

I.

Durable Power of Attorney for Assets

When do you need to sign one?

An individual must execute the document when they are fully capable of understanding the nature and consequences of their own acts.

It can be effective immediately or when the attending physician determines an individual is no longer capable of managing their assets.

Avoids necessity of getting court appointed Conservator.

It may be limited or general.

How do you get one?

The document must be in writing.

The document must be signed before a notary.

The individual must declare that he or she signed or acknowledged that their signing was done freely and voluntarily.

What can the attorney in fact do under a general power of attorney?

When a general power of attorney is effective, the attorney in fact can:

Receive Debts, Property, Etc.

Deal with Banks by endorsing checks and drafts, sign the individual's name to checks, and to withdraw any property of any description held in any Bank.

Deposit, Withdraw, and Invest Moneys.

Satisfy Security Interests and Mortgages.

Prosecute and Defend.

Manage and Lease Real Estate.

Sell or Exchange Real or Personal Property.

Borrow Money, Mortgage, Etc.

Execute Tax Returns and Other Documents.

Exercise Rights Relating to Insurance and Other Benefit Plans.

Acquire Information.

Open Safe Deposit Box.

Authority to Make Gifts. Gifts to the attorney in fact must be authorized in the document.

Authority to Create Trusts.

Selection of Assets for Distribution for the purpose of acquiring cash for the payment of the individual's debts and expenses.

CAUTION:

an attorney in fact **CAN NOT**

Create or change rights of survivorship, or

Create or change a beneficiary designation

UNLESS, the power of attorney document expressly grants the agent the authority to perform such acts.

An attorney in fact under a limited power of attorney can only exercise those powers specifically stated in the document.

When does the authority of the attorney in fact end?

When revoked by the individual. The revocation may be written or may be done by physically destroying the original document.

On the death of the individual.

A statement by a medical doctor licensed to practice in the state in which the acting attorney in fact resides certifying to the incapacity or incompetency of said attorney in fact to act in such capacity.

A written resignation of the attorney in fact.

The execution of a subsequent Durable Power of Attorney.

The lawful revocation by the conservator of the person.

II.

Durable Powers of Attorney for Health Care

When do you need sign one?

An individual must execute the document when they are fully capable of understanding the nature and consequences of their own acts.

It becomes effective when the attending physician determines an individual is no longer capable of understanding and communicating responsible health care decisions.

It may also be used when an individual is unwilling to make medical decisions.

Avoids necessity of getting court appointed Guardian.

How do you get one?

The document must be in writing.

The document must be signed before two witnesses and the signature of the individual and both witnesses must be notarized.

The witnesses must declare that the individual is

personally known to the witnesses,

the individual signed or acknowledged their signature in the presence of the witnesses,

the individual appears to be of sound mind and not under duress or undue influence,

neither witness nor the individual's attending physician is the person appointed as attorney in fact by the document, and

the individual read the warning which accompanied the document and appeared to the witness to understand the consequences of executing a power of attorney for health care.

The individual must acknowledge that they signed freely and voluntarily.

What can the power of attorney do?

The attorney in fact can:

Receive any and all information regarding proposed health care; obtain medical and clinical records; and consent to the disclosures of such records.

Employ and discharge medical personnel; to make arrangements for medical care and to move the individual from any facility or location where care may have commenced to another medical care facility or health care provider in order to carry out the individual's wishes and intentions.

Make health care decisions including day-to-day health care decisions.

Give or withhold consent to any medical procedure, test or treatment, including surgery; to arrange for hospitalization, convalescent care, hospice or home care; to summon emergency medical treatment; and to revoke, withdraw, modify or change consent to such procedures, tests and treatments, as well as hospitalizations, convalescent care, hospice or home care may have been previously allowed or consented to or which may have been implemented due to emergency conditions.

Grant releases to hospital staff, physicians, nurses and other medical and hospital personnel from all liability for damages suffered or to be suffered by the individual and to sign waivers or releases from liability which are required by a hospital or physician.

If authorized, to determine that the individual shall not have life-sustaining treatment if in a terminal condition or persistent vegetative state and to determine that the individual shall not have artificially administered nutrition and hydration if in a terminal condition or a persistent vegetative state.

When does the authority of the attorney in fact end?

When revoked by the individual. The revocation may be written or may be orally communicated to the attorney in fact, his or her doctor, hospital or nursing home staff.

On the death of the individual;

A statement by a medical doctor licensed to practice in the state in which the acting attorney in fact resides certifying to the incapacity or incompetency of said power of attorney to act in such capacity;

A written resignation of the Attorney in Fact;

The execution of a subsequent Durable Power of Attorney, or

The lawful revocation by the guardian of the person.

III.

Guardian

When do you need one?

Is appointed by County Court when an individual does not have a Durable Power of Attorney for Health Care and not capable of understanding the nature and consequences of their own acts.

How do you get one?

An interested party files a petition for appointment with the County Court.

At a hearing the Court must determine by clear and convincing evidence that the individual is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other causes to the extent that the individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person.

What can the guardian do?

The guardian has the same powers, rights and duties that a parent has respecting an un-emancipated minor child. The guardian is not liable for the acts of the incapacitated person.

The guardian has the following specific powers and duties:

Is entitled to custody and may establish the individuals place of abode within or without the state.

Makes provision for the care, comfort and maintenance of the individual and when appropriate, arranges for his or her training and education.

Is to take reasonable care of the individuals clothing, furniture, vehicles and other personal property and is to commence a proceeding for the appointment of a conservator if other property of the individual needs protection.

Gives consents and approvals which are necessary for the individual to receive medical or other professional care, counsel, treatment, or service.

Is required to report the condition of the individual to the Court.

Receives any and all information regarding proposed health care; obtain medical and clinical records; and consents to the disclosures of such records.

When does the authority of the Guardian end?

On the death of the individual.

Determination of incapacity of the guardian.

Removal or resignation.

Determination that the individual is no longer incapacitated.

IV.

Conservator

When do you need one?

Is appointed by the County Court when an individual does not have a Durable Power of Attorney for Assets and is not capable of effectively managing his or her assets.

How do you get one?

An interested party files a petition for appointment with the County Court.

At a hearing the Court must determine by clear and convincing evidence that the individual is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other causes to the extent that the individual is unable to manage property and has property that will be wasted or dissipated unless management is provided.

What can the conservator do?

The Conservator has the duty to deal with the assets of the estate as a prudent person dealing with the property of another. If the conservator has special skills or is named conservator upon representation of special skills, he or she must use those skills.

Conservator must file an inventory with the Court and must account to the Court.

The Conservator has broad powers in investing, reinvesting, holding, managing and disposing of estate assets. The State Statutes set forth twenty-five specific areas in which the conservator may act without court authorization or confirmation.

The Conservator generally can spend the income and principal of the estate for the support, education, care or benefit of the individual without Court order.

The Conservator has the right to possession of all estate assets.

When does the authority of the Conservator end?

On order of discharge from the Court.

Determination of incapacity of the conservator.

Removal or resignation.

Determination that the individual is no longer incapacitated.