ALABAMA

Power of Attorney – Healthcare

General Description

1. A durable power of attorney is a power of attorney where a principal designates another as his attorney in fact in writing, using words showing intent that the authority conferred to the attorney shall be exercisable notwithstanding the principal's subsequent disability, incompetency, or incapacity. Ala. Code § 26-1-2(a).

2. A principal may designate under a durable power of attorney an individual who shall be empowered to make health care decisions on behalf of the principal, if in the opinion of the principal's attending physician the principal is no longer able to give directions to health care providers. Ala. Code § 26-1-2(g)(1).

    (a) All acts done by a durable power of attorney during any period of disability, incompetency, or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal was competent, not disabled, and not incapacitated. Ala. Code § 26-1-2(b).

    (b) The death of a principal who has executed a written power of attorney does not revoke or terminate the attorney's agency, and it binds the principal's successors in interest. Ala. Code § 26-1-2(d)(1).

    (c) A durable power of attorney may request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records, execute a release required to obtain the information, and consent to the disclosure of the information. Ala. Code § 26-1-2(f)(4).

Legal Limitations

Under no circumstances shall the principal's health care provider or a non-relative employee of the health care provider make decisions under the durable power of attorney. Ala. Code § 26-1-2(f)(5).

Legal Requirements

1. The durable power of attorney may make any health care decision on behalf of the principal that the principal could make but for the lack of capacity of the principal to make a decision, but not psychosurgery, sterilization, abortion when not necessary to preserve the life of the principal, or involuntary hospitalization or treatment. Ala. Code § 26-1-2(g)(1).

2. A durable power of attorney shall have the authority to make decisions regarding provision, withholding, or withdrawal of life-sustaining treatment and artificially provided nutrition and hydration but only:

(a) If specifically authorized to do so in the durable power of attorney;

(b) If the substantive provisions of the durable power of attorney are in substantial compliance and if the durable power of attorney is executed and accepted in substantially the same form as set forth in the Alabama Natural Death Act; and

(c) In instances of terminal illness or injury or permanent unconsciousness, if the authority is implemented in the manner permitted under the Alabama Natural Death Act.

Ala. Code § 26-1-2(g)(2).

Revocation

A durable power of attorney executed pursuant to this section may be revoked by (a) written revocation signed and dated by the principal or person acting at the direction of the principal; (b) being obliterated, burnt, torn, or otherwise destroyed or defaced in a manner indicating intention to cancel; or (c) by a verbal expression of intent to revoke made in the presence of a witness 19 years of age or older who signs and dates a writing confirming an expression to revoke. Ala. Code § 26-1-2.22.

Power of Attorney – Property

Creating a Power of Attorney

A durable power of attorney is a power of attorney by which a principal designates another as his or her attorney in fact or agent in writing and the writing contains the words "This power of attorney shall not be affected by disability, incompetency, or incapacity of the principal" or "This power of attorney shall become effective upon the disability, incompetency, or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability, incompetency, or incapacity. Ala. Code § 26-1-2(a).

Disability, Incompetency, or Incapacity

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability, incompetency, or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his or her successors in interest as if the principal were competent, not disabled and not incapacitated. Ala. Code § 26-1-2(b).

Death of the Principal

The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal. Ala. Code § 26-1-2(d)(1).

Spouse as Agent

Any authority granted to the spouse under a durable power of attorney shall be revoked if the marriage of the principal is dissolved or annulled, or if the parties are legally separated or a party to divorce proceedings. Ala. Code § 26-1-2(g)(3).

Gifts

If any power of attorney or other writing either authorizes an attorney in fact or other agent to do, execute, or perform any act that the principal might or could do, or evidences the principal's intent to give the attorney in fact or agent full power to handle the principal's affairs or deal with the principal's property, the attorney in fact or agent shall have the power and authority to make gifts of any of the principal's property to any individuals, including the attorney in fact or agent, within the limits of the annual exclusion as provided by Section 2503(b) of Title 26 of the United States Code, and taking into account the availability of Section 2513 of Title 26 of the United States Code, as the same may from time to time be amended, or to organizations described in Sections 170(c) and 2522(a) of Title 26 of the United States Code, or corresponding future provisions of federal tax law, or both, as the attorney in fact or agent shall determine:

(d) to be in the principal's best interest;

(e) to be in the best interest of the principal's estate or that will reduce the estate tax payable on the principal's death; and

(f) and is in accordance with the principal's personal history of making or joining in the making of lifetime gifts.

Ala. Code § 26-1-2.1.

Revocation

A durable power of attorney executed pursuant to this section may be revoked by written revocation signed and dated by the principal or person acting at the direction of the principal, or by being obliterated, burnt, torn, or otherwise destroyed or defaced in a manner indicating intention to cancel or by a verbal expression of intent to revoke made in the presence of a witness 19 years of age or older who signs and dates a writing confirming an expression to revoke. Ala. Code § 26-1-2(g)(1).

Living Wills

General Description

A competent adult, at least 19 years old ("Declarant"), may make a living will directing the providing, withholding, or withdrawal of life-sustaining treatment and artificially provided nutrition and hydration and/or (ii) designating a health care proxy to make such decisions. Such documents are collectively referred to as advance directives for health care ("ADHCs"). Ala. Code §§ 22-8A-3 & -4; for health care proxy, *see* Alabama Health Care Power of Attorney laws.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

Legal Requirements

1. Pursuant to Alabama Code §§ 22-8A-4(b)-(c), a valid ADHC must be:

   (a) In writing;

   (b) Dated;

   (c) Signed either (i) by Declarant or (ii) by a person in Declarant's presence and at Declarant's express direction ("Proxy Signer"); and

   (d) Witnessed by two persons, at least 19 years old.

      (i) Such witnesses may not be (i) the Proxy Signer; (ii) appointed as the healthcare proxy by the ADHC; (iii) related to Declarant by blood, adoption or marriage; (iv) entitled to any portion of Declarant's estate; or (v) directly financially responsible for Declarant's medical care.

2. Statutory form must be substantially followed, but may include other specific directions. (This form may be found at Ala. Code § 22-8A-4(h).)

3. Declarant is responsible for providing ADHC to attending physician and other health care providers. Ala. Code § 22-8A-4(f).

4. Declarant may file and have recorded a living will in the office of the judge of probate in the county of residence. Ala. Code § 22-8A-14.

5. The ADHC will take effect only once both of the following occur:

   (a) Attending physician determines Declarant unable to understand, appreciate, and direct own medical treatment; and

   (b) Attending physician and second physician, qualified and experienced in making diagnosis, both personally examine Declarant and diagnose and document in medical record that Declarant has terminal illness or injury or is in state of permanent unconsciousness.

Ala. Code § 22-8A-4(d).

6. If Declarant wishes for artificially provided nutrition and hydration to be withheld or withdrawn, Declarant must specifically so state in the living will or specifically authorize a health care proxy. Ala. Code §§ 22-8A-4(a) and (b).

Revocation

1. An ADHC may be revoked at any time by: (a) the Declarant obliterating, burning, tearing or otherwise destroying or defacing ADHC in manner indicating intention to cancel; (b) a written revocation of ADHC signed and dated by Declarant or person acting at direction

of Declarant; or (c) Declarant's verbal expression of intent to revoke ADHC in presence of a witness, at least 19 years old, who signs and dates a written confirmation of intent. Ala. Code § 22-8A-4(5)(a).

(a) Verbal revocation is effective only when such signed written confirmation is received by Declarant's attending physician or health care provider. Such physician or health care provider shall record time, date, and place of such receipt.

2. If the Declarant has executed both a living will and a proxy designation, decisions by the health care proxy regarding the providing, withholding, or withdrawal of life-sustaining treatment, or artificially provided nutrition or hydration, will take precedence over the living will unless Declarant specifically indicated otherwise in the living will or proxy designation. Ala. Code § 22-8A-4(g).

Wills

General Description

Any person 18 or more years of age who is of sound mind may make a will. Ala. Code § 43-8-130.

Legal Requirements

1. Under Alabama Code § 43-8-131, written wills must be:

   (a) Signed by the testator or in the testator's name by some other person in the testator's presence and by his direction; and

   (b) Signed by two (2) witnesses, each of whom witnessed either the signing or the testator's acknowledge of the signature or of the will.

      (i) A will is not invalid if signed by an interested witness. Ala. Code § 43-8-134.

2. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal. Ala. Code § 43-8-132 (see statute for model language).

   (a) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed. Ala. Code § 43-8-132.

3. A devise or bequest may be made by will to the trustee of a trust established or to be established. Ala. Code § 43-8-140.

4. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event. Ala. Code § 43-8-141.

Revocation/Modification

1. Revocation by writing or by act.

   (a) A will or any part thereof is revoked by a subsequent will which revokes the prior will (or part thereof) expressly or by inconsistency.

   (b) A will is revoked by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence by his consent and direction.

      (i) If the physical act is by someone other than the testator, consent and direction of the testator must be proved by at least two witnesses.

Ala. Code § 43-8-136.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. The will is treated as if the former spouse predeceased the testator. Ala. Code § 43-8-137.

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ALASKA

Power of Attorney – Healthcare

General Description

An adult may execute a durable power of attorney for healthcare, which may authorize the agent to make any healthcare decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Alaska Stat. § 13.52.010(b).

Legal Limitations

1. Unless related to the principal by blood, marriage, or adoption, an agent under a durable power of attorney for healthcare may not be an owner, operator, or employee of the healthcare institution at which the principal is receiving care. Alaska Stat. § 13.52.010(c).

2. A witness for a durable power of attorney for healthcare may not be: (a) a healthcare provider employed at the healthcare institution or healthcare facility where the principal is receiving healthcare; (b) an employee of the healthcare provider providing healthcare to the principal, or of the healthcare institution or healthcare facility where the principal is receiving healthcare; or (c) the agent. Alaska Stat. § 13.52.010(d).

Legal Requirements

1. Effective Date. Unless otherwise specified in the durable power of attorney for healthcare, the authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has recovered capacity. Alaska Stat. § 13.52.010(f).

2. A durable power of attorney for healthcare must be:

   (a) In writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

      (i) Signed by at least two individuals who are personally known by the principal, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the instrument; or

      (ii) Acknowledged before a notary public at a place in this state.

   Alaska Stat. § 13.52.010(b).

3. At least one of the witnesses shall be someone who is <u>not</u> (a) related to the principal by blood, marriage, or adoption; or (b) entitled to a portion of the estate of the principal upon

the principal's death under a will or codicil of the principal existing at the time of execution. Alaska Stat. § 13.52.010(e).

Revocation

1. Except in the case of mental illness, a principal may revoke the designation of an agent only by a signed writing or by personally informing the supervising healthcare provider. Alaska Stat. § 13.52.020(a).

2. Except in the case of mental illness, a principal may revoke all or part of an advance healthcare directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. Alaska Stat. § 13.52.020(b).

3. A revocation is effective when a competent principal with capacity communicates the revocation to a physician or other healthcare provider. The physician or other healthcare provider shall note the revocation on the principal's medical record. Alaska Stat. § 13.52.020(c).

    (a) In the case of mental illness, the authority of a named agent and an alternative agent named in the advance healthcare directive continues in effect as long as the advance healthcare directive appointing the agent is in effect or until the agent has withdrawn. Alaska Stat. § 13.52.020(c).

Power of Attorney – Property

Creating a Power of Attorney

A person who wishes to designate another as attorney-in-fact or agent by a power of attorney may execute a statutory power of attorney set out substantially in the form provided in the statute. Alaska Stat. § 13.26.332.

Powers

The agent or agents appointed will have the powers selected on the form provided in the statute. The powers listed on the form are as follows: real estate transactions; transactions involving tangible personal; property, chattels, and goods; bonds, shares, and commodities transactions; banking transactions; business operating transactions; insurance transactions; estate transactions; gift transactions; claims and litigation; personal relationships and affairs; benefits from government programs and military service; records, reports, and statements; delegation; voter registration and absentee ballot requests; and all other matters, including those that a person lists. Alaska Stat. § 13.26.332.

Effectiveness

The power of attorney can be made effective upon the date of signature or upon the date of disability. Alaska Stat. § 13.26.332.

Revocation and Termination

1. A person may revoke one or more of the powers granted in the document. Unless otherwise provided in the document, the person may revoke a specific power granted in the power of attorney by completing a special power of attorney that includes the specific power in the document that the person wants to revoke. Unless otherwise provided in the power of attorney, the person may revoke all the powers granted in this power of attorney by completing a subsequent power of attorney. Alaska Stat. § 13.26.332.

2. The death, disability or incompetence of a principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Action so taken, unless otherwise invalid or unenforceable, binds the principal and the heirs, devisees, and personal representatives of the principal. Alaska Stat. § 13.26.356.

3. An affidavit executed by the attorney-in-fact or agent stating that the attorney-in-fact or agent did not have, at the time of doing an act under the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of an instrument that is recordable, the affidavit when authenticated for record is likewise recordable. Alaska Stat. § 13.26.356.

Termination

The executor can choose whether a subsequent disability will revoke the power of attorney. Alaska Stat. § 13.26.332.

Living Wills

General Description

An adult ("Principal") may give direction through an advance healthcare directive ("AHCD") concerning the Principal's healthcare decisions ("Individual Instructions"), or may execute a durable power of attorney for healthcare. Alaska Stat. §§ 13.52.010 & 13.52.390(25); for instructions concerning anatomical gifts, *see* § 13.52.170, *et seq.*; for durable power of attorney for healthcare, *see* Alaska Health Care Power of Attorney laws.

Legal Requirements

1. Individual Instructions may be oral or written. Alaska Stat. § 13.52.010(a).

2. Statutory form is optional and Individual Instructions are severable. (Form accessible at Alaska Stat. § 13.52.300.)

3. Individual Instructions may be limited to take effect only upon specified conditions. Alaska Stat. § 13.52.010(a).

4. Unless otherwise specified in a written AHCD, a determination that a principal lacks or has recovered capacity, or that another condition exists that affects an individual instruction, will be made by (a) the primary physician, except in the case of mental illness, (b) a court in the case of mental illness, unless the situation is an emergency, or (c) the primary physician or another healthcare provider in the case of mental illness where the situation is an emergency. Alaska Stat. § 13.52.010(g).

Revocation

1. A principal may revoke all or part of an AHCD at any time and in any manner that communicates intent to revoke. A revocation is effective when a competent principal with capacity communicates the revocation to a physician or other health care provider. Such physician or health care provider should note revocation in principal's medical record. Alaska Stat. § 13.52.020.

    (a) Different rules apply for the revocation of an agent and anatomical gifts.

    (b) In the case of mental illness, an AHCD may be revoked in whole or in part at any time by principal if principal does not lack capacity and is competent.

2. An ADHC that conflicts with an earlier ADHC revokes the earlier ADHC to extent there is a conflict. Alaska Stat. § 13.52.020.

3. A healthcare provider, agent, guardian or surrogate informed of revocation should inform the supervising healthcare provider and any healthcare institution where the principal is receiving care. Alaska Stat. § 13.52.020(d).

Wills

General Description

A person, 18 or more years of age, who is "of sound mind" may make a will to provide for the passage of all his or her property and all property acquired by his or her estate. Alaska Stat. §§ 13.12.602 & 13.12.501.

Legal Requirements

1. Under Alaska Stat. § 13.12.502, written wills must be:

    (a) Signed by the testator or in the testator's name by another individual in the testator's conscious presence and by the testator's direction; and

    (b) Signed by at least two (2) individuals, each of whom signs within a reasonable time after the testator's acknowledgment of that signature or the will.

(i) An interested witness does not invalidate the will.

2. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Alaska Stat. § 13.12.510.

3. A will may validly transfer property to the trustee of a trust established or to be established (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Alaska Stat. § 13.12.511.

4. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death (*i.e.*, execution or revocation of another person's will). Alaska Stat. § 13.12.512.

5. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). Alaska Stat. § 13.12.513.

   (a) The statement: 1) must be signed by the testator and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) may be altered by the testator after its preparation; and 5) it may be a writing that does not have significance apart from its effect on the dispositions made by the will. Alaska Stat. § 13.12.513.

6. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal. Alaska Stat. § 13.12.504 (see statute for model language).

   (a) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

7. A will may be deposited by the testator or the testator's agent with a court for safekeeping, under rules of the court. During the testator's lifetime, the will must be kept confidential. Alaska Stat. § 13.12.515.

Revocation/Modification

1. Revocation by writing or by act: (a) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; (b) by performing (with intent) a revocatory act, including burning, tearing, or canceling whether or not the words on the will are touched. Alaska Stat. § 13.12.507.

(a) A change of circumstance does not revoke a will. Alaska Stat. § 13.12.508.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse or relative of the former spouse before the entry of the decree of divorce or annulment. Alaska Stat. § 13.12.804.

ARIZONA

Power of Attorney – Healthcare

General Description

1. A person who is an adult may designate another adult(s) to make healthcare decisions on that person's behalf or to provide funeral and disposition arrangements in the event of the person's death by executing a written healthcare power of attorney. Ariz. Rev. Stat. § 36-3221.

2. The individual designated in a healthcare power of attorney to make healthcare decisions is an agent entitled to make and communicate these decisions while the principal is unable to do so. Ariz. Rev. Stat. § 36-3223.

Legal Limitations

An agent's authority to make healthcare decisions on behalf of the principal is limited only by the express language of the healthcare power of attorney or by court order. Ariz. Rev. Stat. § 36-3223(B).

Legal Requirements

1. A healthcare power of attorney must meet all of the following requirements:

   (a) Contain language that clearly indicates that the person intends to create a healthcare power of attorney.

   (b) Except as provided under Ariz. Rev. Stat. § 36-3221(B), is dated and signed or marked by the person who is the subject of the healthcare power of attorney.

   (c) Is notarized or is witnessed in writing by at least one adult who affirms that the notary or witness was present when the person dated and signed or marked the healthcare power of attorney, except as provided under Ariz. Rev. Stat. § 36-3221(B), and that the person appeared to be of sound mind and free from duress at the time of its execution.

   Ariz. Rev. Stat. § 36-3221(A).

2. If a person is physically unable to sign or mark a healthcare power of attorney, the notary or each witness shall verify on the document that the person directly indicated to the notary or witness that the power of attorney expressed the person's wishes and that the person intended to adopt the power of attorney at that time. Ariz. Rev. Stat. § 36-3221(B).

3. A notary or witness shall not be a person designated to make medical decisions on the principal's behalf or a person directly involved with the provision of healthcare to the

principal at the time the healthcare power of attorney is executed. Ariz. Rev. Stat. § 36-3221(C).

4. If a healthcare power of attorney is witnessed by only one person, that person may not be related to the principal by blood, marriage or adoption and may not be entitled to any part of the principal's estate by will or by operation of law at the time that the power of attorney is executed. Ariz. Rev. Stat. § 36-3221(D).

Revocation

1. The appointment of a person to act as an agent is effective until that authority is revoked by the principal or by court order. Ariz. Rev. Stat. § 36-3223(C).

2. A person may revoke his own healthcare directive by doing any of the following: (a) making a written revocation of a healthcare directive; (b) orally notifying a healthcare provider; (c) making a new healthcare directive; or (d) any other act that demonstrates a specific intent to revoke. Ariz. Rev. Stat. § 36-3202.

Power of Attorney – Property

Creating a Power of Attorney

1. A durable power of attorney is a written instrument by which a principal designates another person as the principal's agent. The instrument shall contain words that demonstrate the principal's intent that the authority conferred in the durable power of attorney may be exercised:

   (a) If the principal is subsequently disabled or incapacitated.

   (b) Regardless of how much time has elapsed, unless the instrument states a definite termination time.

   Ariz. Rev. Stat. § 14-5501.

2. The written instrument may demonstrate the principal's intent using either of the following statements or similar language: "This power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney is effective on the disability or incapacity of the principal." Ariz. Rev. Stat. § 14-5501.

3. An adult, known as the principal, may designate another adult, known as the agent, to make financial decisions on the principal's behalf by executing a written power of attorney that satisfies all of the following requirements:

   (a) Contains language that clearly indicates that the principal intends to create a power of attorney and clearly identifies the agent;

(b) Is signed or marked by the principal or signed in the principal's name by another in the principal's conscious presence and at the principal's direction;

(c) Is witnessed by a person other than the agent, the agent's spouse, the agent's children or the notary public; and

(d) Is executed and attested by its acknowledgment by the principal and by an affidavit of the witness before a notary public and evidenced by the notary public's certificate, under official seal, in substantially the form provided by statute.

Ariz. Rev. Stat. § 14-5501.

Effect of Lapse of Time, Disability or Incapacity

All acts done by an agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal were not incapacitated or disabled. Ariz. Rev. Stat. § 14-5502.

Effect of Death, Disability or Incapacity

1. The death of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the agent or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action taken in good faith pursuant to this subsection, unless otherwise invalid or unenforceable, binds successors in interest of the principal. Ariz. Rev. Stat. § 14-5504.

2. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the agent or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action taken in good faith pursuant to this subsection, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest. Ariz. Rev. Stat. § 14-5504.

Capacity

A power of attorney executed by an adult who does not have capacity is invalid. In a criminal proceeding, the agent has the burden of proving by clear and convincing evidence that the principal had capacity. In a civil proceeding, if the party challenging the validity of a power of attorney on the grounds of lack of capacity proves by a preponderance of the evidence that, at the time the power of attorney was executed, the principal was a vulnerable adult, the agent has the burden of proving by clear and convincing evidence that the principal had capacity. In a civil proceeding, if the party challenging the validity of a power of attorney on the basis of lack of capacity does not prove by a preponderance of the evidence that, at the time the power of

attorney was executed, the principal was a vulnerable adult, the agent has the burden of proving by a preponderance of the evidence that the principal had capacity. (Ariz. Rev. Stat. § 14-5506)

Power of Attorney From One Spouse to the Other

Either husband or wife may authorize the other by power of attorney, executed and acknowledged in the manner conveyances of real property are executed and acknowledged, to execute, acknowledge and deliver, in his or her name and behalf, any conveyance, mortgage or other instrument affecting the separate or community property or any interest therein of the spouse executing the power of attorney. Ariz. Rev. Stat. § 33-454.

Living Wills

General Description

An adult ("Principal") may prepare a living will to control the healthcare treatment decisions to be made on such person's behalf. Such living will may be part of or instead of a healthcare power of attorney. Ariz. Rev. Stat. § 36-3261; for health care power of attorney rules, *see* Arizona Health Care Power of Attorney.

Legal Requirements

1. To be valid, a living will must:

   (a) Contain language that clearly indicates the Principal intends to create a living will;

   (b) Be dated and signed/marked by Principal; and

      (i) If the Principal is physically unable to sign/mark the living will, either the notary or witness must verify on the living will that the Principal directly indicated to such person that the living will expressed the Principal's wishes and that the Principal intended to adopt the living will at such time.

   (c) Be notarized or witnessed in writing by at least one adult who affirms that (i) the notary or witness was present when the Principal dated and signed/marked the living will, unless the Principal was physically unable as described above and (ii) the Principal appeared to be of sound mind and free from duress at time of signing.

      (i) The notary or witness may not be (a) a person designated to make medical decisions on the Principal's behalf or (b) a person directly involved with the provision of healthcare to the Principal at the time the living will is executed.

      (ii) If only one witness, such person may not be (a) related to the Principal by blood, marriage or adoption or (b) entitled to any part of the Principal's estate by will or by operation of law at the time that the living will is executed.

Ariz. Rev. Stat. §§ 36-3261 & 36-3221.

2. Use of the statutory form is optional. (Form is available at Ariz. Rev. Stat. § 36-3262.)

3. Principal may write and use a living will without writing a healthcare power of attorney or may attach a living will to the Principal's healthcare power of attorney. Ariz. Rev. Stat. § 36-3262.

4. Principal may submit a living will, and any revocations, to the secretary of state. Ariz. Rev. Stat. § 36-3292.

Revocation

1. A living will may be revoked by Principal (a) by making a written revocation; (b) orally notifying the healthcare provider; (c) making a new living will; or (d) any other act that demonstrates a specific intent to revoke the living will. Ariz. Rev. Stat. §§ 36-3201(5), -3202, -3261(B).

Wills

General Description

A person who is eighteen years of age or older and who is of sound mind may make a will. Ariz. Rev. Stat. § 14-2501.

Legal Requirements

1. Under Arizona Revised Statute § 14-2502, a written will must be:

   (a) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

   (b) Signed by at least two (2) individuals, each of whom signed within a reasonable time after that person witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.

      (i) The signing of a will by an interested witness does not invalidate the will or any provision of it. Ariz. Rev. Stat. § 14-2505.

2. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution:

   (a) By acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal. (See statute for model language.)

(b) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

Ariz. Rev. Stat. § 14-2504.

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Ariz. Rev. Stat. § 14-2510.

4. A will may validly transfer property to the trustee of a trust established or to be established (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Ariz. Rev. Stat. § 14-2511.

5. A will may dispose of property by reference to acts, such as the execution or revocation of another person's will, that have significance apart from their effect on the dispositions made by the will whether they occur before or after the execution of the will or before or after the testator's death. Ariz. Rev. Stat. § 14-2512.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). The statement: 1) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) it may be altered by the testator after its preparation; and 5) may be a writing that does not have significance apart from its effect on the dispositions made by the will. Ariz. Rev. Stat. § 14-2513.

7. Arizona entitles a spouse or omitted children certain shares in the estate, which can be waived. Ariz. Rev. Stat. §§ 14-2207, 14-2301, 14-2302, 14-2402 &14-2403.

Revocation/Modification

1. A will can be revoked by:

(a) Executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(i) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.

(b) By performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction.

(i) Revocatory acts include burning, tearing, canceling, obliterating or destroying the will or any part of it.

Ariz. Rev. Stat. § 14-2507.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. Ariz. Rev. Stat. § 14-2804.

ARKANSAS

Power of Attorney – Healthcare

General Description

A durable power of attorney is a power of attorney by which a principal designates another as his attorney in fact in writing. Ark. Code § 28-68-201.

Legal Requirements

1. A person may execute a power of attorney for healthcare. The power of attorney may be durable. Ark. Code § 20-13-104(d)(1).

2. The healthcare agency shall be: (a) in writing; (b) signed by the principal or by someone acting at the direction of the principal and in the principal's presence; and (c) attested to by and subscribed in the presence of two or more competent witnesses who are at least eighteen years of age. Ark. Code § 20-13-104(d)(2).

Power of Attorney – Property

General

A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. Ark. Code Ann. § 28-68-201.

Execution and Approval

1. If a person desires to execute a power of attorney in anticipation of or because of infirmity resulting from injury, old age, senility, blindness, disease, or other related or similar cause as a means of providing for the care of his or her person or property, or both, the resident shall execute the instrument in one of the following three methods:

   (a) In the presence of and with the approval of a judge of the circuit court of the county of the principal's domicile;

   (b) In the presence of at least two (2) witnesses who shall attest and prove the execution by affidavit to be filed with the instrument, to be approved by a judge of the circuit court of the county of the principal's domicile; or

   (c) In the presence of a notary public who shall acknowledge the instrument.

   Ark. Code Ann. § 28-68-304.

2. The instrument, with the certificate of a notary public, shall be filed with and approved by the circuit court of the county of the principal's domicile.

   (a) The approval of the judge may be given only if:

      (i) The principal requests approval;

      (ii) The attorney in fact consents to serve;

      (iii) The judge is satisfied, after any examination and investigation he or she deems appropriate, that the principal is a person covered by this subchapter and reasonably understands the nature and purpose of the power and that the attorney in fact is a suitable person to carry out the obligations imposed upon him or her; and

      (iv) The provisions of this subchapter have been observed.

   Ark. Code Ann. § 28-68-304.

   (b) Approval may be given informally in chambers or another convenient place without the necessity of service of summons or other notice and shall be endorsed upon the face of the original of the instrument. Ark. Code Ann. § 28-68-304.

Contents

1. Under Arkansas Code § 28-68-305, the power of attorney shall show or state:

   (a) The fact of execution under the provisions of this subchapter;

   (b) The time and conditions under which the power is to become effective;

   (c) The extent and scope of the power conferred;

   (d) Who is to exercise the power; and

   (e) The annual income covered by the instrument and the nature or description and estimated value of the property, if any, to be affected.

2. The power of attorney may state the conditions and circumstances under which the power terminates. Ark. Code Ann. § 28-68-305.

Scope of Power

1. The power may be restricted or it may grant complete authority to provide for the care of the principal's person and property. Ark. Code Ann. § 28-68-306.

2. Except to the extent limited by the instrument creating the power or to the extent that court approval is required by the instrument, the attorney in fact without prior court approval may:

   (a) Endorse checks and other instruments made payable to the principal;

   (b) Sell, encumber, lease, or otherwise manage the principal's property; and

   (c) Execute and deliver deeds, conveyances, stock and bond transfers, contracts, and other instruments necessary to carry out the power.

   Ark. Code Ann. § 28-68-306.

3. The power remains valid until terminated as provided in this subchapter. Ark. Code Ann. § 28-68-306.

4. The power is not invalidated by reason of any subsequent change in the mental or physical condition of the principal, including, but not restricted to, incompetency. Ark. Code Ann. § 28-68-306.

Filing of Power

The original power of attorney shall be filed in the office of the probate clerk of the circuit court of the county of the domicile of the principal. A certified copy of the original power of attorney, together with the record of judicial approval, shall be recorded in the office of the recorder of each county in which real property to be affected by an exercise of the power is located. Ark. Code Ann. § 28-68-307.

Termination

1. A power of attorney terminates on:

   (a) Written revocation by the principal;

   (b) Death of the principal;

   (c) Order of a court appointing a guardian of the person or property, or both, of the principal, unless the order provides otherwise;

   (d) Expiration or termination as specified in the power of attorney; or

   (e) A determination by a judge of the approving court that the value of the property or the amount of the annual money income covered by the instrument has so increased that this subchapter is no longer appropriately applicable.

   Ark. Code Ann. § 28-68-312(a).

2. The original resignation of an attorney in fact, a written revocation of the power of attorney by a principal, or a certified copy of the death certificate of the principal or of the attorney in fact, or a certified copy of any court judgment or order terminating the power of attorney or removing the attorney in fact for cause shall be filed promptly in the office of the clerk of the court whose judge approved the power, and certified copies shall be recorded promptly in all offices in which a certified copy of the original power of attorney is recorded. A notation of the terminating event shall be made by the clerk on the face of the original power of attorney. Ark. Code Ann. § 28-68-312(b).

3. The attorney in fact is liable to the principal and the principal's estate for all damage and loss the principal suffers because of the attorney's acts done after the attorney receives notice of the termination of his or her authority or after termination by provision of the power itself. Ark. Code Ann. § 28-68-312(c)(1).

4. After the power is terminated, other than by death of the principal, he or she may perform ministerial acts reasonably necessary to complete and conclude his or her duties. Ark. Code Ann. § 28-68-312(c)(2).

Death, Disability or Incapacity

1. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Ark. Code Ann. § 28-68-202.

2. The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Ark. Code Ann. § 28-68-101(a)(1).

3. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Ark. Code Ann. § 28-68-101(b)(1).

4. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Ark. Code Ann. § 28-68-202.

Limit of Power

A power of attorney executed under authority of this subchapter which grants powers concerning property or income shall be approved only if limited to: (a) property having a gross value not exceeding twenty thousand dollars ($20,000), exclusive of homestead, and excluding the

capitalized value of any annual income; or (b) an annual money income covered by the instrument not exceeding six thousand dollars ($6,000). Ark. Code Ann. § 28-68-303.

Living Wills

General Description

An adult, at least 18 years old ("Declarant") of sound mind may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. Ark. Code Ann. § 20-17-202(a).

Legal Requirements

1. To be valid, a declaration must be (a) signed by the Declarant or another person at the Declarant's direction; and (b) witnessed by two (2) individuals. Ark. Code Ann. § 20-17-202(a).

2. Use of statutory form is optional. (Forms are available at Ark. Code Ann. §§ 20-17-202(b)-(c).

3. Declaration operative when (a) it is communicated to the attending physician; and (b) the Declarant is determined by the attending physician and another physician in consultation either (i) to be in terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment or (ii) to be permanently unconscious. Ark. Code Ann. § 20-17-203.

4. Declarant should furnish physician or healthcare provider with copy of declaration. Such person is required to make it part of the Declarant's medical record, or advise the Declarant if such person is unwilling. Ark. Code Ann. § 20-17-202(d).

Revocation

1. A Declaration may be revoked at any time and in any manner by the Declarant without regard to the Declarant's mental or physical condition. Ark. Code Ann. § 20-17-204.

2. Revocation is effective upon communication to the attending physician or other healthcare provider by the Declarant or witness to the revocation. The physician or healthcare provider should make the revocation part of the Declarant's medical record. Ark. Code Ann. § 20-17-204.

Wills

General Description

Any person of sound mind 18 years of age or older may make a will. Ark. Code Ann. § 28-25-101.

Legal Requirements

1. Under Arkansas Code § 28-25-103, a written will must be:

   (a) Signed by the testator or by someone else, at the testator's direction and in his or her presence (the person so signing shall write his or her own name and state that he or she signed the testator's name at the request of the testator);

   (b) The testator must declare to two (2) attesting witnesses that the instruments is his or her will and sign it, acknowledge his or her signature already made, or sign by mark;

   (c) The attesting witnesses must sign at the request and in the presence of the testator;

      (i) Any person, 18 years of age or older, competent to be witness generally in this state may act as an attesting witness to a will. Ark. Code Ann. § 28-25-102.

      (ii) No will is invalidated because attested by an interested witness, but an interested witness, unless the will is also attested by two (2) qualified disinterested witnesses, forfeits anything above the value of the share he or she would receive intestate.

   (d) Signatures must be at the end of the will.

2. Any attesting witness may sign an affidavit before any officer authorized to administer oaths in this state or in any other state stating such facts as he or she would be required to testify to in an uncontested probate proceeding concerning the will.

   (a) The attesting witness may do so at his or her own initiative; at the request of the testator; or after the testator's death, at the request of the executor or of any other person interested.

   (b) The affidavit shall be written on the will, or, if that is impracticable, it shall be securely affixed to the will or to a true copy of the will by the officer administering the oath.

   Ark. Code Ann. § 28-25-106.

3. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Ark. Code Ann. § 28-25-107.

4. A will may refer to a statement or list that disposes of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, securities, and property used in trade or business.

(a) The writing must either be in the handwriting of the testator or be signed by him or her and must describe the items and devisees with reasonable certainty.

(b) The writing may be referred to as one to be in existence at the time of the testator's death; prepared before or after the execution of the will; altered by the testator after its preparation; and a writing which has no significance apart from its effect upon the dispositions made by the will.

Ark. Code Ann. § 28-25-107.

5. A will may be deposited by the person making it (or by some person for him/her) with the circuit court of the county of his or her residence. Ark. Code Ann. § 28-25-108 (see statute for additional details).

6. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Ark. Code Ann. § 28-27-101.

7. Arkansas provides for certain allowances and rights for surviving spouses and children. Spouses may choose to take against the will (dower and curtsey). Ark. Code Ann. § 28-39-101, *et seq.*

Revocation/Modification

A will or any part thereof is revoked: (a) by a subsequent will which revokes the prior will or part expressly or by inconsistency; (b) by being burned, torn, cancelled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in the testator's presence and by the testator's direction; (c) if, after making a will, the testator is divorced or the marriage of the testator is annulled, all provisions in the will in favor of the testator's former spouse are revoked; or (d) when there has been a partial revocation, re-attestation of the remainder of the will shall not be required. Ark. Code Ann. § 28-25-109.

CALIFORNIA

Power of Attorney – Healthcare

General Description

1. An agent designated in the power of attorney may make healthcare decisions for the principal to the same extent the principal could make healthcare decisions if the principal had the capacity to do so. Cal. Prob. Code § 4683(a).

2. The agent may also make decisions that may be effective after the principal's death, including: (a) making a disposition under the Uniform Anatomical Gift Act; (b) authorizing an autopsy; (c) directing the disposition of remains; and (d) authorizing the release of the records of the principal to the extent necessary for the agent to fulfill his or her duties as set forth in this division. Cal. Prob. Code § 4683(b).

Legal Limitations

This division does not authorize consent to any of the following on behalf of a patient: commitment to or placement in a mental health treatment facility; convulsive treatment; psychosurgery; sterilization; and abortion. Cal. Prob. Code § 4652.

Legal Requirements

1. Unless otherwise provided in a power of attorney for healthcare, the authority of an agent becomes effective only on a determination that the principal lacks capacity, and ceases to be effective on a determination that the principal has recovered capacity. Cal. Prob. Code § 4682.

2. An agent shall make a healthcare decision in accordance with the principal's individual healthcare instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent. Cal. Prob. Code § 4684.

3. A written advance health care directive is legally sufficient if all of the following are satisfied: (a) it contains the date of its execution; (b) it is signed either by the patient or in the patient's name by another adult in the patient's presence and at the patient's direction; and (c) it is either acknowledged before a notary public or signed by at least two witnesses. Cal. Prob. Code § 4673(a); *see* Cal. Prob. Code §§ 4674-4675 for detailed requirements.

4. An electronic advance healthcare directive or power of attorney for healthcare is legally sufficient if the requirements in California Probate Code § 4673(a) are satisfied, except an acknowledgment before a notary public shall be required, and if a digital signature is used, it meets all of the following requirements:

(a) The digital signature either meets the requirements of Section 16.5 of the Government Code and Chapter 10 of Division 7 of Title 2 of the California Code of Regulations or the digital signature uses an algorithm approved by the National Institute of Standards and Technology;

(b) The digital signature is unique to the person using it;

(c) The digital signature is capable of verification;

(d) The digital signature is under the sole control of the person using it;

(e) The digital signature is linked to data in such a manner that if the data are changed, the digital signature is invalidated;

(f) The digital signature persists with the document and not by association in separate files; and

(g) The digital signature is bound to a digital certificate.

Revocation

1. A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising healthcare provider. Cal. Prob. Code § 4695(a).

2. A patient having capacity may revoke all or part of an advance healthcare directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. Cal. Prob. Code § 4695(b).

Power of Attorney – Property

General

1. "Power of attorney" means a written instrument, however denominated, that is executed by a natural person having the capacity to contract and that grants authority to an attorney-in-fact. A power of attorney may be durable or nondurable. Cal. Prob. Code § 4022.

2. A durable power of attorney is a power of attorney by which a principal designates another person as attorney-in-fact in writing and the power of attorney contains any of the following statements: "This power of attorney shall not be affected by subsequent incapacity of the principal;" "This power of attorney shall become effective upon the incapacity of the principal;" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity. Cal. Prob. Code § 4124.

Creating a Power of Attorney

1. California Probate Code § 4401 contains a form to use in creating the power of attorney.

    (a) Nothing in this part affects or limits the use of any other form for a power of attorney. A form that complies with the requirements of any law other than the provisions of this part may be used instead of the form set forth in Section 4401, and none of the provisions of this part apply if the other form is used. Cal. Prob. Code § 4408.

2. A statutory form power of attorney is legally sufficient if all of the following requirements are satisfied:

    (a) The wording of the form complies substantially with Section 4401. A form does not fail to comply substantially with Section 4401 merely because the form does not include the provisions of Section 4401 relating to designation of co-agents. A form does not fail to comply substantially with Section 4401 merely because the form uses the sentence "Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation" in place of the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation," in which case the form shall be interpreted as if it contained the sentence "Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation."

    (b) The form is properly completed.

    (c) The signature of the principal is acknowledged.

    Cal. Prob. Code § 4402.

Durable Power of Attorney

A statutory form power of attorney legally sufficient under this part is durable to the extent that the power of attorney contains language, such as "This power of attorney will continue to be effective even though I become incapacitated," showing the intent of the principal that the power granted may be exercised notwithstanding later incapacity. Cal. Prob. Code § 4404.

Living Wills

General Description

An adult ("Patient") having capacity may give an individual healthcare instruction ("Individual Instruction"). The Individual Instruction may be oral or written, and may be limited to take effect only if a specified condition arises. Cal. Prob. Code § 4670.

Legal Requirements

1. An advance healthcare directive ("AHCD") must be:

   (a) Dated;

   (b) Signed either by the Patient or by another adult in the Patient's name, in the Patient's presence, and at the Patient's direction; and

      (i) If the AHCD is electronic, the digital signature must (a) either meet the requirements of Section 16.5 of the Government Code and Chapter 10 (commencing with Section 22000) of Division 7 of Title 2 of the California Code of Regulations or the digital signature uses an algorithm approved by the National Institute of Standards and Technology; (b) be unique to the person using it; (c) be capable of verification; (d) be under the sole control of the person using it; (e) be linked to data in such a manner that if the data are changed, the digital signature is invalidated; (f) persist with the document and not by association in separate files; and (g) be bound to a digital certificate.

   (c) Either (i) acknowledged before a notary public or (ii) signed by at least two (2) witnesses.

      (i) Each witness must (a) be an adult and (b) witness either (i) the signing by the Patient or (ii) the Patient's acknowledgement of the signature or AHCD.

      (ii) No witness may be (a) the Patient's healthcare provider or an employee of Patient's healthcare provider, (b) the operator or an employee of a community care facility or residential care facility for the elderly, or (c) the agent, if the AHCD is a power of attorney.

      (iii) Each witness must declare in substance: "I declare under penalty of perjury under the laws of California (i) that the individual who signed or acknowledged this advance health care directive is personally known to me, or that the individual's identity was proven to me by convincing evidence, (ii) that the individual signed or acknowledged this advance directive in my presence, (iii) that the individual appears to be of sound mind and under no duress, fraud, or undue influence, (iv) that I am not a person appointed as agent by this advance directive, and (v) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly."

(iv) At least one witness, who is neither (i) related to patient by blood, marriage, or adoption nor (ii) entitled to any portion of patient's estate upon patient's death, whether by will or operation of law, must sign a declaration similar in substance to the following: "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."

(v) An electronic AHCD must be acknowledged before a notary public.

Cal. Prob. Code §§ 4673, 4674 & 4675.

2. Use of the statutory form is optional. (Form available at Cal. Prob. Code § 4701.)

3. A patient may, but is not required, to register a written advance healthcare directive in a central information center, making that information available upon request to any health care provider, the public guardian, or the legal representative of the registrant. Cal. Prob. Code §§ 4800 & 4803.

4. Unless otherwise specified in the AHCD, a patient's primary physician will determine whether a patient lacks or has recovered capacity, or that another condition exists that affects the individual healthcare instruction. Cal. Prob. Code § 4658.

5. An AHCD will not affect (a) the right of an individual with capacity, (b) the law governing healthcare in an emergency, or (c) the law governing healthcare for unemancipated minors. Cal. Prob. Code § 4651.

Revocation

A patient with capacity may revoke all or part of an AHCD, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. Revocation of the designation of an agent must be done with a signed writing by a patient with capacity or by a patient with capacity personally informing the supervising healthcare provider. Cal. Prob. Code § 4695.

