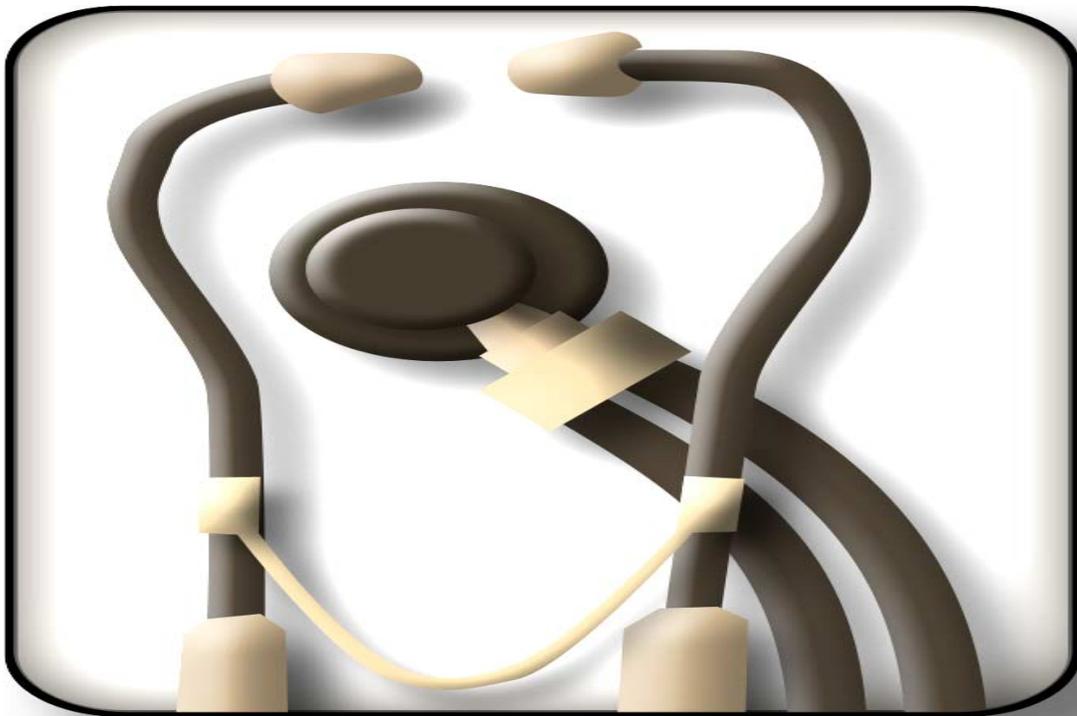


How to protect your assets and
your wishes for medical
treatment by having a durable power
of attorney for health care
and property in Illinois©

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The Self Help Legal Center

SIU School Of Law
Carbondale, IL 62901
selfhelp@siu.edu
(618) 453-3217

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Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

Look for these symbols to tell you when to:



STOP!

You need legal representation or advice to continue.



USE CAUTION!

This is a complicated step so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.



Warning to all readers



4

Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

Free sources of legal help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

For additional information, you may visit their website at

[Http://www.lollaf.org](http://www.lollaf.org)

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9200

Will County Legal Assistance

Serving Will County

815-727-5123



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

What These Legal Terms Mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

Other Options You May Have.

This section provides basic information on other advance directives and options available, listing both their pros and their cons.

Summary of the Law in This Area

This section explains the effect of a durable power of attorney and what happens if you become incapacitated without having made one.

Steps to Complete a Durable Power of Attorney

This section goes through the steps necessary to complete a durable power of attorney.

Selection of an Agent

This section discusses techniques to use when selecting an agent to carry out your wishes as evidenced by the durable power of attorney.

