

Powers of Attorney for Finances and Health Care

1

Teresa Gorman, Fiduciary Real Estate Services, Certified Trust & Estate Attorney

TODAY'S DISCUSSION

2

- Discuss how Powers of Attorney fit into your Estate Plan
- Discuss considerations when selecting your Agents
- Discuss options to express wishes
- Discuss how to properly sign the Documents
- Discuss what the documents do not do

Estate Planning Purpose: Twofold

3

Goals at Death

- Save Fees
- Save Taxes
- Control Beneficiaries/Distribution
- Save Time
- Avoid Litigation

Goals During Life

- Expresses End-Of-Life Decisions
- Name Agent to Act in your Stead
- Long-Term Care Decisions
- HIPPA Release

Death and Incapacity

4



Estate Planning Documents

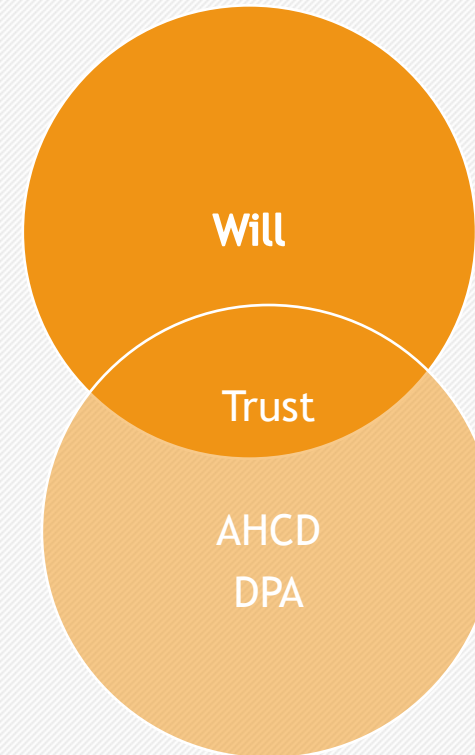
5

Death

- Will
- Trust

Incapacity

- Trust
- Advance Health Care Directive
- Durable Power of Attorney



The Role of a Financial Power of Attorney ONLY to Handle Assets & Other Financial Matters in Your INDIVIDUAL NAME

6



GENERALLY Will NOT be effective for Assets or Liabilities held in the name of a TRUST

Why Whether you Have a Trust or Not... You Need a Durable Power of Attorney

7

Without a properly executed financial Power of Attorney, your family may be forced to go to court — a process that can take months and cost thousands of dollars.

Imagine the Scenario!!!


You are hospitalized unexpectedly and cannot pay your mortgage, access your bank accounts, or manage your investments. Who steps in? Without a Power of Attorney, no one has the automatic legal right to manage your finances — not even your spouse in many cases.


California Recognizes Four Distinct Types of Financial Power of Attorney

California law recognizes four primary types of financial POA, each designed for different situations and offering different levels of authority and duration.

Type	When It's Active	When It Ends	Best Used For
General POA	Immediately upon signing	Upon Principal's incapacity incapacity or death	Short-term, specific financial needs
Durable POA	Immediately upon signing	Only upon Principal's death death (or revocation)	Long-term incapacity planning
Springing POA	Only upon a triggering event (usually incapacity)	Upon Principal's death (or revocation)	Those who want control until incapacity
Limited / Special POA	Immediately or on a set date	When the specific task is complete or date passes	Single transactions (e.g., real estate sale)

A Springing POA Offers Control — But Can Create Dangerous Delays

 A **Springing POA** is a type of Durable POA that does not become effective until a specific triggering event occurs — almost always the **Principal's formal declaration of incapacity**.

 The document must clearly define what constitutes incapacity. Typically, it requires a **written determination from one or two licensed physicians** stating the Principal can no longer manage financial affairs.



Legal Reality: Both springing and immediately effective DPOAs are legally identical under California law (§4124). Banks that treat them differently are legally incorrect, though this confusion is common.

