

Health Care & Powers of Attorney

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Agenda

Capacity

- Overview
- Benefits
- Components

Advanced Health Care Directive

- Overview
- Types
- Requirements /
Witnesses

Power of Attorney

- Overview
- Benefits
- Selecting your
agent

Conservatorships

- Probate, Limited,
LPS
- Conservatee to
Conservator

Capacity of Principal

THE BENEFITS OF HAVING ONE

INCAPACITY

Avoids Conservatorship

FINANCIAL POWER OF
ATTORNEY

Agent / Attorney in fact

ADVANCED HEALTH CARE
DIRECTIVE

Health Care Agent

HIPAA AUTHORIZATION

VARYING DEGREES

- Contractual
- Medical Decision Making
- Testamentary
- Marriage

- Rarely an “all or nothing” condition
- May depend on location, time, or environment
- May be transient

Advanced Health Care Directive (AHCD)

What is it?

A special plan you make for your medical care when you can't make decisions for yourself. It's a legal paper that tells doctors and your family what kind of medical treatments you want or don't want if you get very sick or can't talk about it.

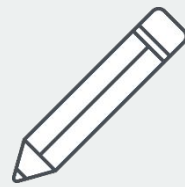
Why is it important?

Helps ensure that your wishes about things like life support, surgeries, or other treatments are known and followed, even if you can't say them yourself.

Objective

It's a way to have control over your own health care, even when you're not able to express your choices.

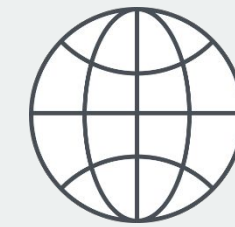
Types of AHCD Forms



Statutory



Printed



Attorney Drafted

Created and provided by state laws

May not cover every unique situation

Can come from variety of sources, including healthcare organizations, insurance companies, or legal self help books

May not cater to specific individual preference

Created by legal professionals

Involved legal fees, making it more expensive than using statutory or printed forms

Advanced Health Care Directive (AHCD)

MUST SATISFY ALL OF THE FOLLOWING

REQUIREMENTS

- Dated as of execution
- Signed by either the principal or in the principal's name by another adult in the principal's presence and at their direction
- Acknowledged before a notary public or signed by two qualified witnesses

WITNESS LIMITATIONS

- Patient's health care provider or an employee of the patient's health care provider
- Operator or an employee of a community care facility
- Operator or an employee of a residential care facility for the elderly

Ex. Disposition of the body

Some powers continue after the death of the principal (unless the principal limits it)



Power to dispose of the principal's remains



Power to authorize an autopsy



Power to donate all or part of the body for transplantation, education, or research purposes



Burial instructions

Notes

▶ HIPAA Concerns

- Most documents executed after 1996 have HIPAA releases

Gifts of fractionalized LP and LLC interests in assets

Power of Attorney (POA)

What is it?

Legal paper that says this person can make decisions for you, like handling your money, paying bills, or making legal choices, if you become sick or can't make those decisions.

Why is it important?

Giving someone you trust a special job to help you with important things when you can't do them yourself.

Objective

Continues to work even if you're not well or can't make decisions, and it's a way to make sure your affairs are taken care of by someone you choose and trust.

Durable Power of Attorney (DPOA)

BENEFITS

- Ensuring continuity of financial and medical decisions in case of incapacity.
- Avoiding costly and time-consuming guardianship proceedings.
- Customizable to meet individual needs and preferences.

CONSIDERATIONS

- Selecting a trustworthy agent.
- Establishing clear guidelines and limitations.
- Legal requirements and state-specific regulations.

Types of DPOA and Responsibilities

GENERAL DPOA

Powers granted for broad
financial decisions

LIMITED / SPECIAL DPOA

Powers restricted to specific
tasks

HEALTH CARE DPOA

Authority over medical
decisions



Agent's role:

The person granted authority
(agent) and their fiduciary
duties.



Principal's Rights:

The person granting
authority (principal) and
their rights and limitations.