Who these people are



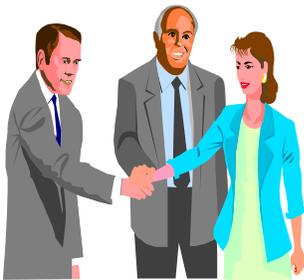
Judge:

The judge is the person who presides over the courtroom. In most cases, including divorce cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



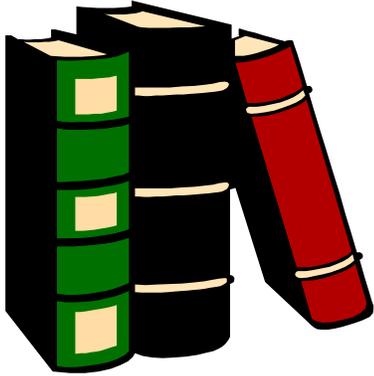
Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



Agent:

An agent is someone you choose to act for you through your Power of Attorney or Durable Power of Attorney. An agent can have broad powers or very limited powers. An agent may be used to help with finances or other assets or to assist in fulfilling your medical treatment wishes.



Disclaimer: Please Read !!



The following is a list of publications which discuss creating durable power of attorneys for health care and or property. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular book will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

The Power of Attorney Handbook

by Edward A. Haman

The Financial Power of Attorney Handbook

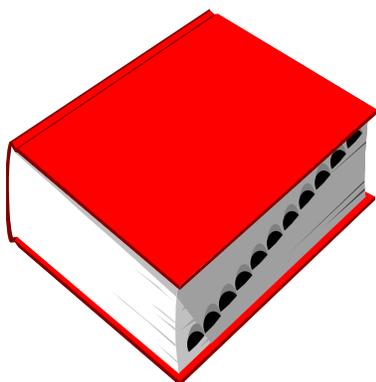
by Shae Irving

60 Minute Estate Planner

by Sandy F. Kraemer

Planning for Uncertainty: Living Wills and Other Advance Directives for Health Care

by David John Doukas, M.D. and William Reichel, M.D.



Agent

The person who is given the authority to act for the principal by the Power of Attorney (also called an attorney-in-fact in some states).

Attorney-in-fact

The person who is given the authority to act for the principal by the Power of Attorney (also called an agent in some states).

Principal

The person who signs the power of attorney and thereby gives someone the authority to act on his or her behalf.

Power of Attorney

A document which gives one person (the agent) authority to act on behalf of another person (the principal). The agent's authority is terminated if the principal becomes incapacitated.

Durable Power of Attorney (DPOA)

A power of attorney that remains valid and in effect even after the principal becomes incapacitated.

Durable Power of Attorney for Health Care

A power of attorney that applies to any kind of medical decision that might need to be made if the person is unable to communicate or otherwise incapacitated, whether or not the person is terminally ill. It permits the person to designate a decision-maker to specify the kinds of treatment you do want as well as those you do not.

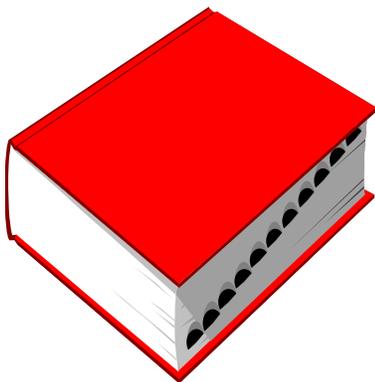
Durable Power of Attorney for Property

A power of attorney that gives the agent the authority to transact business for the principal.

Incapacitated

A person becomes unable to handle his or her own financial affairs or healthcare decisions. (also called "disabled" or "incompetent" in some states). A physician generally makes the determination of whether a person is incapacitated or not. The determination of incapacity is usually made by at least one physician.

What these legal terms mean - cont'd



Advance Directive

Another name used for a DPOA for Health Care or any oral or written statement that tells a health care professional what forms of medical care a person would accept or would refuse in a specific medical circumstance or, alternatively, who should make health care decisions if the person is unable to express his or her own wishes.

