

PLAN NOW TO AVOID GUARDIANSHIP

What if you are injured in such a way that you are temporarily or permanently incapacitated and can no longer act for yourself? How will your bills get paid? Who would take care of your basic medical needs? Without the proper documentation, a guardian would have to be appointed by the courts to manage your estate and person during the term of your incapacity. The attorney fees and other costs to maintain the guardianship during the term of your incapacity is expensive and can erode a large portion of your estate. If you have a Statutory Durable Power of Attorney, not only do you avoid guardianship, but you decide who will pay your bills and take care of your financial affairs on your behalf. Similarly, a Medical Power of Attorney allows you to designate who will make medical decisions on your behalf if the need arises. Finally, you can designate in your Living Will or Directive to Physicians whether you wish to discontinue life-sustaining treatment if you are incapacitated with a terminal or irreversible condition.

Statutory Durable Power of Attorney

The Statutory Durable Power of Attorney is a very powerful document designed to allow the designated person to manage your financial affairs. Unless you specifically exclude a power from the designated agent, you are essentially giving your agent access to all your financial matters. This includes the ability to write checks on your accounts, transfer real estate, and any other financial transaction within his or her power. While

your agent may have broad powers over your financial affairs, the agent must always act in your best interests or be accountable to you or your estate. Nevertheless, because you usually give your agent absolute access to your assets, your agent needs to be a person you trust completely. You should also name an agent who is financially secure in his or her own right because the temptation to access your account to satisfy their own financial burdens may be too great.

Medical Power of Attorney

The Medical Power of Attorney allows the designated person to consent to medical care on your behalf should you suffer an injury or become mentally disabled. The Medical Power of Attorney is designed to become effective if you become unable to make your own health care decisions and your physician certifies that fact in writing. This power is only effective during your incapacity, which could be from a short period of time to indefinite. For example, if you are unconscious and rushed to the hospital, the agent under your Medical Power of Attorney would make all medical decisions for you during this time. Once you regain consciousness, this power is no longer effective and you would make your own medical decisions unless you later become incapacitated. Clients typically name their spouse, parents or siblings to make these medical decisions for them. You can name your agents to act individually or jointly in any order you choose.

Living Will or Directive to Physicians

The Living Will (also known as a “Directive to Physicians and Family or Surrogates” or an “Advanced Directive”) allows you to make certain choices regarding the types of medical treatments that will be provided to

you in the event of a terminal illness or an irreversible condition, such as failure of major organs or serious brain damage. The key is you and you alone make the decision to withdraw life-sustaining treatment in your Living Will before the need arises. As such, this document is not as much for your benefit as it is for the loved ones you leave behind. Without this document, your spouse or a family member will have to make the difficult decision of whether to discontinue your life-sustaining treatment. The decision to withdraw life support is hard enough on

them, but being second-guessed by others can be overwhelming.

With proper planning, you can avoid guardianship by carefully planning your affairs while you have the capacity to do so. Once you are incapacitated in the eyes of the court, you no longer have the opportunity to execute these documents and a court appointed guardian would be your only option. A little planning now will go a long way to making sure your financial and medical needs are met if the need arises.

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