

DURABLE FINANCIAL AND HEALTH CARE POWERS OF ATTORNEY

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A solid estate plan includes **Durable Power of Attorney documents (along with an estate planning document(s) which provides what happens to your property following your death)**. A durable power of attorney allows you to designate an agent and, ideally, an alternate agent, who will act for you with respect to handling finances (**Durable Financial Power of Attorney**) and, in a separate document, with respect to making health care decisions on your behalf in the event you are or become legally incapacitated and unable to make decisions for yourself (**Durable Health Care Power of Attorney and/or Living Will**). Having these documents is like owning life insurance policies: the hope is that you will never need to use them but in the event you become ill or otherwise unable to manage your own financial or health care matters, you will have a written document in place which will authorize an agent or agents to act on your behalf. You should only select someone whom you trust, and who can handle your financial matters in the event you are unable to do so during your lifetime. The authority ends at death. If you marry or divorce after creating one, a new document should be executed (signed). **You do NOT need an attorney to draft a Health Care Power of Attorney or Living Will document for you, but it is part of a well-rounded estate plan.** I often draft or witness this latter document when your other estate planning documents are executed (signed). These documents are especially important in light of recent changes in Wisconsin's Guardianship Statutes which became effective December 1, 2006.

Durable Financial Power of Attorney (DPOA).

A DPOA gives broad authority to an agent(s) you designate and covers the following types of transactions: filing income tax returns, access to all assets including checking, savings, certificates of deposit and mutual funds (including the ability to transfer monies between accounts, make deposits and withdrawals), ability to surrender or purchase life insurance policies, sell real estate, ability to act as guardian for you with regard to your finances (estate), and so forth. You should nominate an agent you trust to manage your finances only after discussing this with your nominated agent(s). Even if you are married and own all of your assets jointly, there are some legal transactions that would not be allowed between spouses without a DPOA. Also, when one of the spouses dies, the other spouse may become ill and unable to manage his or her financial matters. A DPOA then becomes critically important, especially if the aged person requires skilled nursing care in a nursing home facility. A DPOA remains valid until the moment of death, but has no effect and cannot be used after the death of the person giving the authority. (A Will or Revocable Living Trust document then becomes valid).

Durable Health Care Power of Attorney (DHCPOA).

In the past, people often executed "Living Wills" or "Declaration to Physicians" with respect to their health care wishes in the event of imminent death. These documents only applied to cases of imminent death or persistent vegetative state scenarios. The Terry Schiavo case in 2005 demonstrates the importance of executing one of these documents. A DHCPOA allows you to remain in control of your own health care decisions and allows you to designate an agent to make health care decisions on your behalf only if you are legally incapacitated as certified in writing by a physician who personally examines you. You may name one or two alternate agents, but not jointly acting agents. Legally incapacitated means that you are unable to receive and/or evaluate information, such as being unable to blink your eyes or squeeze a hand to communicate your wishes. Actions your agent may take on your behalf include: access to medical records, withholding fluid or nutritional hydration or support, consenting to surgical procedures, admitting you to a nursing home or community based residential facility, and so forth. Once again, you should designate an agent upon careful consideration that the designated person will take actions on your behalf that you would support, and you should discuss this with the agent prior to signing and, ideally, never designate someone without discussing the duties first. The DHCPOA must be signed like a Last Will and Testament (witnessed by two unrelated adult persons) and need not but can be drafted by an attorney. Like the DPOA, the DHCPOA is only valid during the lifetime of the principal (the person designating the agent and signing the document). One document can contain both Living Will and Durable Health Care Power of Attorney designations, but if two separate documents are signed and if the two are inconsistent, the Durable Health Care Power of Attorney document controls. You can further designate in this document your specific wishes concerning end-of-life decisions, and it is imperative that these important matters be discussed openly with whomever you designate as your agent and alternate agent. Litigation surrounding end-of-life decisions can hopefully be avoided by planning in advance and committing your wishes to writing.

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