Springing Power of Attorney

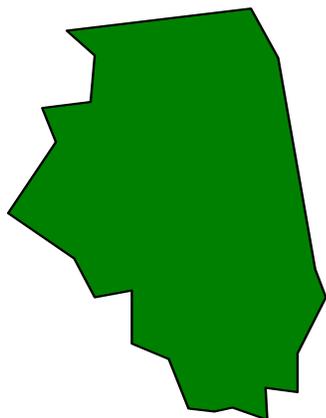
Power of attorney that does not become effective until a certain event occurs, such as the incapacity of the principal. It is used when the principal does not want the DPOA to become effective immediately, but to take effect only when he or she is determined to be incapacitated.

Patient Self-Determination Act

Act requiring hospitals receiving federal funds to advise patients of their right to sign advance directives. The medical facilities are also required to inform adult patients of their right to accept or refuse medical or surgical treatment.

Health Care Surrogate Act

Act that appoints certain family members, as determined by the statute, to act as a surrogate for a person who has become incapacitated and is unable to make health care decisions for his or herself. The person must not have a valid DPOA for Health Care or a valid Living Will in effect for this Act to apply. The surrogate is then allowed to make health care decisions for the incapacitated person.



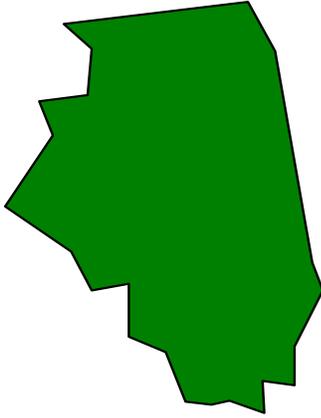
In response to advances in medical technology and increased life spans, most states, including Illinois, have advance directives. Advance directives allow individuals to select the person of their choice make decisions on their behalf if they become disabled and incapacitated. This person is called an "agent." The Illinois legislature enacted the Illinois Power of Attorney Act, 755 ILCS 45/1-1, to create two documents that allow individuals to appoint an agent to make decisions.

What is a Durable Power of Attorney?

A Durable Power of Attorney (DPOA) is a written instrument that allows a person, called the principal, to give to another person, called the agent, the power to make any decision the principal is, or will become, unable to make. Illinois law provides for two types of statutory durable powers of attorney. The first is a Power of Attorney for Healthcare. This advance healthcare directive allows you to designate a person to make medical decisions on your behalf when you are unable to do so. This power of attorney is flexible and applies in various situations. For example, a DPOA can be used to express your wishes about whether you want life-sustaining treatments, as well as under what circumstances you may want them discontinued.

The second advance directive created is a Power of Attorney for Property. This document is also flexible, allowing an individual, the principal, to permit another person to act as their agent when making decisions about their personal or real property. With an effective power of attorney, the principal can designate specific powers suited to their individual needs, including the power to make gifts, authorize real estate or stock transactions or to handle banking matters.

Summary of the law in this area - cont'd



What are the Requirements for a Durable Power of Attorney?

In Illinois, anyone who is at least 18 years of age, with legal capacity, and a resident of Illinois can create a DPOA.

The person appointed as agent must also be 18 or over. The health care power of attorney must be in writing and signed

by the principal and a witness. A property power of attorney must be in writing, signed by the principal and at least one additional witness, and also must be notarized.

Most people name a family member or close friend to act as their agent since these are the people who know them best and who will know how they handle medical or business affairs. The agent must use care when acting on a principal's behalf or he or she might be found personally liable for the negligent exercise of their powers. This means the agent must act the same as a reasonable person would in the same or similar circumstances. Also, the agent's actions must not exceed the powers provided for in the durable power of attorney.

What Happens if I Do Not Have a Durable Power of Attorney When I Become Incapacitated?

Without a DPOA, if you become incompetent, it might be necessary for someone to go to court to have a person appointed to take care of you and/or your finances. This involves the appointment of a legal guardian to take care of you or your assets or both. This court process is normally time consuming, expensive and often traumatic to the family as well as to you.

Under the Health Care Surrogate Act, if you do not have a DPOA for Health Care, the statute provides for certain family members to act as your agent to make health care decisions for you. The family members are chosen in the following order:

1. Patient's guardian of the person
2. Patient's spouse
3. Patient's adult child
4. Patient's parent
5. Patient's adult brother or sister
6. Patient's adult grandchild
7. Patient's close friend
8. Patient's guardian of the estate

However, if an Illinois resident is in a facility in another state where they have no such act, the Health Care Surrogate Act is not applicable.