Wills

1. Under California Probate Code § 6110, a written will must be:

(a) Signed by the testator, in the testator's name by some other person in the testator's presence and by the testator's direction, or by a conservator pursuant to a court order; and

(b) Witnessed by at least two (2) persons each of whom being present at the same time, witnessed either the signing of the will, or the testator's acknowledgment of either the signature or of the will itself.

(i) A will or any provision thereof is not invalid because the will is signed by an interested witness. But, unless there are at least two (2) other subscribing witnesses to the will who are disinterested, a presumption that the witness procured the devise by duress, menace, fraud, or undue influence generally arises. Cal. Prob. Code § 6112.

2. A will or any part thereof is revoked by any of the following: (a) a subsequent will which revokes the prior will or part expressly or by inconsistency; or (b) being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by either (1) the testator or (2) another person in the testator's presence and by the testator's direction. Cal. Prob. Code § 6120.

(a) Unless the will expressly provides otherwise, if after executing a will the testator's marriage or domestic partnership is dissolved or annulled, the dissolution or annulment revokes all provisions in favor the former spouse. Cal. Prob. Code §§ 6122, § 6122.1.

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Cal. Prob. Code § 6130.

4. A writing can include the disposition of personal property, except for money or property primarily in a trade or business. Such a writing must be dated, signed or in the testator's handwriting and each piece of property cannot exceed $5,000 in value and the total cannot exceed $25,000. Cal. Prob. Code § 6132.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether the acts and events occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event. Cal. Prob. Code § 6131.

California Statutory Will

1. A statutory will (see http://www.abanet.org/legalservices/lamp/cle/0306_ParkerCal.pdf) can be executed by:

(c) The testator completing the appropriate blanks and signing the will; and.

(d) Two (2) witnesses who observe the testator's signing the will and who each sign the will in the presence of the testator.

Cal. Prob. Code §§ 6221-6222.

2. Basic constructions of terms are set forth in the statute. Cal. Prob. Code §§ 6200-6211.

3. A California statutory will may be revoked or amended:

(e) By codicil in the same manner as other wills; or

(i) Additions or deletions on the face of the will, other than in accordance with the instructions, shall be given effect only where clear and convincing evidence shows that they would effectuate the clear intent of the testator.

(f) By the dissolution or annulment of the testator's marriage after the making of the will. In those events, any provision in favor of the former spouse are revoked.

Cal. Prob. Code §§ 6226-6227.

Applicable to Both Wills

A will can devise property to the trustee of a trust established or to be established, whether or not the trust is amendable or revocable, if (a) the trust is identified in the will; and (b) the terms of the trust are set forth in a written instrument, other than a will. Cal. Prob. Code § 6300.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

COLORADO

Power of Attorney – Healthcare

General Description

1. The authority of an agent to act on behalf of the principal in consenting to or refusing medical treatment, including artificial nourishment and hydration, may be set forth in a medical durable power of attorney. A medical durable power of attorney may include any directive, condition, or limitation of an agent's authority. Colo. Rev. Stat. § 15-14-506(1).

2. An agent appointed in a medical durable power of attorney may provide informed consent to or refusal of medical treatment on behalf of a principal who lacks decisional capacity and shall have the same power to make medical treatment decisions the principal would have if the principal did not lack such decisional capacity. Colo. Rev. Stat. § 15-14-506(3).

Legal Requirements

1. The agent shall act in accordance with the terms, directives, conditions, or limitations stated in the medical durable power of attorney, and in conformance with the principal's wishes that are known to the agent. Colo. Rev. Stat. § 15-14-506(2).

    (a) If the medical durable power of attorney contains no directives, conditions, or limitations relating to the principal's medical condition, or if the principal's wishes are not known, the agent shall act in accordance with the best interests of the principal.

2. An agent appointed in a medical durable power of attorney shall be considered a designated representative of the patient and shall have the same rights of access to the principal's medical records as the principal. Colo. Rev. Stat. § 15-14-506(3).

3. In making medical treatment decisions on behalf of the principal, and subject to the terms of the medical durable power of attorney, the agent shall confer with the principal's attending physician concerning the principal's medical condition. Colo. Rev. Stat. § 15-14-506(3).

Revocation

Unless otherwise specified in the medical durable power of attorney, if a principal revokes the appointment of an agent or the agent is unable or unwilling to serve, the appointment of the agent shall be revoked. However, nothing in this section shall be construed to revoke any remaining provisions of the medical durable power of attorney. Colo. Rev. Stat. § 15-14-506(4)(d).

Power of Attorney – Property

Form

A document substantially in the form provided in Colorado Revised Statutes § 15-14-741 may be used to create a statutory form power of attorney.

Powers

1. The authority of the attorney-in-fact or agent to act on behalf of the principal shall be set forth in the power and may relate to any act, power, duty, right, or obligation which the principal has or after acquires relating to the principal or any matter, transaction, or property, real or personal, tangible or intangible. Additionally, the principal may expressly empower his attorney-in-fact or agent to renounce and disclaim interests and powers, to make gifts, in trust or otherwise, and to release and exercise powers of appointment. Colo. Rev. Stat. § 15-14-501. Certain grants of power must be expressly granted, which are listed in Colorado Revised Statutes § 15-14-724.

2. The principal may specify in the agency instrument:

   (a) The event upon which or time when the agency begins and terminates;

   (b) The mode of revocation or amendment of the agency instrument; and

   (c) The rights, powers, duties, limitations, immunities, and other terms applicable to the agent and to all third parties dealing with the agent.

   Colo. Rev. Stat. § 15-14-603.

Revocation

The principal may amend or revoke the agency instrument at any time and in any manner that is communicated to the agent or to any other person who is related to the subject matter of the agency. Any agent who acts in good faith on behalf of the principal within the scope of an agency instrument is not liable for any acts that are no longer authorized by reason of an amendment or revocation of the agency instrument until the agent receives actual notice of the amendment or revocation. Colo. Rev. Stat. § 15-14-604.

Durable Power of Attorney

A power of attorney created on or after January 1, 2010, is durable unless it expressly provides that it is terminated by the incapacity of the principal. A power of attorney existing on December 31, 2009, is durable only if on that day the power of attorney is durable under Colorado Revised Statutes §§ 15-14-501 or 15-14-745 (2). Colo. Rev. Stat. § 15-14-704.

Execution

A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. Colo. Rev. Stat. § 15-14-705.

Effective Date

1. A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

2. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

3. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

   (a) A physician or licensed psychologist that the principal is incapacitated within the meaning of Colorado Revised Statutes § 15-14-702(5)(a); or

   (b) An attorney-at-law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of Colorado Revised Statutes § 15-14-702(5)(b).

   Colo. Rev. Stat. § 15-14-709.

Termination

1. A power of attorney terminates when: (a) the principal dies; (b) the principal becomes incapacitated, if the power of attorney is not durable; (c) the principal revokes the power of attorney; (d) the power of attorney provides that it terminates; (e)the express purpose of the power of attorney is accomplished; or (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. Colo. Rev. Stat. § 15-14-710.

2. An agent's authority terminates when: (a) the principal revokes the authority; (b) the agent dies, becomes incapacitated, or resigns; (c) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the

power of attorney otherwise provides; or (d) the power of attorney terminates. Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. Colo. Rev. Stat. § 15-14-710.

Living Wills

General Description

Any competent adult, at least 18 years old ("Declarant") may execute a declaration directing that life-sustaining procedures be withheld or withdrawn if, at some future time, Declarant is in a terminal condition and either unconscious or otherwise incompetent to decide whether any medical procedure or intervention should be accepted or rejected. Colo. Rev. Stat. § 15-18-104(1).

Legal Requirements

1. To be valid, a declaration must be:

   (a) Signed either by the Declarant or if the Declarant is physically unable to sign, by a person ("Proxy Signer") in the presence of and at the direction of the Declarant; and

   (b) Signed in the presence of two (2) witnesses.

      (i) Neither the proxy signer nor either witness may be (a) a physician, (b) an employee of the attending physician or healthcare facility in which the Declarant is a patient, (c) a person who has a claim against any portion of the Declarant's estate at the time declaration is signed, or (d) a person who knows or believes that he is entitled to any portion of the Declarant's estate either as a beneficiary of an existing will or as heir at law. In addition to the above, a witness may not be a patient or resident of a healthcare facility where the Declarant is a patient or resident.

   Colo. Rev. Stat. §§ 15-18-104, -105 & -106.

2. Use of the statutory form is optional. (Form available Colo. Rev. Stat. § 15-18-104.)

3. The declaration must be submitted to the attending physician or advanced practice nurse for entry in the Declarant's medical record. Colo. Rev. Stat. § 15-18-104(1).

4. The declaration becomes operative when the following occurs:

   (a) Two (2) physicians, including the Declarant's attending physician, believe that the Declarant has a terminal condition and certify as such in writing ("Certification"), entering the Certification and the declaration into the patient's medical record.

(b) If the attending physician has actual knowledge of the whereabouts of the Declarant's spouse, any adult children, parent, or attorney-in-fact, the physician must immediately make a reasonable effort to notify at least one of such persons (in order named) of Certification.

(c) If no action to challenge the validity of the declaration occurs within 48 hours of the Certification, the attending physician shall withdraw or withhold all life-sustaining procedures pursuant to the terms of the declaration.

Colo. Rev. Stat. § 15-18-107.

Revocation

A declaration may be revoked by the Declarant (a) orally; (b) in writing; or (c) burning, tearing, canceling, obliterating, or destroying the declaration. Colo. Rev. Stat. § 15-18-109.

Wills

General Description

An individual 18 or more years of age who is of sound mind may make a will. Colo. Rev. Stat. § 15-11-501.

Legal Requirements

1. Under Colorado Revised Statutes § 15-11-502, a written will must be:

   (a) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

   (b) Either:

      (i) Signed by at least two (2) individuals, either prior to or after the testator's death, each of whom signed within a reasonable time after he or she witnessed either the testator's signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will; or

         (1) The signing of a will by an interested witness does not invalidate the will or any provision of it. Colo. Rev. Stat. § 15-11-505.

      (ii) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.

2. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal. (See statute for model language.) A signature affixed to a self-proving

affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution. Colo. Rev. Stat. § 15-11-504.

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Colo. Rev. Stat. § 15-11-510.

4. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Colo. Rev. Stat. § 15-11-511.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event. Colo. Rev. Stat. § 15-11-512.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). The statement: (a) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; (b) may be referred to as one to be in existence at the time of the testator's death; (c) may be prepared before or after the execution of the will; (d) it may be altered by the testator after its preparation; and (e) may be a writing that does not have significance apart from its effect on the dispositions made by the will. Colo. Rev. Stat. § 15-11-513.

7. A will may be deposited by the testator or his agent with the clerk of any court for safekeeping under the rules of that court. Colo. Rev. Stat. § 15-11-515.

Revocations/Modification

1. A will can be revoked by:

   (a) Executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

      (i) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.

   (b) By performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction.

      (i) Revocatory acts include burning, tearing, canceling, obliterating or destroying the will or any part of it.

Colo. Rev. Stat. § 15-11-507.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. Colo. Rev. Stat. § 15-11-508.

CONNECTICUT

Power of Attorney – Healthcare

General Description

1. Any person 18 years of age or older may execute a document that contains directions as to any aspect of healthcare. This division applies to healthcare decisions for adults who lack capacity to make healthcare decisions for themselves. Conn. Gen. Stat. § 19a-575.

2. The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of any person who acts under a power of attorney in a writing executed by the principal, if the writing contains words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incompetence. Conn. Gen. Stat. § 45a-562(a).

Legal Limitations

A physician shall not act as both healthcare representative for a principal and attending physician for the principal. Conn. Gen. Stat. § 19a-576.

Legal Requirements

1. An appointment of healthcare representative becomes operative when (1) the document is furnished to the attending physician, and (2) the declarant is determined by the attending physician to be incapacitated. Conn. Gen. Stat. § 19a-579.

2. The document must be signed and dated by any person over 18 years old in the presence of two (2) adult witnesses who shall also sign the document. The person appointed as representative shall not act as witness to the execution of such document or sign such document. Conn. Gen. Stat. § 19a-576(a).

3. Please refer to Connecticut General Statutes § 19a-576(b)-(d) for persons who may not be witnesses and who may not be the healthcare representative.

Power of Attorney – Property

Form

The use of the form provided in Connecticut General Statutes § 1-43 in the creation of a power of attorney is authorized but not required. The use of the form provided in Connecticut General Statutes § 1-56 in the creation of a power of attorney for a bank account is authorized but not required.

Durable Power of Attorney

The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of any person who acts under a power of attorney in a writing executed by the principal, if the writing contains the words "this power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incompetence; provided the power of attorney is executed and witnessed in the same manner as provided for deeds in Connecticut General Statutes § 47-5. Conn. Gen. Stat. § 45a-562.

Springing Power of Attorney

A power of attorney duly acknowledged in accordance with Connecticut General Statutes § 1-43 may take effect upon the occurrence of a specified contingency, including a date certain or the occurrence of an event, provided the instrument requires that a person named in the instrument execute a written affidavit that such contingency has occurred. A power of attorney limited as provided in this subsection shall be a springing power of attorney and shall take effect upon the written affidavit of the person named in the instrument that the specified contingency has occurred. Conn. Gen. Stat. § 1-56h.

Living Wills

General Description

Any person, at least 18 years old ("Declarant"), may execute a document that (i) contains directions as to any aspect of healthcare, including the withholding or withdrawal of life support systems ("Life Support Instructions") or (ii) contains healthcare instructions, the appointment of a healthcare representative, the designation of a conservator of the person for future incapacity and a document of anatomical gift ("Healthcare Instructions"; Life Support Instructions and Healthcare Instructions both an "advance healthcare directive" or "AHCD"). Conn. Gen. Stat. §§ 19a-575 and -575a; for rules on appointing health care representative, *see* Connecticut Health Care Power of Attorney.

Legal Requirements

1. To be valid, an AHCD must be:

   (a) Signed and dated by the Declarant; and

   (b) Witnessed by two (2) persons.

      (i) Witnesses must be present when the Declarant signs and dates the declaration.

      (ii) For both types of AHCDs, the witnesses must attest that the Declarant (a) appeared to be 18 years of age or older, (b) of sound mind, and (c) able to

understand the nature and consequences of health care decisions at the time the document was signed.

(iii) For the Healthcare Instructions, the witnesses must also attest that (a) the Declarant appeared to be under no improper influence, and (b) the witnesses subscribed the AHCD (i) in the Declarant's presence, (ii) at the Declarant's request, and (iii) in the presence of each other.

(iv) Witness may, but are not required to, make and sign an affidavit before any officer authorized to administer oaths, stating the facts as they would be required to testify to in court to prove such living will. Such affidavits, if made, should be attached to the AHCD, if not made part of the AHCD.

Conn. Gen. Stat. §§ 19a-575 & -575a.

2. Use of the statutory form is optional but must be substantially followed. One form creates Healthcare Instructions, one form provides directions for the withholding or withdrawal of life support systems. (Forms are available at Conn. Gen. Stat. §§ 19a-575 & -575a.)

3. The AHCD becomes operative when (a) the AHCD is furnished to the attending physician; and (b) the Declarant is determined the by attending physician to be incapacitated. Conn. Gen. Stat. § 19a-579.

   (a) In such case that a healthcare representative has been appointed, the attending physician must disclose any determination of incapacity, in writing, to such person.

4. The Declarant should furnish the physician or healthcare provider with a copy of the AHCD. Such person should make it part of the Declarant's medical record. Conn. Gen. Stat. § 19a-578.

Revocation

1. Except with respect to the revocation of the appointment of a healthcare representative, an AHCD may be revoked at any time and in any manner by the Declarant, without regard to the Declarant's mental or physical condition. Conn. Gen. Stat. § 19a-579a.

2. The attending physician or other healthcare provider should make the revocation part of the Declarant's medical record. Conn. Gen. Stat. § 19a-579a.

Wills

General Description.

Any person 18 years of age or older, and of sound mind, may dispose of his estate by will. Conn. Gen. Stat. § 45a-250.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

Legal Requirements

1. Under Connecticut General Statutes § 45a-251, a will or codicil must be:

   (a) In writing,

   (b) Subscribed by the testator; and

   (c) Attested by two (2) witnesses, each of them subscribing in the testator's presence.

      (i) Every provision in favor of a witness, or to the spouse of such subscribing witness, shall be void unless such will or codicil is legally attested without the signature of such witness, or unless such devisee or legatee is an heir to the testator. Conn. Gen. Stat. § 45a-258.

2. If a testator fails to provide by will for the testator's surviving spouse who married the testator after the execution of the will, the surviving spouse shall receive the same share of the estate the surviving spouse would have received if the decedent left no will unless: (a) it appears from the will that the omission was intentional; or (b) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements, or is reasonably inferred from the amount of the transfer or other evidence. Conn. Gen. Stat. § 45a-257a.

3. A will may validly transfer property to the trustee of a trust. The trust can be (a) established during the testator's lifetime; or (b) established at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Conn. Gen. Stat. § 45a-260.

   (a) The reference in a will to a trust does not cause such trust or its assets to be subject to the jurisdiction of the probate court in which such will is admitted. Conn. Gen. Stat. § 45a-259.

Revocation/Modification

1. A will can be revoked by burning, canceling, tearing or obliterating it by the testator or by some person in the testator's presence by the testator's direction, or by a later will or codicil. Conn. Gen. Stat. § 45a-257.

2. If, after executing a will, the testator's marriage is terminated by dissolution, divorce or annulment, provisions in favor of the former spouse shall be revoked, unless the will expressly provides otherwise. Conn. Gen. Stat. § 45a-257c.

DELAWARE

Power of Attorney – Healthcare

General Description

An adult who is mentally competent may execute a power of attorney for health care, which may authorize the agent to make any healthcare decision the principal could have made while having capacity. Del. Code § 2503(a).

Legal Requirements

1. An advance healthcare directive shall become effective only upon a determination that the declarant lacks capacity. Del. Code § 2503(c).

2. An advance health-care directive must be:

   (a) In writing;

   (b) Signed by the declarant or by another person in the declarant's presence and at the declarant's expressed direction;

   (c) Dated; and

   (d) Signed in the presence of two (2) or more adult witnesses, neither of whom:

      (i) Is related to the declarant by blood, marriage or adoption;

      (ii) Is entitled to any portion of the estate of the declarant under any will or trust of the declarant or codicil;

      (iii) Has, at the time of the execution of the advance healthcare directive, a present or inchoate claim against any portion of the estate of the declarant;

      (iv) Has a direct financial responsibility for the declarant's medical care; or

      (v) Has a controlling interest in or is an operator or an employee of a healthcare institution at which the declarant is a patient or resident.

   Del. Code § 2503(b)(1).

Revocation

1. An advance healthcare directive ceases to be effective upon a determination that the declarant has recovered capacity. Del. Code § 2503(d).

2. An individual who is mentally competent may revoke all or part of an advance health-care directive: (a) by a signed writing; or (b) in any manner that communicates an intent

to revoke done in the presence of two (2) competent persons, one (1) of whom is a healthcare provider. Del. Code § 2504(a).

3. Any revocation that is not in writing shall be memorialized in writing and signed and dated by both witnesses. This revocation shall be made a part of the medical record. Del. Code § 2504(b).

Power of Attorney – Property

General

A durable power of attorney is a power of attorney by which a principal designates another attorney-in-fact in writing, and the writing contains the words: "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. Del. Code Ann. § 4901.

Power Not Affected by Disability

All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and by the principal, and the principal's successors in interest, as if the principal were competent and not disabled. Del. Code Ann. § 4902.

Death, Disability or Incapacity of Principal

1. The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal. Del. Code Ann. § 4904(a).

2. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke nor terminate the agency as to the attorney-in-fact, or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest. Del. Code Ann. § 4904(b).

Living Wills

General Description

A mentally competent adult ("Declarant") generally has the right to refuse medical or surgical treatment and may give direction concerning healthcare decisions in an advance healthcare directive ("AHCD"). Del. Code Ann., tit. 16, §§ 2501, 2502, and 2503.

Legal Requirements

1. To be valid, an AHCD must be:

   (a) In writing;

   (b) Dated;

   (c) Signed by the Declarant or another person in the Declarant's presence and at the Declarant's expressed direction; and

   (d) Signed in the presence of two (2) or more adult witnesses;

      (i) Neither witness may (a) be related to the Declarant by blood, marriage or adoption, (b) be entitled to any portion of the Declarant's estate whether, at the time of the execution of the AHCD, by will or by operation of law, (c) have, at the time of the execution of the AHCD, a present or inchoate claim against any portion of the Declarant's estate, (d) have a direct financial responsibility for the Declarant's medical care, or (e) have a controlling interest in or is an operator or an employee of a healthcare institution at which the Declarant is a patient or resident.

      (ii) Each witness must state in writing that he or she is not prohibited from being a witness.

   Del. Code Ann., tit. 16, § 2503(b).

2. Use of the statutory form is optional. (Form available at Del. Code Ann., tit. 16, § 2505.)

3. The AHCD will become effective upon a determination that the Declarant lacks capacity. If the Declarant regains capacity, the AHCD will cease to be effective. Del. Code Ann., tit. 16, §§ 2503(c)-(d).

   (a) And in the case when a life-sustaining procedure will be provided, withheld or withdrawn, when the Declarant's attending physician and a second physician certifies in writing in the Declarant's medical record that the Declarant is permanently unconscious or has a terminal condition. Del. Code Ann., tit. 16, §§ 2501(r) & 2503(c).

Revocation

1. An individual who is mentally competent may revoke all or part of an AHCD (a) by a writing signed by the Declarant; or (b) in any manner that communicates an intent to revoke done in the presence of two (2) competent persons, one (1) of whom is a healthcare provider. The revocation must be (a) memorialized in writing, (b) signed and dated by both witnesses, and (c) made part of the medical record. Del. Code Ann., tit. 16, § 2504.

2. Any person informed of revocation should communicate revocation to the Declarant's supervising healthcare provider and to any healthcare institution at which the Declarant is a patient. Del. Code Ann., tit. 16, § 2504(c).

3. To the extent a later executed AHCD conflicts with an earlier executed AHCD, the later executed AHCD will take precedence. Del. Code Ann., tit. 16, § 2504(e).

Wills

General Description

Any person of the age of 18 years, or upwards, of sound and disposing mind and memory, may make a will of real and personal estate. Del. Code Ann., tit. 12, § 201.

Legal Requirements

1. Every will, whether of personal or real estate, must be: (a) in writing and signed by the testator or by some person subscribing the testator's name in the testator's presence and by the testator's express direction; and (b) attested and subscribed in testator's presence by two (2) or more credible witnesses. Del. Code Ann., tit. 12, § 202.

    (a) A will or any provision thereof is not invalid because the will is signed by an interested person. Del. Code Ann., tit. 12, § 203.

2. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Del. Code Ann., tit. 12, § 211.

3. A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will (other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business).

    (a) The statement: 1) must either be in the handwriting of the testator or be signed by the testator and must identify the items and the legatees with reasonable certainty; 2) must not be inconsistent with the terms of the will; and 3) must not be inconsistent with any other writing permitted by this section unless the writing is dated in which case the writing with the latest date will control.

    (b) If a writing includes both provisions that are consistent and inconsistent with the will, such writing shall be admissible as evidence of the intended disposition of those items that would be disposed of by the provisions of the writing that are not inconsistent with the terms of the will.

    (c) The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it

may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

Del. Code Ann., tit. 12, § 212.

Revocation/Modification

1. A will, or any clause thereof, can only be revoked or altered by:

   (a) Canceling by the testator, or by some person in the testator's presence and by the testator's express direction; or

   (b) A valid last will and testament, or by a writing signed by the testator, or by some person subscribing the testator's name in the testator's presence and by the testator's express direction, and attested and subscribed in the testator's presence by two (2) or more credible witnesses

      (i) But this clause shall not preclude nor extend to an implied revocation.

   Del. Code Ann., tit. 12, § 208.

2. If after executing a will, the testator is divorced or the testator's marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse, as executor, trustee, guardian or other fiduciary, unless the will expressly provides otherwise. Del. Code Ann., tit. 12, § 209.

DISTRICT OF COLUMBIA

Power of Attorney – Healthcare

General Description

1. A competent adult may designate, in writing, an individual who shall be empowered to make healthcare decisions on behalf of the competent adult, if the competent adult becomes incapable, by reason of mental disability, of making or communicating a choice regarding a particular healthcare decision. D.C. Code § 21-2205(a).

2. The agent under a durable power of attorney for healthcare shall have all the rights, powers and authority related to healthcare decisions that the principal would have under District and federal law. This authority shall include, at a minimum:

   (a) The authority to grant, refuse or withdraw consent to the provision of any healthcare service, treatment, or procedure;

   (b) The right to review the healthcare records of the principal;

   (c) The right to be provided with all information necessary to make informed healthcare decisions;

   (d) The authority to select and discharge healthcare professionals; and

   (e) The authority to make decisions regarding admission to or discharge from healthcare facilities and to take any lawful actions that may be necessary to carry out these decisions.

   D.C. Code § 21-2206.

Legal Requirements

A durable power of attorney for health care shall be dated and signed by the principal and two (2) adult witnesses who affirm that the principal was of sound mind and free from duress at the time of signing. The witnesses shall not include the principal, the healthcare provider or an employee of the healthcare provider of the principal. At least one (1) of the witnesses shall not be related to the principal by blood, marriage or adoption and shall not be entitled to any part of the estate of the principal by a current will or operation of law. *See* D.C. Code § 21-2205(c).

Revocation

1. At any time that the principal has the capacity to create a durable power of attorney for healthcare, the principal may:

   (a) Revoke the appointment of the durable power of attorney for healthcare by notifying the attorney in fact orally or in writing; or

(b) Revoke the authority to make healthcare decisions granted by the durable power of attorney for healthcare by notifying the healthcare provider orally or in writing.

D.C. Code § 21-2208.

Power of Attorney – Property

Lena – to come

Living Wills

General Description

Any person, at least 18 years old ("Declarant"), may execute a declaration directing the withholding or withdrawal of life-sustaining procedures from themselves should they be in a terminal condition. D.C. Code § 7-622.

Legal Requirements

1. To be valid, a declaration must be:

   (a) In writing;

   (b) Dated;

   (c) Signed by the Declarant or another person (the "Proxy Signer") in the Declarant's presence at the Declarant's express direction;

   (d) Signed in the presence of two (2) or more witnesses both at least 18 years old.

      (i) The witnesses may not be (a) the Proxy Signer; (b) related to the Declarant by blood, marriage, or domestic partnership; (c) entitled to any portion of the Declarant's estate whether by will or by the laws of intestate succession of the District of Columbia; (d) directly financially responsible for the Declarant's medical care; or (e) the attending physician, an employee of the attending physician, or an employee of the health facility in which the Declarant is a patient.

      (ii) If the Declarant is a patient in an intermediate care or skilled care facility at the time of execution, one of the witnesses must be, in addition to the above, a patient advocate or ombudsman.

   D.C. Code §§ 7-622(a) & -623.

2. Use of the statutory form is optional but must be substantially followed. Specific instructions may be included in addition to what is in the form. If such instructions are determined to be invalid, only such portions will be invalidated. (Form available at D.C. Code § 7-622(c).)

3. Declarant should provide attending physician with declaration, who should include the declaration or a copy as part of the Declarant's medical records. D.C. Code § 7-622(b).

4. Declaration will become operative when:

   (a) An attending physician and a second physician (1) have diagnosed the Declarant with a terminal condition and (2) provides written certification and confirmation of the Declarant's terminal condition; and

   (b) Either (1) the Declarant is diagnosed as unable to comprehend verbal or written communication or (2) the attending physician verbally or in writing informs the Declarant of the terminal condition and documents such communication in the Declarant's medical record.

   D.C. Code § 7-625.

Revocation

1. A declaration may be revoked at any time only by the Declarant or at the express direction of the Declarant, without regard to the Declarant's mental state by: (a) being obliterated, burnt, torn, or otherwise destroyed or defaced by the Declarant or by some person in the Declarant's presence and at his or her direction; (b) a written revocation (1) signed and dated by the Declarant or person acting at the direction of the Declarant and (2) communicated to the attending physician by the Declarant or by a person acting on behalf of the Declarant; or (c) a verbal expression of the intent to revoke the declaration (1) in the presence of a witness 18 years or older who signs and dates a writing confirming that such expression of intent was made and (2) communicated to the attending physician by the Declarant or by a person acting on behalf of the Declarant. D.C. Code § 7-624.

2. Attending physician should record in medical record the time and date when he or she receives notification of the written revocation. D.C. Code § 7-624.

Wills

General Description

A will, testament, or codicil is not valid for any purpose unless the person making it is at least 18 years of age and, at the time of executing or acknowledging it, of sound and disposing mind and capable of executing a valid deed or contract. D.C. Code § 18-102.

Legal Requirements

1. Under District of Columbia Code § 18-103, a will must be:

   (a) In writing and signed by the testator, or by another person in his presence and by his express direction; and

(b) Attested and subscribed in the presence of the testator, by at least two (2) credible witnesses.

(i) A beneficial devise, legacy, estate, interest, gift, or power of appointment of or affecting real or personal estate, given or made to an attesting witness to a will or codicil is void as to him and persons claiming under him, except:

(1) Where an interested witness would be entitled to a share of the estate of the testator if the will were not established, he or persons claiming under him shall take such portion of the devise or bequest made to him in the will as does not exceed the share of the estate which would be distributed to him or persons claiming under him in case of intestacy.

(2) The voidance does not apply to charges on real estate for the payment of debts. D.C. Code § 18-107.

(3) Creditors are competent witnesses. D.C. Code § 18-106.

2. An appointment made by will in the exercise of a power is not valid unless it is executed in a manner that would be valid for the disposition of the property to which the power applies. D.C. Code § 18-108.

3. A devise or bequest may be made to the trustees under, or in accordance with the terms of, a written inter vivos trust, which has been executed and is in existence prior to or contemporaneously with the execution of the will and is identified in the will, without regard to the size or character of the corpus of the trust, or whether the settlor is the testator or a third person. D.C. Code § 18-306 (see statute for more details).

Revocation/Modification

1. A will or codicil, or a part thereof can be revoked by:

(a) A later will, codicil, or other writing declaring the revocation, executed in the same manner as a will as provided by District of Columbia Code §§ 18-103 or 18-107;

(b) Burning, tearing, canceling, or obliterating the will or codicil, or the part thereof, with the intention of revoking it, by the testator himself, or by a person in his presence and by his express direction and consent; or

(c) Divorce on the ground of mutual and voluntary separation, which has the effect of an implied revocation of a will executed during marriage.

D.C. Code § 18-109; *Estate of Liles, App. D.C.*, 435 A.2d 379, 1981 D.C. App. LEXIS 355 (1981).

FLORIDA

Power of Attorney – Healthcare

General Description

A surrogate, in accordance with the principal's instructions, shall have authority to act for the principal and to make all healthcare decisions for the principal during the principal's incapacity. Fla. Stat. § 765.205(1)(a).

Legal Requirements

1. A written document designating a surrogate to make healthcare decisions for a principal shall be signed by the principal in the presence of two (2) subscribing adult witnesses.

    (a) A principal unable to sign the instrument may, in the presence of witnesses, direct that another person sign the principal's name.

    (b) The person designated as surrogate shall not act as witness to the execution of the document designating the healthcare surrogate. At least one (1) person who acts as a witness shall be neither the principal's spouse nor blood relative.

    (c) A document designating a healthcare surrogate may also designate an alternate surrogate provided the designation is explicit. The alternate surrogate may assume his duties as surrogate for the principal if the original surrogate is unwilling or unable to perform his duties.

    Fla. Stat. § 765.202.

2. A surrogate shall:

    (a) Consult with appropriate healthcare providers to provide informed consent, and make only healthcare decisions for the principal which he believes the principal would have made under the circumstances if the principal were capable of making such decisions;

        (i) If there is no indication of what the principal would have chosen, the surrogate may consider the patient's best interest.

    (b) Provide written consent using an appropriate form whenever consent is required;

    (c) Be provided access to the appropriate medical records of the principal;

    (d) Apply for public benefits for the principal and have access to information regarding the principal's income and assets and banking and financial records to the extent required to make application; and

(e) The surrogate may authorize the release of information and medical records to appropriate persons to ensure the continuity of the principal's healthcare and may authorize the admission, discharge, or transfer of the principal to or from a healthcare facility.

Fla. Stat. § 765.205.

Revocation

1. An advance directive may be amended or revoked at any time by a competent principal: (a) by means of a signed, dated writing; (b) by means of the physical cancellation or destruction of the advance directive by the principal or by another in the principal's presence and at the principal's direction; (c) by means of an oral expression of intent to amend or revoke; or (d) by means of a subsequently executed advance directive that is materially different from a previously executed advance directive. Fla. Stat. § 765.104(1).

2. Any such amendment or revocation will be effective when it is communicated to the healthcare provider or healthcare facility. Fla. Stat. § 765.104(3).

Power of Attorney – Property

Creation of Durable Power of Attorney

A durable power of attorney is a written power of attorney by which a principal designates another as the principal's attorney in fact. The durable power of attorney must be in writing, must be executed with the same formalities required for the conveyance of real property by Florida law, and must contain the words: "This durable power of attorney is not affected by subsequent incapacity of the principal except as provided in section 709.08, Florida Statutes"; or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity, except as otherwise provided by this section. The durable power of attorney is exercisable as of the date of execution; however, if the durable power of attorney is conditioned upon the principal's lack of capacity to manage property as defined in section 744.102(12)(a), the durable power of attorney is exercisable upon the delivery of affidavits in paragraphs (4)(c) and (d) to the third party. Fla. Stat. § 709.08(1).

Property Subject to Power of Attorney

Unless otherwise stated in the durable power of attorney, the durable power of attorney applies to any interest in property owned by the principal, including, without limitation, the principal's interest in all real property, including homestead real property; all personal property, tangible or intangible; all property held in any type of joint tenancy, including a tenancy in common, joint tenancy with right of survivorship, or a tenancy by the entirety; all property over which the principal holds a general, limited, or special power of appointment; choses in action; and all other contractual or statutory rights or elections, including, but not limited to, any rights or elections in any probate or similar proceeding to which the principal is or may become entitled. Fla. Stat. § 709.08(6).

Powers of the Attorney in Fact

1. Except as otherwise limited by this section, by other applicable law, or by the durable power of attorney, the attorney in fact has full authority to perform, without prior court approval, every act authorized and specifically enumerated in the durable power of attorney. Such authorization may include, except as otherwise limited in this section:

   (a) The authority to execute stock powers or similar documents on behalf of the principal and delegate to a transfer agent or similar person the authority to register any stocks, bonds, or other securities either into or out of the principal's or nominee's name.

   (b) The authority to convey or mortgage homestead property. If the principal is married, the attorney in fact may not mortgage or convey homestead property without joinder of the spouse of the principal or the spouse's legal guardian. Joinder by a spouse may be accomplished by the exercise of authority in a durable power of attorney executed by the joining spouse, and either spouse may appoint the other as his or her attorney in fact.

   Fla. Stat. § 709.08(7).

2. Notwithstanding the provisions of this section, an attorney in fact may not: (a) perform duties under a contract that requires the exercise of personal services of the principal; (b) make any affidavit as to the personal knowledge of the principal; (c) vote in any public election on behalf of the principal; (d) execute or revoke any will or codicil for the principal; (e) create, amend, modify, or revoke any document or other disposition effective at the principal's death or transfer assets to an existing trust created by the principal unless expressly authorized by the power of attorney; or (f) exercise powers and authority granted to the principal as trustee or as court-appointed fiduciary. Fla. Stat. § 709.08(7).

Who May Serve as an Attorney in Fact

The attorney in fact must be a natural person who is 18 years of age or older and is of sound mind, or a financial institution, as defined in chapter 655, with trust powers, having a place of business in this state and authorized to conduct trust business in this state. A not-for-profit corporation, organized for charitable or religious purposes in this state, which has qualified as a court-appointed guardian prior to January 1, 1996, and which is a tax-exempt organization under 26 U.S.C. s. 501(c)(3), may also act as an attorney in fact. Notwithstanding any contrary clause in the written power of attorney, no assets of the principal may be used for the benefit of the corporate attorney in fact, or its officers or directors. Fla. Stat. § 709.08(2).

Term

The attorney in fact may exercise the authority granted under a durable power of attorney until the principal dies, revokes the power, or is adjudicated totally or partially incapacitated by a court of competent jurisdiction, unless the court determines that certain authority granted by the

durable power of attorney is to remain exercisable by the attorney in fact. Fla. Stat. § 709.08(3)(b).

Revocation

Powers of appointment over any property, real, personal, intangible or mixed, may be released, in whole or in part, by a written instrument signed by the donee or donees of such powers. Such written releases shall be signed in the presence of two (2) witnesses but need not be sealed, acknowledged or recorded in order to be valid, nor shall it be necessary to the validity of such releases for spouses of married donees to join such donees in the execution of releases, in whole or part, of powers of appointment. Fla. Stat. § 709.02.

Living Wills

General Description

Any competent adult ("Principal") may, at any time, make a living will or written declaration and direct the providing, withholding, or withdrawal of life-prolonging procedures in the event that such person has a terminal condition, has an end-stage condition, or is in a persistent vegetative state. Fla. Stat. § 765.302(1).

Legal Requirements

1. To be valid, a living will must be:

   (a) Signed by the Principal; and

      (i) If the Principal physically unable to sign, one (1) witness must subscribe the Principal's signature in the Principal's presence and at the Principal's direction.

   (b) Subscribed by two (2) witnesses.

      (i) The Principal must sign in presence of the witnesses; and

      (ii) At least one (1) witness may not be the Principal's spouse or blood relative.

   Fla. Stat. § 765.302(1).

2. Use of the statutory form is optional. (Form available at § 765.303.)

3. The Principal responsible for notifying attending physician of living will. If the Principal is incapacitated, another may notify physician or health care facility. The physician or healthcare facility should make the living will part of the Principal's medical records. Fla. Stat. § 765.302(2).

4. A living will becomes operative when: (a) two (2) physicians, one of which must be the Principal's attending physician, determine and certify in a writing included in the Principal's medical record that (1) the Principal does not have a reasonable medical probability of recovering capacity and (2) the Principal has a terminal condition, has an end-stage condition, or is in a persistent vegetative state; and (b) any limitations or conditions expressed orally or in a written declaration have been carefully considered and satisfied. Fla. Stat. §§ 765.304 & 765.306.

Revocation

1. A living will may be amended or revoked at any time by a competent principal by: (a) a signed, dated writing; (b) the physical cancellation or destruction of the living will by the Principal or by another in the Principal's presence and at the Principal's direction; (c) an oral expression of intent to amend or revoke; or (d) a subsequently executed living will that is materially different from a previously executed living will. Fla. Stat. § 765.104.

2. Revocation is effective when communicated to the surrogate, healthcare provider or healthcare facility. Fla. Stat. § 765.104.

Wills

General Description

An individual 18 or more years of age who is of sound mind may make a will. Fla. Stat. § 732.501.

Legal Requirements

1. Under Florida Statutes § 732.502, a written will must be in writing and executed as follows:

   (a) Be signed by the testator at the end, or the testator's name must be subscribed at the end of the will by some other person in the testator's presence and by the testator's direction.

   (b) Before two (2) witnesses, the testator must sign or acknowledge that he/she has previously signed the will or that someone else signed the testator's name to it.

   (c) The attesting witnesses must sign the will in the presence of the testator and in the presence of each other.

      (i) A will, or any part, is not invalid because it is signed by an interested witness. Fla. Stat. § 732.504.

2. A will may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, made before

an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will. Fla. Stat. § 732.503 (see statute for sample language).

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Fla. Stat. § 732.512.

4. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will or trust by another person is such an event. Fla. Stat. § 732.512.

5. A valid devise may be made to the trustee of a trust that is evidenced by a written instrument in existence at the time of making the will, or by a written instrument subscribed concurrently with making of the will, if the written instrument is identified in the will. Fla. Stat. § 732.513 (see statute for more details).

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than property used in trade or business). The statement: 1) must be signed by the testator and must describe the items and the devisees with reasonable certainty; 2) may be prepared before or after the execution of the will; 3) may be altered by the testator after its preparation; and 4) it may be a writing that does not have significance apart from its effect on the dispositions made by the will. Fla. Stat. § 732.515.

Revocation/Modification

1. A will, or any part of either, is revoked: (a) by a subsequent inconsistent will, even though the subsequent inconsistent will does not expressly revoke all previous will, but the revocation extends only so far as the inconsistency; or (b) by a subsequent will or other writing executed with the same formalities required for the execution of wills declaring the revocation. Fla. Stat. § 732.505.

2. A will or codicil is revoked by the testator, or some other person in the testator's presence and at the testator's direction, by burning, tearing, canceling, defacing, obliterating, or destroying it with the intent, and for the purpose, of revocation. Fla. Stat. § 732.506.

3. Neither subsequent marriage, birth, nor adoption of descendants shall revoke the prior will of any person, but the pretermitted child or spouse shall inherit, regardless of the prior will. Any provision of a will executed by a married person that affects the spouse of that person shall become void upon the divorce of that person or upon the dissolution or annulment of the marriage. Fla. Stat. § 732.507.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

GEORGIA

Power of Attorney – Healthcare

General Description

Any person of sound mind who is emancipated or 18 years of age or older may execute a document which appoints a healthcare agent. O.C.G.A. § 31-32-5.

Legal Requirements

1. Such document shall be in writing, signed by the declarant or by some other person in the declarant's presence and at the declarant's express direction, and witnessed. O.C.G.A. § 31-32-5(a).

2. It shall be attested and subscribed in the presence of the declarant by two (2) witnesses who are of sound mind and at least 18 years of age, but such witnesses do not have to be together or present when the declarant signs the advance directive for health care. O.C.G.A. § 31-32-5(c)(1).

3. Neither witness can be a person who: (a) was selected to serve as the declarant's healthcare agent; (b) will knowingly inherit anything from the declarant or otherwise knowingly gain a financial benefit from the declarant's death; or (c) is directly involved in the declarant's healthcare.

    (a) Not more than one (1) of the witnesses may be an employee, agent, or medical staff member of the healthcare facility in which the declarant is receiving healthcare.

    O.C.G.A. § 31-32-5(c)(2).

4. A physician or healthcare provider who is directly involved in the declarant's healthcare may not serve as the declarant's healthcare agent. O.C.G.A. § 31-32-5(d).

Revocation

An advance directive for healthcare may be revoked at any time by the declarant, without regard to the declarant's mental state or competency, by any of the following methods:

(a) By completing a new advance directive for health care that has provisions which are inconsistent with the provisions of a previously executed advance directive for health care;

(b) By being obliterated, burned, torn, or otherwise destroyed by the declarant or by some person in the declarant's presence and at the declarant's direction indicating an intention to revoke;

(c) By a written revocation clearly expressing the intent of the declarant to revoke the advance directive for health care signed and dated by the declarant or by a person acting at the declarant's direction; or

(d) By an oral or any other clear expression of the intent to revoke the advance directive for health care in the presence of a witness 18 years of age or older who, within 30 days of the expression of such intent, signs and dates a writing.

