapsed since the date of qualification. This is another step in protecting yourself against unknown claims against the estate and against personal liability.

12. Have an order of distribution entered in the circuit court; this may be done approximately thirty days after the show cause is entered and when you are prepared to make final distribution. This is the final step in protecting yourself against claims against the estate and against personal liability.

13. Make complete distribution of the estate to the beneficiaries, and obtain proper notarized receipts for all distributions.

14. File your final account with the commissioner of accounts.

   It is important that you, as executor, follow the terms of the will, that you not engage in any self-dealing, that you keep assets which you hold in a fiduciary capacity separate from your personal assets, and that you properly maintain your fiduciary records.

Administering a Trust

The trust of which you are trustee may be a testamentary trust (that is a trust under will), in which case you must qualify before the clerk of the circuit court and follow the forms and instructions provided to you by the clerk, or it may be an intervivos living trust under a written agreement, in which case you need not qualify before the clerk of the circuit court. Often, a person may have a will, which is coordinated with a living trust, as part of an overall estate plan. Part of the purpose of the living trust may be to avoid probate and to accomplish estate tax savings. If you are serving as trustee of a living trust, you should consult with an experienced attorney regarding your duties and responsibilities.

   It is important that you, as trustee (testamentary trust or living trust), follow the terms of the will or trust agreement, that you not engage in any self-dealing, that you keep assets which you hold in a fiduciary capacity separate from your personal assets, and that you properly maintain your fiduciary records.

Special Needs Trust

A special needs trust is created by a family member or other person for the benefit of a disabled beneficiary using the beneficiary’s own money. In order to receive distribution from the trust and also continue the beneficiary’s eligibility for government benefits such as Medicaid, a special needs trust is used to hold the beneficiary’s money. Upon the death of the beneficiary, the trust must reimburse Medicaid expenditures made on behalf of the disabled beneficiary before the trust can be disbursed to any other surviving beneficiaries of that trust or any heirs of the disabled decedent. When a special needs trust is established for a disabled individual using the disabled individual’s own funds, it is frequently the result of a lawsuit recovery or settlement, or the disabled individual is the beneficiary of an estate or an insurance policy. Based on the federal law that permits the use of special needs trusts, special needs trusts are also called “(d)(4)(A) trusts.”

Supplemental Needs Trusts
A supplemental needs trust is a trust arrangement established to protect the beneficiary’s eligibility to receive government benefits. These trusts are established by people who have no need for government benefits themselves, but wish to set up a trust for the supplemental needs of a person who does receive such government benefits.

The supplemental needs trust has been developed in answer to the challenge that many families face in not being able to afford to provide for all of the needs of a disabled child. When faced with these expenses, parents or grandparents will often utilize the services and benefits available from federal, state, and local government programs. This allows the families to maintain family resources in case government programs would no longer be available for the child. Since many government benefits are paid only to needy recipients, a benefit of the supplemental needs trust is that it provides funds to supplement (but not to supplant) the care provided by government benefits for the disabled child, and yet does not hinder the ability of the child to receive government benefits.

A supplemental needs trust can be established in a will or in a revocable living trust. Because special elements are required to establish a supplemental needs trust, it is critical to consult with an estate planning attorney experienced in this very unique area of the law.

ADVANCE DIRECTIVES
Introduction
It is important to think about the care and treatment you would or would not like to have.

Advance directive forms are available as both official state law forms and unofficial forms, to be signed in advance of your becoming unable to speak for yourself or terminally ill. It is equally important to discuss these thoughts with your family, loved ones, and health care providers. Many people do not want life-sustaining treatment, such as a respirator, while others prefer all available treatments. Discussing your ideas and documenting them in an advance directive will help you clarify them and ensure that your family and loved ones understand your preferences and can communicate them to your doctor if you are unable to do so.

The Patient Self-Determination Act is a federal law that requires hospitals, nursing homes, home health agencies, and HMOs to provide information on advance directives at the time of admission, but you should not wait until you are in need of health care to make your choices known.

An advance directive is a way to communicate your wishes about health care before you cannot speak for yourself. It may be used to designate another person to make medical decisions for you as well as to authorize or refuse certain treatments. Written advance directives may be made at any time, but oral advance directives may only be made if a person has been diagnosed with a terminal condition. Oral advance directives generally are reserved for people who are physically incapacitated and unable to make a written document.

Advance directives may be revoked at any time. Advance directives only apply when you cannot speak for yourself as determined by your doctors, because as long as you can speak for yourself, your doctor will speak directly to you about your health care choices.

The Commonwealth of Virginia has established an Advance Health Care Directive Registry on which Virginians can store in a secure way, copies of their advance health care directives and certain other documents. Go to http://www.vdh.state.va.us/administration/ahcdr/index.htm.

Types of Advance Directives
There are two types of advance directives: a health care power of attorney and a living will. In Virginia, a written advance directive may contain either type or both.

Health Care Power of Attorney