For further information, refer to page 18.



When Does a DPOA Become Effective?

A DPOA can become effective at different times, depending on what you specify. If you state that your DPOA should take effect at the time you sign it, your agent may immediately make decisions for you. On the other hand, you may wish that your DPOA become effective at some future time or event. This is

called a springing power of at-

torney. For example, you may wish to have a physician make a determination of your disability before your agent can make decisions for you. A person who makes a power of attorney



effective immediately still retains the right to make their own decisions for as long as they maintain their legal capacity.

One drawback to a springing power of attorney is that the process of getting the doctor(s)' statements certifying you are incapacitated may be time-consuming.

How Long is a Durable Power of Attorney Effective?



A durable power of attorney remains in effect even after the principal becomes incapacitated. A DPOA may end, however, if one of the following happens:

- (1) you state a specific date or event of termination in your DPOA;
- (2) you revoke your DPOA in writing or orally, regardless of your physical or mental condition at the time of the revocation;
- (3) your agent is unable or refuses to serve and no alternate agent was named. (The supplement contains a form for an agent who wishes to resign.);
- (4) your spouse was your agent and you are divorced and you did not name an alternate agent; or
- (5) you die.



How Do I Revoke My DPOA?

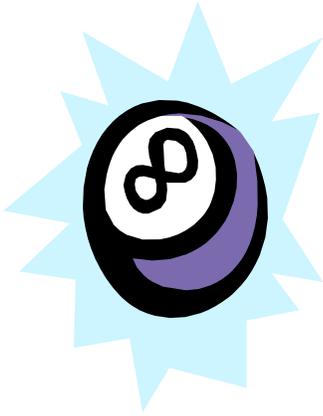


You can revoke your DPOA at any time, regardless of your mental or physical condition, by any of the following methods:

- (1) By obliterating, burning, tearing or otherwise destroying or defacing in a manner indicating intention to revoke;
- (2) You, or a person acting at your direction can prepare, sign, and date a written revocation.
- (3) By an oral expression or some other kind of expression of the intent to revoke your DPOA. This must be done in the presence of a witness 18 years of age or older. Then, he/she must sign and dates a writing confirming that your expression of intent was made.

**** It is important that your agent is informed that they no longer have the authority to act for you. Also inform anyone who dealt with or might deal with your agent that your agent no longer has the authority to act for you. If you do not do so and someone enters into a transaction with your former agent in good faith, you might be held legally liable.**

Steps to Complete the DPOA



Step 1. A DPOA for Health Care and a DPOA for Property are included in the supplement to this packet. Choose which form you want to use - health care or property. Most people need to complete both forms to ensure that all decisions can be made for them if they become incapacitated.

Suggestion: Meet with your physician to discuss the use or refusal of life-sustaining medical treatment and the effects of signing the durable power of attorney for health care and any other questions you might have.

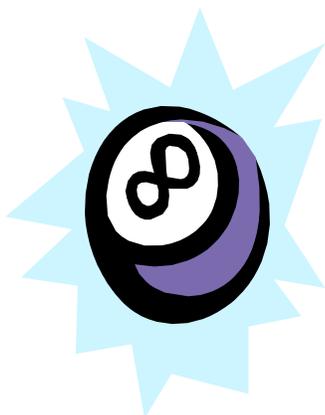
Step 2. Speak with the person you want as your agent. Be sure that the person understands the significance of the role before he or she agrees to serve. Discuss your health care wishes including the circumstances under which you would or would not consent to the use of feeding tubes and other life-sustaining treatment. Discuss your assets and finances with the agent so he or she understands how you conduct your business and financial affairs.

Step 3. Name an alternative agent or agents in case the original agent becomes unavailable or unwilling to serve.

Step 4. Review the form and make modifications to reflect your wishes. Fill out the form and sign it in the presence of a witness, who also signs the form. Do not have your agent or alternative agent sign as the witness. For the DPOA for Property, sign the document in the presence of a notary public.