The Advantage






The Principal retains complete control until incapacity is formally established, providing peace of mind for those uncomfortable granting immediate authority to an Agent.

The Disadvantage

When urgent financial decisions must be made, the Agent may face significant hurdles — obtaining physician letters, convincing banks to accept the document, and navigating institutional skepticism.

Some Powers Are Never Assumed — They Must Be Explicitly Granted

Under California Probate Code §4264, the following acts require **express, specific language** in the POA document and are **never implied** by general authority language:

-  Creating, modifying, revoking, or terminating a **trust**
-  Making or revoking a **gift** of the Principal's property
-  Changing **beneficiary designations** on accounts or insurance
-  Creating or changing **rights of survivorship**
-  **Delegating** the Agent's authority to another person

Critical Warning **Warning**

California's standard Uniform Statutory Form POA (§4401) does **NOT** automatically include trust amendment powers.

If you have a living trust, your POA must explicitly grant trust-related authority — or your Agent cannot touch the trust even in an emergency.

California Provides a Standard Form — But It May Not Be Enough

California Probate Code §§4400–4465 (the [Uniform Statutory Form Power of Attorney Act](#)) provides a standardized POA form that any resident can use. It lists specific powers the Principal can check off, including banking, real estate, stocks, business operations, and tax matters.

Advantages of the Statutory Form

- ✓ Widely recognized by banks and financial institutions
- ✓ Includes durability language automatically
- ✓ Available free from the California courts website

Limitations of the Statutory Form

- ✗ Does NOT automatically include trust amendment powers (§4264)
- ✗ May not address unique assets or complex financial situations
- ✗ One-size-fits-all language may not reflect the Principal's specific wishes



For most people with a living trust, business interests, or complex assets, a custom-drafted POA prepared by an attorney is strongly recommended.

Five Common Mistakes to Avoid

1 Using the Wrong Type of POA

POA

Relying on a General POA for incapacity planning. Without the specific **durability language** (§4124), the document becomes useless exactly when you need it most.

2 Assuming Trust Powers Are Included

Failing to explicitly grant authority to interact with your Living Trust. The standard statutory form does **not** automatically allow the Agent to fund or amend a trust.

3 Naming Co-Agents Who Must Act Jointly

Requiring two Agents to agree on every decision creates a high risk of **deadlock and delay**. It is much safer to name one primary Agent and one successor.

4 Failing to Update the Document

Document

Life changes. If your named Agent moves away, becomes ill, or passes away, an outdated POA with no living successor will force your family into Conservatorship.

5 Hiding the Original Document

Document

Banks and real estate title companies often require **the original, wet-signed document**. If your Agent cannot find it in an emergency, they cannot act on your behalf.

The Ultimate Mistake

The most common mistake of all is simply failing to execute a POA while you still have the mental capacity to do so.

Advance Health Care Directive

13



Other Names for Similar Documents

6



Living Will

- End-of-Life Decisions
- Long-Term/Comfort Decisions



DPA for Health Care

Names your Agents



Advance Health Care Directive

Combines Living Will & DPA for Health Care into a Single Document

Select an Agent

15



Powers of your Agents...Effective when Primary Physician Determines you Lack Capacity to Make your Own Healthcare Decisions

