

# Advance Health Care Directives and Powers of Attorney



Presented by:

**Kaylee K. Sauvey, Esq.**  
8951 Research Drive, First Floor  
Irvine, California 92618

[kaylee@sauveylaw.com](mailto:kaylee@sauveylaw.com) (email)

(949) 418-9923 (tel)



The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the left and right sides of the frame, leaving a large white central area for text.

Designed to help you  
plan for incapacity

# What is the difference?

## Advance Health Care Directive (“ACHD”)

- ▶ Power to make medical decisions
- ▶ Power to direct funerary arrangements and “disposition of remains”
  - ▶ Even above a surviving spouse, if different
- ▶ Survives the death of the principal

## Durable Power of Attorney (“DPOA”)

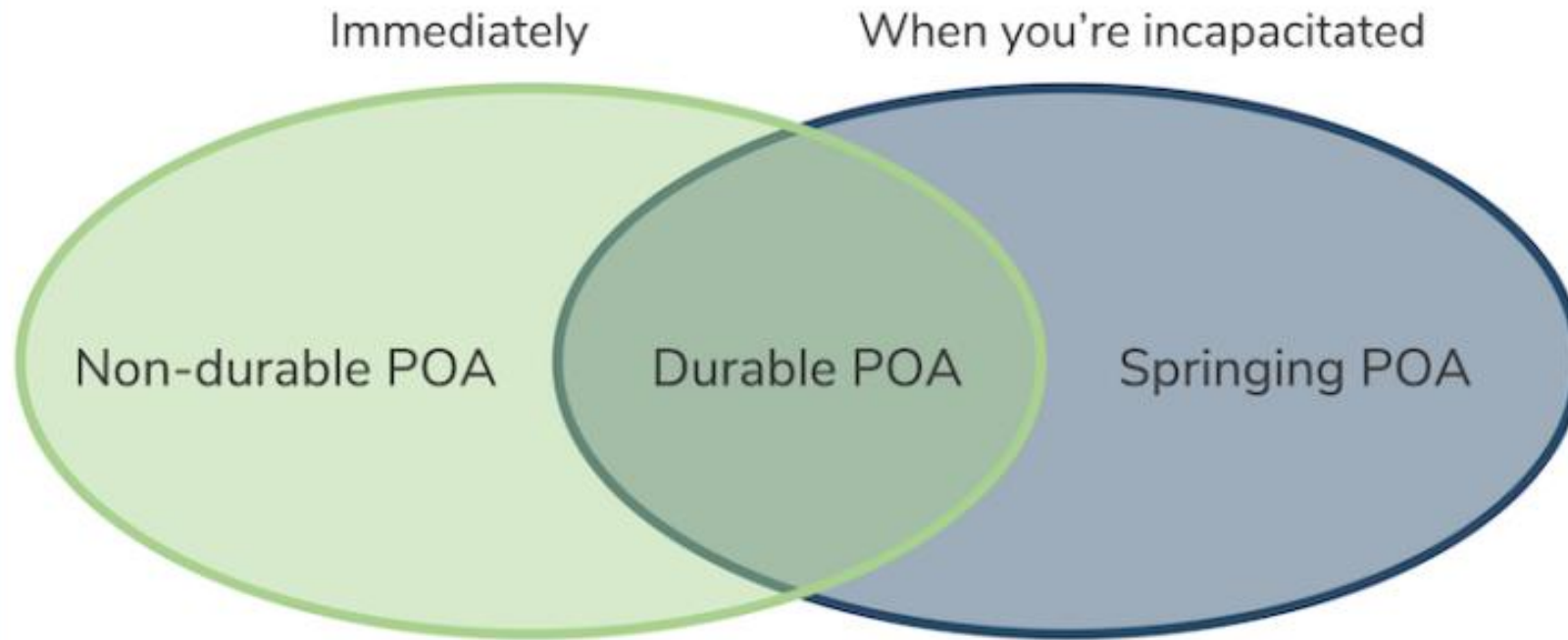
- ▶ Power to make financial decisions
- ▶ Agent controls only the assets in your name individually
  - ▶ Agent does not control any assets in your trust
- ▶ Expires on death of the principal