Step 5. Make copies of the DPOA & give one to your doctor (if it is for health care), one to your agent(s) and one to any other person you want to have this information. Keep the original in a safe and accessible place.

Step 6. Keep your DPOA current. If anything changes with regard to your wishes or choice of agent, make sure to modify your DPOA to reflect the change(s) and give updated copies to anyone who has the outdated form.



Selecting an Agent

Select an adult who you think would best represent your values and preferences regarding medical treatment and who is well acquainted with your values and preferences. This person should be able to weigh the special circumstances of the situation and the choices available and make a decision.

Most people select a close family member or friend. Be sure that the person you choose is trustworthy, responsible, will carry out your wishes and is qualified to handle your assets for you.

If you are married, you should consider naming your spouse. If your spouse is ill, elderly or simply not willing to act as your agent, you should choose your agent with your spouse's help to avoid future conflicts or problems with decision-making and/or property and asset management.

Some characteristics to look for when choosing an agent:

1. Someone you trust completely;
2. Someone who can weigh the specific circumstances of the situation and the choices available and make a rational decision;
3. Someone who will likely be present when the decisions need to be made;
4. Someone who will not be easily swayed or bullied by doctors or family members who disagree with your wishes;
5. Someone who is capable of understanding your medical condition and any proposed life-prolonging measures; and
6. Someone who understands your financial affairs and is capable of handling your assets.

Different Agents for Different DPOAs

You might want to consider naming a different agent for your DPOA for Health Care than the one you named for your DPOA for Property . Since the responsibilities of the agent differs with the type of DPOA, it might be appropriate to name the person with the best business ability for the Property DPOA and the person who knows you the most and who you trust the most for the Health Care DPOA.

6 other options you may have

Option 1: Do Nothing.

If you do not have a DPOA, your health care will be decided by the HCSA.

Health Care Surrogate Act

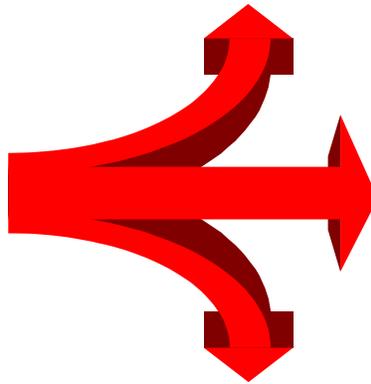
The HCSA becomes effective if a person becomes incapacitated and does not have a valid DPOA for Health

Care or Living Will. Under the Act, a family member or friend, as determined by the statute, is chosen to act as your decision maker for future health care treatment decisions. The family member is chosen in the following order:

1. patient's guardian of the person
2. patient's spouse
3. patient's adult child
4. patient's parent
5. patient's adult brother or sister
6. patient's adult grandchild
7. patient's close friend
8. patient's guardian of the estate

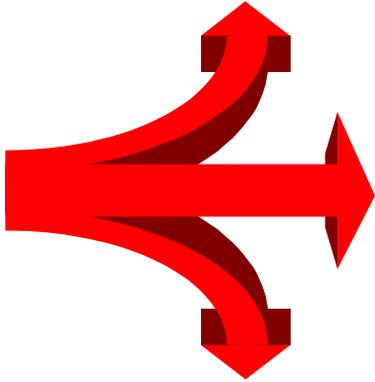
If there is more than one person at a certain level, all of the persons in that level can act as the surrogate. For example, if 2 or more persons in the same level disagree as to a health care matter, then the decision of the majority of persons at that level or that of the custodial parent controls. If there is more than one person at the same level, some may decline to exercise their authority and defer to another's action as surrogate.

The HCSA provides coverage for persons without a Living Will or DPOA for Health Care. It doesn't guarantee that the person you would have chosen as your health care agent becomes your health care surrogate. Thus, it is very important to have a DPOA for Health Care to guarantee that the person you want is making your health care decisions.



