

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. 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. Most married couples 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 only to time periods when the spouse is mentally 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 a 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 gives that person 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. The information statement attached to the Directive provides additional details as to its purpose and effect.

What is a HIPAA Authorization?

Congress recently passed a law entitled the Health Insurance Portability and Accountability Act ("HIPAA") that limits disclosure of "Individually Identifiable Health Information." A HIPAA Authorization authorizes your health care providers to give your personal, protected medical information to any person(s) designated by you in the Authorization. By enabling the person(s) you have designated in a HIPAA authorization to obtain your medical information from health care providers, you would be able to discuss and obtain advice from your family and/or friends about your health care matters and your agents named in your Powers of Attorney (discussed above) would be able to obtain what they need to take care of you and your business in the event of your disability or incapacity. The Authorization becomes effective at the time you sign it and is not affected by your subsequent disability or incapacity.