O.C.G.A. § 31-32-6(a).

Power of Attorney – Property

General

The power of attorney should be substantially as it is set out in Georgia Code § 10-6-142. However, that is not the only way to create such an agency. O.C.G.A. § 10-6-140.

Codified Explanation

1. Georgia Code § 10-6-141 provides a question and answer sheet for a power of attorney. Below is a selection of important items.

   (a) **Definition**: This document is called a 'Financial Power of Attorney.' It allows you to name one or more persons to help you handle your financial affairs. Depending on your individual circumstances, you can give this person or persons complete or limited power to act on your behalf. This document does not give someone the power to make medical decisions or personal decisions for you.

   (b) **Revocation**: You may revoke your financial power of attorney by writing a signed and dated revocation of power of attorney and giving it to your Agent. You should also give it to anyone who has been relying upon the financial power of attorney and dealing with your Agent, such as your bank and investment institutions. Unless you notify all parties dealing with your Agent of your revocation, they may continue to deal with your Agent. You should contact a lawyer if your Agent continues to act after you have revoked the power of attorney.

   (c) **Term**: As long as you are living, the financial power of attorney will remain in effect even if you become incapacitated or unable to communicate your wishes unless: (1) a guardian is appointed for your property; or (2) you include a date or specific occurrence when you want your document to be canceled. However, upon your death or the death of your Agent or successor Agents, the document will be canceled and the Agent's power to act for you will end. You can also include a date or a specific occurrence like your incapacity or illness as the time when you want your document to be canceled and your Agent's power to act for you to end.

(d) **Date of effect**: Depending on your circumstances, you may wish to specify an occurrence or a future date for the document to become effective. Unless you do so, it becomes effective immediately.

(e) **Execution**: If you decide to give your Agent the power described in the paragraph, initial your name at the end of the paragraph. If you do not wish to give your Agent the power described in a paragraph, strike through and initial the paragraph or any line within a paragraph. Two adult witnesses must watch you sign your name on the document. At least one witness cannot be the Principal's spouse or blood relative. After they witness you signing your name, the witnesses must sign their names. This document does not need to be notarized unless real property transactions such as leasing, selling, or mortgaging of property are authorized.

Living Wills

General Description

Any person of sound mind who is emancipated or at least 18 years old ("Declarant") may execute a document (an "advance directive for healthcare" or "ADHC") which (i) appoints a healthcare agent and/or (ii) directs the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration when the Declarant is in a terminal condition or state of permanent unconsciousness. O.C.G.A. § 31-32-5(a).

Legal Requirements

1. To be valid, an ADHC must be:

(a) In writing;

(b) Signed by the Declarant or by a person in the Declarant's presence and at the Declarant's express direction; and

(c) Witnessed by two (2) adults at least 18 years old of sound mind.

(i) Witnesses do not have to be together or present when Declarant signs an ADHC.

(ii) Neither witness can be a person who (a) was selected as the Declarant's healthcare agent, (b) will knowingly inherit anything from the Declarant or otherwise knowingly gain a financial benefit from the Declarant's death, or (c) is directly involved in the Declarant's healthcare.

(iii) Not more than one of the witnesses may be an employee, agent, or medical staff member of the healthcare facility in which the Declarant is receiving healthcare.

O.C.G.A. §§ 31-32-5(a) & 5(c).

2. Use of the statutory form is optional but must be substantially followed. (Form available at O.C.G.A. § 31-32-4.)

3. A physician or healthcare provider who is directly involved in the Declarant's healthcare may not serve as the Declarant's healthcare agent. O.C.G.A. § 31-32-5(d).

4. The ADHC may be amended at any time provided it complies with the rules for original execution. O.C.G.A. § 31-32-5(f).

5. ADHC becomes operative when the attending physician (1) confirms either that the Declarant is not pregnant or the fetus is not viable, (2) along with a second physician, diagnoses and certifies in writing that the Declarant has a terminal condition or is in a state of permanent unconsciousness ("written certification"), (3) confirms that the ADHC is valid, (4) makes the ADHC and written certification part of the Declarant's medical records. O.C.G.A. § 31-32-9.

Revocation

1. An ADHC may be revoked at any time by the Declarant, without regard to the Declarant's mental state or competency, by: (a) completing a new ADHC that is inconsistent with a previously executed ADHC – any part of a prior document that is not inconsistent with a subsequent document remains otherwise valid; (b) being obliterated, burned, torn, or otherwise destroyed by the Declarant or some person in the Declarant's presence and at the Declarant's direction indicating an intention to revoke; (c) written revocation (1) clearly expressing the intent of the Declarant to revoke the ADHC and (2) signed and dated by the Declarant or a person acting at the Declarant's direction; or (d) oral or any other clear expression of the intent to revoke the ADHC (1) in the presence of a witness at least 18 years old and (2) such witness must, within 30 days of the expression of such intent, sign and date a writing confirming expression of intent. O.C.G.A. § 31-32-6(a).

2. If the Declarant is receiving healthcare in a healthcare facility, written or oral revocation or other clear expression of intent to revoke becomes effective only upon communication to the attending physician by the Declarant or by a person acting at the Declarant's direction. The attending physician should record in the Declarant's medical record the time and date of such notification. O.C.G.A. § 31-32-6(a)(4).

3. Any person, other than the healthcare agent, to whom oral or other non-written revocation of an advance directive for healthcare is communicated or delivered, should make all reasonable efforts to inform the healthcare agent of that fact as promptly as possible. O.C.G.A. § 31-32-6(a)(4).

Wills

General Description

1. A testator, by will, may make any disposition of property that is not inconsistent with the laws or contrary to the public policy of the state and may give all the property to strangers, to the exclusion of the testator's spouse and descendants. O.C.G.A. § 53-4-1.

2. Every individual 14 years of age or older may make a will, unless laboring under some legal disability arising either from a want of capacity or a want of perfect liberty of action. O.C.G.A. §§ 53-4-10, 53-4-11.

Legal Requirements

1. Under Georgia Code § 53-4-20, a written will shall be:

    (a) Signed by the testator or by some other individual in the testator's presence and at the testator's express direction. A testator may sign by mark or by any name that is intended to authenticate the instrument as the testator's will; and

    (b) Attested and subscribed in the presence of the testator by two (2) or more competent witnesses. A witness to a will may attest by mark. Another individual may not subscribe the name of a witness, even in that witness's presence and at that witness's direction.

        (i) An interested witness is competent, but the gift to the witness shall be void unless there are at least two (2) other disinterested witnesses. O.C.G.A. § 53-4-23.

2. At the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, a will may be made self-proved and the testimony of the witnesses in the probate regarding such will may be made unnecessary by the affidavits of the testator and the attesting witnesses made before a notary public. The affidavit shall be evidenced by a certificate, affixed with the official seal of the notary public, that is attached or annexed to the will. O.C.G.A. § 53-4-24 (see statute for model language).

3. Joint and mutual wills.

    (a) A joint will is one (1) will signed by two (2) or more testators that deals with the distribution of the property of each testator. A joint will may be probated as each testator's will. O.C.G.A. § 53-4-31.

    (b) Mutual wills are separate wills of two (2) or more testators that make reciprocal dispositions of each testator's property. O.C.G.A. § 53-4-31.

    (c) The execution of a joint will or of mutual wills does not create a presumption of a contract not to revoke the will or wills. O.C.G.A. § 53-4-32.

(d) A joint will or mutual wills may be revoked by any testator in the same manner as any other will. O.C.G.A. § 53-4-33.

(i) Revocation of a joint will or a mutual will by one of the testators shall not revoke the will of any other testator.

Revocation/Modification

1. An express revocation occurs when the testator by writing or action expressly annuls a will. O.C.G.A. § 53-4-42.

   (a) An express revocation may be effected by a subsequent will or other written instrument that is executed, subscribed, and attested with the same formality as required for a will. O.C.G.A. § 53-4-43.

   (b) An express revocation may be effected by any destruction or obliteration of the will done by the testator with an intent to revoke or by another at the testator's direction. O.C.G.A. § 53-4-44.

2. An implied revocation results from the execution of a subsequent inconsistent will that does not by its terms expressly revoke the previous will. O.C.G.A. § 53-4-42.

   (a) An implied revocation extends only so far as an inconsistency exists between testamentary instruments. Any portion of a prior instrument that can stand consistently with the testamentary scheme in a subsequent instrument shall remain unrevoked. O.C.G.A. § 53-4-47.

3. All provisions of a will made prior to a testator's final divorce or the annulment of the testator's marriage (in which no provision is made in contemplation of such event) shall take effect as if the former spouse had predeceased the testator. O.C.G.A. § 53-4-49.

HAWAII

Power of Attorney – Healthcare

General Description

An adult or emancipated minor may execute a power of attorney for healthcare, which may authorize the agent to make any healthcare decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Haw. Rev. Stat. § 327E-3(b).

Legal Limitations

Unless related to the principal by blood, marriage, or adoption, an agent may not be an owner, operator, or employee of the healthcare institution at which the principal is receiving care. Haw. Rev. Stat. § 327E-3(b).

Legal Requirements

1. Unless otherwise specified in a power of attorney for healthcare, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity. Haw. Rev. Stat. § 327E-3(e).

2. The power shall be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

   (a) Signed by at least two (2) individuals, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the instrument; or

   (b) Acknowledged before a notary public at any place within this State.

   Haw. Rev. Stat. § 327E-3. Please refer to Haw. Rev. Stat. § 327E-3(c)-(d) for requirements of what a witness cannot be.

Revocation

1. An individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising healthcare provider. Haw. Rev. Stat. § 327E-4(a).

2. An individual may revoke all or part of an advance healthcare directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. Haw. Rev. Stat. § 327E-4(b).

3. An advance healthcare directive that conflicts with an earlier advance healthcare directive revokes the earlier directive to the extent of the conflict. Haw. Rev. Stat. § 327E-4(e).

Power of Attorney – Property

General

A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney-in-fact in writing and the writing contains the words "This power of attorney shall not be affected by the disability of the principal," "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. Haw. Rev. Stat. § 551D-1.

Death or Disability

1. The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal. Haw. Rev. Stat. § 551D-4(a).

2. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest. Haw. Rev. Stat. § 551D-4(b).

Registration

Any person may by attorney procure land to be registered and convey or otherwise deal with registered land, but the letters of attorney shall be acknowledged and filed or recorded with the assistant registrar and registered. Any instrument revoking such letters shall be acknowledged and registered in like manner. Haw. Rev. Stat. § 551-174.

Living Wills

General Description

An adult or emancipated minor ("Principal") may give (i) direction concerning decisions of such Principal's healthcare (an "Instruction") or (ii) a power of attorney for healthcare (either an "advance healthcare directive" or "AHCD"). Haw. Rev. Stat. § 327E-3(a); for power of attorney rules, *see* Hawaii Health Care Power of Attorney.

Legal Requirements

1. Instructions may be oral or written. Haw. Rev. Stat. § 327E-3(a).

2. Use of the statutory form is optional. (Form available Haw. Rev. Stat. § 327E-16.)

3. Instructions may be limited to take effect only if specified conditions arise. Haw. Rev. Stat. § 327E-3(a).

4. Unless otherwise specified in a written AHCD, a determination that a principal lacks or has recovered capacity, or that another condition exists that affects an Instruction, will be made by primary physician. Haw. Rev. Stat. § 327E-3.

Revocation

1. A Principal may revoke all or part of an AHCD at any time and in any manner that communicates an intent to revoke. Haw. Rev. Stat. § 327E-4.

   (a) Different rules apply for the revocation of an agent.

   (b) In the case of mental illness, an AHCD may be revoked in whole or in part at any time by principal if principal does not lack capacity and is competent.

2. ADHC that conflicts with earlier ADHC revokes earlier ADHC to extent of conflict. Haw. Rev. Stat. § 327E-4.

3. A health care provider, agent, guardian or surrogate informed of revocation should inform supervising health care provider and any health care institution where Principal receives care. Haw. Rev. Stat. § 327E-4.

Wills

General Description

A person who 18 or more years of age and who is "of sound mind" may make a will. Haw. Rev. Stat. § 560:2-501.

Legal Requirements

1. Under Hawaii Revised Statutes § 560:2-502, except for holographic wills, every will shall be in writing and:

   (a) Signed by the testator or in the testator's name by another individual in the testator's conscious presence and by the testator's direction; and

   (b) Signed by at least two (2) individuals, each of whom witnessed either the signing or the testator's acknowledgement of the signature of the will.

      (i) An interested witness does not invalidate the will. Haw. Rev. Stat. § 560:2-505.

2. A will is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting. Haw. Rev. Stat. § 560:2-502.

3. Incorporation by reference. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Haw. Rev. Stat. § 560:2-510.

4. A will can devise property to the trustee of a trust established or to be established, whether or not the trust is amendable or revocable. Haw. Rev. Stat. § 560:2-511.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. (*i.e.*, execution or revocation of another person's will). Haw. Rev. Stat. § 560:2-512.

6. Separate writing identifying devise of personal property. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money, evidences of indebtedness, documents of title, securities, and property used in trade or business). Haw. Rev. Stat. § 560:2-513.

7. Self-proved will. A will may be simultaneously executed, attested, and made self-proved, by acknowledgment by the testator and affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the form provided by statute. Haw. Rev. Stat.§ 560:2-504.

Revocation/Modification

1. A will or any part thereof is revoked by: (a) executing a subsequent will which revokes the prior will or part expressly or by inconsistency; or (b) burning, tearing, canceling, obliterating, or destroying the will or any part of it with the intent and for the purpose of revoking it by the testator or by another person in the presence of and by the direction of the testator. Haw. Rev. Stat. § 560:2-507.

2. Revival of revoked will.

   (a) The previous will is revived if it is evident from the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

   (b) If a subsequent will that partly revoked a previous will is thereafter revoked, a revoked part of the previous will is revived unless it is evident from the circumstances or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

   Haw. Rev. Stat. § 560:2-509.

3. If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later, will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it

appears from the terms of the later will that the testator intended the previous will to take effect. Haw. Rev. Stat. § 560:2-509.

IDAHO

Power of Attorney – Healthcare

General Description

Any competent person may execute a document known as a "Living Will and Durable Power of Attorney for Health Care." Idaho Code § 39-4510(1).

Legal Requirements

A "Living Will and Durable Power of Attorney for Health Care" shall be effective from the date of execution unless otherwise revoked. Idaho Code § 39-4512.

Revocation

1. A living will and durable power of attorney for health care may be revoked at any time by the maker by any of the following methods: (a) by being canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker, or by some person in his presence and by his direction; (b) by a written, signed revocation of the maker expressing his intent to revoke; or (c) by an oral expression by the maker expressing his intent to revoke. Idaho Code § 39-4511.

2. The maker of the revoked living will and durable power of attorney for healthcare is responsible for notifying his physician of the revocation. Idaho Code § 39-4511.

Power of Attorney – Property

Durable

A power of attorney created under this chapter is durable unless it expressly provides that it is terminated by the incapacity of the principal. Idaho Code § 15-12-104.

Execution

A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney, including as set forth in Idaho Code § 73-114. The signature is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized to take acknowledgments, including as set forth in Idaho Code § 51-109(6) or § 55-712B. Idaho Code § 15-12-105.

Effective Date

1. A power of attorney is effective when executed unless the principal provides in the power of attorney that it is to become effective at a future date or upon the occurrence of a future event or contingency. Idaho Code § 15-12-109.

2. If a power of attorney is to become effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred. Idaho Code § 15-12-109.

3. If a power of attorney is to become effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

   (a) A physician or licensed psychologist that the principal is incapacitated within the meaning of Idaho Code § 15-12-102(5)(a); or

   (b) A licensed attorney at law, judge or appropriate governmental official that the principal is incapacitated within the meaning of Idaho Code § 15-12-102(5)(b).

   Idaho Code § 15-12-109.

4. A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative as defined in, and pursuant to, the health insurance portability and accountability act, §§ 1171 through 1179 of the social security act, 42 U.S.C. §§ 1320d through 1320d-8, as amended, and applicable regulations, to obtain access to the principal's healthcare information and communicate with the principal's healthcare provider. Idaho Code § 15-12-109.

Termination

A power of attorney terminates when: (a) the principal dies; (b) the principal becomes incapacitated, if the power of attorney is not durable; (c) the principal revokes the power of attorney; (d) the power of attorney provides it terminates; (e) the purpose of the power of attorney is accomplished; or (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney. Idaho Code § 15-12-110.

Spouse as Agent

An agent's authority ends if the agent is the spouse of the principal and an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides. Idaho Code § 15-12-110.

Living Wills

General Description

A competent adult, at least 18 years old, ("Maker") has the right to have his or her wishes for medical treatment and for the withdrawal of artificial life-sustaining procedures carried out even though such person is no longer able to communicate with the physician. Idaho Code § 39-4509.

Legal Requirements

1. Use of the statutory form is optional, but must be substantially followed. (Form available at Idaho Code § 39-4510.)

2. Any portions of living will left blank is deemed intentional and does not invalidate document. Idaho Code § 39-4510.

3. Maker may register a living will (or its revocation) with the Secretary of State. Idaho Code § 39-4515.

4. A living will effective from the date of execution unless otherwise revoked. Idaho Code § 39-4512.

Revocation

1. Living will may be revoked at any time by Maker by: (a) being canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the Maker or by some person in the Makers' presence and by maker's direction; (b) a written, signed revocation of the Maker expressing intent to revoke; or (c) an oral expression by the Maker expressing intent to revoke. Idaho Code § 39-4511.

2. The Maker is responsible for notifying his physician of the revocation. Idaho Code § 39-4511)

Wills

General Description

Any emancipated minor or any person 18 or more years of age who is of sound mind may make a will. Idaho Code § 15-2-501.

Legal Requirements

1. Under Idaho Code § 15-2-502, a written will must be (except as otherwise provided):

    (a) Signed by the testator or in the testator's name by some other person in the testator's presence and by his direction; and

    (b) Signed by at least two (2) persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

        (i) Any person 18 or more years of age generally competent to be a witness may do so. Idaho Code § 15-2-505.

        (ii) A will or any provision thereof is not invalid because the will is signed by an interested witness. Idaho Code § 15-2-505.

2. A will may be self-proved: (a) at the same time as it is executed and attested, or at any time after its execution; and (b) by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs, whether or not that officer is also a witness to the will, and evidenced by the officer's certificate, under official seal. Idaho Code § 15-2-504 (see statute for model language).

3. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Idaho Code § 15-2-510.

4. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Idaho Code § 15-2-511.

5. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event. Idaho Code § 15-2-512.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money, evidence of indebtedness, documents of title, securities, and property used in trade or business).

    (a) The statement: 1) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) it may be altered by the testator after its preparation; and 5) it may be a writing that does not have significance apart from its effect on the dispositions made by the will. Idaho Code § 15-2-513.

7. A devise or bequest to any person who owns, operates or is employed at a nursing home, residential or assisted living facility or any home, including the testator's home, whether or not licensed, in which the testator was a resident within one (1) year of his death shall be presumed to have been the result of undue influence, rebuttable by clear and convincing evidence.

    (a) This section does not affect the rights of a beneficiary who is related to the testator, or who is a charitable or benevolent society or corporation; and

    (b) Shall not apply to wills of persons whose death is caused by accidental means and whose wills are executed prior to the accident which results in death.

    Idaho Code § 15-2-616.

Revocation/Modification

1. A will can be revoked by: (a) a subsequent will which revokes the prior will or part expressly or by inconsistency; or (b) being burned, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction. Idaho Code § 15-2-507.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. Idaho Code § 15-2-508.

ILLINOIS

Power of Attorney – Healthcare

General Description

The healthcare powers that may be delegated to an agent include, without limitation, all powers an individual may have to be informed about and to consent to or refuse or withdraw any type of healthcare for the individual and all powers a parent may have to control or consent to healthcare for a minor child. Ill. Comp. Stat. § 45/4-3.

Legal Limitations

Neither the attending physician nor any other healthcare provider may act as agent under a healthcare agency; however, a person who is not administering healthcare to the patient may act as healthcare agent for the patient. Ill. Comp. Stat. § 45/4-5.

Legal Requirements

1. Unless otherwise specified in a power of attorney for healthcare, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity. Ill. Comp. Stat. § 45/4-5.

2. The power shall be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods: (a) signed by at least two (2) individuals, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the instrument; or (b) acknowledged before a notary public at any place within this State. Ill. Comp. Stat. § 45/4-5. (Please refer to subsections (c) and (d) for what witnesses may not be.)

Revocation

1. Every healthcare agency may be revoked by the principal at any time, without regard to the principal's mental or physical condition, by any of the following methods: (a) by being obliterated, burnt, torn or otherwise destroyed or defaced in a manner indicating intention to revoke; (b) by a written revocation of the agency signed and dated by the principal or person acting at the direction of the principal; or (c) by an oral or any other expression of the intent to revoke the agency in the presence of a witness 18 years of age or older who signs and dates a writing confirming that such expression of intent was made. Ill. Comp. Stat. § 45/4-6(a).

Power of Attorney – Property

General

The principal may specify in the agency the event or time when the agency will begin and terminate, the mode of revocation or amendment and the rights, powers, duties, limitations, immunities and other terms applicable to the agent and to all persons dealing with the agent, and the provisions of the agency will control notwithstanding this Act, except that every health care agency must comply with Section 4□5 of this Act. 755 Ill. Comp. Stat. 755 § 45/2-4.

Amendment and Revocation

Unless the agency states an earlier termination date, the agency continues until the death of the principal, notwithstanding any lapse of time, the principal's disability or incapacity or appointment of a guardian for the principal after the agency is signed. Every agency may be amended or revoked by the principal at any time and in any manner communicated to the agent or to any other person related to the subject matter of the agency, except that revocation and amendment of healthcare agencies are governed by Section 4□6 of this Act, except to the extent the terms of the agencies are inconsistent with that Section. 755 Ill. Comp. Stat. § 45/2-5.

Disability, Incapacity or Incompetency

All acts of the agent within the scope of the agency during any period of disability, incapacity or incompetency of the principal have the same effect and inure to the benefit of and bind the principal and his or her successors in interest as if the principal were competent and not disabled. Ill. Comp. Stat. 755 § 45/2-6.

Form

A form in substantially the same form as that provided in Illinois Compiled Statutes 755 § 45/3-3 may be used to create a power of attorney.

Living Wills

General Description

An individual of sound mind and either emancipated or having reached the age of majority ("Declarant") may execute a document directing that if Declarant is suffering from a terminal condition, death delaying procedures not be utilized. 755 Ill. Comp. Stat. § 35/3(a).

Legal Requirements

1. To be valid, declaration must be: (a) signed by Declarant or another at Declarant's direction; and (b) witnessed by two (2) individuals, as least 18 years old. 755 Ill. Comp. Stat. § 35/3(a).

2. Use of the statutory form is optional; one may include other specific directions. Directions are severable. (Form available at 755 Ill. Comp. Stat. § 35/3(e).)

3. If the Declarant is able, it is the Declarant's responsibility to provide the declaration to the Declarant's attending physician. The attending physician should make the declaration part of the Declarant's medical records. 755 Ill. Comp. Stat. § 35/3(d).

Revocation

1. The declaration may be revoked at any time by the Declarant, without regard to the Declarant's mental or physical condition, by: (a) being obliterated, burnt, torn or otherwise destroyed or defaced in a manner indicating intention to cancel; (b) written revocation of declaration signed and dated by Declarant or person acting at the direction of Declarant; or (c) an oral or any other expression of intent to revoke declaration, in the presence of a witness, at least 18 years old, who signs and dates a writing confirming that expression of intent. 755 Ill. Comp. Stat. § 35/5(a).

2. Revocation is effective when communicated to the attending physician by the Declarant or by a witness to revocation. The attending physician should record in the Declarant's medical record the time and date when and the place where notified of revocation. 755 Ill. Comp. Stat. § 35/5(b).

Wills

General Description

A person who 18 or more years of age and who is "of sound mind and memory" may make a will. 755 Ill. Comp. Stat. § 5/4-1.

Legal Requirements

1. Under 755 Illinois Compiled Statutes § 5/4-3, every will shall be in writing must be: (a) signed by the testator or in the testator's name by another individual in the testator's presence and by the testator's direction; and (b) attested in the presence of the testator by two (2) or more credible witnesses.

    (a) If any beneficial legacy or interest is given in a will to a person attesting its execution or to his or her spouse, the legacy or interest is void as to that beneficiary and all persons claiming under him or her, unless the will is otherwise duly attested by two (2) other witnesses, but the beneficiary is entitled to receive so much of the legacy or interest given to him or her by the will as does not exceed the value of the share of the testator's estate to which he would be entitled were the will not established. an interested witness does not invalidate the will. Ill. Comp. Stat. § 755 ILCS 5/4-6.

2. A will can devise property to the trustee of a trust established, whether or not the trust is amendable or revocable. Ill. Comp. Stat. § 755 ILCS 5/4-4.

Revocation/Modification

1. A will may be revoked only by: (a) burning, canceling, tearing, or obliterating it by the testator or by some person in the testator's presence and by the testator's direction and consent; (b) the execution of a later will declaring the revocation; (c) a later will to the extent that it is inconsistent with the prior will; or (d) the execution of an instrument declaring the revocation. Ill. Comp. Stat.§ 755 ILCS 5/4-7.

    (a) No will or any part thereof is revoked by any change in the circumstances, condition or marital status of the testator, except that dissolution of marriage or declaration of invalidity of the marriage of the testator revokes every legacy or interest or power of appointment given to or nomination to fiduciary office of the testator's former spouse in a will executed before the entry of the judgment of dissolution of marriage or declaration of invalidity of marriage and the will takes effect in the same manner as if the former spouse had died before the testator.

2. Revival of revoked will. A totally revoked will is not revived other than by its re-execution or by an instrument declaring the revival. If a will is partially revoked by an instrument which is itself revoked, the revoked part of the will is revived and takes effect as if there had been no revocation. Ill. Comp. Stat.§ 755 ILCS 5/4-7.

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INDIANA

Power of Attorney – Healthcare

General Description

Language conferring general authority with respect to healthcare powers means the principal authorizes the attorney in fact to do the following: (a) employ or contract with servants, companions, or healthcare providers to care for the principal; (b) if the attorney in fact is an individual, consent to or refuse healthcare for the principal by properly executing and attaching to the power of attorney a declaration; (c) admit or release the principal from a hospital or healthcare facility; (d) have access to records, including medical records, concerning the principal's condition; (e) make anatomical gifts on the principal's behalf; (f) request an autopsy; and/or (g) make plans for the disposition of the principal's body, including executing a funeral planning declaration on behalf of the principal. Ind. Code § 30-5-5-16(b).

Legal Requirements

1. To be valid, a power of attorney must meet the following conditions: (a) be in writing; (b) name an attorney in fact; (c) give the attorney in fact the power to act on behalf of the principal; and (d) be signed by the principal or at the principal's direction in the presence of a notary public. Ind. Code § 30-5-4-1.

    (a) In the case of a power of attorney signed at the direction of the principal, the notary must state that the individual who signed the power of attorney on behalf of the principal did so at the principal's direction. Ind. Code § 30-5-4-1.

2. Except as otherwise stated in the power of attorney, the attorney in fact shall use due care to act for the benefit of the principal under the terms of the power of attorney. Ind. Code § 30-5-6-2.

Revocation

1. Except as otherwise stated in the power of attorney, an executed power of attorney may be revoked only by a written instrument of revocation that (a) identifies the power of attorney revoked and (b) is signed by the principal. Ind. Code § 30-5-4-1.

2. A revocation is not effective unless the attorney in fact or other person has actual knowledge of the revocation. Ind. Code § 30-5-10-1(b).

Power of Attorney – Property

Creating a Power of Attorney

1. To be valid, a power of attorney must meet the following conditions: (a) be in writing; (b) name an attorney in fact; (c) give the attorney in fact the power to act on behalf of the

principal; and (d) be signed by the principal or at the principal's direction in the presence of a notary public. Ind. Code § 30-5-4-1.

(a) In the case of a power of attorney signed at the direction of the principal, the notary must state that the individual who signed the power of attorney on behalf of the principal did so at the principal's direction. Ind. Code § 30-5-4-1.

Effective Date

A power of attorney is effective on the date the power of attorney is signed unless it specifies that it becomes effective on a certain date or upon the occurrence of an event. Ind. Code § 30-5-4-2.

Incorporation of Powers

An attorney in fact has a power granted under Indiana Code § 30-5-5 (which lists the powers) if the power of attorney incorporates the power by referring to it or citing to it. Ind. Code § 30-5-5-1.

Revocation and Termination

1. Except as otherwise stated in the power of attorney, an executed power of attorney may be revoked only by a written instrument of revocation that: (a) identifies the power of attorney revoked; and (b) is signed by the principal. Ind. Code § 30-5-10-1.

2. A revocation is not effective unless the attorney in fact or other person has actual knowledge of the revocation. Ind. Code § 30-5-10-1.

3. If a power of attorney specifies a termination date and time, the power of attorney terminates at that date and time. Ind. Code § 30-5-10-2.

4. Except as otherwise stated in the power of attorney, a power of attorney is not terminated by the incapacity of the principal. The incapacity of a principal who has previously executed a power of attorney that terminates on the principal's incapacity does not revoke or terminate the power of attorney as to the attorney in fact or other person who, without actual knowledge of the incapacity of the principal, acts in good faith under the power. Ind. Code § 30-5-10-3.

5. A power of attorney terminates on the death of the principal. However, the death of a principal who has executed a written power of attorney does not revoke or terminate the power of attorney as to the attorney in fact or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Ind. Code § 30-5-10-4.

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Living Wills

General Description

A competent adult, at least 18 years old, ("Declarant") has the right to control the decisions relating to Declarant's medical care, including the decision to have medical or surgical means or procedures calculated to prolong the competent adult's life provided, withheld, or withdrawn and to execute a living will declaration stating such choices. Ind. Code §§ 16-36-4-6 & -8.

Legal Requirements

1. To be valid, a living will declaration or life-prolonging procedures will declaration (either a "Declaration") must be: (a) voluntary; (b) in writing; (c) dated; (d) signed by the Declarant or another person ("Proxy Signer") in the Declarant's presence and at the Declarant's express direction; and (e) signed in the presence of at least two (2) competent witnesses, at least 18 years old. Ind. Code §§ 16-36-4-8(b) & -8(c).

    (a) Neither witness may be (a) the Proxy Signer, (b) the Declarant's parent, spouse, or child, (c) entitled to any part of the Declarant's estate whether Declarant dies testate or intestate, including whether witness could take from the estate if the Declarant's will is declared invalid, but not barred simply by being nominated as a personal representative or as the attorney of the estate, or (d) directly financially responsible for the Declarant's medical care.

2. Use of the statutory form is optional but must be substantially followed; may include additional specific directions. (Form available at Ind. Code § 16-36-4-10.)

3. The Declarant should notify attending physician of existence of the declaration. Such physician should make the declaration or a copy part of the Declarant's medical records. Ind. Code § 16-36-4-8(e).

4. The declaration becomes operative when the attending physician has certified in writing (the "Certification") that Declarant is a qualified patient (Declarant is qualified if (1) attending physician has diagnosed Declarant as having a terminal condition and (2) Declarant executed valid declaration).

    (a) The attending physician should include the Certification in the Declarant's medical records. Ind. Code §§ 16-36-4-13(a) & -13(b).

Revocation

1. A declaration may be revoked at any time by Declarant by: (a) a signed, dated writing; (b) physical cancellation or destruction of the declaration by the Declarant or another in the Declarant's presence and at the Declarant's direction; or (c) an oral expression of intent to revoke. Ind. Code § 16-36-4-12.

2. Revocation is effective when communicated to the attending physician. Ind. Code § 16-36-4-12.

Wills

General Description

Any person of sound mind who is 18 years of age or older may make a will. Ind. Code § 29-1-5-1.

Legal Requirements

3. Under Indiana Code §§ 29-1-5-2 & 29-1-5-3, a written wills must be:

   (a) Signed by the testator either on the will or a self proving clause. See Indiana Code § 29-1-5-3.1 for sample self proving clauses.

   (b) The testator, in the presence of two (2) or more attesting witnesses:

      (i) Shall signify that the instrument is the testator's will and either: 1) sign the will; 2) acknowledge the signature already made; or 3) at the testator's direction and in his presence have someone else sign the will

   (c) The attesting witnesses must sign in the presence of the testator and each other.

      (i) If any person is a witness to a will in which any interest is passed to him, and such will cannot be proved without his testimony or proof of his signature, such will shall be void only as to the him and persons claiming under him. If he would have been entitled to a distributive share of the testator's estate except for such will, then he is entitled to no more than that share.

4. A written statement or list that is referred to in a will may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the will. Ind. Code § 29-1-6-1(m).

   (a) To be admissible under this subsection as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the beneficiaries with reasonable certainty.

      (i) The writing may be prepared before or after the execution of the will, altered by the testator after the writing is prepared, or have no significance apart from the writing's effect on the dispositions made by the will.

   (b) Any other writing referred to in the will shall be given the same effect as it existed at the time of execution, even if it was subsequently amended or revoked. Such a

writing must be clearly identified in the will and in existence both at the time of the execution of the will and at the testator's death. Ind. Code § 29-1-6-1(h).

5. If a testator devises real or personal property by reference to a fact or an event independent of the will, such devise shall be valid and effective if the testator's intention can be clearly ascertained. Ind. Code § 29-1-6-1(i).

6. A testator's devise to a trust is valid if it the trust is: 1) clearly identified in the testator's will; and 2) is in existence at the time of the testator's death. Ind. Code § 29-1-6-1(j).

Revocation/Modification

1. A will is revoked when: (a) the testator, or some other person in his presence and by his direction, with intent to revoke, shall destroy or mutilate the will; (b) the testator executes another will; or (c) a will can be revoked in part only by the execution of a writing. Ind. Code § 29-1-5-6.

2. If after making a will the testator is divorced or his or her marriage annulled, all provisions in the will in favor of the testator's spouse are revoked. Ind. Code § 29-1-5-8.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

IOWA

Power of Attorney – Healthcare

General Description

A durable power of attorney for healthcare authorizes the attorney in fact to make healthcare decisions for the principal. Iowa Code § 144B.2.

Legal Limitations

1. The following individuals shall not be designated as the attorney in fact to make healthcare decisions under a durable power of attorney for healthcare: (a) a healthcare provider attending the principal on the date of execution; or (b) an employee of a healthcare provider attending the principal on the date of execution unless the individual to be designated is related to the principal by blood, marriage, or adoption within the third degree of consanguinity. Iowa Code § 144B.4.

Legal Requirements:

1. An attorney in fact shall make healthcare decisions only if the following requirements are satisfied:

   (a) The durable power of attorney for healthcare explicitly authorizes the attorney in fact to make healthcare decisions.

   (b) The durable power of attorney for healthcare contains the date of its execution and is witnessed or acknowledged by one of the following methods:

      (i) Is signed by at least two (2) individuals who, in the presence of each other and the principal, witnessed the signing of the instrument by the principal or by another person acting on behalf of the principal at the principal's direction.

      (ii) Is acknowledged before a notarial officer within this state.

   Iowa Code § 144B.3.

2. The following individuals shall <u>not</u> be witnesses for a durable power of attorney for health care: (a) a healthcare provider attending the principal on the date of execution; (b) an employee of a healthcare provider attending the principal on the date of execution; (c) the individual designated in the durable power of attorney for healthcare as the attorney in fact; or (d) an individual who is less than 18 years of age. Iowa Code § 144B.3

3. At least one (1) of the witnesses for a durable power of attorney for health care shall be an individual who is not a relative of the principal by blood, marriage, or adoption within the third degree of consanguinity. Iowa Code § 144B.3

Revocation

1. A durable power of attorney for healthcare may be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke, without regard to mental or physical condition..

   (a) Revocation may be by notifying the attorney in fact orally or in writing.

   (b) Revocation may also be made by notifying a healthcare provider orally or in writing while that provider is engaged in providing healthcare to the principal.

   (c) A revocation is only effective as to a healthcare provider upon its communication to the provider by the principal or by another to whom the principal has communicated revocation. The healthcare provider shall document the revocation in the treatment records of the principal.

   Iowa Code § 144B.8.

2. The principal is presumed to have the capacity to revoke a durable power of attorney for healthcare. Iowa Code § 144B.8.

3. Unless it provides otherwise, a valid durable power of attorney for healthcare revokes any prior durable power of attorney for healthcare. Iowa Code § 144B.8.

Power of Attorney – Property

General

Whenever a principal designates another the principal's attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal or later uncertainty as to whether the principal is dead or alive. Iowa Code § 633b.1.

Death, Disability or Incompetence

1. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal and the principal's heirs, devisees and personal representatives as if the principal were alive, competent and not disabled. Iowa Code § 633b.1.

2. The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by Iowa Code § 633b.1 does not

revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Iowa Code § 633b.2

Living Wills

General Description

A competent adult, at least 18 years old ("Declarant"), may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn. Iowa Code § 144A.2(1) & 144A.3(1).

Legal Requirements

1. To be valid, a declaration must be:

   (a) Signed by the Declarant or by another person acting on the Declarant's behalf and at the Declarant's direction ("proxy signer");

   (b) Dated; and

   (c) Witnessed or acknowledged.

      (i) If witnessed, must be signed by at least two (2) individuals, at least 18 years old, who, in the presence of each other and the Declarant, witnessed the signing of the declaration by the Declarant or the proxy signer.

      (ii) At least one of the witnesses must not be the Declarant's relative by blood, marriage, or adoption within the third degree of consanguinity.

      (iii) Neither witness may be (a) a healthcare provider attending the Declarant on the date of execution of declaration or (b) an employee of a health are provider attending the Declarant on the date of execution of declaration.

      (iv) If acknowledged, must be acknowledged before a notary public.

   Iowas Code § 144A.3.

2. Use of the statutory form is optional. (Form available at Iowa Code § 144A.3(5).)

3. Declarant must provide the Declarant's attending physician or healthcare provider with the declaration. Iowa Code § 144A.3(3).

4. The declaration is operative only if the Declarant's condition is determined to be terminal and the Declarant is not able to make treatment decisions. Iowa Code § 144A.3(1).

Revocation

1. A declaration may be revoked at any time and in any manner by which the Declarant is able to communicate intent to revoke, without regard to mental or physical condition. Iowa Code § 144A.4.

    (a) Effective as to the attending physician upon communication to such physician who should make revocation part of the Declarant's medical record. Iowa Code § 144A.4.

Wills

General Description

Subject to the rights of the surviving spouse to take an elective share (as provided by Iowa Code § 633.236), any person of full age and sound mind may dispose by will of all the person's property, except an amount sufficient to pay the debts and charges against the person's estate. Iowa Code § 633.264.

Legal Requirements

1. Under Iowa Code § 633.279, all written wills and codicils, must be:

    (a) Signed by the testator, or by some person in the testator's presence and by the testator's express direction writing the testator's name thereto;

    (b) Declared by the testator to be the testator's will; and

    (c) Witnessed by two (2) competent persons who signed as witnesses in the presence of the testator and in the presence of each other;

        (i) Any person who is 16 years of age, or older, and who is competent to be a witness generally in this state, may act as an attesting witness to a will. Iowa Code § 633.280.

        (ii) No will is invalidated because attested by an interested witness; but any interested witness shall, unless the will is also attested by two (2) competent and disinterested witnesses, forfeit the provisions made for him/her. If the interested witness would have received had the testator died intestate, he/she will not receive in excess of what the witness would have received had the testator died without a will. Iowa Code § 633.281.

2. An attested will may be made self-proved at the time of its execution, or at any subsequent date, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a person authorized to administer oaths and take acknowledgments under the laws of this state, and evidenced by such person's certificate,

under seal, attached or annexed to the will. Iowa Code § 633.279(2) (see statute for form language).

3. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Iowa Code § 633.275.

4. A will may refer to a written statement of items of tangible personal property not otherwise specifically disposed of by the will, except tangible personal property used in trade or business. The writing must:

   (a) Be either in the handwriting of the testator or signed by testator, and describe the items and distributees with reasonable certainty.

   (b) The writing may be referred to as one to be in existence at the time of the testator's death, be prepared before or after the execution of the will, be altered, added to, or changed in any respect by the testator after its preparation, and/or have no significance apart from its effect upon the dispositions made by the will.

   Iowa Code § 633.276.

5. A will can be deposited with the Clerk of the District Court for safekeeping. Iowa Code § 633.286-289)

6. Iowa provides a spouse the right to an elective share, and has special rules concerning the spouse's share and the homestead. Iowa Code § 633.247-258.

Revocation/Modification

1. Under Iowa Code § 633.284, a will can be revoked in whole or in part by:

   (a) Being canceled or destroyed by the act or direction of the testator, with the intention of revoking it; or

      (i) The revocation must be witnessed in the same manner as the making of a new will.

   (b) The execution of a subsequent will.

2. If after making a will the testator is divorced or the testator's marriage is dissolved, all provisions in the will in favor of the testator's spouse or of a relative of the testator's spouse are revoked. Iowa Code § 633.271.

KANSAS

Power of Attorney – Healthcare

General Description

1. A durable power of attorney for healthcare decisions is a power of attorney by which a principal designates another as the principal's agent in writing and the writing contains words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. Kan. Stat. Ann. § 58-625.

2. All acts done by an agent pursuant to a durable power of attorney for healthcare decisions during any period of disability or incapacity of the principal have the same effect as if the principal were competent and not disabled. Kan. Stat. Ann. § 58-626.

Legal Requirements

1. Under Kansas Statutes § 58-629(e), a durable power of attorney for healthcare decisions shall be:

   (a) Dated and signed in the presence of two (2) witnesses at least 18 years of age neither of whom shall be the agent, related to the principal by blood, marriage or adoption, entitled to any portion of the estate of the principal according to the laws of intestate succession of this state or under any will of the principal or codicil thereto, or directly financially responsible for the principal's healthcare; or

   (b) Acknowledged before a notary public.

Revocation

A voluntary revocation by a principal of a durable power of attorney for healthcare decisions does not revoke or terminate the agency as to the agent or other person, who, without actual knowledge of the revocation, acts in good faith under the power. Kan. Stat. Ann. § 58-628.

