

Introduction to “Ancillary” Advance Planning Documents

Financial Powers of Attorney, Medical Directives, Designations of
Guardian, and more

This presentation will briefly introduce the following non-will estate planning documents. The individual documents will be covered in more detail in additional presentations.

- Financial Powers of Attorney
- Advance Directives
 - Medical Powers of Attorney
 - Directives to Physicians and Family or Surrogates
 - plus Authorization for Release of Protected Health Information
- Declarations of Guardian
- Agents and Instructions for Disposition of Remains

Financial Power of Attorney

- AKA “Durable Power of Attorney.”
- Allows named agent to take care of declarant’s financial affairs—bank and investment accounts, paying bills, real estate transactions, etc.
- Is effective either immediately upon signing or only if the declarant is incapacitated.
- Tex. Est. Code ch. 751–752.

Medical Power of Attorney

- Gives agent the power to make healthcare and medical decisions for the declarant.
- Only effective if the declarant is incapacitated or unable to communicate.
- Tex. Health & Safety Code §§ 166.151–166.

Directive to Physicians and Family or Surrogates (aka “Living Will”)

- Expresses declarant’s wishes if in a terminal or irreversible condition and unable to state own desires.
- Irreversible condition = a condition, injury, or illness: (1) that may be treated, but is never cured or eliminated; (2) that leaves a person unable to care for or make decisions for the person's own self; and (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.
- Terminal condition = an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Authorization for Release of Protected Health Information

- Allows named individuals to receive medical information and records about the declarant.
- The agent named in the Medical Power of Attorney already has these powers, but this form allows the declarant to name more individuals.
- Effective upon signing.
- 45 C.F.R. § 164.508, Tex. Health & Safety Code ch. 181.

Declarations of Guardian

- Two kinds of guardianship forms:
 - Designation of guardian for declarant, and
 - Designation of guardian for declarant's children.
 - Two kinds of guardianship:
 - Guardianship of the Estate handles financial matters.
 - Guardianship of the Person handles food, housing, healthcare, etc.
 - These declarations are not binding on a court.
 - Exception: a court must honor a declarant's designation of a person who may not be the declarant's guardian.
 - Tex. Est. Code ch. 1104.
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Agents and Instructions for Disposition of Remains

- Appointment of Agent to Control Remains
 - Named agent has the right to control the disposition of remains.
 - Tex. Health & Safety Code § 711.002.
- Instructions for Disposition of Remains
 - Instructions can be included in the Appointment of Agent form or be written without designating an agent.
 - If no agent is named, the persons with the right to control disposition of remains are listed in order of precedence at § 711.002(a).
 - Tex. Health & Safety Code § 711.002(g).

Statutory Requirements of Forms

- Some of these documents must be in the form set out in the statute:
 - Medical Power of Attorney
 - Appointment of Agent to Control Remains (“may be substantially the following form”)
- Most of the rest of the documents must meet certain statutory requirements in order to be valid in Texas.

Free Access to the Texas Guardianship Manual Online

- The forms discussed in this presentation are available in the Texas Guardianship Manual Online.
- TexasBarBooks is providing all State Bar members free access to the Texas Guardianship Manual Online. The manual includes forms and instructions for creating guardianships, advance directives, and end-stage planning.
- To request access to these resources, email books@texasbar.com with your name, bar card number, and preferred email address. Complimentary access extends until May 31, 2020.