Option 2: Get a Guardianship

A guardian is a person appointed by the court to take care of another person who has been deemed unable to make decisions for himself or herself. A guardian may be given authority to make all kinds of decisions or his/her authority may be limited by the court to a specific area. Before a person can have a guardian, the court must determine that the person has become incompetent to handle some or all of his or her affairs.



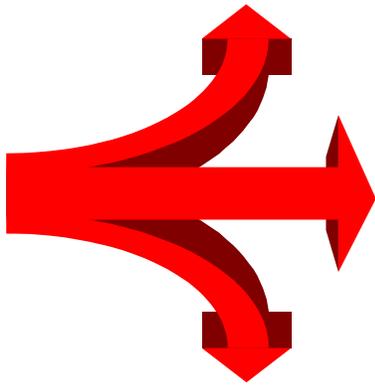
Disadvantages of a Guardianship:

Several factors weigh against guardianships.

Guardianships can be complicated, expensive (lawyers are usually necessary) and embarrassing (because family members must ask the court to rule that you cannot take care of your own affairs and the proceeding is a matter of public record). In addition, there is no guarantee that the judge will appoint the person you might have chosen for the job. Guardians are entitled to payment for their services so an unscrupulous person could pay him or herself handsomely for less than dedicated service and a guardianship may be ended only by the court. Finally, guardians usually must post a bond and get court approval for certain transactions. In addition, they usually have to prepare detailed financial reports and periodically file them with the court.

Advantages of a Guardianship:

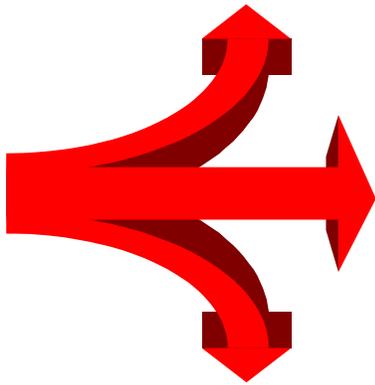
The work of a guardian is subject to court scrutiny and supervision. In some situations, the involvement of the court might be beneficial.



Option 3: Putting Property in Joint Tenancy

Joint tenancy is a way for more than one person to own property together. Generally, when one owner dies, the other owner automatically receives the deceased person's share of the property. This is why a lot of people put property in joint tenancy because once they die, the other party can own the property outright without having to go through a will or probate. There are, however, disadvantages to this. If one owner simply becomes incapacitated, however, the other owner has very limited authority over his or her share of the joint tenancy property (for example, they will possess no legal authority to sell or refinance the incapacitated owner's share). Thus, the other owner will need someone with legal authority to act on the behalf of the incapacitated owner.

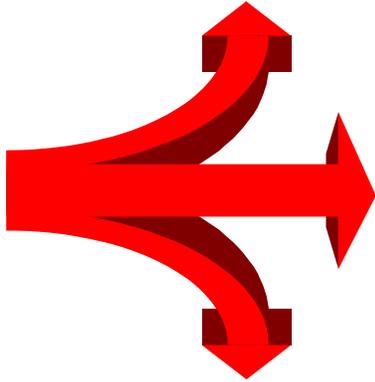
In addition, as long as any joint tenant is alive, he or she can terminate the joint tenancy simply by selling his or her share, whether or not the other owner's consent to it. But a person cannot leave (by will or otherwise) their interest in a joint tenancy property to anyone other than another joint tenant. Furthermore, creditors may go after any joint tenant's interest (but not the others' interest) which might require a court order demanding the property be sold to reach the debtor's share.



Option 4: Living (or Inter Vivos) Trust

A trust is a legal document that controls the use of property and assets placed in the trust. It is advantageous in that it is not made public at your death (as wills are) and you can revise, amend or revoke it at any time prior to your death as long as you are mentally competent. In addition, it is extremely flexible because you can use it to transfer all of your property or only some of it. The trustee (the person you choose to manage your trust) can also, in most cases, take over management of the trust property if you become incapacitated. The disadvantage, however, is that it only governs property specifically placed within the trust. Therefore, the trustee would have no control over property the trust does not own. Setting up trusts is complicated and requires consultation with an attorney who is familiar with the process. In addition, setting up and managing trusts can be expensive.