Power of Attorney – Property

Creating a Power of Attorney

1. The authority granted by a principal to an attorney in fact in a written power of attorney is not terminated in the event the principal becomes wholly or partially disabled or in the event of later uncertainty as to whether the principal is dead or alive if:

   (a) The power of attorney is denominated a "durable power of attorney;"

   (b) the power of attorney states in substance one of the following:

(i) "This is a durable power of attorney and the authority of my attorney in fact shall not terminate if I become disabled or in the event of later uncertainty as to whether I am dead or alive"; or

(ii) "This is a durable power of attorney and the authority of my attorney in fact, when effective, shall not terminate or be void or voidable if I am or become disabled or in the event of later uncertainty as to whether I am dead or alive"; and

(c) the power of attorney is signed by the principal, and dated and acknowledged in the manner prescribed by K.S.A. 53-501, *et seq.*, and amendments thereto. If the principal is physically unable to sign the power of attorney but otherwise competent and conscious, the power of attorney may be signed by an adult designee of the principal in the presence of the principal and at the specific direction of the principal expressed in the presence of a notary public. The designee shall sign the principal's name to the power of attorney in the presence of a notary public, following which the document shall be acknowledged in the manner prescribed by K.S.A. 53-501, *et seq.*, and amendments thereto, to the same effect as if physically signed by the principal.

Kan. Stat. Ann. § 58-652.

Powers

1. A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or nondurable. Kan. Stat. Ann. § 58-654.

2. If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is not disabled may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsection (f) and (g). When a power of attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and purposes, the enumeration of one or more specific subjects or purposes does not limit the general authority granted by that power of attorney, unless otherwise provided in the power of attorney. An attorney in fact vested with general powers shall be authorized to execute a power of attorney required by any governmental agency or other legal entity on behalf of the principal, naming such attorney in fact as the attorney in fact authorized to enter into any transaction with such agency or legal entity. Kan. Stat. Ann. § 58-654.

3. If the power of attorney states that general powers are granted to an attorney in fact with respect to one or more express subjects or purposes for which general powers are conferred, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power, but only with respect to the specific subjects or purposes expressed in the power of attorney that an adult who is not disabled may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsection (f) and (g). Kan. Stat. Ann. § 58-654.

4. Except as provided in subsections (f) and (g), an attorney in fact with general powers has, with respect to the subjects or purposes for which the powers are conferred, all rights, power and authority to act for the principal that the principal would have with respect to the principal's own person or property, including property owned jointly or by the entireties with another or others, as an adult who is not disabled. Without limiting the foregoing an attorney in fact with general powers has, with respect to the subject or purposes of the power, complete discretion to make a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment, contract, note, security instrument, consent, receipt, release, proof of claim, petition or other pleading, tax document, notice, application, acknowledgment or other document necessary or convenient to implement or confirm any act, transaction or decision. An attorney in fact with general powers, whether power to act with respect to all lawful subjects and purposes, or only with respect to one or more express subjects or purposes, shall have the power, unless specifically denied by the terms of the power of attorney, to make, execute and deliver to or for the benefit of or at the request of a third person, who is requested to rely upon an action of the attorney in fact, an agreement indemnifying and holding harmless any third person or persons from any liability, claims or expenses, including legal expenses, incurred by any such third person by reason of acting or refraining from acting pursuant to the request of the attorney in fact. Such indemnity agreement shall be binding upon the principal who has executed such power of attorney and upon the principal's successor or successors in interest. No such indemnity agreement shall protect any third person from any liability, claims or expenses incurred by reason of the fact that, and to the extent that, the third person has honored the power of attorney for actions outside the scope of authority granted by the power of attorney. In addition, the attorney in fact has complete discretion to employ and compensate real estate agents, brokers, attorneys, accountants and subagents of all types to represent and act for the principal in any and all matters, including tax matters involving the United States government or any other government or taxing entity, including, but not limited to, the execution of supplemental or additional powers of attorney in the name of the principal in form that may be required or preferred by any such taxing entity or other third person, and to deal with any or all third persons in the name of the principal without limitation. No such supplemental or additional power of attorney shall broaden the scope of authority granted to the attorney in fact in the original power of attorney executed by the principal. Kan. Stat. Ann. § 58-654.

5. Kansas Statutes § 58-654(f) and (g) list powers that must be expressly enumerated and authorized in a power of attorney.

Modification and Termination

1. As between the principal and attorney in fact or successor attorney in fact, and any agents appointed by either of them, unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be modified or terminated as follows:

   (a) on the date shown in the power of attorney and in accordance with the express provisions of the power of attorney;

   (b) when the principal, orally or in writing, or the principal's legal representative in writing informs the attorney in fact or successor that the power of attorney is modified or terminated, or when and under what circumstances it is modified or terminated; or

   (c) when a written notice of modification or termination of the power of attorney is filed by the principal or the principal's legal representative for record in the office of the register of deeds in the county of the principal's residence or, if the principal is a nonresident of the state, in the county of the residence of the attorney in fact last known to the principal, or in the county in which is located any property specifically referred to in the power of attorney.

   Kan. Stat. Ann. § 58-657.

2. As between the principal and attorney in fact, unless the power of attorney is coupled with an interest, the authority granted shall be terminated as follows:

   (a) On the death of the principal, except that if the power of attorney grants authority under subsection (f)(7), (f)(8) or (f)(13) of Kansas Statutes § 58-654, and amendments thereto, the power of attorney and the authority of the attorney in fact shall continue for the limited purpose of carrying out the authority granted under either or both of such subsections for a reasonable length of time after the death of the principal;

   (b) when the attorney in fact under a power of attorney is not qualified to act for the principal; or

   (c) on the filing of any action for annulment, separate maintenance or divorce of the principal and the principal's attorney in fact who were married to each other at or subsequent to the time the power of attorney was created, unless the power of attorney provides otherwise.

   Kan. Stat. Ann. § 58-657.

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Living Wills

General Description

1. Any adult person ("Declarant") may execute a declaration directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. Kan. Stat. Ann. § 65-28,102.

2. To be valid, declaration must be: (a) in writing; (b) signed by the Declarant, or by another person in the Declarant's presence and by the Declarant's expressed direction (the "Proxy Signer"); (c) dated; and (d) signed in the presence of two (2) or more witnesses or acknowledged before a notary public. Kan. Stat. Ann. § 65-28,103.

    (a) Witnesses must be at least 18 years old and neither witness may be (a) the proxy signer, (b) related to Declarant by blood or marriage, (c) entitled to any portion of Declarant's estate whether by intestate succession or by will, or (d) directly financially responsible for Declarant's medical care.

3. Use of the statutory form is optional but must be substantially followed and may include other specific directions. Directions are severable. (Form available at Kan. Stat. Ann. § 65-28,103.)

4. Declarant must notify the Declarant's attending physician about existence of the declaration, who should make it part of the Declarant's medical records. Kan. Stat. Ann. § 65-28,103.

5. Declaration becomes operative when (1) attending physician has been notified of declaration and (2) two physicians, one the attending physician, diagnosed and certified in writing that the Declarant has terminal condition. Kan. Stat. Ann. § 65-28,105.

Revocation

1. The declaration may be revoked at any time by Declarant by: (a) being obliterated, burnt, torn, or otherwise destroyed or defaced in a manner indicating intention to cancel; (b) a written revocation of the declaration signed and dated by Declarant or person acting at the direction of Declarant; or (c) a verbal expression of the intent to revoke the declaration, in the presence of a witness 18 years of age or older who signs and dates a writing confirming that such expression of intent was made. Kan. Stat. Ann. § 65-28,104.

2. Verbal revocation effective upon receipt by the attending physician of above mentioned writing. Attending physician should record in the patient's medical record the time, date and place of when he or she received notification of the revocation. Kan. Stat. Ann. § 65-28,104.

Wills

General Description

Any person of sound mind, and possessing the rights of majority, may dispose of any or all of his or her property by will, subject to the provisions of this act. Kan. Prob. Code Ann. § 59-601.

Legal Requirements

1. Under Kansas Probate Code § 59-606, every written will must be:

   (a) Signed at the end by the party making the will, or by some other person in the presence and by the express direction of the testator.

   (b) Signed by two (2) or more competent witnesses, who saw the testator subscribe or heard the testator acknowledge the will.

      (i) A beneficial devise or bequest made in a will to a witness shall be void, unless there are two (2) other competent subscribing witnesses who are not beneficiaries. But if such witness would have been entitled to any share of the testator's estate in the absence of a will, then the witness will get no more than the value of what he would have received intestate. Kan. Prob. Code Ann. § 59-604.

      (ii) A gift to the preparer of the will, or to his relatives, is also void, unless he/she is related to testator or it affirmatively appears that the testator had independent legal advice with reference to the devise. Kan. Prob. Code Ann. § 59-605.

2. A will can be made self-proved (making the witnesses testimony unnecessary in the probate of the will):

   (a) At the time of its execution or at any subsequent date during the lifetimes of the testator and the witnesses.

   (b) By the acknowledgments of the will and the affidavits of the testator and the attesting witnesses. Such acknowledgments and affidavits shall be made before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths. Such acknowledgments and affidavits shall be evidenced by the certificate, with official seal affixed, of such officer attached or annexed to such will.

   Kan. Prob. Code Ann. § 59-606 (see statute for model language).

3. A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of debt, documents of title, securities, and properties used in trade or business.

(a) The statement must be in the handwriting of the testator or be signed by the testator, and must describe the items with reasonable certainty. The writing may: be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; and it may be altered by the testator after its preparation.

Kan. Prob. Code Ann. § 59-623.

Revocation/Modification

1. If after making a will the testator marries and has a child, by birth or adoption, the will is thereby revoked. If after making a will the testator is divorced, all provisions in such will in favor of the testator's spouse so divorced are thereby revoked. Kan. Prob. Code Ann. § 59-610.

2. A will can be revoked by: (a) some other will in writing; (b) some other writing with the same formalities as a will; or (c) being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself or herself or by another person in the testator's presence by his or her direction. Kan. Prob. Code Ann. § 59-611.

KENTUCKY

Power of Attorney – Healthcare

General Description

A surrogate designated pursuant to an advance directive may make healthcare decisions for the grantor which the grantor could make individually if he had decisional capacity. Ky. Rev. Stat. § 311.629(1).

Legal Limitations

1. When making any healthcare decision for the grantor, the surrogate shall consider the recommendation of the attending physician and honor the decision made by the grantor as expressed in the advance directive. Ky. Rev. Stat. § 311.629(1).

2. The surrogate may not make a healthcare decision in any situation in which the grantor's attending physician has determined in good faith that the grantor has decisional capacity. The attending physician shall proceed as if there were no designation if the surrogate is unavailable or refuses to make a healthcare decision. Ky. Rev. Stat. § 311.629(2).

Power of Attorney – Property

General

As used in this section, "durable power of attorney" means a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. Ky. Rev. Stat. § 386.093(1).

Death or Disability

1. The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Ky. Rev. Stat. § 386.093(3).

2. The disability or incapacity of the principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Ky. Rev. Stat. § 386.093(4).

Effective Date

If the power of attorney is to become effective upon the disability or incapacity of the principal, the principal may specify the conditions under which the power is to become effective and may designate the person, persons, or institution responsible for making the determination of disability or incapacity. If the principal fails to so specify, the power shall become effective upon a written determination by two physicians that the principal is unable, by reason of physical or mental disability, to prudently manage or care for the principal's person or property, which written determination shall be conclusive proof of the attorney in fact's power to act pursuant to the power of attorney. The two physicians making the determination shall be licensed to practice medicine. Ky. Rev. Stat. § 386.093(5).

Living Wills

General Description

An adult, at least 18 years old ("Grantor"), of sound mind and with decisional capacity may make a written living will directive (an "advance directive"): (a) directing the withholding or withdrawal of life-prolonging treatment and/or artificially provided nutrition or hydration; (b) designating a surrogate to make health care decisions on grantor's behalf; and/or (c) directing any or all of grantor's body upon death. Ky. Rev. Stat. § 311.623; for surrogate rules, *see* Kentucky Health Care Power of Attorney.

Legal Requirements

1. To be valid, an advance directive must be:

    (a) Written;

    (b) Dated;

    (c) Signed by Grantor or at Grantor's direction; and

    (d) Witnessed or acknowledged.

        (i) If acknowledged, before a notary public or other person authorized to administer oaths.

        (ii) If witnessed, witnessed by two or more adults, at least 18 years old of sound mind, in the presence of Grantor and in the presence of each other.

            (1) No person witnessing or acknowledging advance directive may be (i) a blood relative of Grantor, (ii) a beneficiary of grantor under descent and distribution statutes of Kentucky, (iii) an employee of a healthcare facility in which Grantor is a patient, unless the employee serves as a notary public, (iv) an attending physician of

Grantor, or (v) any person directly financially responsible for Grantor's healthcare.

Ky. Rev. Stat. § 311.625(2).

2. Use of the statutory form is optional but must be substantially followed. (Form available at Ky. Rev. Stat. § 311.625(1).)

3. Grantor, or other responsible party of Grantor, should notify Grantor's attending physician and healthcare facility where Grantor is a patient of advance directive. Attending physician should make advance directive part of the Grantor's medical records. Ky. Rev. Stat. § 311.633.

Revocation

1. An advance directive may be revoked by: (a) a writing declaring an intention to revoke, signed and dated by Grantor; (b) an oral statement of intent to revoke made by a Grantor with decisional capacity in the presence of two (2) adults, one of whom shall be a healthcare provider; or (c) destruction of the document by Grantor or by some person in Grantor's presence and at Grantor's direction. Ky. Rev. Stat. § 311.627(1).

2. An oral statement by a Grantor with decisional capacity to revoke an advance directive overrides any previous written advance directive made. Ky. Rev. Stat. § 311.627(2).

3. When notified of revocation, attending physician or healthcare facility should record, in Grantor's medical record, the time, date, and place of the notice receipt. Ky. Rev. Stat. § 311.627(3).

Wills

General Description

Any person of sound mind and 18 years of age or over may by will dispose of any estate, right, or interest in real or personal estate that he may be entitled to at his death, which would otherwise descend to his heirs or pass to his personal representatives, even though he becomes so entitled after the execution of his will. Ky. Rev. Stat. § 394.020.

Legal Requirements

1. Under Kentucky Revised Statute § 394.040, a will must be:

   (a) In writing with the name of the testator subscribed thereto by himself, or by some other person in his presence and by his direction; and

   (b) Acknowledged by him in the presence of at least two (2) credible witnesses, who shall subscribe the will with their names in the presence of the testator, and in the presence of each other.

(i) A creditor for debts discharged in the will and an executor of a will are not considered interested witnesses. Ky. Rev. Stat. § 394.200.

(ii) If a will is attested by a person to whom, or to whose spouse, any beneficial interest in the estate is devised or bequeathed, and the will cannot otherwise be proved, such person shall be deemed a competent witness; but such devise or bequest shall be void, unless such witness would be entitled to a share of the estate of the testator if the will were not established, in which case he shall receive so much of his share as does not exceed the value of that devised or bequeathed. Ky. Rev. Stat. § 394.210.

2. Any will may be made self-proved—either simultaneously with execution of the will or at any time after—by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state and evidenced by the officer's certificate. Ky. Rev. Stat. § 394.225 (see statute for form language).

(a) A self-proved will may be admitted to probate without the testimony of any subscribing witness, but otherwise is treated no differently from a will not self-proved.

3. A will may validly transfer property to the trustee of a trust: (a) established during the testator's lifetime by the testator or by the testator with others; or (b) established at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Ky. Rev. Stat. § 394.076.

4. A will may be deposited by the person making it, or anyone for him, with the county clerk of the county of his residence for safekeeping. Ky. Rev. Stat. § 394.110.

Revocation/Modification

1. No will or codicil, or any part thereof, shall be revoked, except: (a) by subsequent will or codicil; (b) by some writing declaring an intention to revoke the will or codicil, and executed in the manner in which a will is required to be executed; or (c) by the person who made the will, or some person in his presence and by his direction, cutting, tearing, burning, obliterating, canceling, or destroying the will or codicil, or the signature thereto, with the intent to revoke. Ky. Rev. Stat. § 394.080.

(a) A will shall not be revoked by the marriage of the testator. Ky. Rev. Stat. § 394.090.

2. If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any provision in the former spouse's favor. Ky. Rev. Stat. § 394.092.

LOUISIANA

Power of Attorney – Healthcare

General Description

1. An advance directive for mental health treatment may designate a competent adult to act as a representative to make decisions about mental health treatment. A representative who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is determined to be incapable. La. Rev. Stat. § 28:223.

2. An adult who is not incapable may make an advance directive for mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment. La. Rev. Stat. § 28:222(A).

Legal Limitations

1. An advance directive for mental health treatment shall continue in effect for a period of five years or until revoked, whichever occurs first. The authority of a named representative and any alternative representative named in the advance directive for mental health treatment shall continue in effect as long as the advance directive appointing the representative is in effect or until the representative has withdrawn. La. Rev. Stat. § 28:222(B).

2. The following individuals shall be prohibited from serving as a representative:

   (a) The treating physician, provider, or an employee of the physician or provider if the physician, provider, or employee is unrelated to the principal by blood, marriage, or adoption.

   (b) An owner, operator, or employee of a healthcare facility in which the principal is a patient or resident if the owner, operator, or employee is unrelated to the principal by blood, marriage, or adoption.

   La. Rev. Stat. § 28:233.

3. The following individuals shall be prohibited from serving as a witness to the signing of an advance directive for mental health treatment:

   (a) The treating physician, provider, or a relative of the physician or provider.

   (b) An owner, operator, or relative of an owner or operator of a mental health treatment facility in which the principal is a patient or resident.

   (c) An individual related to the principal by blood, marriage, or adoption.

La. Rev. Stat. § 28:234.

Legal Requirements

1. An advance directive for mental health treatment shall be valid only if it is signed by the principal and two (2) competent witnesses and accompanied by a written mental status examination performed by a physician or psychologist attesting to the principal's ability to make reasoned decisions concerning his mental health treatment. La. Rev. Stat. § 28:224.

    (a) The witnesses shall attest that the principal is known to them, signed the advance directive in their presence, and does not appear to be unable to make reasoned decisions concerning his mental health treatment or under duress, fraud, or undue influence.

Revocation

1. An advance directive for mental health treatment may be revoked in whole or in part at any time by the principal if the principal is not incapable. La. Rev. Stat. § 28:231.

    (a) Revocation shall be effective when a principal who is not capable communicates the revocation to the treating physician or other provider.

    (b) The treating physician or other provider shall note the revocation as part of the principal's medical record.

    La. Rev. Stat. § 28:231.

Power of Attorney – Property

General

A power of attorney is called a "mandate" in Louisiana. La. Civ. Code art. 2989.

Form

The contract of mandate is not required to be in any particular form. La. Civ. Code art. 2993.

Power

1. The principal may confer on the mandatary general authority to do whatever is appropriate under the circumstances. La. Civ. Code art. 2994.

2. The authority to alienate, acquire, encumber, or lease a thing must be given expressly. Neither the property nor its location need be specifically described. La. Civ. Code art. 2996.

3. Authority must be given expressly to:

(a) Make an inter vivos donation, either outright or to a new or existing trust or other custodial arrangement, and, when also expressly so provided, to impose such conditions on the donation, including, without limitation, the power to revoke, that are not contrary to the other express terms of the mandate.

(b) Accept or renounce a succession.

(c) Contract a loan, acknowledge or make remission of a debt, or become a surety.

(d) Draw or endorse promissory notes and negotiable instruments.

(e) Enter into a compromise or refer a matter to arbitration.

(f) Make healthcare decisions, such as surgery, medical expenses, nursing home residency, and medication.

La. Civ. Code art. 2997.

Termination

1. In addition to causes of termination of contracts under the Titles governing "Obligations in General" and "Conventional Obligations or Contracts," both the mandate and the authority of the mandatary terminate upon the: (a) death of the principal or of the mandatary; (b) interdiction of the mandatary; or (c) qualification of the curator after the interdiction of the principal. La. Civ. Code art. 3024.

2. The principal may terminate the mandate and the authority of the mandatary at any time. A mandate in the interest of the principal, and also of the mandatary or of a third party, may be irrevocable, if the parties so agree, for as long as the object of the contract may require. La. Civ. Code art. 3025.

Incapacity or Disability

In the absence of contrary agreement, neither the contract nor the authority of the mandatary is terminated by the principal's incapacity, disability, or other condition that makes an express revocation of the mandate impossible or impractical. La. Civ. Code art. 3026.

Living Wills

General Description

Any adult person ("Declarant") may, at any time, make a written declaration directing the withholding or withdrawal of life-sustaining procedures in the event such person should have a terminal and irreversible condition. La. R.S. § 40:1299.58.3(A)(1).

Legal Requirements

1. To be valid, a declaration must be either: (a) written and signed by the Declarant in the presence of two (2) witnesses; or (b) an oral/nonverbal declaration made by the Declarant in the presence of two (2) witnesses at any time subsequent to the diagnosis of a terminal and irreversible condition.

    (a) For either written or oral/nonverbal declaration, both witnesses must be competent adults. Neither witness may be (1) related to Declarant by blood or marriage or (2) entitled to any portion of Declarant's estate.

    La. R.S. §§ 40:1299.58.3(A) and 40:1299.58.2(16).

2. Use of the statutory form is optional. It may include other specific instructions and the directions are severable. (Form available at La. R.S. § 40:1299.58.3.)

3. Declarant is responsible for notifying attending physician of the declaration, who should make written declaration or reasons the Declarant could not make written declaration, part of medical record. If unable to communicate, another may give notice. La. R.S. § 40:1299.58.3(B).

4. Declarant may register the declaration with the state. La. R.S. § 40:1299.58.3(D)(1).

Revocation

1. Declaration may be revoked at any time by Declarant regardless of mental state or competency by: (a) being cancelled, defaced, obliterated, burned, torn, or otherwise destroyed by the Declarant or by another in presence of and at direction of the Declarant; (b) written revocation, signed and dated by the Declarant, expressing intent to revoke; or (d) oral or nonverbal expression by the Declarant of intent to revoke declaration. La. R.S. § 40:1299.58.4.

2. Revocation is effective when communicated to attending physician, who should record time and date of notification in the Declarant's medical records. La. R.S. § 40:1299.58.4(B).

Wills

Legal Requirements

1. Under Louisiana Civil Code Article 1577, notarial (written) testaments must be:

    (a) Dated;

    (b) Signed at the end of every page by the testator (if he is able and literate) in the presence of a notary and two (2) witnesses, after the testator declares or signifies to them that the instrument is his testament; and

(i) Interested witnesses do not invalidate a will, but a legacy to a witness or notary is invalid. If the witness or notary is an heir in intestacy, he/she receives the lesser of his intestate share or legacy in the will. La. Civ. Code art. 1582 & 1583.

(c) In the presence of the testator and each other, the notary and the witnesses shall sign the following declaration, or one substantially similar: "In our presence the testator has declared or signified that this instrument is his testament and has signed it at the end and on each other separate page, and in the presence of the testator and each other we have hereunto subscribed our names this ____ day of _____, ____."

2. Types of Legacies:

(a) A universal legacy is a disposition of all of the estate, or the balance of the estate that remains after particular legacies. La. Civ. Code art. 1585.

(i) A universal legacy may be made jointly for the benefit of more than one legatee without changing its nature.

(b) A general legacy is a disposition by which the testator bequeaths a fraction or a certain proportion of the estate, the balance of the estate that remains after particular legacies, or particular types of property (separate or community property, movable or immovable property, or corporeal or incorporeal property). La. Civ. Code art. 1586.

(c) A legacy that is neither general nor universal is a particular legacy. Particular legacies must be discharged in preference to all others. La. Civ. Code art. 1587 & 1560.

(d) A legacy to more than one person is: (i) separate when the testator assigns shares and joint when he does not; or (ii) the testator may make a legacy joint or separate by expressly designating it as such. La. Civ. Code art. 1588.

3. Lapse of legacies.

(a) A legacy lapses when the legatee cannot take the gift (because he/she has died, the legacy is invalid, or the legatee is otherwise incapable of receiving the gift, etc.).

(b) When a particular or a general legacy lapses (unless otherwise stated in the will), accretion takes place in favor of the successor who, under the testament, would have received the thing if the legacy had not been made.

(c) If a legatee, joint or otherwise, is a child or sibling of the testator, or a descendant of a child or sibling of the testator, then to the extent that the legatee's interest in the legacy lapses, accretion takes place in favor of his descendants.

La. Civ. Code art. 1589-93.

Revocation/Modification

1. Testator can revoke a will by: (a) physically destroying the testament, or has it destroyed at his direction; (b) declaring it revoked in a form following a notarial will; or (c) identifying and clearly revoking the testament by a writing that is entirely written and signed by the testator in his own handwriting. La. Civ. Code art. 1607.

2. Testator can revoke a legacy or other testamentary provision by:

   (a) Declaring it revoked in a form following a notarial will;

   (b) Making a subsequent incompatible testamentary disposition or provision;

   (c) Making a subsequent inter vivos disposition of the thing that is the object of the legacy and does not reacquire it;

   (d) Clearly revoking the provision or legacy by a signed writing on the testament itself; or

   (e) Divorcing the legatee after the testament is executed and at the time of his death, unless the testator provides to the contrary. Testamentary designations or appointments of a spouse are revoked under the same circumstances.

   La. Civ. Code art. 1608.

MAINE

Power of Attorney – Healthcare

General Description

An adult or emancipated minor with capacity may execute a power of attorney for health care, which may authorize the agent to make any healthcare decision the principal could have made while having capacity. Me. Rev. Stat. § 5-802(a).

Legal Requirements

1. Unless otherwise specified in a power of attorney for healthcare, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity. Me. Rev. Stat. § 5-802(c).

2. The power must be in writing and signed by the principal and two (2) witnesses.

   (a) Signatures of the principal and witnesses must be made in person and not by electronic means.

   (b) The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions.

   (c) Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a residential long-term healthcare institution at which the principal is receiving care.

   Me. Rev. Stat. § 5-802(b).

Revocation

1. An individual with capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising healthcare provider. Me. Rev. Stat. § 5-803(a).

2. An individual with capacity may revoke all or part of an advance healthcare directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. Me. Rev. Stat. § 5-803(b).

3. A healthcare provider, agent, guardian or surrogate who is informed of a revocation by an individual with capacity shall promptly communicate the fact of the revocation to the supervising healthcare provider and to any healthcare institution at which the patient is receiving care. Me. Rev. Stat. § 5-803(c).

4. An advance healthcare directive that conflicts with an earlier advance healthcare directive revokes the earlier directive to the extent of the conflict. Me. Rev. Stat. § 5-803(e).

Power of Attorney – Property

General

A power of attorney created under this part is durable unless it expressly provides that it is terminated by the incapacity of the principal. Me. Rev. Stat. 18-A § 5-904)

Execution

1. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. (Me. Rev. Stat. 18-A § 5-905)

2. A power of attorney is not valid unless it contains the following notices substantially in the following form:

   (a) "Notice to the Principal: As the "Principal" you are using this power of attorney to grant power to another person (called the Agent) to make decisions about your property and to use your property on your behalf. Under this power of attorney you give your Agent broad and sweeping powers to sell or otherwise dispose of your property without notice to you. Under this document your Agent will continue to have these powers after you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-A, Article 5, Part 9. You have the right to revoke this power of attorney at any time as long as you are not incapacitated. If there is anything about this power of attorney that you do not understand you should ask a lawyer to explain it to you.

   (b) Notice to the Agent: As the "Agent" you are given power under this power of attorney to make decisions about the property belonging to the Principal and to dispose of the Principal's property on the Principal's behalf in accordance with the terms of this power of attorney. This power of attorney is valid only if the Principal is of sound mind when the Principal signs it. When you accept the authority granted under this power of attorney a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. The duties are more fully explained in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-A, Article 5, Part 9 and Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are generally not entitled to use the Principal's property for your own benefit or to make gifts to yourself or others unless the power of attorney gives you such authority. If you violate your duty under this power of attorney you may be liable for damages and

> may be subject to criminal prosecution. You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events of termination are more fully explained in the Maine Uniform Power of Attorney Act and include, but are not limited to, revocation of your authority or of the power of attorney by the Principal, the death of the Principal or the commencement of divorce proceedings between you and the Principal. If there is anything about this power of attorney or your duties under it that you do not understand you should ask a lawyer to explain it to you."

Me. Rev. Stat. 18-A § 5-905.

Effective Date

A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency. Me. Rev. Stat. 18-A § 5-909.

Termination

1. A power of attorney terminates when: (a) the principal dies; (b) the principal becomes incapacitated, if the power of attorney is not durable; (c) the principal revokes the power of attorney; (d) the power of attorney provides that it terminates; (e) the purpose of the power of attorney is accomplished; or (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns and the power of attorney does not provide for another agent to act under the power of attorney. Me. Rev. Stat. 18-A § 5-910.

2. An agent's authority terminates: (a) when the principal revokes the authority; (b) when the agent dies, becomes incapacitated or resigns; (c) when an action is filed for the termination or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; (d) upon the sooner to occur of either the marriage of the principal to a person other than the agent if upon or after execution of the power of attorney the principal and the agent are or became registered domestic partners, the filing with the domestic partner registry, in accordance with Title 22, section 2710, subsection 4, of a notice consenting to the termination of a registered domestic partnership of the principal and the agent or upon service, in accordance with Title 22, section 2710, subsection 4, of a notice of intent to terminate the registered domestic partnership of the principal and the agent; or (e) the power of attorney terminates. Me. Rev. Stat. 18-A § 5-910.

Power

1. An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(a) Create, amend, revoke or terminate an inter vivos trust;

(b) Make a gift;

(c) Create or change rights of survivorship;

(d) Create or change a beneficiary designation;

(e) Delegate authority granted under the power of attorney;

(f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(g) Exercise fiduciary powers that the principal has authority to delegate; or

(h) Disclaim property, including a power of appointment.

Me. Rev. Stat. 18-A § 5-931(a).

2. Notwithstanding a grant of authority to do an act described in subsection (a), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, registered domestic partner or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise. Me. Rev. Stat. 18-A § 5-931(b).

3. Subject to subsections (a), (b), (d) and (e), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 5-934 through 5-946. Me. Rev. Stat. 18-A § 5-931(c).

4. Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 5-947. Me. Rev. Stat. 18-A § 5-931(d).

5. Subject to subsections (a), (b) and (d), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls. Me. Rev. Stat. 18-A § 5-931(e).

6. Specific powers listed in statute sections 5-934 through 5-947 can be incorporated by reference. Me. Rev. Stat. 18-A § 5-932.

Living Wills

General Description

An adult or emancipated minor with capacity ("Principal") may (i) give direction concerning such person's healthcare decisions ("Instruction" or "Individual Instruction") and/or (ii) execute a power of attorney for healthcare (either an "advance healthcare directive" or "AHCD"). Me.

Rev. Stat. 18-A §§ 5-801(i), -802(a), & -802(b); for power of attorney for healthcare rules, *see* Maine Health Care Power of Attorney.

Legal Requirements

1. Instruction may be oral or written. Me. Rev. Stat. § 5-802(a).

    (a) To be valid, an oral instruction must be made to (1) a healthcare provider, (2) principal's spouse, unless legally separate, (3) a parent, or (4) an adult (a) who shares an emotional, physical and financial relationship with the patient similar to that of a spouse, (b) child, (c) brother or sister, (d) grandchild, (e) niece or nephew, related by blood or adoption, (f) aunt or uncle, related by blood or adoption, (g) relative of the patient, related by blood or adoption, who is familiar with the patient's personal values and is reasonably available for consultation, or (h) if none of the above reasonably available for consultation, who is and who is familiar with the patient's personal values. Me. Rev. Stat. §§ 5-802(a) & 5-805(b).

2. Use of the statutory form is optional. (Form available at Me. Rev. Stat. § 5-804.)

3. An individual instruction may be limited to take effect only if a specified condition arises. Me. Rev. Stat. § 5-802(a).

4. Unless otherwise specified in a written AHCD, a determination that a principal lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the validity of an AHCD must be made by the primary physician, by a court of competent jurisdiction, or, for an individual who has included a directive authorizing mental health treatment in an AHCD, by a person qualified to conduct an examination pursuant to Title 34-B, section 3863. Me. Rev. Stat. § 5-802.

Revocation

1. A Principal may revoke all or part of an AHCD at any time and in any manner that communicates an intent to revoke. Me. Rev. Stat. § 5-803.

    (a) Different rules apply for the revocation of an agent.

2. An AHCD that conflicts with an earlier AHCD revokes the earlier AHCD to the extent of conflict. Me. Rev. Stat. § 5-803.

3. A healthcare provider, agent, guardian or surrogate informed of revocation should inform supervising healthcare provider and any health care institution where the Principal is receiving care. Me. Rev. Stat. § 5-803.

Wills

General Description

Any person 18 or more years of age who is of sound mind may make a will. Me. Rev. Stat. 18-A § 2-501.

Legal Requirements

1. Under Maine Revised Statutes 18-A § 2-502, a written will must be:

    (a) Signed by the testator or in the testator's name by some other person in the testator's presence and by his direction; and

    (b) Signed by at least two (2) people who witnessed either the signing or the testator's acknowledgment of the signature or of the will.

        (i) A will is not invalid because the will is signed by an interested witness. Me. Rev. Stat. 18-A § 2-505.

    (c) See statute for form will. Me. Rev. Stat. 18-A § 2-514.

2. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution; by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal. Me. Rev. Stat. 18-A § 2-504 (see statute for model language).

3. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Me. Rev. Stat. 18-A § 2-510.

4. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Me. Rev. Stat. 18-A § 2-511.

5. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. Me. Rev. Stat. 18-A § 2-512.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business). Me. Rev. Stat. 18-A § 2-513.

(a) The statement: 1) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) may be altered by the testator after its preparation; and 5) may be a writing that does not have significance apart from its effect on the dispositions made by the will.

7. For a statutory will form, *see* Me. Rev. Stat. 18-A § 2-514.

Revocation/Modification

1. A will or any part thereof is revoked: (a) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or (b) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction. Me. Rev. Stat. 18-A § 2-507.

2. If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a power of appointment or other nomination of the former spouse, unless the will expressly provides otherwise. Me. Rev. Stat. 18-A § 2-508.

MARYLAND

Power of Attorney – Healthcare

General Description

1. Any competent individual may, at any time, make a written or electronic advance directive regarding the provision of healthcare to that individual, or the withholding or withdrawal of healthcare from that individual. Md. Code Health-Gen. § 5-602(a).

2. Any competent individual may, at any time, make a written or electronic advance directive appointing an agent to make healthcare decisions for the individual under the circumstances stated in the advance directive. Md. Code Health-Gen. § 5-602(b).

Legal Requirements

1. Unless otherwise provided in the document, an advance directive shall become effective when the declarant's attending physician and a second physician certify in writing that the patient is incapable of making an informed decision. If a patient is unconscious, or unable to communicate by any means, the certification of a second physician is not required. Md. Code Health-Gen. § 5-602(e).

2. A disqualified person (defined in Md. Code Health-Gen. § 5-602(b)(1)) may not serve as a healthcare agent unless the person: (a) would qualify as a surrogate decision maker (*see* Md. Code Health-Gen. § 5-605(a)); or (b) was appointed by the declarant before the date on which the declarant received, or contracted to receive, healthcare from the facility. Md. Code Health-Gen. § 5-602(b)(3).

3. A written or electronic advance directive shall be dated, signed by or at the express direction of the declarant, and subscribed by two (2) witnesses. Md. Code Health-Gen. § 5-602(c).

4. Any competent individual may make an oral advance directive to authorize the providing, withholding, or withdrawing of any life-sustaining procedure or to appoint an agent to make healthcare decisions for the individual.

   (a) An oral advance directive shall have the same effect as a written or electronic advance directive if made in the presence of the attending physician or nurse practitioner and one witness and if the substance of the oral advance directive is documented as part of the individual's medical record.

   (b) The documentation shall be dated and signed by the attending physician or nurse practitioner and the witness.

   Md. Code Health-Gen. § 5-602(d).

5. Notification of advance directive.

(a) It shall be the responsibility of the declarant to notify the attending physician that an advance directive has been made. In the event the declarant becomes comatose, incompetent, or otherwise incapable of communication, any other person may notify the physician of the existence of an advance directive.

(b) An attending physician who is notified of the existence of the advance directive shall promptly make the advance directive a part of the declarant's medical records.

Md. Code Health-Gen. § 5-602(f).

Revocation

1. In general – An advance directive may be revoked at any time by a declarant by a signed and dated written or electronic document, by physical cancellation or destruction, by an oral statement to a healthcare practitioner, or by the execution of a subsequent directive. Md. Code Health-Gen. § 5-604(a).

2. Oral revocation of advance directive – If a declarant revokes an advance directive by an oral statement to a healthcare practitioner, the practitioner and a witness to the oral revocation shall document the substance of the oral revocation in the declarant's medical record. Md. Code Health-Gen. § 5-604(b).

3. It shall be the responsibility of the declarant, to the extent reasonably possible, to notify any person to whom the declarant has provided a copy of the directive. Md. Code Health-Gen. § 5-604(c).

Power of Attorney – Property

General

1. "Durable power of attorney" means a power of attorney by which a principal designates another as an attorney in fact or agent and the authority is exercisable notwithstanding the principal's subsequent disability or incapacity. Md. Estates and Trust Code § 13-601(a).

2. When a principal designates another as an attorney in fact or agent by a power of attorney in writing, it is a durable power of attorney unless otherwise provided by its terms. Md. Estates and Trust Code § 13-601(b).

Death or Disability

The death, disability, or incompetence of a principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Md. Estates and Trust Code § 13-602.

Execution (only applicable for transactions of real property)

1. Every power of attorney executed by any person authorizing an agent or attorney to sell and grant any property shall be executed in the same manner as a deed and recorded:

   (a) Before the day on which the deed executed pursuant to the power of attorney is recorded;

   (b) On the same day as the deed executed pursuant to the power of attorney; or

   (c) Subject to subsection (b) of this section, after the day on which the deed executed pursuant to the power of attorney is recorded.

   Md. Real Property Code § 4-107.

2. A power of attorney may be recorded after the day on which the deed executed pursuant to the power of attorney is recorded, if:

   (a) The power of attorney is both dated and acknowledged on or before the effective date of the deed executed pursuant to the power of attorney;

   (b) The power of attorney has not been revoked with respect to the period of time up to and including the date of recording of the deed in accordance with the provisions of subsection (c) of this section; and

   (c) The deed, or a recorded instrument of writing supplementing the deed contains an affidavit or certification by the agent or attorney in fact named in the power of attorney, stating substantially, that the agent or attorney in fact did not have, at the time of the execution of the deed pursuant to the power of attorney, actual knowledge of the revocation of the power of attorney, by death of the principal or, if applicable, by the subsequent disability or incompetence of the principal.

   Md. Real Property Code § 4-107.

3. Any person executing a deed as agent or attorney for another shall describe himself in and sign the deed as agent or attorney. A power of attorney is deemed to be revoked when the instrument containing the revocation is recorded in the office where the deed should be recorded. Md. Real Property Code § 4-107.

Living Wills

General Description

Any competent individual, either (I) at least 18 years old or (II) married or a parent not incapable of making an informed decision ("Declarant") may, at any time, make an advance directive regarding the provision of healthcare to the Declarant, or the withholding or withdrawal of healthcare from the Declarant. Md. Code Health-Gen. §§ 5-601(f), -602(a) & 20-102(a).

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

Legal Requirements

1. An advance directive may be either written or oral. Md. Code Health-Gen. §§ 5-602(c) & -602(d).

2. To be valid, a written advance directive must be:

   (a) Written or electronic;

   (b) Dated;

   (c) Signed by or at the express direction of Declarant; and

   (d) Subscribed by two (2) competent individuals (1) at least 18 years old or (2) married or a parent not incapable of making an informed decision.

      (i) Any competent individual, other than the healthcare agent, may serve as a witness including an employee of a healthcare facility, nurse practitioner, or physician caring for the Declarant if acting in good faith.

      (ii) At least one (1) witness must not knowingly be entitled (a) to any portion of the Declarant's estate or (b) to any financial benefit by reason of the death of the Declarant.

   Md. Code Health-Gen. §§ 5-601(f), -602(c) & 20-102(a).

3. To be valid, an oral advance directive must be: (a) made in the presence of (i) the attending physician or nurse practitioner and (ii) a witness (same requirements as for written advance directive); (b) documented, in substance, as part of the Declarant's medical record; and (c) dated and signed by the attending physician or nurse practitioner and witness. Md. Code Health-Gen. § 5-602(d).

4. Use of the statutory form is optional. (Form available at Md. Code Health-Gen. § 5-603.)

5. Declarant is responsible for notifying attending physician of advance directive. If the Declarant is unable to communicate, another person may provide the notice. Attending physician should include in the Declarant's medical record either (a) the written declaration or (b) if oral declaration, (i) the substance of declaration, (ii) the date oral directive made, and (iii) the name of the attending physician. Md. Code Health-Gen. § 5-602(f).

6. Declarant may register advance directive with the Department of Health and Mental Hygiene. If so registered, Declarant must register amendments or revocations. Md. Code Health-Gen. §§ 1-101(c) and 5-623.

7. Advance directive operative, unless otherwise provided in advance directive, when the Declarant's attending physician and, unless the Declarant unconscious or unable to

communicate by any means, a second physician certify in writing that the patient is incapable of making an informed decision. Md. Code Health-Gen. §§ 5-602(e) & 5-606.

Revocation

1. An advance directive may be revoked at any time by a Declarant by:

   (a) A signed and dated written or electronic document;

   (b) Physical cancellation or destruction;

   (c) An oral statement to a healthcare practitioner and a witness; or

      (i) Practitioner or witness should document substance of oral revocation in the Declarant's medical records.

   (d) The execution of a subsequent directive.

   Md. Code Health-Gen. § 5-604.

2. Declarant is responsible, to the extent reasonably possible, for notifying any person to whom the Declarant has provided a copy of the directive. Md. Code Health-Gen. § 5-604.

Wills

General Description

Any person may make a will if he/she is 18 years of age or older, and legally competent to make a will. Md. Estates and Trust Code § 4-101.

Legal Requirements

1. Under Maryland Estates and Trust Code § 4-102, a written will shall be: (a) signed by the testator, or by some other person for him, in his presence and by his express direction; and (b) attested and signed by two (2) or more witnesses in the presence of the testator.

2. The terms of any writing which is in existence when a will or trust instrument is executed (*e.g.*, statement of administrative provisions and fiduciary powers recorded in a record office of this State) may be incorporated into a will by reference, if described sufficiently to permit its identification. Md. Estates and Trust Code § 4-107.

3. Subject to the terms of the instrument creating the power, a residuary clause in a will exercises a power of appointment held by the testator only if: (a) an intent to exercise the power is expressly indicated in the will; or (b) the instrument creating the power of appointment fails to provide for disposition of the subject matter of the power upon its nonexercise. Md. Estates and Trust Code § 4-407.

4. A legacy can be made to the trustee of both an inter vivos trust and a testamentary trust. Md. Estates and Trust Code §§ 4-411 & 4-412.

5. Depositing a will for safekeeping.

   (a) A will may be deposited by the testator, or by his agent, for safekeeping with the register of the county where the testator resides. The register shall give a receipt for it, upon the payment of the required fee.