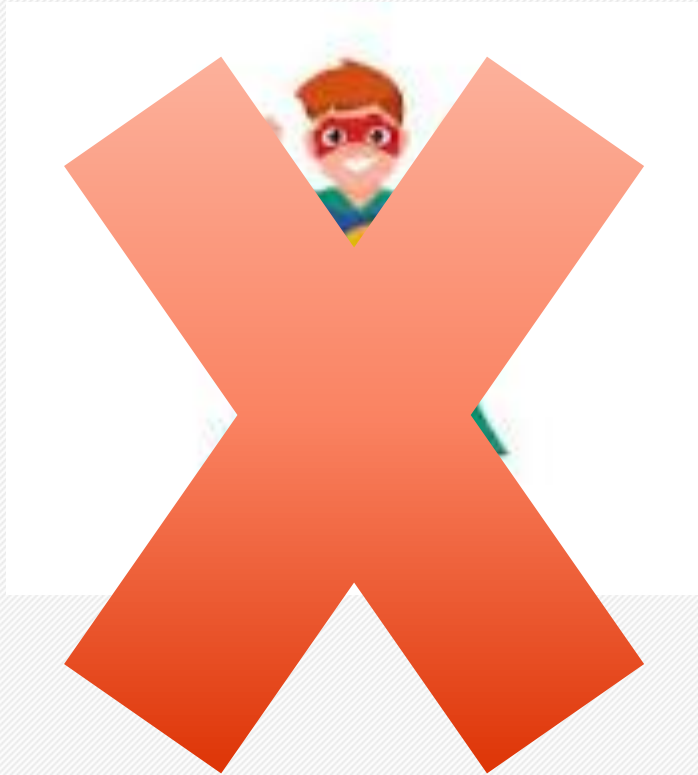
16



- Consent or refuse medical treatment
- Choose health care provider & facilities
- Make decisions regarding pain management
- Authorize or withdraw life-sustaining treatment

Some Persons are Disqualified from Acting Probate Code §4659

17



Non-Related:

- Your doctor
- Employees of doctor, owner/staff of nursing home, residential care facility or community care facility

What's an Agent to Do...Read your AHCD

18

When does Agent's Authority Begin

- Immediately
- When Primary Physician determines unable to make health decisions

Choice to Prolong or Not to Prolong Life



Different Forms have Different Definitions

19

PART 2 INSTRUCTIONS FOR HEALTH CARE

If you fill out this part of the form, you may strike any wording you do not want.

(2.1) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

(a) Choice Not to Prolong Life

I do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the likely risks and burdens of treatment would outweigh the expected benefits, OR

(b) Choice to Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

Different Forms have Different Definitions

20

Step 2 Give guidance to my health care agent and care team. Choose **ONE** box only:

If I have an illness that is not curable and will result in my death in a short time,

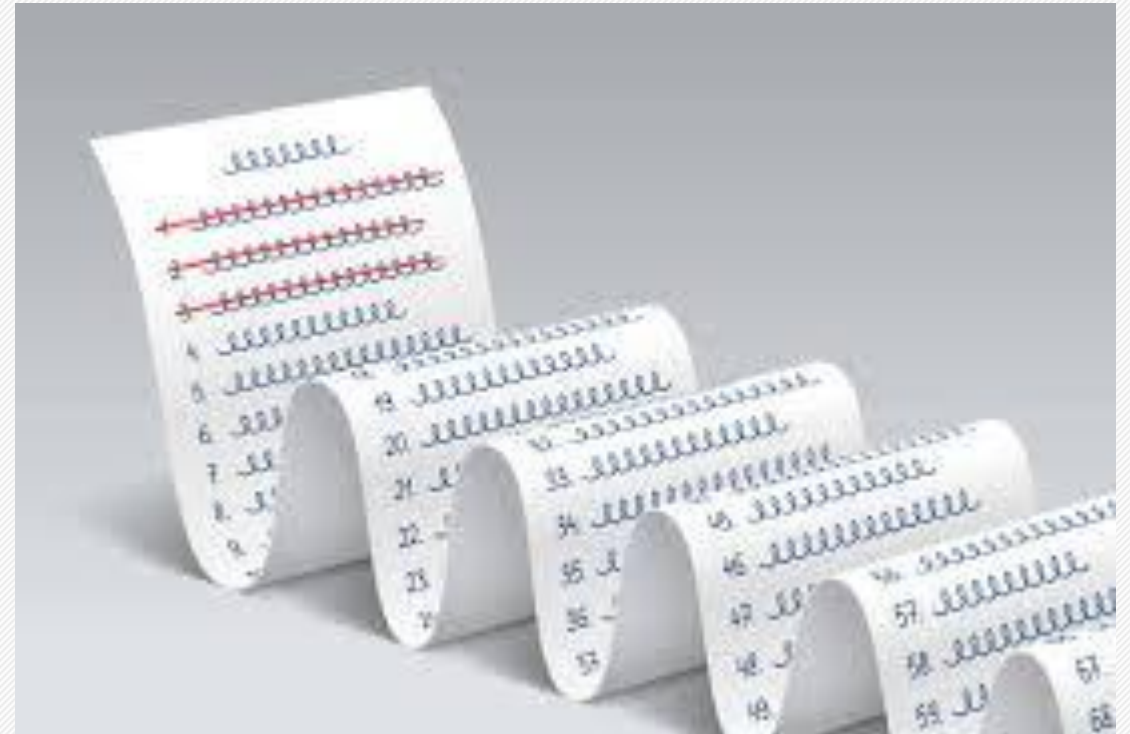
OR I become unconscious, and my doctors do not think I will improve,