Option 5: Living Will

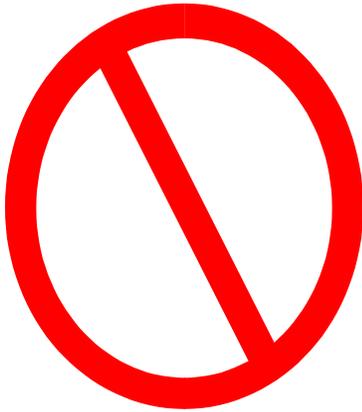


A living will is a declaration or statement allowing a person to direct that life-sustaining medical treatment be withdrawn or withheld in the future if the person is terminally ill and no longer able to make decisions. The

document speaks directly to medical personnel, thus, it allows the person to articulate his or her preferences directly instead of using an agent. Living wills are now recognized in nearly all of the states and nearly all of them also have a statutory form to create one.

The living will is designed to allow a person to refuse life-sustaining treatment if he becomes terminally ill. It does not replace the need for a durable power of attorney for health care because it would be virtually impossible to anticipate all possible medical situations that could arise. Presently, the living will only pertains to situations involving a terminal illness or, in some states, a persistent vegetative condition. In addition, some states will not allow a living will to be used to terminate life-sustaining nutrition and hydration.

One way to completely protect yourself would be to create both a Living Will and a Durable Power of Attorney for Health Care. However, the living will would only be operative if your agent and any successor agents are unavailable. If only one method is utilized, however, it is best to do a Durable Power of Attorney for Health Care.



I don't have to think about this until I get older or become ill.

You never know when you suddenly will be unable to speak for yourself. Illness or accidents can happen to anyone at any time. If you do not have the mental capacity to make the necessary decisions when the time comes, you abrogate the decision to the doctors, courts and others who may take steps that are the opposite of what you would want.

My spouse can take care of everything if I become incapacitated.

Generally, spouses do not have the legal authority to sign the other spouse's name or make medical or other decisions for a disabled spouse. Spouses can only deal with property and assets held jointly with you.

It's no big deal if I do not make a DPOA for Health Care.

Not making a DPOA may jeopardize your ability to be treated in the manner of your choosing if you should some day be unable to speak for yourself. As a result, you may be subjected to medical treatments that you did not want or health care decisions being made by someone you would not have selected. It also may put your loved ones in the difficult position of selecting treatment for you based on their guesses about what you would choose.

I do not need a DPOA for Health Care if I already have a Living Trust.

The trustee of your living trust cannot make health care decisions for you. The trustee only manages assets in the trust according to the trust terms. You still need a DPOA for Health Care.

I do not need a DPOA for Property if I already have a Living Trust.

The trustee of your living trust can only deal with assets in the trust. If you receive income or have other assets not in the trust, you will need a DPOA for Property to ensure that these are properly handled.



Get help if you need it

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, then doing your own durable power of attorney may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if doing your own durable power of attorney proves to be too difficult a task for you, talk to an attorney.

The time to designate a Power of Attorney

The best time for you to create a Power of Attorney is right now, long before you anticipate anything happening to you. This will ensure that if you are ever in a situation where you need an agent, you will have one.



Other things to Consider



Before executing your Durable Power of Attorney for Health Care, you should talk to the person who you want to be your agent and review your wishes for the types of medical treatment you choose to receive.

Be careful not to provide your agent with powers that are too broad (may be subject to abuse of misinterpretation) or too confined (could make it impossible for the agent to act).

It is advisable for you to specify one or more successor agents to act in your behalf in case the primary agent is unavailable, unable or unwilling to act in your behalf should it become necessary. As with your primary agent, the primary consideration should be that the individuals appointed are people in whom you have a great deal of trust and can rely upon to act according to your interests and value. Your Power of Attorney document should also state the duties, limitations, immunities and other terms applicable to your agent.