   (b) The will must be enclosed in a sealed wrapper, with the endorsement "Will of," followed by the name of the testator, his address, and his Social Security number, if available.

   (c) During the lifetime of the testator a deposited will may be delivered only to him, or to a person authorized by him in writing to receive it.

   (d) The registrar will open the will upon the testator's death and notify the personal representative named in the will, and any other person the register considers appropriate, that the will is on deposit with the register.

   Md. Estates and Trust Code § 4-201.

Revocation/Modification

1. A will, or any part of it, may be revoked by:

   (a) A provision in a subsequent, validly executed will which (i) revokes any prior will or part of it either expressly or by necessary implication, or (ii) expressly republishes an earlier will that had been revoked by an intermediate will but is still in existence;

   (b) Burning, canceling, tearing, or obliterating the same, by the testator himself, or by some other person in his presence and by his express direction and consent;

   (c) The subsequent marriage of the testator followed by the birth, adoption, or legitimation of a child by him, provided such child or his descendant survives the testator; and all wills executed prior to such marriage shall be revoked; or

   (d) By divorce of a testator and his spouse or the annulment of the marriage, occurring after the execution of the will. In that case, all provisions in the will relating to the spouse, and only those provisions, shall be revoked unless otherwise provided in the will or decree.

   Md. Estates and Trust Code § 4-105.

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MASSACHUSETTS

Power of Attorney – Healthcare

General Description

Every competent adult shall have the right to appoint a healthcare agent by executing a healthcare proxy. Mass. Gen. Laws § 2. **[bad cite – check]**

Legal Limitations

No person who is an operator, administrator or employee of a facility may be appointed as healthcare agent by an adult, who, at the time of executing the healthcare proxy is a patient or resident of such facility or has applied for admission to such facility, unless said person is related to the principal by blood, marriage or adoption. Mass. Gen. Laws § 3. **[bad cite – check]**

Legal Requirements

1. The authority of a healthcare agent shall begin after a determination is made that the principal lacks the capacity to make or to communicate healthcare decisions. Such determination shall be made by the attending physician according to accepted standards of medical judgment. Mass. Gen. Laws § 6. **[bad cite – check]**

2. The healthcare proxy shall be in writing signed by the principal or at the direction of such adult in the presence of two (2) other adults who shall subscribe their names as witnesses to such signature. Mass. Gen. Laws § 2. **[bad cite – check]**

    (a) The witnesses shall affirm in writing that the principal appeared to be at least eighteen years of age, of sound mind and under no constraint or undue influence.

    (b) No person who has been named as health care agent in a healthcare proxy shall act as a witness to the execution of such proxy.

3. A competent adult may designate an alternate healthcare agent as part of a valid healthcare proxy. Said alternate may serve when the designated healthcare agent is not available, willing or competent to serve and the designated healthcare agent is not expected to become available, willing or competent to make a timely decision given the patient's medical circumstances; or, the healthcare agent is disqualified. Mass. Gen. Laws § 2. **[bad cite – check]**

Revocation

1. A principal may revoke a healthcare proxy by notifying the agent or a healthcare provider orally or in writing or by any other act evidencing a specific intent to revoke the proxy. Mass. Gen. Laws § 7. **[bad cite – check]**

2. A healthcare proxy shall also be revoked upon: (i) execution by the principal of a subsequent healthcare proxy, or (ii) the divorce or legal separation of the principal and his spouse, where the spouse is the principal's agent under a healthcare proxy. Mass. Gen. Laws § 7. **[bad cite – check]**

3. A physician who is informed of or provided with a revocation of a healthcare proxy shall immediately record the revocation in the principal's medical record and notify orally and in writing the agent and any healthcare providers known by the physician to be involved in the principal's care of the revocation. Mass. Gen. Laws § 7. **[bad cite – check]**

Power of Attorney – Property

General

A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. Mass. Gen. Laws 190B § 5-501.

Death, Disability and Incapacity

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument. Mass. Gen. Laws 190B § 5-502.

No Revocation Until Notice

The death of a principal who has executed a written power of attorney, durable or otherwise, shall not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power shall not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Mass. Gen. Laws 190B § 5-504.

Living Wills

There is no statutory provision for living wills. *See* Massachusetts Healthcare Power of Attorney.

Wills

Note: Effective July 1, 2011, Massachusetts will be governed by the Uniform Probate Code. *See* Mass. Ann. Laws ch. 190B. The statutes cited below, unless otherwise noted, will be repealed effective July 1, 2011.

Legal Requirements

1. Every person 18 years of age or older and of sound mind may by his last will in writing, dispose of his property, real and personal. Under Massachusetts General Laws, chapter 190, § 1, a will must be:

    (a) Signed by him or by a person in his presence and by his express direction; and

    (b) Attested and subscribed in his presence by two (2) or more competent witnesses.

        (i) A beneficial devise or legacy to a subscribing witness or to the spouse of such witness shall be void unless there are two other subscribing witnesses to the will who are not similarly benefited. Mass. Gen. Laws ch. 190 § 2.

2. A will enclosed in a sealed wrapper, with an endorsement thereon of the name and residence of the testator and of the day when and the person by whom it is deposited, and with or without the name of a person to whom the will is to be delivered after the death of the testator, shall, on the payment of five dollars, be received by the register of probate in the county where the testator lives, who shall give a certificate of the receipt thereof, and shall keep such will. Mass. Gen. Laws ch. 190 § 10.

3. If a testator does not provide in his will for any of his children or for the issue of a deceased child, whether born before or after the testator's death, they shall take the same share of his estate which they would have taken if he had died intestate, unless they have been provided for by the testator in his lifetime or unless it appears that the omission was intentional. Mass. Gen. Laws ch. 190 § 20.

4. A testator can choose to incorporate the Uniform Statutory Will Act by stating, in substantially the same form "Except as otherwise provided in this will, I direct that my testamentary estate be disposed of in accordance with the Massachusetts Uniform Statutory Will Act." Mass. Gen. Laws ch. 191B, § 3.

    (a) This act provides for how an estate shall pass in Mass. Ann. Laws ch. 191B, §§ 5-9. For example, Mass. Ann. Laws ch. 190, § 9, which provides for the revocation of wills by marriage, divorce, or annulment, does not apply. It will not be repealed in July 2011.

Revocation/Modification

1. A will can be revoked: (a) by burning, tearing, cancelling or obliterating it with the intention of revoking it, by the testator himself or by a person in his presence and by his

direction; or (b) by some other writing signed, attested and subscribed in the same manner as a will. Mass. Gen. Laws ch. 190 § 8.

2. Revocation by Marriage, Divorce, or Annulment.

(a) The marriage of a person shall, in most cases, act as a revocation of a will made by him previous to such marriage, unless the will clearly indicates otherwise.

(b) If, after executing a will, the testator shall be divorced or his marriage shall be annulled, the divorce or annulment shall revoke any provision in favor of the former spouse.

Mass. Gen. Laws ch. 190 § 9.

MICHIGAN

Power of Attorney – Healthcare

General Description

A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains words showing the principal's intent that the authority is exercisable notwithstanding the principal's subsequent disability or incapacity, and unless the power states a termination time, notwithstanding lapse of time since its execution. Mich. Comp. Laws § 700.5501.

Legal Limitations

1. An individual designated as a patient advocate has the following authority, rights, responsibilities, and limitations:

   (a) Shall act in accordance with the standards of care applicable to fiduciaries.

   (b) Shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in decisions regarding care, custody, medical treatment, or mental health treatment.

   (c) Shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

   (d) Cannot be used to make a medical treatment decision to withhold or withdraw treatment from a pregnant patient that would result in the patient's death.

   (e) May make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is so authorized, and that the patient acknowledges that such a decision could or would allow the patient's death.

   (f) May choose to have the patient placed under hospice care.

   (g) Shall not delegate powers to another individual without prior authorization by the patient.

   (h) Shall only consent to the forced administration of medication or to inpatient hospitalization if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to consent to that treatment.

   Mich. Comp. Laws § 700.5509(1).

2. A patient advocate designation is suspended when the patient regains the ability to participate in decisions regarding medical treatment or mental health treatment. Mich. Comp. Laws § 700.5509(2).

Legal Requirements

1. The authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment or, as applicable, mental health treatment decisions. Mich. Comp. Laws § 700.5508(1).

2. An individual 18 years of age or older who is of sound mind at the time a patient advocate designation is made may designate in writing another individual who is 18 years of age or older to exercise powers concerning care, custody, and medical or mental health treatment decisions for the individual making the patient advocate designation. Mich. Comp. Laws § 700.5506(1).

3. Designation must be in writing, signed, witnessed, dated, executed voluntarily, and, before its implementation, made part of the patient's medical record with the patient's attending physician, the mental health professional providing treatment to the patient, the facility where the patient is located, or the community mental health services program that is providing mental health services to the patient. Mich. Comp. Laws § 700.5506(3).

    (a) Must include a statement that the authority is exercisable only when the patient is unable to participate in medical or mental health treatment decisions.

4. A patient advocate designation must be executed in the presence of and signed by two (2) witnesses. Mich. Comp. Laws § 700.5506(4).

    (a) A witness shall not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate or an employee of a life or health insurance provider for the patient, of a health facility that is treating the patient.

    (b) A witness shall not sign the patient advocate designation unless the patient appears to be of sound mind and under no duress, fraud, or undue influence.

Revocation

1. A patient advocate designation is revoked by: (a) the patient's death; (b) an order of removal by the probate court; (c) the patient advocate's resignation or removal by the court; (d) the patient's revocation of the patient advocate designation; (e) a subsequent designation that revokes the prior patient advocate designation either expressly or by inconsistency; or (f) the occurrence of a provision for revocation contained in the designation. Mich. Comp. Laws § 700.5510(1)

Power of Attorney – Property

General

A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words "This power of attorney is not affected by the principal's subsequent disability or incapacity, or by the lapse of time," or "This power of attorney is effective upon the disability or incapacity of the principal," or similar words showing the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity and, unless the power states a termination time, notwithstanding the lapse of time since the execution of the instrument. Mich. Comp. Laws § 700.5501.

Disability or Incapacity

An act done by an attorney in fact under a durable power of attorney during a period of disability or incapacity of the principal has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a termination time, the power is exercisable notwithstanding the lapse of time since the execution of the instrument. Mich. Comp. Laws § 700.5502.

No Revocation Until Notice

The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the principal's death, acts in good faith under the power. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the principal's disability or incapacity, acts in good faith under the power. Mich. Comp. Laws § 700.5504.

Living Wills

There is no statutory provision for living wills. *See* Michigan Health Care Power of Attorney.

Wills

General Description

An individual 18 years of age or older who has sufficient mental capacity may make a will. Mich. Comp. Laws § 700.2501.

Legal Requirements

1. Under Michigan Compiled Laws § 700.2502, a written will must be:

(a) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(b) Signed by at least two (2) individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.

(i) The signing of a will by an interested witness does not invalidate the will or any provision of it. Mich. Comp. Laws § 700.2505.

2. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution:

(a) By acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal.

(b) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

(c) Instead of the testator and witnesses each making a sworn statement before an officer authorized to administer oaths as prescribed above, a will may be made self-proved by a written statement including the above details under the following heading: "I certify (or declare) under penalty for perjury under the law of the state of Michigan that. . ."

Mich. Comp. Laws § 700.2504 (see statute for model language).

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Mich. Comp. Laws § 700.2510.

4. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Mich. Comp. Laws § 700.2511.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event. Mich. Comp. Laws § 700.2513.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). Mich. Comp. Laws § 700.2513.

(a) The statement: 1) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) may be altered by the testator after its preparation; and 5) it may be a writing that does not have significance apart from its effect on the dispositions made by the will.

7. A sealed and properly endorsed will can be deposited with the court in the county where the testator resides for safe-keeping. Mich. Comp. Laws § 700.2515.

8. See statute for form will, Mich. Comp. Laws § 700-2519.

Revocation/Modification

1. A will can be revoked by:

(a) Executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(i) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.

(b) By performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction.

(i) Revocatory acts include burning, tearing, canceling, obliterating or destroying the will or any part of it.

Mich. Comp. Laws § 700.2512.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. Mich. Comp. Laws § 700.2807.

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MINNESOTA

Power of Attorney – Healthcare

General Description

1. A principal with the capacity to do so may execute a healthcare directive. Minn. Stat. § 145C.02.

2. A healthcare directive may include a healthcare power of attorney to appoint a healthcare agent to make healthcare decisions for the principal when the principal, in the judgment of the principal's attending physician, lacks decision-making capacity. Minn. Stat. § 145C.02.

Legal Requirements

1. A healthcare directive is effective for a health care decision when: (a) it meets the requirements of Minn. Stat. § 145C.03(1); and (b) the principal, in the determination of the attending physician of the principal, lacks decision-making capacity to make the health care decision; or if other conditions for effectiveness otherwise specified by the principal have been met. Minn. Stat. § 145C.06.

2. A health care directive must:

   (a) Be in writing;

   (b) Be dated;

   (c) State the principal's name;

   (d) Be executed by a principal with capacity to do so with the signature of the principal or with the signature of another person authorized by the principal to sign on behalf of the principal;

   (e) Contain verification of the principal's signature or the signature of the person authorized by the principal to sign on behalf of the principal, either by a notary public or by witnesses as provided under this chapter; and

   (f) Include a healthcare power of attorney.

   Minn. Stat. § 145C.03(1).

3. The following individuals are not eligible to act as the healthcare agent, unless the individual is related to the principal by blood, marriage, registered domestic partnership, or adoption, or unless the principal has otherwise specified in the healthcare directive:

(a) A healthcare provider attending the principal on the date of execution of the healthcare directive or on the date the healthcare agent must make decisions for the principal; or

(b) An employee of a healthcare provider attending the principal on the date of execution of the healthcare directive or on the date the healthcare agent must make decisions for the principal.

Minn. Stat. § 145C.03(2)(b).

4. A healthcare agent may not act as a witness or notary public for the execution of the healthcare directive that includes the healthcare power of attorney. Minn. Stat. § 145C.03(3)(a).

5. At least one witness must not be a healthcare provider providing direct care to the principal or an employee of a healthcare provider providing direct care to the principal on the date of execution. A person notarizing a healthcare directive may be an employee of a healthcare provider providing direct care to the principal. Minn. Stat. § 145C.03(3)(b).

Revocation

1. A principal with the capacity to do so may revoke a healthcare directive in whole or in part at any time by doing any of the following:

(a) Canceling, defacing, obliterating, burning, tearing, or otherwise destroying the health care directive instrument or directing another in the presence of the principal to destroy the health care directive instrument, with the intent to revoke the health care directive in whole or in part;

(b) Executing a statement, in writing and dated, expressing the principal's intent to revoke the health care directive in whole or in part;

(c) Verbally expressing the principal's intent to revoke the health care directive in whole or in part in the presence of two witnesses who do not have to be present at the same time; or

(d) Executing a subsequent health care directive, to the extent the subsequent instrument is inconsistent with any prior instrument.

Minn. Stat. § 145C.09(1).

Power of Attorney – Property

General

A person who is a competent adult may, as principal, designate another person or an authorized corporation as the person's attorney-in-fact by a written power of attorney. Minn. Stat. § 523.01.

Execution

The power of attorney is validly executed when it is dated and signed by the principal and, in the case of a signature on behalf of the principal, by another, or by a mark, acknowledged by a notary public. Only powers of attorney validly created pursuant to this section or section 523.02 are validly executed powers of attorney for the purposes of sections 523.01 to 523.24. Minn. Stat. § 523.01.

Recording

If the exercise of the power of attorney requires execution and delivery of any instrument which is recordable, the power of attorney and any affidavit authorized under sections 523.01 to 523.24 when authenticated for record in conformity with section 507.24, are also recordable. Minn. Stat. § 523.05.

Durable

A power of attorney is durable if it contains language such as "This power of attorney shall not be affected by incapacity or incompetence of the principal," or "This power of attorney shall become effective upon the incapacity or incompetence of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the principal's later incapacity or incompetence. Minn. Stat. § 523.07.

Termination

1. A durable power of attorney terminates on the earliest to occur of the death of the principal, the expiration of a date of termination specified in the power of attorney, or, in the case of a power of attorney to the spouse of the principal, upon the commencement of proceedings for dissolution, separation, or annulment of the principal's marriage. Minn. Stat. § 523.08.

2. A nondurable power of attorney terminates on the death of the principal, the incapacity or incompetence of the principal, the expiration of a date of termination specified in the power of attorney, or, in the case of a power of attorney to the spouse of the principal, upon the commencement of proceedings for dissolution, separation, or annulment of the principal's marriage. Minn. Stat. § 523.09.

Revocation

1. An executed power of attorney may be revoked only by a written instrument of revocation signed by the principal and, in the case of a signature on behalf of the principal by another or a signature by a mark, acknowledged before a notary public. The conservator or guardian of the principal has the same power the principal would have if the principal were not incapacitated or incompetent to revoke, suspend, or terminate all or any part of the power of attorney. Minn. Stat. § 523.11.

2. Revocation of an executed power of attorney is not effective as to any party unless that party has actual notice of the revocation. Minn. Stat. § 523.11.

3. As used in this chapter, "actual notice of revocation" means that a written instrument of revocation has been received by the party. In real property transactions only, "actual notice of revocation" means that a written instrument of revocation has been received by the party, or that a written instrument of revocation containing the legal description of the real property has been recorded in the office of the county recorder or filed in the office of the registrar of titles. Recorded or filed revocation is actual notice of revocation of a power of attorney only as to any interest in real property described in the revocation and located in the county where it is recorded. Minn. Stat. § 523.11.

Form

The form provided in section 523.23 may be used to create a power of attorney. Minn. Stat. § 523.23.

Powers

Powers in the statutory form are defined in section 523.24. Minn. Stat. § 523.24.

Living Wills

General Description

An individual, at least 18 years old ("Principal"), with capacity may execute a healthcare directive ("HCD"). An HCD may include healthcare instruction and/or a healthcare power of attorney. Minn. Stat. §§ 145C.01 (subd. 8) and 145C.02; for healthcare power of attorney rules, *see* Minnesota Health Care Power of Attorney.

Legal Requirements

1. To be valid, an HCD must:

   (a) Be in writing;

   (b) Be dated;

   (c) State the Principal's name;

   (d) Be signed by a Principal with capacity or by a person authorized by the Principal to sign on the Principal's behalf ("Proxy Signer");

   (e) Contain verification of the Principal's signature or the signature of the Proxy Signer, either by a notary public or by two (2) witnesses; and

(i) A healthcare agent or alternate healthcare agent appointed in a healthcare power of attorney may not act as witness or notary public for the execution of the HCD that includes the healthcare power of attorney.

(ii) At least one (1) witness must not be a health care provider, or such provider's employee, providing direct care to principal on the date of execution. No such limitation applies to notary public.

(f) Include a healthcare instruction, a healthcare power of attorney, or both.

Minn. Stat. §§ 145C.03 & 145C.16.

2. Statutory form is optional; may include healthcare instructions, the appointment of a healthcare agent, or both; *see also* Minnesota Statutes § 145C.05 for a list of provisions that may be included in the health care directive. (Form available at Minn. Stat. § 145C.16.)

3. The HCD is operative when the Principal, as determined by the Principal's attending physician, lacks decision-making capacity to make healthcare decisions or if other conditions specified by the Principal have been met. Minn. Stat. § 145C.06.

Revocation

1. Principal with capacity may revoke a HCD in whole or in part at any time by: (a) canceling, defacing, obliterating, burning, tearing, or otherwise destroying the health care directive instrument; (b) directing another in the Principal's presence to destroy the HCD instrument, with the intent to revoke the HCD in whole or in part; (c) executing a statement, in writing and dated, expressing the intent to revoke the HCD in whole or in part; (d) verbally expressing intent to revoke the HCD in whole or in part in the presence of two (2) witnesses who do not have to be present at the same time; or (e) executing a subsequent HCD, to the extent the subsequent instrument is inconsistent with any prior instrument. Minn. Stat. § 145C.09.

Wills

General Description

Any person 18 or more years of age who is of sound mind may make a will. Minn. Stat. § 24.2-501.

Legal Requirements

1. Under Minnesota Statutes § 524.2-502, a written will must be:

(a) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(b) Signed by at least two (2) individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.

(i) The signing of a will by an interested witness does not invalidate the will or any provision of it. Minn. Stat. § 524.2-505.

2. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution:

(a) By acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal.

(b) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

Minn. Stat. § 524.2-504 (see statute for model language).

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Minn. Stat. § 524.2-510.

4. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Minn. Stat. § 524.2-511.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event. Minn. Stat. § 524.2-512.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). Minn. Stat. § 524.2-513.

(a) The statement: 1) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) may be altered by the testator after its preparation; and 5) may be a writing that does not have significance apart from its effect on the dispositions made by the will.

7. A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court. The will must be sealed and kept confidential. Minn. Stat. § 524.2-515.

Revocations/Modification

1. A will can be revoked by:

   (a) Executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

      (i) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.

   (b) By performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction.

      (i) Revocatory acts include burning, tearing, canceling, obliterating or destroying the will or any part of it.

   Minn. Stat. § 524.2-510.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. Minn. Stat. § 524.2-804.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

MISSISSIPPI

Power of Attorney – Healthcare

General Description

1. An adult or emancipated minor may execute a power of attorney for healthcare, which may authorize the agent to make any healthcare decision the principal could have made while having capacity. Miss. Code § 41-41-205(2).

2. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Miss. Code § 41-41-205(2).

Legal Limitations

1. Unless related to the principal by blood, marriage, or adoption, an agent may not be an owner, operator, or employee of a residential long-term healthcare institution at which the principal is receiving care. Miss. Code § 41-41-205(2).

2. None of the following may be used as witness for a power of attorney for healthcare: (a) a healthcare provider; (b) an employee of a healthcare provider or facility; or (c) the agent. Miss. Code § 41-41-205(3)

3. At least one (1) of the individuals used as a witness for a power of attorney for health care shall be someone who is neither a relative of the principal by blood, marriage or adoption nor an individual who would be entitled to any portion of the estate of the principal upon his death under any will or codicil. Miss. Code § 41-41-205(4).

Legal Requirements

1. Unless otherwise specified in a power of attorney for healthcare, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity. Miss. Code § 41-41-205(5).

2. The power must be in writing, contain the date of its execution, be signed by the principal, and be witnessed. Miss. Code § 41-41-205(2).

Revocation

1. An individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising healthcare provider. Miss. Code § 41-41-207(1).

2. An individual may revoke all or part of an advance healthcare directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. Miss. Code § 41-41-207(2).

3. A healthcare provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising healthcare provider and to any healthcare institution at which the patient is receiving care. Miss. Code § 41-41-207(3).

4. An advance healthcare directive that conflicts with an earlier advance healthcare directive revokes the earlier directive to the extent of the conflict. Miss. Code § 41-41-207(5).

Power of Attorney – Property

General

In Mississippi, a power of attorney is called a "letter of attorney." No special form is needed to create a letter of attorney. A letter of attorney to transact any business need only express plainly the authority conferred. Miss. Code § 87-3-7.

Acknowledged and Recorded

All letters of attorney intended to be used in this state may be acknowledged or proved as conveyances of land are required to be, and, when so acknowledged or proved, may be recorded in like manner; and copies thereof, duly certified, shall be admitted in evidence, without accounting for the nonproduction of the original. Miss. Code § 87-3-1.

Form of Letter of Attorney to Convey Land

A form to convey land is provided in Mississippi Code § 87-3-9:

"Know all, that I, George Poindexter, of ---- county, Mississippi, do hereby appoint Albert Brown, of ---- county, my attorney in fact, with full power to sell and convey in fee simple, with general warranty [or without warranty, as the case may be] of title, that land situated in [describe it].

"Witness my signature, the ---- of ----, A. D. ----.

"George Poindexter."

Revocation

1. The death of the principal shall not operate a revocation of an agency created by him, other than by writing, as to one who, without notice of such death, in good faith and under circumstances repelling the imputation to him of fraud or negligence, deals with such agent. Miss. Code § 87-3-15.

2. Any writing revoking letters of attorney may, when acknowledged or proved as conveyances of land are required to be acknowledged or proved, be recorded in like manner, and with like effect from the time of being filed for record, in the office in which the letters revoked were recorded. Miss. Code § 87-3-17.

3. The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Miss. Code § 87-3-111.

4. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Miss. Code § 87-3-111.

Durable

1. A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. Miss. Code § 87-3-105.

2. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument. Miss. Code § 87-3-107.

Living Wills

General Description

An adult, at least 18 years old, or an emancipated minor ("Principal") may give direction in an advance healthcare directive ("AHCD") concerning a healthcare decision for such principal ("Individual Instruction") or execute a power of attorney for healthcare. Miss. Code §§ 41-41-203(a), -203(e), 203(k) & -205(1); for power of attorney for health care rules, *see* Mississippi Health Care Power of Attorney.

Legal Requirements

1. Individual Instruction may be oral or written. Miss. Code § 41-41-205(1).

2. Use of the statutory form is optional. (Form available at Miss. Code § 41-41-209.)

3. Individual Instruction may be limited to take effect only if specified condition arises. Miss. Code § 41-41-205(1).

Revocation

1. Principal may revoke all or part of AHCD, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. Miss. Code § 41-41-207(1).

2. An AHCD that conflicts with an earlier AHCD revokes the earlier directive to the extent of the conflict. Miss. Code § 41-41-207(5).

3. A healthcare provider, agent, guardian or surrogate informed of revocation should inform supervising healthcare provider and any healthcare institution where the Principal is receiving care. Miss. Code § 41-41-207(3).

Wills

Legal Requirements

1. Execution of will and testament (Miss. Code § 91-5-1):

   (a) Shall be attested by (2) or more credible witnesses in the presence of the testator or testatrix.

   (b) An interested witness (if he is one of the two necessary witnesses) does not void the will, but it does void the devise or bequest made to him/her. If such witness would have been entitled to any share of the testator's estate if there was no will, then he/she takes up to the value of the devise or bequest made to him in the will. Miss. Code § 91-5-9.

2. Testamentary additions to trust.

   (a) A devise or bequest may be made to the trustee of a trust which is evidenced by a written instrument in existence when the will is made and which is identified in the will.

   (b) Such devise or bequest shall not be invalid (unless the will provides otherwise) because:

      (i) The trust is amendable or revocable, or both;

      (ii) The trust instrument or any amendment thereto was not executed in the manner required for wills; or

      (iii) The trust was amended after execution of the will.

   (c) An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest.

   Miss. Code § 91-5-11.

3. The statute protects the rights of children born after a will is executed (and therefore absent from it) and a spouse's fair share to the estate. Miss. Code §§ 91-5-3, 91-5-5, 91-5-25, 91-5-27 & 91-5-29.

Revocation/Modification

1. Testator can revoke the will by: (a) destroying, canceling, or obliterating the will or causing it to be done in his or her presence; or (b) executing a subsequent will, codicil, or declaration, in writing, made and executed. Miss. Code § 91-5-3.

MISSOURI

Power of Attorney – Healthcare

General Description

This is the "Durable Power of Attorney for Health Care Act." Mo. Rev. Stat. § 404.800.

Legal Limitations

1. An attorney in fact shall not be authorized to delegate such healthcare decision-making power to another person unless explicitly authorized by the patient in the durable power of attorney for healthcare to make such delegation. Mo. Rev. Stat. § 404.865.

2. An attending physician or an employee of the attending physician, or an owner, operator or employee of a healthcare facility in which the patient is a resident, shall not serve as an attorney in fact unless:

   (a) The patient and attorney in fact are related by affinity or consanguinity within the second degree;

   (b) The patient and attorney in fact are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conducting of religious services and actually and regularly engage in religious, benevolent, charitable, or educational ministry, or the performance of healthcare services.

   Mo. Rev. Stat. § 404.815.

Legal Requirements

1. Unless the patient expressly authorizes otherwise in the power of attorney, the powers and duties of the attorney in fact to make healthcare decisions shall commence upon a certification by two licensed physicians based upon an examination of the patient that the patient is incapacitated and will continue to be incapacitated for the period of time during which treatment decisions will be required. Mo. Rev. Stat. § 404.825.

   (a) The powers and duties shall cease upon certification that the patient is no longer incapacitated. Mo. Rev. Stat. § 404.825.

2. In making any healthcare decision, the attorney in fact shall seek and consider information concerning the patient's medical diagnosis, the patient's prognosis and the benefits and burdens of the treatment to the patient. Mo. Rev. Stat. § 404.822.

3. In withdrawing treatment, which withdrawal will allow the preexisting condition to run its natural course, the attorney in fact shall seek evidence of the medical diagnosis and the

prognosis and the benefit and burden of the treatment to the patient to the extent possible within prevailing medical standards. Mo. Rev. Stat. § 404.822.

Revocation

1. A power of attorney for healthcare may be revoked at any time and in any manner by which the patient is able to communicate the intent to revoke. Mo. Rev. Stat. § 404.850(1).

   (a) Revocation shall be effective upon communication of such revocation by the patient to the attorney in fact or to the attending physician or healthcare provider.

2. Upon learning of the revocation of a power of attorney for healthcare, the attending physician or other healthcare provider shall cause the revocation to be made a part of the patient's medical records. Mo. Rev. Stat. § 404.850(2).

3. Unless the power of attorney provides otherwise, execution by the patient of a valid power of attorney for healthcare revokes any prior power of attorney for healthcare. Mo. Rev. Stat. § 404.850(3).

Power of Attorney – Property

Creating a Power of Attorney

1. The authority granted by a principal to an attorney in fact in a written power of attorney is not terminated in the event the principal becomes wholly or partially disabled or incapacitated or in the event of later uncertainty as to whether the principal is dead or alive if:

   (a) The power of attorney is denominated a "Durable Power of Attorney";

   (b) The power of attorney includes a provision that states in substance the language in section 404.705-1(1)(a) or (b); and

   (c) The power of attorney is subscribed by the principal, and dated and acknowledged in the manner prescribed by law for conveyances of real estate.

   Mo. Rev. Stat. § 404.705.

2. A durable power of attorney does not have to be recorded, except to the extent that recording may be required for transactions affecting real estate under sections 442.360 and 442.370. Mo. Rev. Stat. § 404.705.

Agent Qualifications

Any person, other than a person who is disqualified from being appointed a guardian or conservator under subsection 2 of section 475.055, is qualified. Mo. Rev. Stat. § 404.707.

Powers

1. A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or not durable. Mo. Rev. Stat. § 404.710.

2. If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section. The enumeration of one or more specific subjects or purposes does not limit the general authority granted by that power of attorney, unless otherwise provided in the power of attorney. Mo. Rev. Stat. § 404.710.

3. If the power of attorney states that general powers are granted to an attorney in fact with respect to one or more express subjects or purposes for which general powers are conferred, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power, but only with respect to the specific subjects or purposes expressed in the power of attorney that an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section. Mo. Rev. Stat. § 404.710.

4. Except as provided in subsections 6 and 7 of this section, an attorney in fact with general powers has, with respect to the subjects or purposes for which the powers are conferred, the rights listed in section 404.710-4. Mo. Rev. Stat. § 404.710-4.

5. Certain powers listed in section 404.710-6 may only be granted through an express authorization. Mo. Rev. Stat. § 404.710-6.

6. Certain powers listed in section 404.710-7 may not be granted to an attorney in fact. Mo. Rev. Stat. § 404.710-6.

Modification and Termination

1. Unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be modified or terminated as follows:

    (a) On the date shown in the power of attorney and in accordance with the express provisions of the power of attorney;

(b) When the principal, orally or in writing, or the principal's legal representative with approval of the court in writing informs the attorney in fact or successor that the power of attorney is modified or terminated, or when and under what circumstances it is modified or terminated;

(c) When a written notice of modification or termination of the power of attorney is filed by the principal in the proper office of the recorder of deeds;

(d) On the death of the principal, except that if the power of attorney grants authority under subdivision (7) or (8) of subsection 6 of section 404.710, the power of attorney and the authority of the attorney in fact shall continue for the limited purpose of carrying out the authority granted under either or both of said subdivisions for a reasonable length of time after the death of the principal;

(e) When the attorney in fact under a durable power of attorney is not qualified to act for the principal;

(f) On the filing of any action for divorce or dissolution of the marriage of the principal and the principal's attorney in fact who were married to each other at or subsequent to the time the power of attorney was created, unless the power of attorney provides otherwise.

Mo. Rev. Stat. § 404.717.

Living Wills

General Description

Any competent person, at least 18 years old, of sound mind ("Declarant") may execute a declaration directing the withholding or withdrawal of death-prolonging procedures. Mo. Rev. Stat. §§ 459.010(2) & 459.015(1).

Legal Requirements

1. To be valid, a declaration must be:

(a) In writing;

(b) Signed by the person making the declaration, or by another person in the Declarant's presence and by the Declarant's expressed direction ("Proxy Signer");

(c) Dated; and

(d) If not wholly in the Declarant's handwriting, signed in the presence of two (2) or more witnesses at least 18 years of age neither of whom is the Proxy Signer.

Mo. Rev. Stat. § 459.015(1).

2. Use of the statutory form is optional. It may include other specific directions, and the directions are severable. (Form available at Mo. Rev. Stat. § 459.015.)

3. Declarant is responsible for notifying attending physician of declaration. Upon the Declarant's request, attending physician or the healthcare facility where the Declarant is a patient may include the declaration in the Declarant's medical records. Mo. Rev. Stat. § 459.015(2).

4. Declaration operative only if the Declarant is determined to be: (a) terminal; and (b) unable to make treatment decisions. Determinations should be recorded in Declarant's medical record. Mo. Rev. Stat. § 459.025.

Revocation

1. A declaration may be revoked at any time and in any manner by which the Declarant is able to communicate intent to revoke, without regard to mental or physical condition. Mo. Rev. Stat. § 459.020.

2. Attending physician or healthcare provider should make revocation part of Declarant's medical record. Mo. Rev. Stat. § 459.020.

Wills

General Description

Any person of sound mind, 18 years of age or older or any emancipated minor may by last will devise his or her real or personal property and may also devise the whole or any part of his or her body to any college, university, licensed hospital or to the state anatomical board for use in the manner expressly provided by his or her will or otherwise. Mo. Rev. Stat. § 474.310.

Legal Requirements

1. Under Missouri Revised Statutes §§ 474.320 & 474.330, a written will must be:

   (a) Signed by the testator, or by some person, by his direction, in his presence; and

   (b) Attested by two (2) or more competent witnesses subscribing their names to the will in the presence of the testator.

      (i) No will is invalidated because it was attested by an interested witness; but any interested witness shall, unless the will is also attested by two disinterested witnesses, forfeit the value of the devise above what he would have received had the testator died intestate.

      (ii) No attesting witness is interested solely by reason of being a creditor of the estate or because he is named executor in the will.

2. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money, evidences of indebtedness, documents of title, securities and property used in trade or business). Mo. Rev. Stat. § 474.333)

   (a) The statement: 1) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) may be altered by the testator after its preparation; and 5) may be a writing that does not have significance apart from its effect on the dispositions made by the will.

3. A written will may at the time of its execution, or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the witnesses, each made before an officer authorized to administer oaths under the laws of this state, and evidenced by the officer's certificate, under official seal, attached or annexed to the will. Mo. Rev. Stat. § 474.337 (see statute for model form).

4. When lands are devised by the will, a copy of the will must be recorded in the recorder's office in the county where the land is situated, and if the lands are situated in different counties, then a copy of such will shall be recorded in the recorder's office in each county within six months after probate. Mo. Rev. Stat. § 474.500.

5. A will may be deposited by the person making it (or his/her agent), with the probate division of any circuit court for safekeeping. The will:

   (a) Must be sealed in an appropriate manner approved by the circuit court;

   (b) Must have endorsed thereon "Will of," followed by the name of the testator;

   (c) Shall not be opened or read until delivered to a person entitled to receive it; and

   (d) During the lifetime of the testator, the will shall be delivered only to such testator, or to some person authorized by such testator by an order in writing proved by the oath of a subscribing witness. After the testator's death, the clerk shall notify the person named on the envelope of the will, if there is a person so named, and deliver it to such person. Or, the Court will publicly open the will.

   Mo. Rev. Stat. § 474.510.

Revocation/Modification

1. A will can be revoked by: (a) a subsequent will in writing; or (b) burning, canceling, tearing or obliterating the same, by the testator, or in his presence, and by his consent and direction. Mo. Rev. Stat. § 474.400

2. All provisions in the will in favor of the testator's spouse shall be treated as if the divorced spouse had died at the time of divorce. Mo. Rev. Stat. § 474.420.

MONTANA

Power of Attorney – Healthcare

No healthcare power of attorney statutes. For living wills, *see* Montana Rights of the Terminally Ill Act, Mont. Code Ann. § 50-9-101, *et seq.*

Power of Attorney – Property

General

A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney-in-fact or agent in writing and the writing contains the words, "This power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time," or "This power of attorney becomes effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred must be exercisable notwithstanding the principal's subsequent disability or incapacity and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. Mont. Code Ann. § 72-5-501.

Disability or Incapacity

All acts done by the attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument. Mont. Code Ann. § 72-5-501.

No Revocation Until Notice

The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. The disability or incapacity of a principal who has previously executed a power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Mont. Code Ann. § 72-5-502.

Form

The statutory form provided in section 72-31-201 is considered "legally sufficient" to create a power of attorney. Mont. Code Ann. § 72-31-201. Powers listed in the statutory form are defined in sections 72-31-223 through 72-31-236.

Living Wills

General Description

An individual, at least 18 years old, of sound mind ("Declarant") may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment and/or may designate another to make decisions governing the withholding or withdrawal of life-sustaining treatment. Mont. Code Ann. § 50-9-103(1).

Legal Requirements

1. To be valid, a declaration must: (a) be signed by Declarant or another at Declarant's direction; and (b) be witnessed by two individuals. Mont. Code Ann. § 50-9-103(1).

2. Use of the statutory form is optional. (Form available at Mont. Code Ann. § 50-9-103(2).)

3. Declarant may register declaration with the state. Mont. Code Ann. § 50-9-501.

4. Declaration is operative when: (a) the declaration is communicated to the attending physician or attending advanced practice registered nurse; and (b) the Declarant is determined by the attending physician or attending advanced practice registered nurse to be (i) in a terminal condition and (ii) no longer able to make decisions regarding administration of life-sustaining treatment. Mont. Code Ann. § 50-9-105(1).

Revocation

1. Declarant may revoke a declaration at any time and in any manner, without regard to mental or physical condition. Mont. Code Ann. § 50-9-104.

2. Revocation is effective when communicated to attending physician, attending advanced practice registered nurse, or other healthcare provider by the Declarant or a witness. Mont. Code Ann. § 50-9-104.

3. The attending physician, attending advanced practice registered nurse, or other healthcare provider should make the revocation a part of the Declarant's medical record. Mont. Code Ann. § 50-9-104.

Wills

General Description

An individual 18 or more years of age who is of sound mind may make a will. Mont. Code Ann. § 72-2-521.

Legal Requirements

1. Under Montana Code § 72-2-522, a written will must be:

(a) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(b) Signed by at least two (2) individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.

(i) The signing of a will by an interested witness does not invalidate the will or any provision of it. Mont. Code Ann. § 72-2-525.

2. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution:

(a) By acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal.

(b) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

Mont. Code Ann. § 72-2-524 (see statute for model language).

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Mont. Code Ann. § 72-2-530.

4. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. Mont. Code Ann. § 72-2-531.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death (*i.e.*, the execution or revocation of a will of another person). Mont. Code Ann. § 72-2-532.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). Mont. Code Ann. § 72-2-533.

(a) The statement: 1) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) may be altered by the testator after its preparation; and 5) may be a writing that does not have significance apart from its effect on the dispositions made by the will.

7. A will may be deposited by the testator with any court for safekeeping, under rules of the court. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will may be delivered only to the testator or to a person authorized in a writing signed by the testator to receive the will. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that person on request or the court may deliver the will to the appropriate court. Mont. Code Ann. § 72-2-535.

Revocation/Modification

1. A will or any part of a will is revoked by:

   (a) Executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

      (i) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.

   (b) Performing a revocatory act (by the testator or his/her agent in the testator's presence) with the intent and purpose to revoke the will.

      (i) Revocatory acts include burning, tearing, canceling, obliterating, or destroying the will or any part of it.

   Mont. Code Ann. § 72-2-527.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. Mont. Code Ann. § 72-2-812.

NEBRASKA

Power of Attorney – Healthcare

General Description

A principal may confer a power of attorney for healthcare thereby designating another competent adult as attorney in fact for healthcare decisions. Neb. Rev. Stat. § 30-3403(1).

Legal Limitations

1. The following shall not qualify to witness a power of attorney for healthcare:

   (a) The principal's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, attending physician, or attorney in fact; or an employee of a life or health insurance provider for the principal.

   (b) No more than one (1) witness may be an administrator or employee of a healthcare provider who is caring for or treating the principal.

   Neb. Rev. Stat. § 30-3405(1).

2. None of the following may serve as an attorney in fact:

   (a) The attending physician;

   (b) An employee of the attending physician who is unrelated to the principal by blood, marriage, or adoption;

   (c) A person unrelated to the principal by blood, marriage, or adoption who is an owner, operator, or employee of a healthcare provider in or of which the principal is a patient or resident; and

   (d) A person unrelated to the principal by blood, marriage, or adoption if, at the time of the proposed designation, he or she is presently serving as an attorney in fact for ten or more principals.

   Neb. Rev. Stat. § 30-3406.

Legal Requirements:

1. The power of attorney for healthcare shall:

   (a) Be in writing;

   (b) Identify the principal, the attorney in fact, and the successor attorney in fact, if any;

(c) Specifically authorize the attorney in fact to make healthcare decisions on behalf of the principal in the event the principal is incapable;

(d) Show the date of its execution; and

(e) Be witnessed and signed by at least two (2) adults, each of whom witnesses either the signing and dating of the power of attorney for healthcare by the principal or the principal's acknowledgment of the signature and date, or be signed and acknowledged by the principal before a notary public who shall not be the attorney in fact or successor attorney in fact.

Neb. Rev. Stat. § 30-3404.

Revocation

1. A power of attorney for healthcare or a healthcare decision made by an attorney in fact may be revoked at any time by a principal who is competent and in any manner by which the principal is able to communicate his or her intent to revoke. Neb. Rev. Stat. § 30-3420(1).

2. Revocation shall be effective upon communication to the attending physician, the healthcare provider who shall promptly inform the attending physician of the revocation, or the attorney in fact who shall promptly inform the attending physician of the revocation. Neb. Rev. Stat. § 30-3420(1).

3. Upon learning of the revocation of the power of attorney for healthcare, the attending physician shall cause the revocation to be made a part of the principal's medical records. Neb. Rev. Stat. § 30-3420(3).

4. Unless the power of attorney for healthcare provides otherwise, execution of a valid power of attorney for healthcare shall revoke any previously executed power of attorney for healthcare. Neb. Rev. Stat. § 30-3420(4).