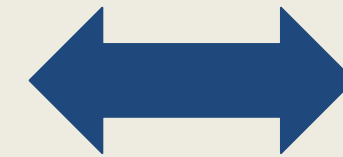


DURABLE

Remains in effect even if
the principal becomes
incapacitated

NON-DURABLE

Only valid while the
principal is mentally
capable and able to make
decisions

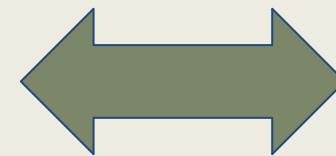


IMMEDIATE

Becomes active as soon
as it's signed

SPRINGING

Becomes active at a
future date or when a
specific condition is met



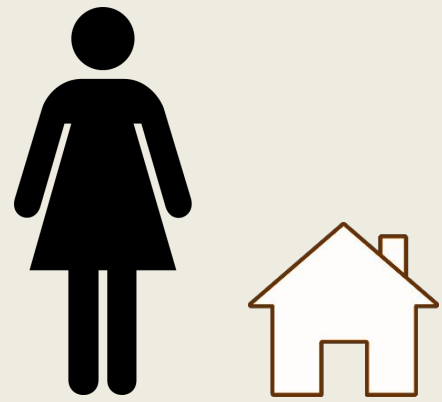
GENERAL

Principal gives agent
broad and
comprehensive authority

LIMITED

Grants agent for specific
transactions

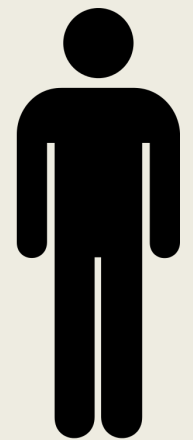
Selecting an Agent



**SPOUSE, ADULT
CHILDREN, RELATIVES**

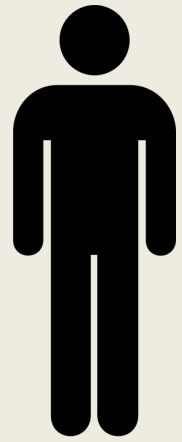


FRIEND
(Beware of Probate Code §
21380)



**PROFESSIONAL
ADVISOR**

POWER OF ATTORNEY



SPOUSE, ADULT
CHILDREN, RELATIVES



FRIEND

(Beware of Probate Code § 21380)



PROFESSIONAL ADVISOR

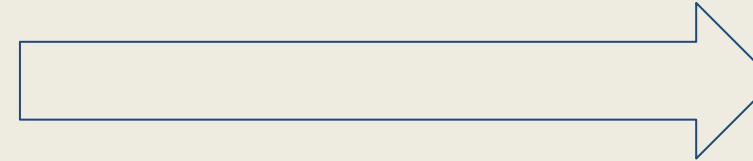
Termination of Principal:

- ▶ Revocation by Principal
- ▶ Expiration as per instrument
- ▶ Agent's death
- ▶ Agent's resignation
- ▶ Agent's incapacity to Act
- ▶ Dissolution or Annulment
- ▶ Principal's incapacity (if non-durable)
- ▶ Principal's Death
- ▶ Revocation by Court

Conservatorships



CONSERVATEE



CONSERVATOR

PROBATE

Court-appointed conservator managing the personal and/or financial affairs of an individual who is unable to make decisions due to factors like old age, disability, or mental illness, typically without their consent.

LIMITED

Specifically designed for individuals with developmental disabilities or intellectual impairments, allowing for a conservator to assist with decision-making while maximizing the conservatee's independence and self-determination.

LPS

Applies to individuals with serious mental health issues who may be a danger to themselves or others. It grants a conservator the authority to make mental health treatment decisions on their behalf, with a focus on treatment and safety.

Conservatorship of Person



- ▶ Conservatee is unable to properly provide for his personal needs
- ▶ Conservator is responsible for choices regarding conservatee's healthcare, living arrangements, and personal care
- ▶ Has authority to consent for Medical Treatment
- ▶ Agent under AHCD has priority over conservator



Conservatorship of Estate

- ▶ Conservatee is substantially unable to manage his financial affairs
- ▶ Conservator handles the conservatee's finances, assets, bills, and investments
- ▶ Primarily deals with money and property management, not personal care

THANK YOU



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