

IT'S YOUR ESTATE/MONEY WORKSHOPS

Power of Attorney over Assets,
Advanced Health Care Directives, and
Conservatorships
DONNA R. BASHAW, ESQ.

Planning for Incapacity

- Durable Power of Attorney for Finances
- Advanced Health Care Directives
- Conservatorships

Power of Attorney for Finances

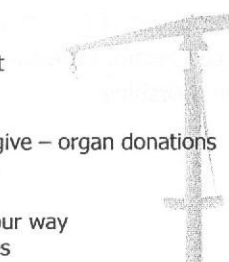
- Purpose
- Durable vs. non durable
- General vs. limited
- Immediate vs. springing

- Forms
 - Printed
 - Statutory
 - Attorney drafted
 - Combination

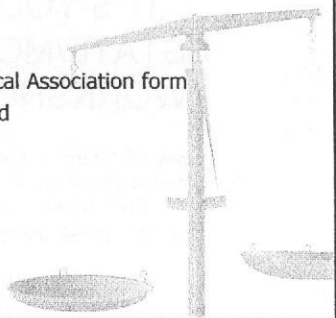
- Choosing an agent
 - Spouse, adult children, relative, friend
 - Professional advisor, professional fiduciary, corporate
 - Multiple agents
 - Different agents for different tasks
 - Successor agents

- Misc.
 - Execution
 - When to record
 - Getting it accepted
 - Termination/Revocation
 - Misuse of the document

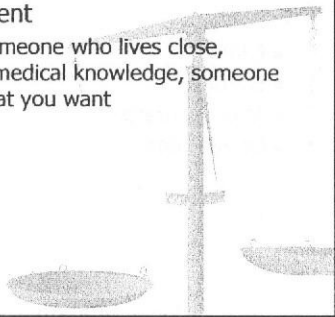
Advanced Health Care Directives

- Purpose
 - Forms
 - Choosing an agent
 - End of life issues
 - HIPAA
 - To give or not to give – organ donations
 - Burial Instructions
 - Execution
 - HELP – doing it your way
 - Hospital surrogates
- 

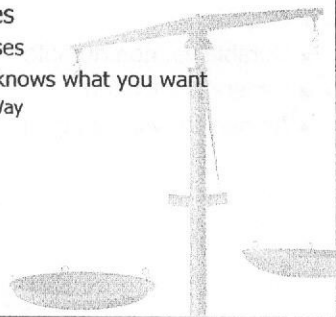
■ Forms

- Statutory form
 - California Medical Association form
 - Attorney drafted
 - Combination
- 

■ Choosing an agent

- Oldest child, someone who lives close, someone with medical knowledge, someone who will do what you want
- 

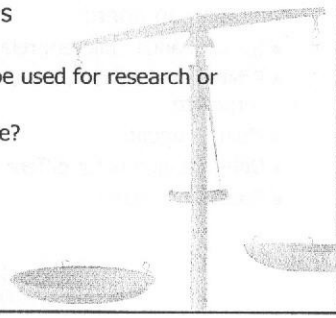
■ End of life issues

- Well known cases
 - Be sure agent knows what you want
 - HELP – Your Way
- 

■ HIPAA

- Is the release necessary?
- 

■ Organ donations

- Am I too old?
 - May my body be used for research or education?
 - Will it cost more?
- 

- Burial instructions
 - In health care directive not will
 - Agent has authority to dispose of body

- Execution
 - Notarization
 - Witnessing
 - Skilled nursing facilities - ombudsman

- Healthcare and Elder Law Programs Corp.
HELP
Your Way – to help you communicate with family and friends so that if they ever have to make medical care decisions for you, your voice will be heard.

- Registering
 - State
 - DocuBank

- Hospital surrogates
 - Oral appointment
 - For one hospital stay only

- Do Not Resuscitate Order
 - Signed by doctor
 - Must have if 911 called or will resuscitate

CONSERVATORSHIPS

- A court procedure that gives an individual or individuals the authority to act for or in behalf of an incapacitated person.
- When needed?
- Three types (each may be for person and/or estate):
 - Probate conservatorship
 - Limited conservatorship
 - LPS conservatorship

- Conservatorship of the person
 - May be appointed for a person who is unable to provide properly for his personal needs for health, food, clothing, or shelter

- Conservator of the estate
 - May be appointed for a person who is substantially unable to manage his own financial resources or to resist fraud or undue influence.

- Conservatees with dementia
 - Special powers:
 - To place in a facility with a secured perimeter
 - To give authority for psychotropic medications

- Who should be the conservator?
 - Family member
 - Professional fiduciary
 - Public Guardian
 - Did the conservatee nominate someone?

- Cost
- Commitment
- Court involvement

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Protect Yourself Elder Law

Helping People Meet Aging-Related Legal and Care Challenges

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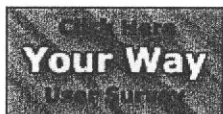
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AUTHORITY TO INSPECT/ RELEASE MEDICAL INFORMATION:

I, _____, authorize that my agent(s): _____ shall be my personal representative under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As such, my agent has the same rights to inspect and obtain copies of any medical or other health information as I would have. My agent also has the right to authorize disclosure of my patient records and other medical or health information subject to and protected under HIPAA. Pursuant to the California Confidentiality of Medical Information Act (CMIA) and California Probate Code §4678, my agent has the same rights to request, receive, examine, copy and consent to the disclosure of my medical or other health care information as I would have. This authority applies to any individually identifiable health or medical information, health care information or other medical records governed by HIPAA, CMIA or California Probate Code §4678.

(Signature)

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

On _____, 2004, before me, _____, Notary Public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(This space reserved for official notarial seal.).