5. Unless the power of attorney for healthcare provides otherwise, a power of attorney for health care shall supersede: (a) any conflicting preexisting directive; (b) any guardianship proceedings under the Nebraska Probate Code to the extent the proceedings involve the right to make healthcare decisions for the protected person; and (c) any conservatorship proceedings under the Nebraska Probate Code to the extent the proceedings involve the right to make healthcare decisions for the protected person. Neb. Rev. Stat. § 30-3420(5).

Power of Attorney – Property

General

As used in the Uniform Durable Power of Attorney Act, unless the context otherwise requires, durable power of attorney shall mean a power of attorney by which a principal designates another his or her attorney in fact in writing and the writing contains the words "this power of

attorney shall not be affected by subsequent disability or incapacity of the principal" or "this power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. Neb. Rev. Stat. § 30-2665.

Death or Disability

The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power of attorney does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Neb. Rev. Stat. § 30-2668.

Form

The form provided in section 49-1522 can be used to create a power of attorney. Neb. Rev. Stat. § 49-1522. Powers listed in the form are defined in sections 49-1525 through 49-1558.

Revocation by Form

The form provided in section 49-1559 can be used to revoke a statutory short form power of attorney. Neb. Rev. Stat. § 49-1559.

Living Wills

General Description

An adult, at least 19 years old or who is or has been married, of sound mind ("Declarant") may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. Neb. Rev. Stat. §§ 20-403(1) & -404(1).

Legal Requirements

1. To be valid, a declaration must be:

    (a) Signed by the Declarant or another person at the Declarant's direction; and

    (b) Witnessed by two (2) adults or a notary public.

        (i) No more than one (1) witness may be an administrator or employee of a healthcare provider who is caring for or treating the Declarant. Neither witness may be an employee of a life or health insurance provider for Declarant.

            (1) Such restrictions do not apply to a notary public.

Neb. Rev. Stat. § 20-404(1).

2. Use of the statutory form is optional. (Form available at Neb. Rev. Stat. § 20-404(2).)

3. The declaration becomes operative when: (a) it is communicated to attending physician; (b) the Declarant is determined by attending physician to be in a terminal condition or in a persistent vegetative state, (c) the Declarant is determined by attending physician to be unable to make decisions regarding administration of life-sustaining treatment, and (d) attending physician has notified a reasonably available member of Declarant's immediate family or guardian, if any, of Declarant's diagnosis and of the intent to invoke the declaration. Neb. Rev. Stat. § 20-405.

4. When the declaration becomes operative, the attending physician should record diagnosis, determination and terms of declaration, in writing, in the Declarant's record. Neb. Rev. Stat. § 20-405.

Revocation

1. The Declarant may revoke a declaration at any time and in any manner without regard to the Declarant's mental or physical condition. Neb. Rev. Stat. § 20-406.

2. Revocation becomes effective when communicated to attending physician or other healthcare provider by the Declarant or a witness to revocation. Neb. Rev. Stat. § 20-406.

   (a) Attending physician or other health care provider should make revocation a part of the Declarant's medical record.

Wills

General Description

A person who 18 or more years of age or is not a minor and who is "of sound mind" may make a will. Neb. Rev. Stat. § 30-2326.

Legal Requirements

1. Except for holographic wills, every will shall be: (a) in writing; (b) signed by the testator or in the testator's name by another individual in the testator's presence and by the testator's direction; and (c) signed by at least two (2) individuals, each of whom witnessed either the signing or the testator's acknowledgement of the signature or of the will. Neb. Rev. Stat.§ 30-2327

2. A will is valid as a holographic will, whether or not witnessed, if the signature, the material provisions, and an indication of the date of signing are in the testator's handwriting and, in the absence of such indication of date, if such instrument is the only such instrument or contains no inconsistency with any like instrument or if such date is

determinable from the contents of such instrument, from extrinsic circumstances, or from any other evidence. Neb. Rev. Stat. § 30-2328.

3. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Neb. Rev. Stat. § 30-2335.

4. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. (*i.e.*, execution or revocation of another person's will). Neb. Rev. Stat. § 30-2337.

5. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money, evidences of indebtedness, documents of title, securities, and property used in trade or business). Neb. Rev. Stat. § 30-2338.

6. A will may be simultaneously executed, attested, and made self-proved, by acknowledgment by the testator and affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form.. Neb. Rev. Stat. § 30-2329.

Revocation/Modification

1. A will or any part thereof is revoked: (a) by executing a subsequent will which revokes the prior will or part expressly or by inconsistency; or (b) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in the presence of and by the direction of the testator. Neb. Rev. Stat. § 30-2332.

    (a) If after executing a will the testator is divorced or his or her marriage dissolved or annulled, the divorce, dissolution, or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Neb. Rev. Stat. § 30-2333.

    (b) A change of circumstances other than divorce or dissolution or annulment of the marriage does not revoke a will. Neb. Rev. Stat. § 30-2333.

2. Revival of revoked will.

    (a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of

the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

Neb. Rev. Stat. § 30-2334.

NEVADA

Power of Attorney – Healthcare

General Description

A power of attorney created is durable unless it expressly provides that it is terminated by the incapacity of the principal. Nev. Rev. Stat. § 162A.210.

Legal Requirements

1. A power of attorney must be signed by the principal or, in the principal's conscious presence, by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. Nev. Rev. Stat. § 162A.220(1).

2. If the principal resides in a hospital, assisted living facility or facility for skilled nursing at the time of execution of the power of attorney, a certification of competency of the principal from a physician, psychologist or psychiatrist must be attached to the power of attorney. Nev. Rev. Stat. § 162A.220(2).

Revocation

1. A power of attorney terminates when:

   (a) The principal dies;

   (b) The principal becomes incapacitated, if the power of attorney is not durable;

   (c) The principal revokes the power of attorney;

   (d) The power of attorney provides that it terminates;

   (e) The limited purpose of the power of attorney is accomplished; or

   (f) The principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

   Nev. Rev. Stat. § 162A.270(1).

2. An agent's authority terminates when:

   (a) The principal revokes the authority;

   (b) The agent dies, becomes incapacitated or resigns;

(c) An action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or

(d) The power of attorney terminates.

Nev. Rev. Stat. § 162A.270(1).

3. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked. Nev. Rev. Stat. § 162A.270(6).

Power of Attorney – Property

Durable

A power of attorney is durable unless it expressly provides that it is terminated by the incapacity of the principal. Nev. Rev. Stat. § 162A.210.

Execution

A power of attorney must be signed by the principal or, in the principal's conscious presence, by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. If the principal resides in a hospital, assisted living facility or facility for skilled nursing at the time of execution of the power of attorney, a certification of competency of the principal from a physician, psychologist or psychiatrist must be attached. Nev. Rev. Stat. § 162A.220.

Time of Effectiveness

A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing that the event or contingency has occurred. Nev. Rev. Stat. § 162A.260.

Termination

1. A power of attorney terminates when:

(a) The principal dies;

(b) The principal becomes incapacitated, if the power of attorney is not durable;

(c) The principal revokes the power of attorney;

(d) The power of attorney provides that it terminates;

(e) The limited purpose of the power of attorney is accomplished; or

(f) The principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

Nev. Rev. Stat. § 162A.270.

2. An agent's authority terminates when:

(a) The principal revokes the authority;

(b) The agent dies, becomes incapacitated or resigns;

(c) An action is filed for the dissolution or annulment of the agent's marriage to the principal or legal separation, unless the power of attorney otherwise provides; or

(d) The power of attorney terminates.

Nev. Rev. Stat. § 162A.270.

Powers

1. An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority:

(a) Create, amend, revoke or terminate an inter vivos trust;

(b) Make a gift;

(c) Create or change rights of survivorship;

(d) Create or change a beneficiary designation;

(e) Delegate authority granted under the power of attorney;

(f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(g) Exercise fiduciary powers that the principal has authority to delegate; or

(h) Disclaim property, including a power of appointment.

Nev. Rev. Stat. § 162A.450.

2. Except as otherwise provided in Nevada Revised Statutes § 162A.450, if a power of attorney grants to an agent authority to do all acts that a principal could do or refers to general authority or cites a section of Nevada Revised Statutes §§ 162A.200 to 162A.660, inclusive, in which the authority is described, the agent has the general authority described in Nevada Revised Statutes §§ 162A.200 to 162A.660, inclusive. Nev. Rev. Stat. § 162A.450.

3. A reference in a power of attorney to any part of a section in Nevada Revised Statutes §§ 162A.200 to 162A.660, inclusive, incorporates the entire section. Nev. Rev. Stat. § 162A.450.

4. Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in Nevada Revised Statutes §§ 162A.200 to 162A.660, inclusive, or that grants to an agent authority to do all acts that a principal could do pursuant to this chapter, a principal authorizes the agent to do a list of things listed in section 162A.470. Nev. Rev. Stat. § 162A.470.

Form

The form provided in section 162A-620 can be used to create a power of attorney. Nev. Rev. Stat. § 162A.620.

Living Wills

General Description

A person, at least 18 years old ("Declarant"), of sound mind may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment and may designate another such person to make decisions governing the withholding or withdrawal of life-sustaining treatment. Nev. Rev. Stat. § 449.600(1).

Legal Requirements

1. To be valid, the declaration must be: (a) signed by the Declarant or another at the Declarant's direction; and (b) attested by two (2) witnesses. Nev. Rev. Stat. § 449.600(1).

2. Use of the statutory form is optional. (Form available at Nev. Rev. Stat. § 449.610)

3. A physician or other healthcare provider furnished with a copy of the declaration should make it part of the Declarant's medical record. Nev. Rev. Stat. § 449.600(2).

4. The Declarant may register the directive with the state. Nev. Rev. Stat. § 449.625.

5. Declaration becomes operative when: (a) it is communicated to the attending physician; and (b) the Declarant is determined by the attending physician to be (i) in a terminal condition and (ii) no longer able to make decisions regarding administration of life-sustaining treatment. Nev. Rev. Stat. § 449.617.

Revocation

1. The Declarant may revoke a declaration at any time and in any manner, without regard to his mental or physical condition. Nev. Rev. Stat. § 449.620.

2. Revocation is effective when communicated to attending physician or other provider of healthcare by the Declarant or a witness to the revocation. Nev. Rev. Stat. § 449.620.

3. Attending physician or other provider of healthcare should make revocation part of the Declarant's medical record. Nev. Rev. Stat. § 449.620.

Wills

General Description

Every person of sound mind, over the age of 18 years, may, by last will, dispose of all his or her estate, real and personal, the same being chargeable with the payment of the testator's debts. Nev. Rev. Stat. § 133.020.

Legal Requirements

1. Under Nevada Revised Statutes § 133.040, a written will must be:

   (a) Signed by the testator, or by an attending person at the testator's direction; and

   (b) Attested by at least two (2) competent witnesses who subscribe their names to the will in the presence of the testator.

      (i) All devises in a will to a subscribing witness are void unless there are two (2) other competent subscribing witnesses to the will. Nev. Rev. Stat. § 133.060.

      (ii) A mere charge on the estate for the payment of debts shall not prevent a creditors from being competent witnesses. Nev. Rev. Stat. § 133.070.

2. Nevada provides for electronic wills. Nev. Rev. Stat. § 133.085.

3. A will may refer to a written statement to dispose of items of tangible personal property not otherwise specifically disposed of by the will (other than money, evidences of indebtedness, documents of title, securities and property used in a trade or business). Nev. Rev. Stat. § 133.045.

   (a) The statement must contain: (i) the date of its execution; (ii) a title indicating its purpose; (iii) a reference to the will to which it relates; (iv) a reasonably certain description of the items to be disposed of and the names of the devisees; and (v) the testator's signature.

(b) The statement or list may be: (i) referred to as a writing to be in existence at the time of the testator's death; (ii) prepared before or after the execution of the will; (iii) altered by the testator after its preparation; or (iv) a writing which has no significance apart from its effect upon the dispositions made by the will.

Nev. Rev. Stat. § 133.045.

4. Any attesting witness to a will may sign a declaration under penalty of perjury or an affidavit before any person authorized to administer oaths in Nevada, stating such facts as the witness would be required to testify to in court to prove the will. Nev. Rev. Stat. § 133.050 (see statute for sample language).

(a) The declaration or affidavit must be written on the will or, if that is impracticable, on some paper attached thereto.

(b) The sworn statement of any witness so taken must be accepted by the court as if it had been taken before the court.

(c) A signature affixed to a self-proving affidavit or a self-proving declaration that is attached to a will and executed at the same time as the will is considered a signature affixed to the will. Nev. Rev. Stat. § 133.055.

Revocation/Modification

1. A written will may be revoked by: (a) burning, tearing, canceling or obliterating the will, with the intention of revoking it, by the testator, or by some person in the presence and at the direction of the testator; or (b) another will or codicil in writing, executed as prescribed in this chapter. Nev. Rev. Stat. § 133.120.

2. Revocations implied by law.

(a) If a person marries after making a will, the will is revoked as to the spouse, unless provision has been made for the spouse by a marriage contract, the spouse is already provided for in the will, or there is proof in the will that the testator did not want to make any provisions for the spouse. Nev. Rev. Stat. § 133.110.

(b) Unless otherwise provided, divorce or annulment of the marriage of the testator revokes every devise, beneficial interest or designation to serve as personal representative given to the testator's former spouse in a will executed before the entry of the decree of divorce or annulment. Nev. Rev. Stat. § 133.115.

NEW HAMPSHIRE

Power of Attorney – Healthcare

General Description

The agent shall have the authority to make any and all healthcare decisions on the principal's behalf that the principal could make. N.H. Rev. Stat. Ann. § 137-J:5.

Legal Limitations

1. A person may not exercise the authority of agent while serving in one of the following capacities: (a) the principal's healthcare provider or residential care provider; or (b) a nonrelative of the principal who is an employee of the principal's healthcare provider or residential care provider. N.H. Rev. Stat. Ann. § 137-J:8.

Legal Requirements

1. An agent's authority under an advance directive shall be in effect only when the principal lacks capacity to make healthcare decisions, as certified in writing by the principal's attending physician, and filed with the name of the agent in the principal's medical record. N.H. Rev. Stat. Ann. § 137-J:5.

2. When and if the principal regains capacity to make healthcare decisions, such event shall be certified in writing by the principal's attending physician, noted in the principal's medical record, the agent's authority shall terminate, and the authority to make healthcare decisions shall revert to the principal. N.H. Rev. Stat. Ann. § 137-J:5.

3. A disclosure statement must accompany a durable power of attorney for healthcare. N.H. Rev. Stat. Ann. § 137-J:19.

4. The advance directive shall be signed by the principal in the presence of either of the following:

    (a) Two (2) or more subscribing witnesses, neither of whom shall, at the time of execution, be the agent, the principal's spouse or heir at law, or a person entitled to any part of the estate of the principal upon death of the principal under a will, trust, or other testamentary instrument or deed in existence or by operation of law, or attending physician, or person acting under the direction or control of the attending physician.

        (i) No more than one (1) such witness may be the principal's health or residential care provider or such provider's employee.

        (ii) The witnesses shall affirm that the principal appeared to be of sound mind and free from duress at the time the advance directive was signed and that

the principal affirmed that he or she was aware of the nature of the document and signed it freely and voluntarily; or

(b) A notary public or justice of the peace, who shall acknowledge the principal's signature; or

(c) If the principal is physically unable to sign, the advance directive may be signed by the principal's name written by some other person in the principal's presence and at the principal's express direction.

N.H. Rev. Stat. Ann. § 137-J:14.

Revocation

1. An advance directive shall be revoked:

(a) By written revocation delivered to the agent or to a healthcare provider or residential care provider expressing the principal's intent to revoke, signed and dated by the principal; by oral revocation in the presence of two (2) or more witnesses, none of whom shall be the principal's spouse or heir at law; or by any other act evidencing a specific intent to revoke the power, such as by burning, tearing, or obliterating the same or causing the same to be done by some other person at the principal's direction and in the principal's presence;

(b) By execution by the principal of a subsequent advance directive; or

(c) By a determination by a court that the agent's authority has been revoked.

N.H. Rev. Stat. Ann. § 137-J:15.

2. A principal's health or residential care provider who is informed of or provided with a revocation of an advance directive shall immediately record the revocation, and the time and date when he or she received the revocation, in the principal's medical record and notify the agent, the attending physician, and staff responsible for the principal's care of the revocation.

(a) An agent who becomes aware of such revocation shall inform the principal's health or residential care provider of such revocation.

(b) Revocation shall become effective upon communication to the attending physician.

N.H. Rev. Stat. Ann. § 137-J:15.

Death or Disability

1. The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of an agent who acts under a power of attorney in a writing executed by such principal which contains the words "This power of attorney shall not be affected by the subsequent disability or incompetence of the principal'' or words of similar import showing the intent of such principal that the authority conferred shall be exercisable notwithstanding his subsequent disability or incompetence. N.H. Rev. Stat. Ann. § 506:5.

2. The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a durable power, does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. N.H. Rev. Stat. Ann. § 506:5.

Execution

A durable power of attorney shall be executed in accordance with the requirements of New Hampshire Revised Statutes § 477:9, which states: "Every power of attorney to convey real estate must be signed and acknowledged, and may be recorded as required for a deed, and a copy of the record may be used in evidence whenever a copy of the deed so made is admissible." N.H. Rev. Stat. Ann. § 506:5(IV).

Disclosure Statement

A disclosure statement, signed by the principal, in substantially the form provided in section 506.5, VI, shall be affixed to a durable general power of attorney. N.H. Rev. Stat. Ann. § 506:5(VI).

Acknowledgement

An agent shall have no authority to act as agent under a durable general power of attorney unless the agent has first executed and affixed to the power of attorney an acknowledgment in substantially the form provided in section 506.5, VII. N.H. Rev. Stat. Ann. § 506:5(VII).

Validity

1. A power of attorney shall be valid if it: (a) is valid under common law or statute existing at the time of execution; or (b) has been determined by the court to be valid upon the filing of a petition pursuant to New Hampshire Revised Statutes 506:7. N.H. Rev. Stat. Ann. § 506:5(VIII).

Living Wills

General Description

A person, at least 18 years old ("Principal"), may (i) give direction about future medical care ("Living Will") or (ii) designate another person to make medical decisions should the Principal lose capacity to do so ("Durable Power of Attorney") (either an "Advance Directive"). N.H. Rev. Stat. Ann. §§ 137-J:2(I) & -J:2(XIX); for Durable Power of Attorney rules, *see* New Hampshire Health Care Power of Attorney.

Legal Requirements

1. To be valid, an Advance Directive must be:

   (a) Signed by the Principal or if the Principal is physically unable to sign, by a person in the Principal's presence and at the Principal's express direction ("Proxy Signer"); and

   (b) Either (i) subscribed by at least two (2) competent witnesses, at least 18 years old or (ii) acknowledged by notary public or justice of the peace.

      (i) Witnesses, notary public or justice of the peace, whichever applicable, must be present when the Principal or Proxy Signer signs.

      (ii) If witnessed, neither witness may be, at the time of the execution, (a) the agent, (b) the Principal's spouse or heir at law, (c) entitled to any part of the Principal's estate under a will, trust, or other testamentary instrument or deed in existence or by operation of law, or (d) an attending physician or advance practiced registered nurse ("APRN"), or person acting under such person's direction or control.

      (iii) No more than one (1) witness may be the Principal's health or residential care provider or such provider's employee.

      (iv) Witnesses must affirm (a) that the Principal appeared to be of sound mind and free from duress when advance directive signed and (b) that the Principal affirmed that the Principal was aware of the nature of the document and signed it freely and voluntarily.

   N.H. Rev. Stat. Ann. § 137-J:14.

2. Use of the statutory form is optional but must be substantially followed. The Principal may exclude or strike references to APRN. (Form available at N.H. Rev. Stat. Ann. § 137-J:20.) N.H. Rev. Stat. Ann. §§ 137-J:14(III) & -J:20.

3. Advance directive becomes operative when the attending physician or APRN certifies in writing (i) that Principal lacks capacity to make healthcare decisions, and/or (ii)

Principal's near death or permanently unconscious condition. N.H. Rev. Stat. Ann. § 137-J:7(I)(c).

4. The Principal may request that attending physician or APRN or other healthcare provider or residential care provider include advance directive in Principal's medical record. N.H. Rev. Stat. Ann. § 137-J:7(I)(a).

Revocation

1. An Advance Directive may be revoked by:

   (a) Written revocation delivered to the agent or to a healthcare provider or residential care provider expressing the Principal's intent to revoke, signed and dated by the Principal;

   (b) Oral revocation in the presence of two (2) or more witnesses, each at least 18 years old, neither of whom are the Principal's spouse or heir at law;

   (c) Any other act evidencing a specific intent to revoke the power, such as by burning, tearing, or obliterating the same or causing the same to be done by some other person at the Principal's direction and in the Principal's presence;

   (d) Execution by the Principal of a subsequent Advance Directive;

   (e) The filing of an action for divorce, legal separation, annulment or protective order, where both the agent and Principal are parties to such action, except when there is an alternate agent designated, in which case the designation of the primary agent shall be revoked and the alternate designation shall become effective; or

      (i) Re-execution or written re-affirmation of the Advance Directive following a filing of an action for divorce, legal separation, annulment, or protective order make the original designation of the primary agent under the Advance Directive effective.

   (f) Determination by a court under New Hampshire Revised Statutes § 506:7 that the agent's authority is revoked.

   N.H. Rev. Stat. Ann. § 137-J:15(I).

2. Revocation is effective when communicated to attending physician or APRN.

   (a) The Principal's health or residential care provider who informed of or provided with revocation, must (i) include revocation, and time and date of receipt of such revocation, in the Principal's medical record and (ii) notify the agent, attending physician or APRN and staff responsible for the Principal's care.

(b) Agent who is aware of revocation must inform the Principal's health or residential care provider.

N.H. Rev. Stat. Ann. § 137-J:15(II).

Wills

General Description

Every person of the age of 18 years and married persons under that age, of sane mind, may devise and dispose of their property, real and personal, and of any right or interest they may have in any property, by their last will in writing. N.H. Rev. Stat. Ann. § 551:1.

Legal Requirements

1. To be valid under New Hampshire Revised Statutes § 551:2, a written will or codicil to a will shall be:

   (a) Signed by the testator, or by some person at his or her express direction in his or her presence; and

   (b) Signed by two (2) or more witnesses, who shall, at the request of the testator and in the testator's presence, attest to the testator's signature.

      (i) Any beneficial device or legacy made or given in a will to a witness or to the spouse of such a witness shall be void unless there are two (2) other witnesses. N.H. Rev. Stat. Ann. § 551:3.

      (ii) A provision for the payment of a debt in a will shall not be void nor disqualify the creditor as a witness thereto. N.H. Rev. Stat. Ann. § 551:3.

      (iii) A witness' membership in a corporation that receives a device or legacy in the will does not void the gift. N.H. Rev. Stat. Ann. § 551:4.

   (c) No seal shall be required.

2. To qualify as self-proved, the signatures of the testator and witnesses shall be followed by a sworn acknowledgment made before a notary public or justice of the peace or other official authorized to administer oaths in the place of execution. N.H. Rev. Stat. Ann. § 551:2 (see statute for sample language).

3. Every child born—and every child or issue of a child—of the testator that is not named or referred to in the will is entitled to the same portion of the estate, as he would be if the deceased were intestate. N.H. Rev. Stat. Ann. § 551:10.

Revocation/Modification

1. A will can be revoked by: (a) some other valid will or codicil; (b) some writing executed in the same manner; or (c) canceling, tearing, obliterating or otherwise destroying the same by the testator, or by some person by the testator's consent and in the testator's presence. N.H. Rev. Stat. Ann. § 551:13.

2. Unless a will expressly provides otherwise, if after executing a will the testator is divorced or the marriage is annulled, the divorce or annulment revokes any: (a) disposition or appointment of property made by the will to the former spouse; (b) provision conferring a general or special power of appointment on the former spouse; and (c) nomination of the former spouse as executor, trustee, conservator, or guardian. N.H. Rev. Stat. Ann. § 551:13.

NEW JERSEY

Power of Attorney – Healthcare

General Description

A declarant may execute an advance directive for healthcare at any time. N.J. Stat. Ann. § 26:2H-56.

Legal Limitations

1. The attending physician shall determine whether the patient lacks capacity to make a particular healthcare decision. The determination shall be stated in writing, shall include the attending physician's opinion concerning the nature, cause, extent, and probable duration of the patient's incapacity, and shall be made a part of the patient's medical records. N.J. Stat. Ann. § 26:2H-60(a).

2. The attending physician's determination of a lack of decision making capacity shall be confirmed by one or more physicians. N.J. Stat. Ann. § 26:2H-60(b).

3. A physician designated by the patient's advance directive as a healthcare representative shall not make or confirm the determination of a lack of decision making capacity. N.J. Stat. Ann. § 26:2H-60(d).

Legal Requirements

1. An advance directive becomes operative when (1) it is transmitted to the attending physician or to the healthcare institution, and (2) it is determined that the patient lacks capacity to make a particular healthcare decision. N.J. Stat. Ann. § 26:2H-59(a).

2. A declarant may execute a directive designating a competent adult to act as his healthcare representative.

    (a) A competent adult, including, but not limited to, a declarant's spouse, domestic partner, adult child, parent or other family member, friend, religious or spiritual advisor, or other person of the declarant's choosing, may be designated as a healthcare representative.

    (b) An operator, administrator or employee of a healthcare institution in which the declarant is a patient or resident shall not serve as the declarant's healthcare representative unless the operator, administrator or employee is related to the declarant by blood, marriage, domestic partnership or adoption.

    N.J. Stat. Ann. § 26:2H-58(a).

3. The advance directive shall be signed and dated by, or at the direction of, the declarant in the presence of two (2) subscribing adult witnesses, who shall attest that the declarant is of sound mind and free of duress and undue influence. N.J. Stat. Ann. § 26:2H-56.

4. A designated health care representative shall not act as a witness to the execution of an advance directive. N.J. Stat. Ann. § 26:2H-56.

5. Alternatively, the advance directive shall be signed and dated by, or at the direction of, the declarant and be acknowledged by the declarant before a notary public, attorney at law, or other person authorized to administer oaths. N.J. Stat. Ann. § 26:2H-56.

6. An advance directive may be supplemented by a video or audio tape recording. N.J. Stat. Ann. § 26:2H-56.

Revocation

1. A declarant may reaffirm or modify a directive. N.J. Stat. Ann. § 26:2H-57(a).

2. A declarant may revoke an advance directive by the following means:

   (a) Notification, orally or in writing, to the healthcare representative, physician, nurse or other healthcare professional, or other reliable witness, or by any other act evidencing an intent to revoke the document; or

   (b) Execution of a directive.

   N.J. Stat. Ann. § 26:2H-57(b).

3. Reaffirmation, modification, revocation or suspension of an advance directive is effective upon communication to any person capable of transmitting the information including the healthcare representative, the attending physician, nurse or other healthcare professional responsible for the patient's care. N.J. Stat. Ann. § 26:2H-57(e).

Power of Attorney – Property

General

A power of attorney is a written instrument by which an individual known as the principal authorizes another individual or individuals or a qualified bank within the meaning of P.L.1948, c.67, s.28 (C.17:9A-28) known as the attorney-in-fact to perform specified acts on behalf of the principal as the principal's agent. N.J. Stat. Ann. § 46:2B-8.2.

Durable Power of Attorney

A durable power of attorney is a power of attorney which contains the words "this power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time," or " this power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall

be exercisable notwithstanding the principal's subsequent disability or incapacity, and unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. N.J. Stat. Ann. § 46:2B-8.2.

Disability or Incapacity

All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period when the power of attorney is effective in accordance with its terms, including any period when the principal is under a disability, have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. N.J. Stat. Ann. § 46:2B-8.4.

No Revocation Until Notice

The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. N.J. Stat. Ann. § 46:2B-8.5.

Execution

A power of attorney must be in writing, duly signed and acknowledged in the manner set forth in R.S. 46:14-2.1. N.J. Stat. Ann. § 46:2B-8.9.

Revocation

A power of attorney is revoked when the principal has caused all executed originals of the power of attorney to be physically destroyed; or when the principal has signed and caused to be acknowledged in the manner set forth in R.S. 46:14-2.1 a written instrument of revocation; or when the principal has delivered to the attorney-in-fact a written revocation. Unless expressly so provided, the subsequent execution of another power of attorney does not revoke a power of attorney. N.J. Stat. Ann. § 46:2B-8.10.

Living Wills

General Description

A competent adult, at least 18 years old ("Declarant"), may execute an advance directive for healthcare ("ADHC"), which may include a proxy directive or an instruction directive, at any time. N.J. Stat. Ann. §§ 26:2H-55 & -56; for rules specific to the proxy directive, *see* New Jersey Health Care Power of Attorney.

Legal Requirements

1. To be valid, an ADHC, as well any modifications and reaffirmations, must be:

   (a) Signed and dated by, or at the direction of, the Declarant; and

   (b) Either (i) subscribed by two (2) adults, at least 18 years old, or (ii) acknowledged by the Declarant before a notary public, attorney at law, or other person authorized to administer oaths.

      (i) If witnessed, both witnesses must (1) be present when the Declarant, or person at the Declarant's direction, signed and (2) attest the Declarant of sound mind and free of duress and undue influence.

      (ii) Neither witness may be a designated healthcare representative.

   N.J. Stat. Ann. §§ 26:2H-56 & -57.

2. ADHC may be supplemented by a video or audio tape recording. N.J. Stat. Ann. § 26:2H-56.

3. No statutory form available.

4. An ADHC becomes operative when:

   (a) ADHC is transmitted to attending physician or healthcare institution;

   (b) It is determined, and confirmed in a writing and included in the Declarant's medical record, by attending physician and a second physician that patient lacks capacity to make particular healthcare decision;

   (c) Declarant is notified, if able to comprehend, of lack of capacity determination; and

   (d) There has been reasonable opportunity to establish, and as appropriate confirm, reliable diagnosis and prognosis for patient.

   N.J. Stat. Ann. §§ 26:2H-59 & -60.

Revocation

1. A declarant, whether competent or incompetent, may revoke ADHC by: (a) notification, orally or in writing, to the health care representative, physician, nurse or other healthcare professional, or other reliable witness; or (b) any other act evidencing an intent to revoke the document. N.J. Stat. Ann. § 26:2H-57.

2. A competent Declarant may revoke ADHC by the execution of a valid subsequent ADHC. N.J. Stat. Ann. § 26:2H-57.

3. Revocation effective when communicated to healthcare representative, attending physician, nurse or other healthcare professional responsible for Declarant's care, or other reliable witness. N.J. Stat. Ann. § 26:2H-57.

Wills

General Description

Any individual 18 or more years of age who is of sound mind may make a will. N.J. Stat. Ann. § 3B:3-1.

Legal Requirements

1. Under New Jersey Statutes § 3B:3-2, a written will shall be:

   (a) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and at the testator's direction; and

   (b) Signed by at least two (2) individuals, each of whom signed within a reasonable time after each witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.

      (i) A will or any provision thereof is not invalid because the will is signed by an interested witness. N.J. Stat. Ann. § 3B:3-8.

2. Wills can be registered in the registry run by the Secretary of State at http://www.state.nj.us/state/will_registry.html. N.J. Stat. Ann. § 3B:3-2.1.

3. A will may be self-proved:

   (a) This can happen simultaneously with execution and attestation of the will by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to take acknowledgments and proofs of instruments entitled to be recorded under the laws of this State. N.J. Stat. Ann. § 3B:3-4 (see statute for model language).

   (b) This can also happen at any time subsequent to its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to take acknowledgments and proofs of instruments entitled to be recorded under the laws of this State. N.J. Stat. Ann. § 3B:3-5 (see statute for model language).

4. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. N.J. Stat. Ann. § 3B:3-10.

5. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). N.J. Stat. Ann. § 3B:3-11.

    (a) The statement: 1) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) may be altered by the testator after its preparation; and 5) may be a writing that does not have significance apart from its effect on the dispositions made by the will.

6. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another individual is such an event. N.J. Stat. Ann. § 3B:3-12.

Revocation/Modification

1. A will or any part thereof is revoked by:

    (a) The execution of a subsequent will that revokes the previous will or part expressly or by inconsistency; or

        (i) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.

    (b) The performance of a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction.

        (i) A "revocatory act on the will" includes burning, tearing canceling, obliterating or destroying the will or any part of it.

    N.J. Stat. Ann. § 3B:3-13.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. N.J. Stat. Ann. § 3B:3-14.

3. No devise in, or clause of a will may be altered, except by another will or codicil or other writing declaring the alteration executed in the manner in which wills are required by law to be executed. N.J. Stat. Ann. § 3B:3-16.

NEW MEXICO

Power of Attorney – Healthcare

General Description

An adult or emancipated minor, while having capacity, may execute a power of attorney for healthcare, which may authorize the agent to make any healthcare decision the principal could have made while having capacity. N.M. Stat. § 24-7A-2(B).

Legal Limitations

Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a healthcare institution at which the principal is receiving care. N.M. Stat. § 24-7A-2(B).

Legal Requirements

1. Unless otherwise specified in a power of attorney for healthcare, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity. N.M. Stat. § 24-7A-2(C).

2. The power must be in writing and signed by the principal. N.M. Stat. § 24-7A-2(B).

3. An agent shall make a healthcare decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent.

    (a) Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

    N.M. Stat. § 24-7A-2(E).

Revocation

1. An individual, while having capacity, may revoke the designation of an agent either by a signed writing or by personally informing the supervising healthcare provider.

    (a) If the individual cannot sign, a written revocation must be signed for the individual and be witnessed by two witnesses, each of whom has signed at the direction and in the presence of the individual and of each other.

    N.M. Stat. § 24-7A-3(A).

2. An individual, while having capacity, may revoke all or part of an advance healthcare directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. N.M. Stat. § 24-7A-3(B).

3. A healthcare provider, agent, guardian or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising healthcare provider and to any healthcare institution at which the patient is receiving care. N.M. Stat. § 24-7A-3(C).

4. An advance healthcare directive that conflicts with an earlier advance healthcare directive revokes the earlier directive to the extent of the conflict. N.M. Stat. § 24-7A-3(E).

Power of Attorney – Property

Creating a Power of Attorney

A power of attorney created under the Uniform Power of Attorney Act is durable unless it expressly provides that it is terminated by the incapacity of the principal. N.M. Stat. § 46B-1-104. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. N.M. Stat. § 46B-1-105.

Powers

1. An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

   (a) create, amend, revoke or terminate an inter vivos trust;

   (b) make a gift;

   (c) create or change rights of survivorship;

   (d) create or change a beneficiary designation;

   (e) delegate authority granted under the power of attorney;

   (f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

   (g) exercise fiduciary powers that the principal has authority to delegate; or

   (h) disclaim property, including a power of appointment.

N.M. Stat. § 46B-1-201.

Revocation and Termination

1. A power of attorney terminates when: (a) the principal dies; (b) the principal becomes incapacitated, if the power of attorney is not durable; (c) the principal revokes the power of attorney; (d) the power of attorney provides that it terminates; (e) the purpose of the power of attorney is accomplished; or (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns and the power of attorney does not provide for another agent to act under the power of attorney. N.M. Stat. § 46B-1-110.

2. An agent's authority terminates when: (a) the principal revokes the authority; (b) the agent dies, becomes incapacitated or resigns; (c) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or (d) the power of attorney terminates. N.M. Stat. § 46B-1-110.

3. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked. N.M. Stat. § 46B-1-110.

Statutory Short Form

A document substantially in the form provided may be used to create a statutory form power of attorney. N.M. Stat. § 46B-1-301.

Living Wills

General Description

An adult or emancipated minor ("Principal"), while having capacity, has the right (I) to make healthcare decisions and may give individual instruction ("Instruction") and (II) execute a power of attorney for healthcare (either an "advance healthcare directive" or "AHCD"). N.M. Stat. § 24-7A-2; for power of attorney rules, *see* New Mexico Health Care Power of Attorney.

Legal Requirements

1. An Instruction may be oral or written. If oral, it must be made by personally informing a healthcare provider. N.M. Stat. § 24-7A-2.

2. Instruction may be limited to take effect only if a specified condition arises. N.M. Stat. § 24-7A-2.

3. Use of the statutory form is optional. (Form available at N.M. Stat. § 24-7A-4.)

4. Unless otherwise specified in a written AHCD, a determination that Principal lacks or has recovered capacity or that another condition exists that affects an individual instruction will be made by two (2) qualified healthcare professionals, one of whom will be the primary physician. N.M. Stat. § 24-7A-11(C).

Revocation

1. A Principal with capacity may revoke all or part of an AHCD at any time and in any manner that communicates an intent to revoke. N.M. Stat. § 24-7A-3(B).

   (a) Different rules apply for the revocation of an agent.

2. An ADHC that conflicts with an earlier ADHC revokes the earlier ADHC to extent of conflict. N.M. Stat. § 24-7A-3(E).

3. A healthcare provider, agent, guardian or surrogate informed of revocation should inform supervising healthcare provider and any healthcare institution where Principal receiving care. N.M. Stat. § 24-7A-3(C).

Wills

General Description

An individual 18 or more years of age who is of sound mind may make a will. N.M. Stat. § 45-2-501.

Legal Requirements

1. Under New Mexico Statutes § 45-2-502, a written will must be:

   (a) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

   (b) Signed by at least two (2) individuals, each of whom signed in the presence of the testator and of each other after each witnessed the signing of the will.

      (i) The signing of a will by an interested witness does not invalidate the will or any provision of it. N.M. Stat. § 45-2-507)

2. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution:

(a) By acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal.

(b) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

N.M. Stat. § 45-2-504 (see statute for model language).

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. N.M. Stat. § 45-2-510.

4. A will may validly transfer property to the trustee of a trust established or to be established: (a) during the testator's lifetime; or (b) at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. N.M. Stat. § 45-2-511.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event. N.M. Stat. § 45-2-512.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). N.M. Stat. § 45-2-513.

(a) The statement: 1) must be signed by the testator or in his handwriting and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) may be altered by the testator after its preparation; and 5) may be a writing that does not have significance apart from its effect on the dispositions made by the will.

7. A will may be deposited by the testator or his agent with the clerk of any district court in New Mexico for safekeeping pursuant to rules of that court. Upon being informed of the testator's death, the district court clerk shall notify any person designated to receive the will and deliver it to him on request, or the court clerk may deliver the will to the appropriate court. N.M. Stat. § 45-2-515.

8. New Mexico has a form, statutory will that is governed by its own set of standardized rules. N.M. Stat. §§ 45-2A-17 (form) & 45-2A-1, *et seq.* (additional information).

Revocations/Modification

1. A will can be revoked by:

(a) Executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(i) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.

(b) Performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction.

(i) Revocatory acts include burning, tearing, canceling, obliterating or destroying the will or any part of it.

N.M. Stat. § 45-2-507.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. N.M. Stat. § 45-2-804.

NEW YORK

Power of Attorney – Healthcare

General Description

A competent adult may appoint a healthcare agent. N.Y. Public Health Law § 2981(1)(a).

Legal Limitations

1. An operator, administrator or employee of a hospital may not be appointed as a healthcare agent by any person who, at the time of the appointment, is a patient or resident of, or has applied for admission to, such hospital. N.Y. Public Health Law § 2981(3)(a).

2. If a physician is appointed agent, the physician shall not act as the patient's attending physician after the authority under the healthcare proxy commences, unless the physician declines the appointment as agent at or before such time. N.Y. Public Health Law § 2981(3)(c).

3. No person who is not the spouse, child, parent, brother, sister or grandparent of the principal, or is the issue of, or married to, such person, shall be appointed as a healthcare agent if, at the time of appointment, he is presently appointed healthcare agent for ten principals. N.Y. Public Health Law § 2981(3)(d).

Legal Requirements

1. The agent's authority shall commence upon a determination that the principal lacks capacity to make healthcare decisions. N.Y. Public Health Law § 2981(4).

2. A competent adult may appoint a healthcare agent by a healthcare proxy, signed and dated by the adult in the presence of two adult witnesses who shall also sign the proxy.

    (a) Another person may sign and date the healthcare proxy for the adult if the adult is unable to do so, at the adult's direction and in the adult's presence, and in the presence of two (2) adult witnesses who shall sign the proxy.

    (b) The witnesses shall state that the principal appeared to execute the proxy willingly and free from duress.

    (c) The person appointed as agent shall not act as witness to execution of the healthcare proxy.

    N.Y. Public Health Law § 2981(2)(a).

3. Subject to any express limitations in the healthcare proxy, an agent shall have the authority to make any and all healthcare decisions on the principal's behalf that the principal could make. N.Y. Public Health Law § 2982(1).

4. The agent shall have the right to receive medical information and medical and clinical records necessary to make informed decisions regarding the principal's healthcare. N.Y. Public Health Law § 2982(3).

Revocation

1. A competent adult may revoke a healthcare proxy by notifying the agent or a healthcare provider orally or in writing or by any other act evidencing a specific intent to revoke the proxy. N.Y. Public Health Law § 2985(1)(a).

2. A healthcare proxy shall also be revoked upon execution by the principal of a subsequent healthcare proxy. N.Y. Public Health Law § 2985(1)(c).

Power of Attorney – Property

Form

The use of the statutory short form in the creation of a durable power of attorney is lawful. N.Y. Gen. Oblig. Law § 5-1501.

Creating a Durable Power of Attorney

1. A power of attorney is durable unless it expressly provides that it is terminated by the incapacity of the principal. The subsequent incapacity of a principal shall not revoke or terminate the authority of an agent who acts under a durable power of attorney. N.Y. Gen. Oblig. Law § 5-1501A.

2. To be valid, a power of attorney must:

   (a) Be typed or printed using letters which are legible or of clear type no less than twelve (12) point in size, or, if in writing, a reasonable equivalent thereof.

   (b) Be signed and dated by a principal with capacity, with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgement of a conveyance of real property.

   (c) Be signed and dated by any agent acting on behalf of the principal with the signature of the agent duly acknowledged in the manner prescribed for the acknowledgement of a conveyance of real property. A power of attorney executed pursuant to this section is not invalid solely because there has been a lapse of time between the date of acknowledgment of the signature of the principal and the date of acknowledgement of the signature of the agent acting on behalf of the principal or because the principal became incapacitated during any such lapse of time.

(d) Contain the exact wording of the:

(i) "Caution to the Principal" in paragraph (a) of subdivision one of section 5-1513 of this title; and

(ii) "Important Information for the Agent" in paragraph (n) of subdivision one of section 5-1513 of this title.

(e) In addition to the requirements of subdivision one of this section, to be valid for the purpose of authorizing the agent to make any gift or other transfer described in section 5-1514 of this title: (a) a statutory short form power of attorney must contain the authority (SMGR) initialed by the principal and be accompanied by a valid statutory major gifts rider; and (b) a non-statutory power of attorney must be executed pursuant to the requirements of paragraph (b) of subdivision nine of section 5-1514 of this title.

