

Impaired Judgment Documents

What is a Power of Attorney?

A Power of Attorney enables you to appoint someone to act on your behalf during your lifetime regarding financial matters. Many people appoint their spouse or another trusted family member to serve as their "agent." Frequently, one or more alternate agents are named. These documents prove particularly useful if you become incapacitated. The Texas Legislature has created a form known as a Statutory Durable Power of Attorney. That instrument, under the heading of "Special Instructions," allows you to empower your agent to make gifts on your behalf. Without this specific authorization, the IRS takes the position that no gifts can be made on your behalf if you are incapacitated. Under the "Special Instructions" section, you will also be able to indicate whether you would like the person acting as your agent to be compensated for his or her services in that capacity. The form also allows you to choose an effective date for the Power of Attorney. By marking out the provision labeled "A" the Power of Attorney is effective *only* upon your disability. Many people cross out "B" (or leave the form as is), making their Powers of Attorney effective immediately (and, therefore, not limiting use of the Power of Attorney to time periods when you are incapacitated).

What are the Rights and Responsibilities of an Agent?

An agent is a "fiduciary". As a result, the agent must act with the utmost honesty in carrying out the wishes of the person who has appointed the agent to act. While a Power of Attorney may appoint an agent to serve for a limited purpose or for limited period of time, most Powers of Attorney give broad authority to the agent. Third parties are entitled to rely upon information and instructions given to them on your behalf by your agent. For example, if your agent signs a check on your account, and the bank has received a copy of the Power of Attorney from you or from the agent, the bank is entitled to honor the check as though it were signed by you. As you can see, naming someone to serve as your agent vests that person with substantial power over your financial affairs. As a result, careful thought should be given to the person or persons that you select to serve as your agent.

What is a Medical Power of Attorney?

As its name implies, a Medical Power of Attorney enables someone to act on your behalf during your lifetime regarding medical treatment decisions. Again, many people appoint their spouse or another trusted family member to serve as their "agent." One or more alternate agents are usually named. This form applies only in the event that you are incapacitated and unable to make medical treatment decisions on your own behalf. Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. Texas law requires that you read and sign an information statement attached to the Medical Power of Attorney.

What is a Directive to Physicians and Family or Surrogates?

A Directive to Physicians and Family or Surrogates (sometimes called a "Directive" or "Living Will") evidences your intentions whether to withhold or continue life sustaining treatment in the event you have an "irreversible condition" or a "terminal condition." However, if you want the agent named in your Medical Power of Attorney to control the decision to either withhold or continue life sustaining treatment, you do not need a Directive. This is because, whenever you do not have a Directive, Texas law gives this authority to the agent under your Medical Power of Attorney. If you do *not* want your Medical Power of Attorney agent to have the authority (and you want to

specify your preferences in writing), you *do* need a Directive. The Directive applies only if you are otherwise unable to communicate your wishes. It may be revoked by you at any time. An information statement attached to the Directive provides additional details as to its purpose and effect.

What is a Declaration of Guardian Before Need Arises?

The Power of Attorney, Medical Power of Attorney, and Directive are designed to give your agent (or agents) full power to act for you. In most instances, as long as you have those documents in place, there will be no need for a formal guardianship over you. However, there may be instances where a court supervised guardianship could be sought or required. The law allows you to designate in advance who you would want to be appointed to act as guardian of your person and guardian of your estate. It also allows you to specify any persons whom you would not want, under any circumstances, to act as your guardian.

What is a HIPAA Authorization?

The Health Insurance Portability and Accountability Act ("HIPAA") imposed strict laws regarding who may access your protected medical information, and it is unclear whether an authorization pursuant to a Medical Power of Attorney is sufficient. Large fines can be imposed on medical care providers who disclose your medical information in violation of HIPAA. Executing a HIPAA Authorization will more easily allow the people you list on the document to communicate with your healthcare providers and to access your medical records.