# POWERS OF ATTORNEY

# Types of Powers of Attorney

- ▶ Durable Power of attorney = effective after incapacity
- ▶ Non-Durable Power of Attorney = authority expires on your incapacity
  - ▶ Limited POA - limited to a specific purpose
- ▶ “Springing” Durable Power of Attorney
  - ▶ It “springs” into effect on your incapacity
  - ▶ Incapacity is measured by two doctors opining in writing that you lack capacity to manage your financial affairs.
- ▶ Uniform Statutory Power of Attorney
  - ▶ Form found in the Probate Code
  - ▶ Not very detailed

# When can your agent make decisions for you under your POA?



When you die, any type of POA you have will be null and void.

FREEWILL 

# Uniform Statutory POA Powers

- A. Real property transactions
- B. Tangible personal property transactions
- C. Stock and bond transactions
- D. Commodity and option transactions
- E. Banking and other financial institution transactions
- F. Business operating transactions
- G. Insurance and annuity transactions
- H. Estate, trust, and other beneficiary transactions
- I. Claims and litigation
- J. Personal and family maintenance
- K. Benefits from social security, Medicare, Medicaid, or other governmental programs, or civil or military service
- L. Retirement plan transactions
- M. Tax matters
- N. ALL OF THE POWERS LISTED ABOVE

# Sample Comparison of Language

## Uniform Statutory POA

“Tangible personal property transactions”

## POA (drafted by Sauvey Law)

“To manage my tangible personal property, including but not limited to moving, storing, selling, donating, or otherwise disposing of this property.”



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# ADVANCE HEALTH CARE DIRECTIVES

# What is included in an AHCD?

- ▶ Whether the doctors should give or withhold life-sustaining treatment
- ▶ Whether you are or would like to be an organ/tissue donor
- ▶ Whether you would like your agent's authority to be effective immediately
- ▶ Specific plans for your funeral, cremation, or burial
  - ▶ This is where you will include information about burial plots already purchased, cremation arrangements made, or specific preferences for funeral
  - ▶ If you are religious or have certain cultural preferences for disposition, you can include requests for observation of specific rituals or customs

## AHCD: Expiration Dates

- ▶ Powers of Attorney for Health Care (“PAHC”) signed before January 1, 1992 expired seven (7) years from date of execution.
- ▶ PAHCs and AHCDs executed after January 1, 1992 are do not have an expiration date unless specifically assigned.

# CONSERVATORSHIPS

# What is a conservatorship?

- ▶ A conservatorship is essentially a guardianship for an adult who cannot make his or her own medical or financial decisions.
- ▶ Conservator of the Person may be appointed for someone who is “Unable to provide for his or her needs for physical health, food, clothing, and shelter.”
- ▶ Conservator of the Estate may be appointed for someone who is “substantially unable to manage his or her own financial affairs or to resist fraud or undue influence.”

# Facts about Conservatorships

- ▶ It can cost as much as \$10,000 to establish a conservatorship.
  - ▶ This amount does not include ongoing administrative costs.
- ▶ Conservatorships are heavily scrutinized by the court.
- ▶ No privacy - much of your medical and financial information is public record and can be accessed by anyone.

# Fees in Conservatorships

- ▶ Conservator can have his or her attorney fees paid from the Conservatee's funds
- ▶ Conservatee will be assigned an attorney at the outset
- ▶ Conservatee's counsel will also be paid from Conservatee's funds
- ▶ Expenses of administration are paid from Conservatee's funds
- ▶ Litigation between family members increases all costs dramatically

# How can I avoid conservatorship?

- ▶ Planning is key!
- ▶ Talk with an attorney and create an estate plan
  - ▶ Including a trust, a power of attorney, and advance health care directive
- ▶ Ensure that any existing plan you have is current
- ▶ Try to include agents who have a high likelihood of being alive when you will eventually need them to act
  - ▶ Try nominating Private Professional Fiduciaries





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[www.sauveylaw.com](http://www.sauveylaw.com)

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