N.Y. Gen. Oblig. Law § 5-1501B; *see also* N.Y. Gen. Oblig. Law § 5-1507 regarding the signature requirements for agents.

Powers

For construction of specific powers, *see* N.Y. Gen. Oblig. Law §5-1502A-M. In a statutory short form power of attorney, the language conferring general authority with respect to "all other matters" must be construed to mean that the principal authorizes the agent to act as an alter ego of the principal with respect to any and all possible matters and affairs which are not enumerated in sections 5-1502A to 5-1502M, inclusive, of this title, and which the principal can do through an agent; provided, however, that such authority shall not include authorization for the agent to designate a third party to act as agent for the principal or to make medical or other health care decisions for the principal, except as otherwise provided in subdivision one of section 5-1502K of this title. N.Y. Gen. Oblig. Law § 5-1502N. Gifts are governed by a statutory form major gifts rider or specific construction language, listed in N.Y. Gen. Oblig. Law § 5-1514.

Termination and Revocation

1. A power of attorney terminates when: (a) the principal dies; (b) the principal becomes incapacitated, if the power of attorney is not durable; (c) the principal revokes the power of attorney; (d) the principal revokes the agent's authority and there is no co-agent or successor agent, or no co-agent or successor agent who is willing or able to serve; (e) the agent dies, becomes incapacitated or resigns and there is no co-agent or successor agent or no co-agent or successor agent who is willing or able to serve; (f) the authority of the agent terminates and there is no co-agent or successor agent or no co-agent or successor agent who is willing or able to serve; (g) the purpose of the power of attorney is accomplished; or (h) a court order revokes the power of attorney as provided in section 5-1510 of this title or in section 81.29 of the mental hygiene law. N.Y. Gen. Oblig. Law § 5-1511.

2. An agent's authority terminates when: (a) the principal revokes the agent's authority; (b) the agent dies, becomes incapacitated or resigns; (c) the agent's marriage to the principal is terminated by divorce, annulment or declaration of nullity, unless the power of attorney expressly provides otherwise. If the authority of an agent is revoked solely by this subdivision, it shall be revived by the principal's remarriage to the former spouse; or (d) the power of attorney terminates. N.Y. Gen. Oblig. Law § 5-1511.

3. A principal may revoke a power of attorney:

   (a) in accordance with the terms of the power of attorney;

   (b) by delivering a written, signed and dated revocation of the power of attorney as follows: (1) to the agent, and the agent must comply with the principal's revocation notwithstanding the actual or perceived incapacity of the principal unless the principal is subject to a guardianship under article eighty-one of the mental hygiene law; and (2) to any third party that the principal has reason to believe has received, retained or acted upon, the power of attorney.

   N.Y. Gen. Oblig. Laws § 5-1511.

Living Wills

There is no statutory provision for living wills. *See* New York Health Care Power of Attorney.

Wills

General Description

1. Every person 18 years of age or over, of sound mind and memory, may by will dispose of real and personal property and exercise a power to appoint such property. N.Y. Est. Powers & Trusts Law § 3-1.1.

2. Every estate in property may be devised or bequeathed. N.Y. Est. Powers & Trusts Law § 3-1.2.

Legal Requirements

1. Under New York Estate Powers & Trusts Law § 3-2.1, a written will must be:

   (a) Signed at the end thereof by the testator or, in the name of the testator, by another person in his presence and by his direction.

      (i) Any person who signs the testator's name to the will, must sign his own name and affix his residence address to the will but shall not be counted as one of the necessary attesting witnesses to the will.

   (b) The signature of the testator shall be affixed to the will in the presence of each of the two (2) attesting witnesses, or shall be acknowledged by the testator to each of

them. The testator may either sign in the presence of, or acknowledge his signature to each attesting witness separately. The testator must also declare that the writing is his/her will.

(i) The witnesses must both sign within one 30-day period, both attest the testator's signature, as affixed or acknowledged in their presence, and at the request of the testator, sign their names and affix their residence addresses at the end of the will.

(ii) An interested witness is competent, but any disposition or appointment made to him/her is void unless there are at least two (2) other disinterested attesting witnesses (except that they can receive up to the value of their intestate share, under certain circumstances). N.Y. Est. Powers & Trusts Law § 3-3.2.

(c) This procedure need not be followed in the precise order set forth so long as all the requisite formalities are observed during a period of time in which, satisfactorily to the surrogate, the ceremony or ceremonies of execution and attestation continue.

2. A testator may dispose of or appoint all or any part of his or her estate to a trustee of a trust, the terms of which are evidenced by a written instrument provided that such trust instrument is executed in the manner provided for in 7-1.17, prior to or contemporaneously with the execution of the will, and such trust instrument is identified in such will. N.Y. Est. Powers & Trusts Law § 3-3.7.

Revocation/Modification

1. A revocation or alteration, if intended by the testator, may be effected in the following manner:

(a) Another will;

(b) A writing of the testator clearly indicating an intention to effect such revocation or alteration, executed with the formalities prescribed by this article for the execution and attestation of a will; and

(c) An act of burning, tearing, cutting, cancellation, obliteration, or other mutilation or destruction performed by:

(i) The testator; or

(ii) Another person, in the presence and by the direction of the testator; in which case, the fact that the will was so revoked in the presence and by the direction of the testator shall be proved by at least two witnesses, neither of whom shall be the person who performed the act of revocation.

N.Y. Est. Powers & Trusts Law § 3-4.1.

2. A will may be revoked or altered by a nuncupative or holographic declaration of revocation or alteration made in the circumstances prescribed by N.Y. Est. Powers & Trusts Law § 3-2.2.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

NORTH CAROLINA

Power of Attorney – Healthcare

General Description

A principal, pursuant to a healthcare power of attorney, may grant to the healthcare agent full power and authority to make healthcare decisions to the same extent that the principal could make those decisions for himself if he had capacity to make and communicate healthcare decisions. N.C. Gen. Stat. § 32A-19(a).

Legal Limitations

1. A healthcare power of attorney may authorize the healthcare agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains; provided this authority is limited to incurring reasonable costs related to exercising these powers. N.C. Gen. Stat. § 32A-19(b).

2. A healthcare power of attorney does not give the healthcare agent general authority over a principal's property or financial affairs. N.C. Gen. Stat. § 32A-19(b).

3. The powers and authority granted to the healthcare agent pursuant to a healthcare power of attorney shall be limited to the matters addressed in it, and, except as necessary to exercise such powers and authority relating to healthcare, shall not confer any power or authority with respect to the property or financial affairs of the principal. N.C. Gen. Stat. § 32A-19(d).

Legal Requirements

1. A healthcare power of attorney shall become effective when and if the physician determines in writing that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to the healthcare of the principal, and shall continue in effect during the incapacity of the principal. N.C. Gen. Stat. § 32A-20(a).

2. Any person having understanding and capacity to make and communicate healthcare decisions, who is 18 years of age or older, may make a healthcare power of attorney. N.C. Gen. Stat. § 32A-17.

3. Any competent person who is not engaged in providing healthcare to the principal for remuneration, and who is 18 years of age or older, may act as a healthcare agent. N.C. Gen. Stat. § 32A-18.

Revocation

1. A healthcare power of attorney may be revoked by the principal at any time, so long as the principal is capable of making and communicating healthcare decisions. N.C. Gen. Stat. § 32A-20(b).

2. The principal may exercise this right of revocation by executing and acknowledging an instrument of revocation, by executing and acknowledging a subsequent healthcare power of attorney, or in any other manner by which the principal is able to communicate an intent to revoke. N.C. Gen. Stat. § 32A-20(b).

3. This revocation becomes effective only upon communication by the principal to each healthcare agent named in the revoked healthcare power of attorney and to the principal's attending physician or eligible psychologist. N.C. Gen. Stat. § 32A-20(b).

Power of Attorney – Property

Form

The use of the provided form in the creation of a power of attorney is lawful. N.C. Gen. Stat. § 32A-1.

Creating a Durable Power of Attorney

A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing and the writing contains a statement that it is executed pursuant to the provisions of this Article or the words "This power of attorney shall not be affected by my subsequent incapacity or mental incompetence," or "This power of attorney shall become effective after I become incapacitated or mentally incompetent," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity or mental incompetence. Unless the durable power of attorney provides otherwise, where the grant of power or authority conferred by a durable power of attorney is effective only upon the principal's subsequent incapacity or mental incompetence, any person to whom such writing is presented, in the absence of actual knowledge to the contrary, shall be entitled to rely on an affidavit, executed by the attorney-in-fact and setting forth that such condition exists, as conclusive proof of such incapacity or mental incompetence, subject to the provisions of N.C. Gen. Stat. § 32A-13. N.C. Gen. Stat. § 32A-8.

Effect During Periods of Disability/Registration

1. All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of incapacity or mental incompetence of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were not incapacitated or mentally incompetent if the power of attorney has been registered under the provisions of subsection (b). N.C. Gen. Stat. § 32A-9.

2. No power of attorney executed pursuant to the provisions of this Article shall be valid subsequent to the principal's incapacity or mental incompetence unless it is registered in the office of the register of deeds of that county in this State designated in the power of attorney, or if no place of registration is designated, in the office of the register of deeds of the county in which the principal has his legal residence at the time of such registration or, if the principal has no legal residence in this State at the time of registration or the attorney-in-fact is uncertain as to the principal's residence in this State, in some county in

the State in which the principal owns property or the county in which one or more of the attorneys-in-fact reside. A power of attorney executed pursuant to the provision of this Article shall be valid even though the time of such registration is subsequent to the incapacity or mental incompetence of the principal. N.C. Gen. Stat. § 32A-9.

3. Within 30 days after registration of the power of attorney as provided above, the attorney-in-fact shall file with the clerk of superior court in the county of such registration a copy of the power of attorney. N.C. Gen. Stat. § 32A-11.

Powers

The statutory short form contains provisions that allow the principal to check a series of 17 enumerated powers including gifts to charities, and to individuals other than attorney-in-fact and gifts to the attorney-in-fact. N.C. Gen. Stat. § 32A-1. A full list of powers and construction of those powers can be found in N.C. Gen. Stat. § 32A-1. Attorneys in fact do not have certain powers to alter the designation of beneficiaries to receive property on the settlor's death under the settlor's existing estate plan. N.C. Gen. Stat. § 32A-3. For further description of powers related to gifts, *see* N.C. Gen. Stat. § 32A-14.1.

Revocation and Termination

1. Every power of attorney executed pursuant to the provisions described here and registered in an office of the register of deeds in this State as provided above shall be revoked by:

   (a) The death of the principal; or

   (b) Registration in the office of the register of deeds where the power of attorney has been registered of an instrument of revocation executed and acknowledged by the principal while he is not incapacitated or mentally incompetent, or by the registration in such office of an instrument of revocation executed by any person or corporation who is given such power of revocation in the power of attorney, or by this Article, with proof of service thereof in either case on the attorney-in-fact in the manner prescribed for service of summons in civil actions.

   N.C. Gen. Stat. § 32A-13.

2. Every power of attorney executed pursuant to the provisions of this Article which has not been registered in an office of the register of deeds in this State shall be revoked by:

   (a) The death of the principal;

   (b) Any method provided in the power of attorney;

   (c) Being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the principal himself or by another person in his

presence and by his direction, while the principal is not incapacitated or mentally incompetent; or

(d) A subsequent written revocatory document executed and acknowledged in the manner provided herein for the execution of durable powers of attorney by the principal while not incapacitated or mentally incompetent and delivered to the attorney-in-fact in person or to his last known address by certified or registered mail, return receipt requested.

N.C. Gen. Stat. § 32A-13.

Living Wills

General Description

An individual ("Declarant") has the right to a peaceful and natural death and the fundamental right to control the decisions relating to the rendering of the patient's own medical care, including the decision to have life-prolonging measures withheld or withdrawn in instances of a terminal condition. N.C. Gen. Stat. § 90-320.

Legal Requirements

1. To be valid, a declaration must:

(a) Be signed by Declarant in the presence of two (2) witnesses;

(i) Witnesses must (a) believe the Declarant to be of sound mind and (b) state that they (i) are not related within the third degree to the Declarant or to the Declarant's spouse, (ii) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the Declarant upon the Declarant's death under any will of the Declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) are not the attending physician, licensed healthcare providers who are paid employees of the attending physician, paid employees of a health facility in which the Declarant is a patient, or paid employees of a nursing home or any adult care home in which the Declarant resides, and (iv) do not have a claim against any portion of the estate of the Declarant at the time of the declaration.

(b) Expressly specify the Declarant's desires as to which circumstances life-prolonging measures should or should not be used to prolong the Declarant's life;

(c) States that the Declarant is aware that the declaration authorizes a physician to withhold or discontinue the life-prolonging measures; and

(d) Has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in the statutory form.

(i) The notary may, but is not required to be, a paid employee of the attending physician, a paid employee of a health facility in which the Declarant is a patient, or a paid employee of a nursing home or any adult care home in which the Declarant resides.

N.C. Gen. Stat. § 90-321(c).

2. Use of the statutory form is optional. (Form available at N.C. Gen. Stat. § 90-321(d).)

3. The declaration may be combined with or incorporated into a healthcare power of attorney form, provided that also complies with requirements stated above. N.C. Gen. Stat. § 90-321(j).

4. The declaration becomes operative when:

(a) It is determined by attending physician and confirmed by a second physician that the Declarant (i) has incurable or irreversible condition that will result in the Declarant's death within a relatively short period of time, (i) unconscious, and to a high degree of medical certainty, will never regain consciousness, or (iii) suffers from advanced dementia or any other condition resulting in substantial loss of cognitive ability and that loss, to a high degree of medical certainty, is not reversible; and

(b) Such condition is specified in the declaration.

N.C. Gen. Stat. § 90-321.

Revocation

1. The declaration may be revoked by the Declarant, in writing or in any manner by which the Declarant is able to communicate intent to revoke in a clear and consistent manner, without regard to the Declarant's mental or physical condition. N.C. Gen. Stat. § 90-321(e).

2. Healthcare agent may not revoke a declaration unless the healthcare power of attorney explicitly so authorizes. N.C. Gen. Stat. § 90-321(e).

Wills

General Description

Any person of sound mind, and 18 years of age or over, may make a will. N.C. Gen. Stat. § 31-1.

Legal Requirements

1. Under North Carolina General Statutes § 31-3.3, to execute an attested written will:

(a) The testator must sign the will, or have someone else in the testator's presence and at his direction sign the testator's name thereon;

(b) The testator must signify to two (2) attesting witnesses that the instrument is his instrument by signing it in their presence or by acknowledging to them his signature previously affixed thereto, either of which may be done before the attesting witnesses separately; and

(c) The attesting witnesses must sign the will in the presence of the testator but need not sign in the presence of each other.

(i) An executor of a will or a shareholder of a corporation named as a trustee may be a witness. N.C. Gen. Stat. §§ 31-9 & 31-10.1.

(ii) A witness to who or to whose spouse receives a beneficial interest or power of appointment by the will can be a witness. However, if there are not at least two (2)other witnesses who are disinterested, the interested witness and his/her spouse shall take nothing. N.C. Gen. Stat. § 31-10.

(iii) Likewise, an attorney who drafts the will cannot receive under the will, unless he is related to the testator. Any such gift is void. N.C. Gen. Stat. § 31-4.1.

(d) A seal is not necessary to the validity of a will. N.C. Gen. Stat. § 31-3.6.

(e) An attorney who drafts a will must have his or her name and business address affixed to the will and indicate that he or she is the drafter. N.C. Gen. Stat. § 31-4.2.

2. No appointment, made by will in the exercise of any power, shall be valid unless the same be executed in the manner by law required for the execution of wills; and every will, executed in such manner, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity. N.C. Gen. Stat. § 31-4.

3. A will can be deposited with the clerk of the superior court in each county for safekeeping. N.C. Gen. Stat. § 31-11.

4. A will may be self-proved at the same time as it is executed and attested, or at any time after its execution by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal. N.C. Gen. Stat. § 31-11.6 (see statute for model language).

5. A will may validly transfer property to the trustee of a trust, whether the trust is amendable or revocable. The trust can be: (a) established during the testator's lifetime; or

(b) established at the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will. N.C. Gen. Stat. § 31-47.

6. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. N.C. Gen. Stat. § 31-51.

7. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's death. These acts and events may include the execution or revocation of another individual's will and the safekeeping of items in a secured depository. N.C. Gen. Stat. § 31-52.

Revocations/Modification

1. A written will, or any part thereof, may be revoked by: (a) by a subsequent written will, codicil or other revocatory writing executed in the same manner as a will; or (b) by being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself or by another person in his presence and by his direction. N.C. Gen. Stat. § 31-5.1.

2. A will is not revoked by a subsequent marriage of the maker, although the spouse may petition for an elective share. N.C. Gen. Stat. § 31-5.3.

3. Dissolution of marriage by absolute divorce or annulment after making a will does not revoke the will of any testator but, unless otherwise specifically provided in the will, it revokes all provisions in the will in favor of the testator's former spouse or purported former spouse. N.C. Gen. Stat. § 31-5.4.

NORTH DAKOTA

Power of Attorney – Healthcare

General Description

A healthcare directive may include a power of attorney to appoint an agent to make healthcare decisions for the principal when the principal lacks the capacity to make healthcare decisions, unless otherwise specified in the healthcare directive. N.D. Cent. Code § 23-06.5-03(1).

Legal Limitations

1. A person may not exercise the authority of agent while serving in one of the following capacities:

   (a) The principal's healthcare provider;

   (b) A nonrelative of the principal who is an employee of the principal's healthcare provider;

   (c) The principal's long-term care services provider; or

   (d) A nonrelative of the principal who is an employee of the principal's long-term care services provider.

   N.D. Cent. Code § 23-06.5-04

Legal Requirements

1. To be effective, the agent must accept the appointment in writing. N.D. Cent. Code § 23-06.5-06.

2. A healthcare directive, including the agent's authority, is in effect only when the principal lacks capacity to make healthcare decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity. N.D. Cent. Code § 23-06.5-03(3).

3. Subject to the right of the agent to withdraw, the acceptance creates authority for the agent to make healthcare decisions on behalf of the principal at such time as the principal becomes incapacitated.

   (a) Until the principal becomes incapacitated, the agent may withdraw by giving notice to the principal.

   (b) After the principal becomes incapacitated, the agent may withdraw by giving notice to the attending physician.

(c) The attending physician shall cause the withdrawal to be recorded in the principal's medical record.

N.D. Cent. Code § 23-06.5-06.

4. To be legally sufficient in this state, a health care directive must:

(a) Be in writing;

(b) Be dated;

(c) State the principal's name;

(d) Be executed by a principal with capacity to do so with the signature of the principal or with the signature of another person authorized by the principal to sign on behalf of the principal;

(e) Contain verification of the principal's signature or the signature of the person authorized by the principal to sign on behalf of the principal, either by a notary public or by witnesses; and

(f) Include a power of attorney for health care.

N.D. Cent. Code § 23-06.5-05(1).

5. A healthcare directive must be signed by the principal and that signature must be verified by a notary public or at least two (2) or more subscribing witnesses who are at least eighteen years of age. N.D. Cent. Code § 23-06.5-05(2).

Revocation

1. A health care directive is revoked: (a) by notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the directive; or (b) by execution by the principal of a subsequent health care directive. N.D. Cent. Code § 23-06.5-07(1).

2. A principal's healthcare or long-term care services provider who is informed of or provided with a revocation of a healthcare directive shall immediately record the revocation in the principal's medical record and notify the agent, if any, the attending physician, and staff responsible for the principal's care of the revocation. N.D. Cent. Code § 23-06.5-07(2).

Power of Attorney – Property

Creation of Durable Power of Attorney

A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words "This power of attorney

is not affected by subsequent disability or incapacity of the principal or by lapse of time," or "This power of attorney becomes effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. N.D. Cent. Code § 30.1-30-01.

Effect of Acts During Period of Disability

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument. N.D. Cent. Code § 30.1-30-020.

Revocation and Termination

The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. N.D. Cent. Code § 30.1-30-03.

Gifts

If any power of attorney, durable or otherwise, or other writing authorizes an attorney in fact or other agent to perform any act that the principal might or could do or evidences the principal's intent to give the attorney in fact or agent full power to handle the principal's affairs or deal with the principal's property, the attorney in fact or agent may make gifts. The gifts may be in any amount of any of the principal's property to any individual or to an organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both. Notwithstanding this section, a principal, by express words in the power of attorney or other writing, may authorize, or limit the authority of, any attorney in fact or other agent to make gifts of the principal's property. N.D. Cent. Code § 30.1-30-06.

Living Wills

General Description

Every competent adult ("Principal") has the right and responsibility to make the decisions relating to the adult's own healthcare, including the decision to have healthcare provided, withheld, or withdrawn. A Principal may execute a healthcare directive. A healthcare directive may include healthcare instructions and/or power of attorney to appoint an agent. N.D. Cent.

Code §§ 23-06.5-01 & -03; for power of attorney rules, *see* North Dakota Health Care Power of Attorney.

Legal Requirements

1. To be valid, a healthcare directive must:

   (a) Be in writing;

   (b) Be dated;

   (c) State Principal's name;

   (d) Be executed by a Principal with capacity to do so with the signature of the Principal or with the signature of another person authorized by the Principal to sign on behalf of the Principal ("Proxy Signer");

      (i) If the Principal is physically unable to sign, the directive may be signed by the Principal's name being written by some other person in the Principal's presence and at the Principal's express direction.

   (e) Contain a verification of the Principal's signature or the Proxy Signer, either by two (2) or more witnesses each at least 18 years old or by a notary public; and

      (i) Notary public may be an employee of a healthcare or long term care provider providing direct care to the Principal.

      (ii) At least one (1) of the witnesses must not be a healthcare or long-term care provider providing direct care to Principal or an employee of a healthcare or long-term care provider providing direct care to principal on the date of execution.

      (iii) Neither the notary public nor any witness may be at the time of execution, (a) the agent, (b) the Principal's spouse or heir, (c) a person related to the Principal by blood, marriage, or adoption, (d) a person entitled to any part of the Principal's estate upon the Principal's death under a will or deed in existence or by operation of law, (e) any other person who has, at the time of execution, any claims against the Principal's estate, (f) a person directly financially responsible for the Principal's medical care, or (g) the attending physician of the Principal.

   (f) Include a health care instruction or a power of attorney for healthcare, or both.

   N.D. Cent. Code §§ 23-06.5-05(1) & -05(2).

2. Use of the statutory form is optional. (Form available at N.D. Cent. Code § 23-06.5-17.)

3. Principal may submit a healthcare directive (and revocation) to the secretary of state for registration. N.D. Cent. Code § 23-06.5-19.

4. Health care directive becomes operative when the Principal lacks capacity to make healthcare decisions, as certified in writing by the Principal's attending physician and filed in the Principal's medical record. N.D. Cent. Code § 23-06.5-03.

5. Principal's attending physician shall make reasonable efforts to inform Principal of any proposed treatment, or of any proposal to withdraw or withhold treatment. N.D. Cent. Code § 23-06.5-03.

Revocation

1. A healthcare directive may be revoked by:

   (a) Notification by the Principal to agent or a healthcare or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the directive; or

   (b) By execution by the Principal of a subsequent healthcare directive.

   N.D. Cent. Code § 23-06.5-07(1).

2. A Principal's healthcare or long-term care services provider who is informed of or provided with a revocation of a healthcare directive should immediately record the revocation in the Principal's medical record and notify the agent, if any, the attending physician, and staff responsible for the Principal's care of the revocation. N.D. Cent. Code § 23-06.5-07(2).

Wills

General Description

Any adult who is of sound mind may make a will. N.D. Cent. Code § 30.1-08-01.

Legal Requirements

1. Under North Dakota Century Code § 30.1-08-02, a written will must be:

   (a) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

   (b) Either:

      (i) Signed by at least two (2) individuals, each of whom signed within a reasonable time after witnessing either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will; or

(1) The signing of a will by an interested witness does not invalidate the will or any provision of it. N.D. Cent. Code § 30.1-08-05.

(c) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.

2. A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will. N.D. Cent. Code § 30.1-08-04 (see statute for form language).

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. N.D. Cent. Code § 30.1-08-10.

4. A will can devise property to the trustee of a trust established or to be established, whether or not the trust is amendable or revocable, if: (a) the trust is identified in the will; and (b) the terms of the trust are set forth in a written instrument, other than a will. Testamentary additions to trust. N.D. Cent. Code § 30.1-08-11.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event. N.D. Cent. Code § 30.1-08-12.

6. Separate writing identifying devise of personal property.

(a) A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money).

(b) The statement: 1) must be signed by the testator and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) it may be altered by the testator after its preparation; 5) and it may be a writing that does not have significance apart from its effect on the dispositions made by the will.

N.D. Cent. Code § 30.1-08-13.

Revocations/Modification

1. A will can be revoked by:

(a) Executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(i) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.

(b) Performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction.

(i) Revocatory acts include burning, tearing, canceling, obliterating or destroying the will or any part of it.

N.D. Cent. Code § 30.1-08-07.

2. Unless otherwise provided, the marriage, divorce or annulment, a divorce or annulment revokes any revocable devise, beneficial interest or designation to serve as personal representative given to the testator's former spouse or relative of the former spouse in a will executed before the entry of the decree of divorce or annulment. N.D. Cent. Code § 30.1-10-04.

OHIO

Power of Attorney – Healthcare

General Description

1. An adult who is of sound mind voluntarily may create a valid durable power of attorney for healthcare by executing a durable power of attorney that authorizes an attorney in fact to make healthcare decisions for the principal at any time that the attending physician of the principal determines that the principal has lost the capacity to make informed healthcare decisions for the principal. Ohio Rev. Code Ann. § 1337.12(A)(1).

2. The authorization may include the right to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any healthcare that is being or could be provided to the principal. Ohio Rev. Code Ann. § 1337.12(A)(1).

Legal Limitations

1. The attending physician of the principal and an administrator of any nursing home in which the principal is receiving care shall not be designated as an attorney in fact pursuant to a durable power of attorney for healthcare. Ohio Rev. Code Ann. § 1337.12(A)(2).

2. An employee or agent of the attending physician of the principal and an employee or agent of any healthcare facility in which the principal is being treated shall not be designated as an attorney in fact pursuant to a durable power of attorney for healthcare. Ohio Rev. Code Ann. § 1337.12(A)(2).

3. A durable power of attorney for healthcare shall not expire, unless the principal specifies an expiration date in the instrument.

   (a) However, when a durable power of attorney contains an expiration date, if the principal lacks the capacity to make informed healthcare decisions for the principal on the expiration date, the instrument shall continue in effect until the principal regains the capacity to make informed healthcare decisions for the principal.

   Ohio Rev. Code Ann. § 1337.12(A)(3).

Legal Requirements

1. To be valid, a durable power of attorney for healthcare shall satisfy both of the following: (a) it shall be signed at the end of the instrument by the principal and shall state the date of its execution; and (b) it shall be witnessed or acknowledged. Ohio Rev. Code Ann. § 1337.12(A)(1)

2. If witnessed, any person who is related to the principal by blood, marriage, or adoption, any person who is designated as the attorney in fact in the instrument, the attending physician of the principal, and the administrator of any nursing home in which the principal is receiving care are ineligible to be witnesses. Ohio Rev. Code Ann. § 1337.12(B).

3. If acknowledged, a durable power of attorney for healthcare shall be acknowledged before a notary public, who shall make the certification and also shall attest that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence. Ohio Rev. Code Ann. § 1337.12(C).

Revocation

1. A principal who creates a valid durable power of attorney for healthcare may revoke that instrument or the designation of the attorney in fact under it.

   (a) The principal may so revoke at any time and in any manner.

   (b) The revocation shall be effective when the principal expresses an intention to so revoke, except that, if the principal made the principal's attending physician aware of the durable power of attorney for healthcare, the revocation shall be effective upon its communication to the attending physician by the principal, a witness to the revocation, or other healthcare personnel to whom the revocation is communicated by such a witness.

   Ohio Rev. Code Ann. § 1337.14(A).

2. Upon communication to the attending physician of a principal of the fact that the principal's durable power of attorney for healthcare has been revoked, the attending physician or other healthcare personnel acting under the direction of the attending physician shall make the fact a part of the principal's medical record. Ohio Rev. Code Ann. § 1337.14(B).

3. Unless the instrument provides otherwise, a valid durable power of attorney for healthcare revokes a prior, valid durable power of attorney for healthcare. Ohio Rev. Code Ann. § 1337.14(C).

Power of Attorney – Property

Form

The provided form may be used to create a power of attorney. Ohio Rev. Code Ann. § 1337.18.

Creating a Power of Attorney

A power of attorney for the transfer of personal property or the transaction of business relating to the transfer of personal property, in order to be admitted to record as provided in section 1337.07

of the Revised Code, shall be signed and acknowledged in the same manner as deeds and mortgages under section 5301.01 of the Revised Code. (The signing shall be acknowledged by the grantor, mortgagor, vendor, or lessor, or by the trustee, before a judge or clerk of a court of record in this state, or a county auditor, county engineer, notary public, or mayor, who shall certify the acknowledgement and subscribe the official's name to the certificate of the acknowledgement.) When so executed, acknowledged, and recorded, a copy of the record, certified by the county recorder, with the recorder's official seal affixed to it, shall be received in all courts and places within this state as prima-facie evidence of the existence of that instrument and as conclusive evidence of the existence of that record. Ohio Rev. Code Ann. § 1337.06; for powers of attorney relating to real property, *see* Ohio Rev. Code Ann. § 1337.01-.05.

Durable Powers of Attorney

Whenever a principal designates another as attorney in fact by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," "this power of attorney shall not be affected by disability of the principal or lapse of time," or words of similar import, the authority of the attorney in fact is exercisable by the attorney in fact as provided in the written instrument notwithstanding the later disability, incapacity, or adjudged incompetency of the principal and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. Whenever a principal designates another the principal's attorney in fact by a power of attorney in writing and the writing expressly states that the power of attorney shall become effective at a later time or upon the occurrence of a specified event, including, but not limited to, the disability, incapacity, or adjudged incompetency of the principal, the attorney in fact may exercise the authority provided to the attorney in fact in the written instrument at the later time or upon the occurrence of the specified event notwithstanding the later disability, incapacity, or adjudged incompetency of the principal and, unless the instrument states a time of termination, notwithstanding the lapse of time since its execution. Ohio Rev. Code Ann. § 1337.09.

Effect of Acts During Period of Disability

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability, incapacity, or adjudged incompetency of the principal shall have the same effect and inure to the benefit of and bind the principal or the principal's heirs, devisees, and personal representatives as if the principal were competent and not disabled or incapacitated. Ohio Rev. Code Ann. § 1337.09.

Recordation

Any person interested may have a power of attorney authorizing the transfer of personal property or the transaction of any business relating thereto admitted to record in the office of the county recorder of the county in which such property is situated, or in which any of such business is to be transacted. Ohio Rev. Code Ann. § 1337.07.

Powers

Unless expressly authorized in the power of attorney, a power of attorney does not grant authority to an agent to do any of the following: (a) Create, modify, or revoke a trust; (b) Fund with your property a trust not created by you or a person authorized to create a trust for your benefit; (c) Make or revoke a gift of your property in trust or otherwise; (d) Create or change rights of survivorship in your property or in property in which you may have an interest; (e) Designate or change the designation of a beneficiary to receive any property, benefit, or contractual right on your death, such as insurance benefits and retirement benefits; (f) Create in the agent or a person to whom the agent owes a legal duty of support the right to receive property, a benefit, or a contractual right in which you have an interest; (g) Delegate the powers granted under the power of attorney to another person. (h) Elect or change elections under certain retirement plans and public employee plans. Ohio Rev. Code Ann. § 1337.18.

The statutory form lists specific powers that may be checked for inclusion. Ohio Rev. Code Ann. § 1337.18-20.

Living Wills

General Description

An adult, at least 18 years old ("Declarant"), of sound mind voluntarily may execute at any time a declaration governing the use or continuation, or the withholding or withdrawal, of life-sustaining treatment. Ohio Rev. Code Ann. §§ 2133.01(A) & .02(A)(1))

Legal Requirements

1. To be valid, the declaration must be:

   (a) Signed at the end by the Declarant or by another individual at the direction of the Declarant ("Proxy Signer");

   (b) Dated; and

   (c) Either witnessed by at least two (2) individuals present at the time of signing by the Declarant or Proxy Signer or acknowledged by a notary public.

      (i) Witnesses may not be (a) related to the Declarant by blood, marriage, or adoption, (b) the Declarant's attending physician, or (c) the administrator of any nursing home in which the Declarant is receiving care.

      (ii) Each witness must subscribe signature after the signature of the Declarant or proxy signer.

      (iii) Both the witness and notary must attest that the Declarant appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

Ohio Rev. Code Ann. §§ 2133.02(A)(1) & .02(B)(1).

2. A printed form is optional. (Form described in Ohio Rev. Code Ann. § 2133.07.)

3. Declaration operative when:

   (a) Communicated to the Declarant's attending physician;

   (b) Attending physician and one other consulting physician, depending on the nature of the condition, determines that the Declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration; and

   (c) Attending physician determines that the Declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment.

   Ohio Rev. Code Ann. § 2133.03(A).

4. To the extent the provisions of the declaration would conflict with a durable power of attorney for healthcare if the Declarant should be in a terminal condition or in a permanently unconscious state, the declaration supersedes the durable power of attorney. Ohio Rev. Code Ann. § 2133.03(B).

Revocation

1. Declarant may revoke declaration at any time and in any manner. Ohio Rev. Code Ann. § 2133.04(A).

2. Revocation is effective when the Declarant expresses intention to revoke the declaration, except that, if the Declarant made his attending physician aware of the declaration, the revocation is effective once communicated to the Declarant's attending physician by the Declarant himself, a witness to the revocation, or other healthcare personnel to whom the revocation is communicated by such a witness. Ohio Rev. Code Ann. § 2133.04(A).

3. Attending physician should include notification of revocation in the Declarant's medical record. Ohio Rev. Code Ann. § 2133.04(B).

Wills

General Description

A person of the age of 18 years, or over, sound mind and memory, and not under restraint may make a will. Ohio Rev. Code Ann. § 2107.02.

Legal Requirements

1. Under Ohio Revised Code § 2107.03, a written will must be:

(a) Signed at the end by the testator making it or by some other person in the testator's conscious presence and at the testator's express direction; and

(b) Attested and subscribed in the conscious presence of the testator, by two (2) or more witnesses, who saw the testator subscribe, or heard the testator acknowledge the testator's signature.

(i) "Conscious presence" means within the range of any of the testator's senses, excluding the sense of sight or sound that is sensed by telephonic, electronic, or other distant communication.

(ii) Witnesses must be over 18 years old. Ohio Rev. Code Ann. § 2107.06.

2. An existing document may be incorporated in a will by reference, if referred to as being in existence at the time the will is executed. Ohio Rev. Code Ann. § 2107.05.

3. A will may be deposited in the office of the judge of the probate court in the county in which the testator lives. Such will shall be safely kept until delivered or disposed of, for the fee of one dollar. Ohio Rev. Code Ann. § 2107.07.

(a) The will must be enclosed in a sealed wrapper, which shall be indorsed with the name of the testator. The wrapper may be indorsed with the name of a person to whom it is to be delivered after the death of the testator.

4. A testator can petition probate court of the county in which he is domiciled for a declaration that the will is valid. Failure to file such a petition is not evidence that the will is invalid. Ohio Rev. Code Ann. §§ 2107.081-.085.

5. A testator may make provisions to a trustee of a trust that is evidenced by a written instrument: (a) signed by the testator or any other settlor either before or on the same date of the execution of the will of the testator; (b) that is identified in the will; and (c) that has been signed, or is signed at any time after the execution of the testator's will, by the trustee.

(a) Any amendments or modifications of the trust made in writing before, concurrently with, or after the making of the will and prior to the death of the testator.

Ohio Rev. Code Ann. § 2107.63.

Revocation/Modification

1. A will shall be revoked in the following manners:

(a) By the testator by tearing, canceling, obliterating, or destroying it with the intention of revoking it;

(b) By some person, at the request of the testator and in the testator's presence, by tearing, canceling, obliterating, or destroying it with the intention of revoking it;

(c) By some person tearing, canceling, obliterating, or destroying it pursuant to the testator's express written direction;

(d) By some other written will or codicil, executed as prescribed by this chapter; or

(e) By some other writing that is signed, attested, and subscribed in the manner provided by this chapter.

Ohio Rev. Code Ann. § 2107.33.

2. A will that has been declared valid and is in the possession of a probate judge also may be revoked by petitioning the court. Ohio Rev. Code Ann. § 2107.33.

3. If after executing a will, a testator is divorced, obtains a dissolution of marriage, has the testator's marriage annulled, or, upon actual separation from the testator's spouse (with a particular separation agreement), any disposition or appointment of property made by the will to the former spouse or to a trust with powers created by or available to the former spouse, any provision in the will conferring a general or special power of appointment on the former spouse, and any nomination in the will of the former spouse as executor, trustee, or guardian shall be revoked unless the will expressly provides otherwise. Ohio Rev. Code Ann. § 2107.33.

4. A will executed by an unmarried person is not revoked by a subsequent marriage. Ohio Rev. Code Ann. § 2107.37.

OKLAHOMA

Power of Attorney – Healthcare

General Description

A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing and the writing contains words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding lapse of time since its execution. Okla. Stat. tit. 58 § 1072.

Legal Requirements

1. An advance directive becomes operative when: (a) it is communicated to the attending physician; and (b) the declarant is no longer able to make decisions regarding administration of life-sustaining treatment. Okla. Stat. tit. 63 § 3101.5(A).

2. An individual of sound mind and 18 years of age or older may execute at any time an advance directive for healthcare governing the provision, withholding, or withdrawal of life-sustaining treatment. Okla. Stat. tit. 63 § 3101.4(A).

3. The advance directive shall be signed by the declarant and witnessed by two (2) individuals who are 18 years of age or older who are not legatees, devisees, or heirs at law. Okla. Stat. tit. 63 § 3101.4(A).

Revocation

1. Death of the principal revokes and terminates the power of attorney, provided however, the death of a principal who has executed a written power of attorney does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under it. Okla. Stat. tit. 58 § 1075(A).

2. An advance directive may be revoked in whole or in part at any time and in any manner by the declarant, without regard to the declarant's mental or physical condition. Okla. Stat. tit. 63 § 3101.6(A).

    (a) A revocation is effective upon communication to the attending physician or other healthcare provider by the declarant or a witness to the revocation.

3. The attending physician or other healthcare provider shall make the revocation a part of the declarant's medical record. Okla. Stat. tit. 63 § 3101.6(B).

Creating a Durable Power of Attorney

1. A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability, incapacity, or extended absence of the principal, or lapse of time," or "This power of attorney shall become effective upon the disability, incapacity, or extended absence of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability, incapacity, or extended absence, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. Okla Stat. tit. 58 § 072.

2. A durable power of attorney may be executed in accordance with the provided provisions; provided, however, failure to execute a power of attorney as prescribed in this section shall not be construed to diminish the effect or validity of an otherwise properly executed durable power of attorney:

   (a) The principal shall sign the power of attorney at its end, or, if the principal is unable, some other person shall subscribe his name thereto in his presence and by his direction. The principal, or such other person, shall sign in the presence of two (2) witnesses, each of whom shall sign his name in the presence of the principal and each other;

   (b) The witnesses shall not be: (i) under 18 years of age, (ii) related to the principal by blood or marriage, or (iii) the attorney-in-fact or anyone related to the attorney-in-fact by blood or marriage.

      (i) The execution of the power of attorney shall be in substantially the form provided by Okla Stat. tit. 58 § 1072.2.

   Okla Stat. tit. 58 § 1072.2.

3. The durable power of attorney may show or state:

   (a) The fact of execution under the provisions of the Uniform Durable Power of Attorney Act;

   (b) The time and conditions under which the power is to become effective;

   (c) The extent and scope of the powers conferred; and

   (d) Who is to exercise the power, including any successor attorney-in-fact if a prior appointed attorney-in-fact dies, ceases to act, refuses or is unable to serve, or resigns.

Okla Stat. tit. 58 § 1072.1.

Effect During Periods of Disability

All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability, incapacity, or extended absence of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled, incapacitated, or on an extended absence. Okla Stat. tit. 58 § 1073.

Revocation and Termination

Death of the principal revokes and terminates the power of attorney, provided however, the death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Okla Stat. tit. 58 § 1075.

Powers

1. The power may grant complete or limited authority with respect to the principal's:

   (a) Person, including, but not limited to, health and medical care decisions and a do-not-resuscitate consent on the principal's behalf, but excluding:

      (i) the execution, on behalf of the principal, of a Directive to Physicians, an Advance Directive for Health Care, Living Will, or other document purporting to authorize life-sustaining treatment decisions, and

      (ii) the making of life-sustaining treatment decisions unless the power complies with the requirements for a health care proxy under the Oklahoma Rights of the Terminally 111 or Persistently Unconscious Act or the Oklahoma Do-Not-Resuscitate Act; and

   (b) Property, including homestead property, whether real, personal, intangible or mixed.

   Okla Stat. tit. 58 § 1072.1.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

Living Wills

General Description

An individual, at least 18 years old ("Declarant"), of sound mind may execute at any time an advance directive for health care governing the provision, withholding, or withdrawal of life-sustaining treatment. Okla. Stat. tit. 63 § 3101.4(A).

Legal Requirements

1. To be valid, advance directive must be: (a) signed by the Declarant; and (b) witnessed by two (2) individuals, at least 18 years old, who are not legatees, devisees, or heirs at law. Okla. Stat. tit. 63 § 3101.4(A).

2. Use of the statutory form is optional but should be substantially followed. (Form available at Okla. Stat. tit. 63 § 3101.4.)

3. Declarant may register advance directive with the State Department of Health. Okla. Stat. tit. 63 §§ 3102.1 & 3102.3.

4. Advance directive becomes operative when: (a) it is communicated to attending physician; and (b) the Declarant is no longer able to make decisions regarding administration of life-sustaining treatment. Okla. Stat. tit. 63 § 3101.5.

Revocation

1. Advance directive may be revoked in whole or in part at any time and in any manner by the Declarant, without regard to the Declarant's mental or physical condition. Okla. Stat. tit. 63 § 3101.6.

2. Revocation is effective upon communication to attending physician or other healthcare provider by the Declarant or a witness to the revocation. Okla. Stat. tit. 63 § 3101.6.

3. Attending physician or other healthcare provider should make revocation part of the Declarant's medical record. Okla. Stat. tit. 63 § 3101.6.

4. If more than one valid advance directive has been executed and not revoked, the last advance directive so executed will be construed to be the last wishes of the Declarant. Okla. Stat. tit. 63 § 3101.5.