OR the likely risks and burdens of treatment would outweigh the expected benefits...

- I want to be kept alive as long as possible within the limits of generally accepted health care standards.
- I do not want my life to be prolonged. I would stop treatments to keep me alive or not start them.
- I am not sure which statements I most agree with. I trust my health care agent to do what is best for me.

Is there anything else your care team should know about you or your medical preferences?

"The expression of one thing is the exclusion of the other".



Beware of Latin: Inclusio Unius Exclusio Alterius

22

Latin legal maxim that makes the point that where a statute, contract or other legal document includes a list of items falling into a category, the inclusion of certain items on that list should be presumed to mean that any excluded items are intentionally outside the definition.

I Do Not Want

- Feeding Tube
 - Intubation
-

But did you say...No Heffalump???

You may be getting one.

It is Difficult to Predict the Future

23



Talk to Your Agents

24

- Sole or Co-Agents
- Alternate Agent
- Availability & Proximity
- Willingness to Serve
- Are they aligned with your values including religious & spiritual beliefs
- Effective, even assertive, communicators



Other Issues an AHCD Addresses

25

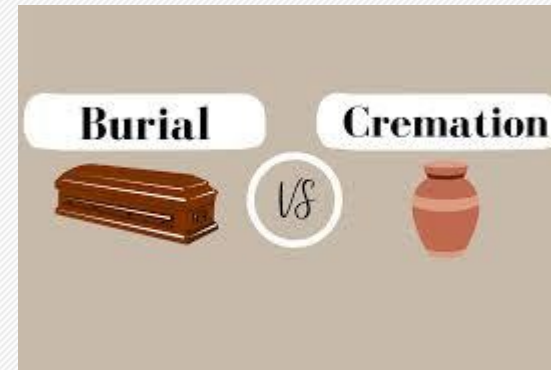
Nomination of Conservator



Organ Donation



Cremation or Burial



Must be Properly Signed

Notarized **OR**

Witnessed by **TWO** Witnesses: One witness must sign an additional statement as follows:

(5.4) **ADDITIONAL STATEMENT OF WITNESSES:** At least one of the above witnesses must also sign the following declaration:

I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance health care directive by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

(signature of witness)

(signature of witness)

NOTE: If patient at a Skilled Nursing Facility a Patient Advocate or Ombudsman must witness. You Agent cannot be a witness nor persons associated with Health Care.

Where to Get an AHCD and Other Forms that Explore Views

27

- Attorney
- Hospital
- California Medical Association
- California Attorney General's Office



Five Wishes (and similar forms to provide input to Agents)

- Wish 1: Person you want to be Agent
- Wish 2: Kind of Medical Treatment or Don't Want
- Wish 3: How Comfortable You Want to Be
- Wish 4: How You Want People to Treat You
- Wish 5: What You Want your Loved Ones to Know

Once Signed...

28

- Make additionally copies for doctors and Agents to have in their files
- Register AHCD with the CA Secretary of State for a \$10 fee
- Some forms provide Wallet Cards



AHCD are Not DNR or POLST

29



Thank You

30