Wills

General Description

1. Every person over the age of 18 years, of sound mind may, by last will, dispose of all his estate, real and personal. Okla. Stat. tit. 84 § 41.

(a) Except that a will shall be subservient to any antenuptial marriage contract in writing. In addition, no spouse can bequeath or devise away from his partner more than an undivided one-half interest in the property acquired by the joint industry of the husband and wife during coverture. Okla. Stat. tit. 84 § 44.

2. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by its charter or by statute. Okla. Stat. tit. 84 § 45.

Legal Requirements

1. Under Oklahoma Statutes, Title 84 § 55, a written will must be:

(a) Subscribed at the end by the testator, or some person in his presence and by his direction, must subscribe his name thereto (if the testator does not sign, the person signing must write his own name as witness to the will;

(b) Subscribed in the presence of two (2) attesting witnesses, or be acknowledged by the testator to have been made by him or by his authority; and declared to the attesting witnesses that the instrument is his will; and

(i) The witnesses must sign at the end of the will at the testator's request and in his presence. He or she must also write their name and place of residence.

(ii) Gifts to witnesses are void, unless two uninterested witnesses also sign the will. But, if the witness would have received if there was no will, he or she will get no more than the value of his share had the testator died intestate. Okla. Stat. tit. 84 § 56.

2. A will may, at the time of execution or at any subsequent date during the lifetimes of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses. Okla. Stat. tit. 84 § 55.

(a) The acknowledgements must be made before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this state, with the officer's official seal. See statute for sample language.

3. A will can be deposited with any judge of the district court for safekeeping. Okla. Stat. tit. 84 § 81.

4. A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will. Okla. Stat. tit. 84 § 52.

5. If a testator wants to omit from his will a child, or the issue of any deceased children, the heir's omission must appear intentional in the will. Okla. Stat. tit. 84 §§ 132 & 133.

Revocation/Modification

1. A written will can be revoked or altered by:

   (a) A written will or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities as a will; or

      (i) A subsequent will must contain an express revocation, or provisions wholly inconsistent with the terms of the former will; the prior will remains effectual so far as consistent with the provisions of the subsequent will. Okla. Stat. tit. 84 § 105.

   Okla. Stat. tit. 84 § 101.

   (b) Being burnt, torn, canceled, obliterated or destroyed, with intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

      (i) The destruction must be proved by two witnesses. Okla. Stat. tit. 84 § 102.

      (ii) If there are duplicates, only one copy must be destroyed. Okla. Stat. tit. 84 § 104.

   Okla. Stat. tit. 84 § 101.

2. If, after making a will, the testator is divorced or his/her marriage annulled, all provisions in such will in favor of the testator's spouse so are revoked. Okla. Stat. tit. 84 § 114.

OREGON

Power of Attorney – Healthcare

General Description

1. A capable adult may designate in writing a competent adult to serve as attorney-in-fact for healthcare. Or. Rev. Stat. § 127.510(1).

2. The attorney-in-fact so appointed shall make healthcare decisions on behalf of the principal if the principal becomes incapable. Or. Rev. Stat. § 127.510(1).

Legal Limitations

1. An appointed healthcare representative shall not make a healthcare decision with respect to any of the following on behalf of the principal: (a) admission to or retention in a healthcare facility for care or treatment of mental illness; (b) convulsive treatment; (c) psychosurgery; (d) sterilization; (e) abortion; or (f) withholding or withdrawing of a life-sustaining procedure. Or. Rev. Stat. § 127.540; *see* statute for exceptions.

2. The following persons may not serve as healthcare representatives if unrelated to the principal by blood, marriage or adoption:

   (a) The attending physician or an employee of the attending physician.

   (b) An owner, operator or employee of a healthcare facility in which the principal is a patient or resident, unless the healthcare representative was appointed before the principal's admission to the facility.

   Or. Rev. Stat. § 127.520.

Legal Requirements

1. For an appointment under a power of attorney for healthcare to be effective, the attorney-in-fact must accept the appointment in writing. Or. Rev. Stat. § 127.525.

2. Subject to the right of the attorney-in-fact to withdraw, the acceptance imposes a duty on the attorney-in-fact to make healthcare decisions on behalf of the principal at such time as the principal becomes incapable.

   (a) Until the principal becomes incapable, the attorney-in-fact may withdraw by giving notice to the principal.

   (b) After the principal becomes incapable, the attorney-in-fact may withdraw by giving notice to the healthcare provider.

   Or. Rev. Stat. § 127.525.

3. The power of attorney for healthcare is effective when it is signed, witnessed and accepted. Or. Rev. Stat. § 127.510(1).

4. Unless the period of time that an advance directive is to be effective is limited by the terms of the advance directive, the advance directive shall continue in effect until: (a) the principal dies; or (b) the advance directive is revoked, suspended or superseded. Or. Rev. Stat. § 127.510(3).

Revocation

1. An advance directive or a healthcare decision by a health care representative may:

   (a) If it involves the decision to withhold or withdraw life-sustaining procedures or artificially administered nutrition and hydration, be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke; or

   (b) Be revoked at any time and in any manner by a capable principal.

   Or. Rev. Stat. § 127.545(1).

2. Revocation is effective upon communication by the principal to the attending physician, the healthcare provider or the healthcare representative. Or. Rev. Stat. § 127.545(2).

3. Upon learning of the revocation, the healthcare provider or attending physician shall cause the revocation to be made a part of the principal's medical records. Or. Rev. Stat. § 127.545(3).

4. Execution of a valid power of attorney for healthcare revokes any prior power of attorney for healthcare. Or. Rev. Stat. § 127.545(4).

Power of Attorney – Property

Creation of Power of Attorney

1. When a principal designates another person as an agent by a power of attorney in writing, and the power of attorney does not contain words that otherwise delay or limit the period of time of its effectiveness:

   (a) The power of attorney becomes effective when executed and remains in effect until the power is revoked by the principal;

   (b) The powers of the agent are unaffected by the passage of time; and

   (c) The powers of the agent are exercisable by the agent on behalf of the principal even though the principal becomes financially incapable.

   Or. Rev. Stat. §127.005.

2. The terms of a power of attorney may provide that the power of attorney will become effective at a specified future time, or will become effective upon the occurrence of a specified future event or contingency such as the principal becoming financially incapable. If a power of attorney becomes effective upon the occurrence of a specified future event or contingency, the power of attorney may designate a person or persons to determine whether the specified event or contingency has occurred, and the manner in which the determination must be made. A person designated by a power of attorney to determine whether the principal is financially incapable is the principal's personal representative for the purposes of ORS 192.518 to 192.529 and the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164. Or. Rev. Stat. §127.005.

Effect of Acts During Period of Disability

All acts done by an agent under a power of attorney during a period in which the principal is financially incapable have the same effect, and inure to the benefit of and bind the principal, as though the principal were not financially incapable. Or. Rev. Stat. §127.005.

Revocation and Termination

The death of a principal who has executed a power of attorney in writing, or the occurrence of any other event that would otherwise terminate the authority of the agent, does not revoke or terminate the authority of an agent who, without actual knowledge of the death of the principal or other event, acts in good faith under the power of attorney. Or. Rev. Stat. §127.015.

Living Wills

General Description

Capable adults, at least 18 years old ("Principal"), may make their own health care decisions. Or. Rev. Stat. §§ 127.505(1) & 127.507.

Legal Requirements

1. To be valid, advance directive must:

   (a) Be signed by the Principal;

   (b) Dated ; and

   (c) Witnessed by at least two (2) adults.

      (i) Each witness must witness either (a) the signing of the instrument by the Principal or (b) the Principal's acknowledgement of principal's signature.

      (ii) Each witness must make the written declaration set forth on the statutory form.

(iii) One (1) of the witnesses must not be (a) a relative of the Principal by blood, marriage or adoption, (b) a person who at the time the advance directive is signed would be entitled to any portion of the Principal's estate upon death under any will or by operation of law, or (c) an owner, operator or employee of a healthcare facility where the Principal is a patient or resident.

(iv) Neither witness may be (a) the attorney-in-fact for healthcare, (b) the alternative attorney-in-fact for healthcare, or (c) the Principal's attending physician at the time advance directive is signed.

(v) If the Principal is a patient in a long term care facility at the time the advance directive is executed, one (1) witness must be individual designated by the facility and having any qualifications that may be specified by the Department of Human Services by rule.

Or. Rev. Stat. § 127.515(4).

2. Statutory form must be followed by all Oregon residents. (Form available at Or. Rev. Stat. § 127.531.)

3. Any reinstatement of advance directive must be in writing. Or. Rev. Stat. § 127.545(8).

Revocation

1. An advance directive generally may be revoked at any time and in any manner by a capable Principal. Or. Rev. Stat. § 127.545(1).

   (a) If advance directive involves decision to withhold or withdraw life-sustaining procedures or artificially administered nutrition and hydration, it may be revoked at any time and in any manner by which the Principal is able to communicate intent to revoke. Or. Rev. Stat. § 127.545(1).

2. Unless advance directive provides otherwise, the directions provided therein supersede: (a) any directions contained in a previous court appointment or advance directive; and (b) any prior inconsistent expression of desires with respect to health care decisions. Or. Rev. Stat. § 127.545(5).

3. If principal has both a valid healthcare instruction and a valid power of attorney for healthcare and directions are inconsistent, last executed governs to extent of inconsistency. Or. Rev. Stat. § 127.545(8).

4. Revocation effective when communicated by the Principal to the attending physician, the health care provider or to the healthcare representative. Upon learning of the revocation, the healthcare provider or attending physician should include revocation in the Principal's medical records. Or. Rev. Stat. § 127.545(3).

Wills

General Description

Any person who is 18 years of age or older or who has been lawfully married, and who is of sound mind, may make a will. Or. Rev. Stat. § 112.225.

Legal Requirements

1. Under Oregon Revised Statutes § 112.235, a will shall be in writing and shall be executed with the following formalities:

    (a) The testator, in the presence of each of the witnesses, shall:

        (i) Sign the will; or

        (ii) Direct one (1) of the witnesses or some other person to sign thereon the name of the testator; or

            (1) Any person who signs the name of the testator sign the signer's own name on the will and write on the will that the signer signed the name of the testator at the direction of the testator.

        (iii) Acknowledge the signature previously made on the will by the testator or at the testator's direction.

    (b) At least two (2) witnesses shall each:

        (i) See the testator sign the will; or

        (ii) Hear the testator acknowledge the signature on the will; and

        (iii) Attest the will by signing the witness' name to it.

        (iv) A will attested by an interested witness is not thereby invalidated. Or. Rev. Stat. § 112.245)

2. A will can devise property to the trustee of a trust established or to be established if: (a) the trust is established or will be established; (b) the trust is identified in the will; and (c) the terms of the trust are set forth in a written instrument, other than a will. Or. Rev. Stat. § 112.265.

3. *In terrorem* clauses generally enforceable:

    (a) If a devisee contests a will that contains an *in terrorem* clause that applies to the devisee, the court shall enforce the clause against the devisee even though the devisee establishes that there was probable cause for the contest.

(b) The court shall not enforce an *in terrorem* clause if the devisee contesting the will establishes that the devisee has probable cause to believe that the will is a forgery or that the will has been revoked.

(c) The court shall not enforce an *in terrorem* clause if the contest is brought by a fiduciary acting on behalf of a protected person under (*see* Or. Rev. Stat. § 125), a guardian ad litem appointed for a minor, or a guardian ad litem appointed for an incapacitated or financially incapable person.

Or. Rev. Stat. § 112.272.

Revocation/Modification

1. Revocation or alteration of a will.

(a) A will may be revoked or altered by another will.

(b) A will may be revoked by being burned, torn, canceled, obliterated or destroyed, with the intent and purpose of the testator of revoking the will, by the testator, or by another person at the direction of the testator and in the presence of the testator. The injury or destruction by a person other than the testator at the direction and in the presence of the testator shall be proved by at least two (2) witnesses.

Or. Rev. Stat. § 112.285.

2. Revocation by a subsequent marriage.

(a) A will is revoked by the subsequent marriage of the testator if the testator is survived by a spouse, unless:

(i) The will evidences an intent otherwise or was drafted under circumstances establishing that it was in contemplation of the marriage; or

(ii) The testator and spouse entered into a written contract before the marriage that either makes provision for the spouse or provides that the spouse is to have no rights in the estate of the testator.

Or. Rev. Stat. § 112.305.

3. Unless a will evidences a different intent of the testator, the divorce or annulment of the marriage of the testator after the execution of the will revokes all provisions in the will in favor of the former spouse of the testator and any provision therein naming the former spouse as executor. Or. Rev. Stat. § 112.315.

PENNSYLVANIA

Power of Attorney – Healthcare

General Description

This shall be known as the Health Care Agents and Representatives Act. 20 Pa. Cons. Stat. § 5451.

Legal Limitations

1. An individual who signs a healthcare power of attorney on behalf of and at the direction of a principal may not witness the healthcare power of attorney. 20 Pa. Cons. Stat. § 5452(c)(1).

2. A healthcare provider and its agent may not sign a healthcare power of attorney on behalf of and at the direction of a principal if the healthcare provider or agent provides healthcare services to the principal. 20 Pa. Cons. Stat. § 5452(c)(2).

3. Unless otherwise specified in the healthcare power of attorney, a healthcare power of attorney becomes inoperative during such time as, in the determination of the attending physician, the principal is competent. 20 Pa. Cons. Stat. § 5454(b).

Legal Requirements

1. An individual of sound mind may make a health care power of attorney if the individual: (a) is 18 years of age or older; (b) has graduated from high school; (c) has married; or (d) is an emancipated minor. 20 Pa. Cons. Stat. § 5452(a).

2. Unless otherwise specified in the healthcare power of attorney, a healthcare power of attorney becomes operative when: (a) a copy is provided to the attending physician; and (b) the attending physician determines that the principal is incompetent. 20 Pa. Cons. Stat. § 5454(a).

3. A healthcare power of attorney must be:

   (a) Dated and signed by the principal by signature or mark or by another individual on behalf of and at the direction of the principal if the principal is unable to sign but specifically directs another individual to sign the healthcare power of attorney; and

   (b) Witnessed by two (2) individuals, each of whom is 18 years of age or older.

   20 Pa. Cons. Stat. § 5452(b).

4. A health care power of attorney shall: (a) identify the principal and appoint the healthcare agent; and (b) declare that the principal authorizes the healthcare agent to make healthcare decisions on behalf of the principal. 20 Pa. Cons. Stat. § 5453(a).

5. Except as expressly provided otherwise in a healthcare power of attorney, a healthcare agent shall have the authority to make any healthcare decision and to exercise any right and power regarding the principal's care, custody and healthcare treatment that the principal could have made and exercised. 20 Pa. Cons. Stat. § 5456(a).

6. The health care agent's authority may extend beyond the principal's death to make anatomical gifts, dispose of the remains and consent to autopsies. 20 Pa. Cons. Stat. § 5456(a).

Revocation

1. While of sound mind, a principal may revoke a healthcare power of attorney by a writing or by personally informing the attending physician, healthcare provider or healthcare agent that the healthcare power of attorney is revoked. 20 Pa. Cons. Stat. § 5459(a).

2. A healthcare provider may rely on the effectiveness of a healthcare power of attorney unless notified of its revocation. 20 Pa. Cons. Stat. § 5459(b).

3. A healthcare agent, knowing of the revocation of the healthcare power of attorney, may not make or attempt to make healthcare decisions for the principal. 20 Pa. Cons. Stat. § 5459(c).

Power of Attorney – Property

Possible Changes

A bill is currently in the judiciary committee of Pennsylvania. The bill substantially changes the text of the below summarized statutes.

Creation of Power of Attorney

A power of attorney shall be signed and dated by the principal by signature or mark, or by another on behalf of and at the direction of the principal. If the power of attorney is executed by mark or by another individual, then it shall be witnessed by two individuals, each of whom is 18 years of age or older. A witness shall not be the individual who signed the power of attorney on behalf of and at the direction of the principal. All powers of attorney shall include the notice listed in 20 Pa. Consol. Stat. § 5601 in capital letters at the beginning of the power of attorney. The notice shall be signed by the principal. In the absence of a signed notice, upon a challenge to the authority of an agent to exercise a power under the power of attorney, the agent shall have the burden of demonstrating that the exercise of this authority is proper. An agent shall have no authority to act as agent under the power of attorney unless the agent has first executed and affixed to the power of attorney an acknowledgment in substantially form given in 20 Pa. Cons.

Stat. Ann. § 5601. 20 Pa. Cons. Stat. Ann. § 5601; *see also* 20 Pa. Cons. Stat. Ann. § 5601 for multiple agents.

Durable Powers of Attorney

Unless specifically provided otherwise in the power of attorney, all powers of attorney shall be durable. 20 Pa. Cons. Stat. Ann. § 5601. A durable power of attorney is a power of attorney by which a principal designates another his agent in writing. The authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. A principal may provide in the power of attorney that the power shall become effective at a specified future time or upon the occurrence of a specified contingency, including the disability or incapacity of the principal. All acts done by an agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Unless the power of attorney states a time of termination, it is valid notwithstanding the lapse of time since its execution. 20 Pa. Cons. Stat. Ann. § 5604.

Powers

In addition to all other powers that may be delegated to an agent, any or all of the powers referred to below may lawfully be granted in writing to an agent and, unless the power of attorney expressly directs to the contrary, shall be construed in accordance with the provisions of this chapter. 20 Pa. Consol. Stat. § 5601. Such powers that may be granted are: (1) "To make limited gifts." (2) "To create a trust for my benefit." (3) "To make additions to an existing trust for my benefit." (4) "To claim an elective share of the estate of my deceased spouse." (5) "To disclaim any interest in property." (6) "To renounce fiduciary positions." (7) "To withdraw and receive the income or corpus of a trust." (8) "To authorize my admission to a medical, nursing, residential or similar facility and to enter into agreements for my care." (9) "To authorize medical and surgical procedures." (10) "To engage in real property transactions." (11) "To engage in tangible personal property transactions." (12) "To engage in stock, bond and other securities transactions." (13) "To engage in commodity and option transactions." (14) "To engage in banking and financial transactions." (15) "To borrow money." (16) "To enter safe deposit boxes." (17) "To engage in insurance transactions." (18) "To engage in retirement plan transactions." (19) "To handle interests in estates and trusts." (20) "To pursue claims and litigation." (21) "To receive government benefits." (22) "To pursue tax matters." (23) "To make an anatomical gift of all or part of my body." 20 Pa. Cons. Stat. Ann. § 5602.

Certain limitations apply to commercial transactions. 20 Pa. Cons. Stat. Ann. § 5601. *See also* 20 Pa. Cons. Stat. Ann. § 5601.2 for powers relating to gifts; 20 Pa. Cons. Stat. Ann. § 5603 for construction of the above powers; and 20 Pa. Cons. Stat. Ann. § 5608-10 for provisions relating to liability and immunity, accounts to be maintained and compensation and expenses.

Revocation and Termination

The death of a principal who has executed a written power of attorney, durable or otherwise, shall not revoke or terminate the agency as to the agent or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. The disability or

incapacity of a principal who has previously executed a written power of attorney which is not a durable power shall not revoke or terminate the agency as to the agent or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. If a principal designates his spouse as his agent and thereafter either the principal or his spouse files an action in divorce, the designation of the spouse as agent shall be revoked as of the time the action was filed, unless it appears from the power of attorney that the designation was intended to survive such an event. 20 Pa. Cons. Stat. Ann. § 5605.

Recordation of Power of Attorney

An executed copy of the power of attorney may be filed with the clerk of the orphans' court division of the court of common pleas in the county in which the principal resides, and if it is acknowledged, it may be recorded in the office for the recording of deeds of the county of the principal's residence and of each county in which real property to be affected by an exercise of the power is located. The clerk of the orphans' court division or any office for the recording of deeds with whom the power has been filed, may, upon request, issue certified copies of the power of attorney. Each such certified copy shall have the same validity and the same force and effect as if it were the original, and it may be filed of record in any other office of this Commonwealth (including, without limitation, the clerk of the orphans' court division or the office for the recording of deeds) as if it were the original. 20 Pa. Cons. Stat. Ann. § 5602.

Living Wills

General Description

A living will may be in any written form expressing the wishes of a principal regarding the initiation, continuation, withholding or withdrawal of life-sustaining treatment and may include other specific directions, including, but not limited to, designation of a health care agent to make health care decisions for principal if principal is determined to be incompetent and to have an end-stage medical condition or is permanently unconscious. 20 Pa. Cons. Stat. § 5447.

Legal Requirements

1. To be valid, a living will must be:

   (a) Executed by an individual ("Principal") who is (1) at least 18 years old, (2) a high school graduate, (3) married, or (4) an emancipated minor;

   (b) Dated and signed by (1) the Principal or (2) another individual on behalf of and at the specific direction of the Principal if the Principal unable to sign ("Proxy Signer"); and

      (i) Health care provider and its agent may not be the Proxy Signer.

   (c) Witnessed by two (2) individuals, each of whom is at least 18 years old.

      (i) Witness may not be the Proxy Signer.

20 Pa. Cons. Stat. § 5442.

2. Use of the statutory form is optional. Directions are severable. (Form available at 20 Pa. Cons. Stat. § 5471.)

3. Living will operative when:

   (a) Copy provided to attending physician; and

      (i) Health care provider to whom provided should make living will part of the Principal's medical record.

   (b) The Principal is determined by attending physician to be incompetent and to have an end-stage medical condition or to be permanently unconscious.

   20 Pa. Cons. Stat. § 5443.

Revocation

1. Living will may be revoked at any time and in any manner by the Principal regardless of the medical or physical condition of the Principal. 20 Pa. Cons. Stat. § 5444.

2. Revocation effective when communicated to the attending physician or other healthcare provider by the Principal or witness to revocation. Such person should make revocation part of the Principal's medical record. 20 Pa. Cons. Stat. § 5444.

3. If any provision of living will conflicts with earlier living will, instrument last executed prevails to extent of conflict unless instruments expressly provide otherwise. 20 Pa. Cons. Stat. § 5444.

Wills

General Description

Any person 18 or more years of age who is of sound mind may make a will. 20 Pa. Cons. Stat. § 2501.

Legal Requirements

1. Under Pennsylvania Consolidated Statutes § 2502, every will shall be:

   (a) In writing; and

   (b) Signed by the testator at the end.

      (i) The presence of any writing after the signature to a will, whether written before or after its execution, shall not invalidate that which precedes the signature.

(ii) If testator is unable to sign his name, he/she can sign by mark in the presence of two (2) witnesses who sign their names to the will in his presence. *See* sample oath available at http://secureprod.phila.gov/wills/displayform.aspx?pdf=oath_witness_mark.pdf.

(iii) If the testator is unable to sign his name or to make his mark for any reason, a will to which his name is subscribed in his presence and by his express direction shall be as valid as though he had signed his name. The testator must declare the instrument to be his/her will in the presence of two (2) witnesses who sign their names to it in his presence. *See* sample oath at http://secureprod.phila.gov/wills/displayform.aspx?pdf=oath_witness_another.pdf.

(iv) Law does not generally require the signature, but it is custom to have two (2) witnesses, since two witnesses are required at probate. *See* sample oath at http://secureprod.phila.gov/wills/displayform.aspx?pdf=oath_subscribing.pdf.

2. Self-proving affidavits are not mentioned in the statute, but noted by the Register of Wills (*see, e.g.*, http://secureprod.phila.gov/wills/wills.aspx). Affidavits must include proper acknowledgements signed by the testator and witnesses at the time of execution.

3. A devise or bequest in a will may be made to the trustee of a trust established in writing. Such devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after execution of the will. 20 Pa. Cons. Stat. § 2515.

4. Under certain circumstance, a testator can appoint a testamentary guardian for real or personal property passing to a minor. 20 Pa. Cons. Stat. § 2519.

Revocation/Modification

1. A will can be revoked by:

(a) Some other will or codicil in writing;

(b) Some other writing declaring the same, executed and proved in the manner required of wills; or

(c) Being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revocation, by the testator himself or by another person in his presence and by his express direction. If such act is done by any person other than the testator, the direction of the testator must be proved by the oaths or affirmations of two (2) competent witnesses.

20 Pa. Cons. Stat. § 2505.

2. If the testator is divorced after making a will, any provision in the will in favor of or relating to his/her former spouse shall become ineffective for all purposes unless the will demonstrates a different intent. 20 Pa. Cons. Stat. § 2507.

RHODE ISLAND

Power of Attorney – Healthcare

General Description

The laws of the state recognize the right of an adult person to make a written durable power of attorney which might include instructing his or her physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition. R.I. Gen. Laws § 23-4.10-1(b).

Legal Requirements

1. The attending physician who had knowledge of the existence of a durable power of attorney shall note in the medical record the existence of the durable power of attorney. R.I. Gen. Laws § 23-4.10-4.

2. A patient has the right to make decisions regarding use of life sustaining procedures as long as the patient is able to do so. If a patient is not able to make those decisions, the durable power of attorney governs decisions regarding use of life sustaining procedures. R.I. Gen. Laws § 23-4.10-5(a).

3. The durable power of attorney of a patient known to the attending physician to be pregnant shall be given no force or effect as long as it is probable that the fetus could develop to the point of live birth with continued application of life sustaining procedures. R.I. Gen. Laws § 23-4.10-5(c).

Revocation

1. A durable power of attorney may be revoked at any time and in any manner by which the declarant is able to communicate an intent to revoke, without regard to mental or physical condition. R.I. Gen. Laws § 23-4.10-3(a).

    (a) A revocation is only effective as to the attending physician or any healthcare provider or emergency medical services personnel upon communication to that physician or healthcare provider or emergency medical services personnel by the declarant or by another who witnessed the revocation.

2. The attending physician or healthcare provider shall make the revocation a part of the declarant's medical record. R.I. Gen. Laws § 23-4.10-3(b).

3. For emergency medical services personnel, the absence of reliable documentation shall constitute a revocation of a durable power of attorney. R.I. Gen. Laws § 23-4.10-3(c).

Power of Attorney – Property

Statutory Short Form

Use of the statutory short form power of attorney is optional. R.I. Gen. Laws § 18-16-2.

Every statutory short form power of attorney shall contain, in bold face type or a reasonable equivalent thereof, the "Notice" at the beginning of this section. R.I. Gen. Laws § 18-16-2. A power of attorney is a "statutory short form power of attorney," as this phrase is used in this chapter, when it is in writing, has been duly acknowledged by the principal and contains the exact wording of the clause first set forth in the statutory short form power of attorney, except that any one or more of certain subdivisions may be stricken out and shall be deemed eliminated. A statutory short form power of attorney may contain modifications or additions to the types described in R.I. Gen. Laws § 18-16-15. R.I. Gen. Laws § 18-16-2.

Execution

The execution of this statutory short form power of attorney shall be duly acknowledged by the principal in the manner prescribed for the acknowledgement of a conveyance of real property. .R.I. Gen. Laws § 18-16-2.

Powers

See R.I. Gen. Laws § 18-16-3, *et seq.* for construction of powers related to real estate transactions, chattel and goods transactions, and other transactions.

Additional Provisions

1. A power of attorney which satisfies the requirements of subsection (b) of R.I. Gen. Laws § 18-16-2 is not prevented from being a statutory short form power of attorney, as that phrase is used in the sections of this chapter, by the fact that it also contains additional language which:

    (a) Eliminates from the power of attorney one or more of the powers enumerated in one or more of the constructional sections of this chapter with respect to a subdivision of the statutory short form power of attorney not eliminated therefrom by the principal;

    (b) Supplements one or more of the powers enumerated in one or more of the constructional sections in this chapter with respect to a subdivision of the statutory short form power of attorney not eliminated therefrom by the principal, by specifically listing additional powers of the agent; or

    (c) Makes some additional provision which is not inconsistent with the other provisions of the statutory short form power of attorney. R.I. Gen. Laws § 18-16-12.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

Living Wills

General Description

A competent individual, at least 18 years old ("Declarant"), may at any time execute a declaration governing the withholding or withdrawal of life sustaining procedures. R.I. Gen. Laws § 23-4.11-3(a).

Legal Requirements

1. To be valid, declaration must be:

   (a) Signed by the Declarant or another ("Proxy Signer") at the Declarant's direction; and

   (b) Witnessed by two (2) subscribing witnesses not related to the Declarant by blood or marriage.

      (i) Witnesses must be present at time of the Declarant's or the Proxy Signer's signing.

   R.I. Gen. Laws § 23-4.11-3(a).

2. Use of the statutory form is optional. (Form available at R.I. Gen. Laws § 23-4.11-3(d).)

3. Physician or healthcare provider provided with declaration should make it part of the Declarant's medical record.

4. Declaration becomes operative when: (a) the declaration is communicated to attending physician; (b) the Declarant is determined by attending physician to be in a terminal condition; and (c) the Declarant is unable to make treatment decisions. R.I. Gen. Laws § 23-4.11-3(c).

Revocation

1. Declaration may be revoked at any time and in any manner by which the Declarant is able to communicate intent to revoke, without regard to mental or physical condition. R.I. Gen. Laws § 23-4.11-4.

2. Revocation effective when communicated to attending physician or other healthcare provider by the Declarant or witness to revocation. Such person should make revocation part of the Declarant's medical record. R.I. Gen. Laws § 23-4.11-4.

3. If inconsistency between declaration and durable healthcare power of attorney, last executed document controls to extent of inconsistency. R.I. Gen. Laws § 23-4.11-3.

Wills

General Description

A person 18 or more years of age and who is "of sane mind" may make a will to dispose of all real estate and all personal estate which he or she is entitled to either at law or in equity. R.I. Gen. Laws § 33-5-2.

Legal Requirements

1. Every will shall be in writing, and:

    (a) Signed by the testator or in the testator's name by another individual in the testator's presence and by the testator's direction; and

    (b) Made or acknowledged by the testator in the presence of at least two (2) individuals, each of whom shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary, and no other publication shall be necessary.

    R.I. Gen. Laws § 33-5-5.

2. Where any real estate shall be devised to any trustee or executor, the devise shall be construed to pass the fee simple, or the other whole estate or interest which the testator had power to dispose of by will in the real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall be thereby expressly given to him or her. R.I. Gen. Laws § 33-6-8.

3. Original wills shall be kept on file in the probate court where they were proved, and shall only be taken from the files by order of the court or under the provisions of statutes now or hereafter in force. R.I. Gen. Laws § 33-6-32.

Revocation/Modification

1. A will or any part thereof is revoked by:

    (a) marriage of the testator, unless it appears from the will that it was made in contemplation thereof, R.I. Gen. Laws § 33-5-9; or

    (b) another will or codicil or by some writing declaring an intention to revoke the will or by burning, tearing, or otherwise destroying the will by the testator, or by some person in her or her presence and by his or her direction, with the intention of revoking the will, R.I. Gen. Laws § 33-5-10.

2. The entry of a final judgment in the divorce of a person shall act as a revocation of all provisions for the benefit of the former spouse in a will made by the person prior to the

divorce, unless it appears from the will that the will was made in contemplation of the divorce. R.I. Gen. Laws § 33-5-9.1.

3. A change of circumstances does not revoke a will. R.I. Gen. Laws § 33-5-11.

SOUTH CAROLINA

Power of Attorney – Healthcare

General Description

Whenever a principal designates another his attorney in fact by a power of attorney in writing and the writing contains words showing the intent of the principal that the authority conferred is exercisable notwithstanding his physical disability or mental incompetence or either physical disability or mental incompetence, the authority of the attorney in fact is exercisable. S.C. Code Ann. § 62-5-501(A).

Legal Limitations

A healthcare agent may not be a healthcare provider, or an employee of a provider, with whom the principal has a provider-patient relationship at the time the healthcare power of attorney is executed, or an employee of a nursing care facility in which the principal resides, or a spouse of the healthcare provider or employee, unless the healthcare provider, employee, or spouse is a relative of the principal. S.C. Code Ann. § 62-5-504(C).

Legal Requirements

1. A healthcare agent must be an individual who is 18 years of age or older and of sound mind. S.C. Code Ann. § 62-5-504(C).

2. A power of attorney executed under the provisions of this section must be executed and attested with the same formality and with the same requirements as to witnesses as a will. S.C. Code Ann. § 62-5-501(C).

3. In addition, the instrument must be recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded.

    (a) After the instrument has been recorded, whether recorded before or after the onset of the principal's physical disability or mental incompetence, it is effective notwithstanding the mental incompetence or physical disability.

    (b) If the authority of the attorney in fact relates solely to the person of the principal, the instrument is effective without being recorded.

    S.C. Code Ann. § 62-5-501(C).

4. A health care power of attorney must:

    (a) Be substantially in the example form found at S.C. Code Ann. § 62-5-504(D);

    (b) Be dated and signed by the principal or in the principal's name by another person in the principal's presence and by his direction;

(c) Be signed by at least two (2) persons, each of whom witnessed either the signing of the healthcare power of attorney or the principal's acknowledgment of his signature on the healthcare power of attorney; and

(d) State the name and address of the agent.

S.C. Code Ann. § 62-5-504(C).

5. An attorney-in-fact is entitled to reimbursement for expenses and compensation for services as provided in the power of attorney. S.C. Code Ann. § 62-5-501(G)(1).

Revocation

The death, disability, or incompetence of any principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. S.C. Code Ann. § 62-5-502.

Power of Attorney – Property

Creating a Durable Power of Attorney

1. Whenever a principal designates another his attorney in fact by a power of attorney in writing and the writing contains: the words "This power of attorney is not affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate," the words "This power of attorney becomes effective upon the physical disability or mental incompetence of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding his physical disability or mental incompetence or either physical disability or mental incompetence, the authority of the attorney in fact is exercisable by him as provided in the power on behalf of the principal notwithstanding later physical disability or mental incompetence of the principal or later uncertainty as to whether the principal is dead or alive. S.C. Code Ann. § 62-5-501.

2. A power of attorney executed under the provisions of this section must be executed and attested with the same formality and with the same requirements as to witnesses as a will. In addition, the instrument must be recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded. After the instrument has been recorded, whether recorded before or after the onset of the principal's physical disability or mental incompetence, it is effective notwithstanding the mental incompetence or physical disability. If the authority of the attorney in fact relates solely to the person of the principal, the instrument is effective without being recorded. S.C. Code Ann. § 62-5-501.

Effect During Period of Disability

All acts done by the attorney in fact pursuant to the power during a period of physical disability or mental incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, legatees, and personal representative as if the principal were alive, mentally competent, and not disabled physically. S.C. Code Ann. § 62-5-501.

Powers

The authority of the attorney in fact to act on behalf of the principal must be set forth in the power and may relate to any act, power, duty, right, or obligation which the principal has or may acquire relating to the principal or any matter, transaction, or property, including the power to consent or withhold consent on behalf of the principal to healthcare. S.C. Code Ann. § 62-5-501.

Termination and Revocation

The death, disability, or incompetence of any principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives. The above does not alter and provisions for revocation or termination in the power of attorney. S.C. Code Ann. § 62-5-502.

Living Wills

General Description

If a person, at least 18 years old ("Declarant"), adopts a valid declaration then life-sustaining procedures may be withheld or withdrawn upon the direction and under the supervision of the attending physician. S.C. Code Ann. § 44-77-30.

Legal Requirements

1. To be valid, declaration must:

    (a) (i) express substantially in form set forth in § 44-77-50 the Declarant's desire that no life-sustaining procedures be used to prolong dying if condition terminal or if the Declarant is permanently unconscious and (ii) state that the Declarant is aware that the declaration authorizes a physician to withhold or withdraw life-sustaining procedures; and

    (b) Be dated and signed by the Declarant in the presence of (i) an officer authorized to administer oaths under the laws of the state where the signing occurs ("Officer") and (ii) two (2) witnesses.

(i) One (1) witness may be the Officer.

(ii) If Declarant is a patient in a hospital or a resident in a nursing care facility at the time declaration executed, one (1) of the witnesses must be an ombudsman as designated by the State Ombudsman, Office of the Governor.

(iii) Witnesses must provide affidavit stating that, to the extent they have knowledge of their status, neither witness is (a) related to the Declarant by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the Declarant, or spouse of any of them, (b) directly financially responsible for person's medical care, (c) entitled to a portion of the Declarant's estate upon the Declarant's death under the Declarant's will then existing or as an heir by intestate succession, (d) a beneficiary of a life insurance policy of the Declarant, (e) the attending physician, (f) an employee of the attending physician, or (g) a person who has a claim against a portion of the Declarant's estate upon the Declarant's death at the time declaration executed.

(iv) No more than one (1) witness may be an employee of a health facility in which the Declarant is a patient. Witnesses must include statement to that effect in affidavit.

(v) Witness affidavit must be subscribed by both witnesses and sworn to by at least one (1) of the witnesses in the presence of the Declarant, and of each other, and of an officer authorized to administer oaths under the laws of the state where the signing occurs. A witness to a declaration who is also the officer may notarize the signature of the other witness.

S.C. Code Ann. § 44-77-40.

2. Statutory form must be substantially followed. (Form available at S.C. Code Ann. § 44-77-50.)

3. Declaration becomes operative when the Declarant's present condition certified to be terminal or to be in a state of permanent unconsciousness by two (2) physicians, one (1) of whom is the Declarant's attending physician. S.C. Code Ann. § 44-77-30.

Revocation

1. Declaration may be revoked by:

(a) Being defaced, torn, obliterated, or otherwise destroyed in expression of the Declarant's intent to revoke by the Declarant or by a person in the presence of and by the direction of the Declarant;

(i) Revocation by destruction of one or more of multiple original declarations revokes all of the original declarations.

(b) A written revocation signed and dated by the Declarant expressing intent to revoke;

(c) An oral expression by the Declarant of intent to revoke declaration;

(d) A written, signed, and dated revocation or oral revocation by the Declarant's designee, if the Declarant is incompetent to revoke, and designee's name and address supplied in the declaration; or

(e) The Declarant's execution of a subsequent declaration.

S.C. Code Ann. § 44-77-80.

2. Revocation effective when communicated to the attending physician. If oral revocation, must be communicated by the Declarant, or by a person present for oral revocation if communicated within a reasonable time and physical or mental condition of declarant makes it impossible for the physician to confirm revocation through subsequent conversation with the Declarant. If revocation by designee, must be communicated by designee. Attending physician should include time and date of notification, and for oral and designee revocation, time, date and place of revocation and notification in the Declarant's medical record. S.C. Code Ann. § 44-77-80.

Wills

General Description

A person who is married or 18 or more years of age and who is "of sound mind" may make a will of his or her estate. S.C. Code Ann. § 62-2-501.

Legal Requirements

1. Under South Carolina Code § 62-2-502, every will shall be in writing:

   (a) Signed by the testator or in the testator's name by another individual in the testator's conscious presence and by the testator's direction; and

   (b) Signed by at least two (2) individuals, each of whom witnessed either the signing or the testator's acknowledgement of the signature or of the will.

2. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. S.C. Code Ann. § 62-2-509.

3. A will can devise property to the trustee of a trust established or to be established, whether or not the trust is amendable or revocable. S.C. Code Ann. § 62-2-510.

4. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. (*i.e.*, execution or revocation of another person's will). S.C. Code Ann. § 62-2-511.

5. Separate writing identifying devise of personal property.

   (a) A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money, evidences of indebtedness, documents of title, securities, and property used in trade or business).

      (i) The statement: 1) must be in the handwriting of the testator or signed by the testator and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) it may be altered by the testator after its preparation; 5) and it may be a writing that does not have significance apart from its effect on the dispositions made by the will.

   S.C. Code Ann. § 62-2-512.

6. Self-proved will.

   (a) A will may be simultaneously executed, attested, and made self-proved, by acknowledgment by the testator and affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form. S.C. Code Ann.§ 62-2-503 (see statute for model language).

Revocation/Modification

1. A will or any part thereof is revoked:

   (a) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or

   (b) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his or her presence and by his or her direction.

   (c) By divorce, annulment, and an order terminating marital property rights revoke a will.

   S.C. Code Ann. § 62-2-506.

2. If a subsequent will that revoked a previous will is revoked, the original will shall not revive unless it appears by "clear, cogent, and convincing evidence" that the testator intended to revive the original will. S.C. Code Ann. § 62-2-508.

3. If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later, will, the previous will is not revived except to the extent it appears from the terms of the latest will that the testator intended the previous will to take effect. S.C. Code Ann. § 62-2-508.

SOUTH DAKOTA

Power of Attorney – Healthcare

General Description

1. The attorney-in-fact or agent may make any healthcare decisions for the principal which the principal could make individually if the principal had decisional capacity. S.D. Codified Laws § 59-7-2.5.

2. All acts done by an agent pursuant to a durable power of attorney have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if done by the principal. S.D. Codified Laws § 59-7-9.

3. Unless the instrument states a time of termination, the authority of the agent is exercisable notwithstanding the lapse of time since the execution of the instrument. S.D. Codified Laws § 59-7-9.

Legal Limitations

1. All decisions shall be made in accordance with accepted medical standards. S.D. Codified Laws § 59-7-2.5.

2. Whenever making any healthcare decision for the principal, the attorney-in-fact or agent shall consider the recommendation of the attending physician, the decision that the principal would have made if the principal then had decisional capacity, if known, and the decision that would be in the best interest of the principal. S.D. Codified Laws § 59-7-2.5.

3. The attorney-in-fact or agent may not make a healthcare decision in any situation in which the principal's attending physician has determined in good faith that the principal has decisional capacity. The attending physician shall proceed as if there were no designation if the attorney-in-fact or agent is unavailable or refuses to make a healthcare decision. S.D. Codified Laws § 59-7-2.6.

Legal Requirements

1. A power of attorney granted pursuant to this section may authorize the attorney-in-fact to consent to, to reject, or to withdraw consent for medical procedures, treatment or intervention. S.D. Codified Laws § 59-7-2.1.

2. An agent may request, receive, and review any information regarding the principal's physical or mental health, including legal, medical, and hospital records, execute any release or other documents that may be required in order to obtain such information, and disclose such information to such persons, organizations, firms, or corporations as the agent shall deem appropriate. S.D. Codified Laws § 59-7-2.1.

Power of Attorney – Property

General

Any person with capacity to contract may create an agency and confer authority on any other person to do any act which he might do excepting acts to which he is bound to give personal attention. S.D. Codified Laws § 59-2-1.

Creating a Durable Power of Attorney

If a principal designates another as his attorney in fact or agent by a written power of attorney which contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding any later disability or incapacity of the principal or later uncertainty as to whether or not the principal is dead or alive. S.D. Codified Laws § 59-7-2.1.

Such power of attorney may be recorded with a register of deeds specified in the power of attorney, and a certified copy thereof shall have the same force and effect as the signed original. It shall be effective for the purposes granted during the lifetime of the principal, unless revoked by a revocation recorded in the office of the register of deeds where the power of attorney was originally recorded. S.D. Codified Laws § 59-7-2.2.

Effect of Acts During Period of Disability

All acts done by an attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representatives, as if the principal were alive, competent and not disabled. S.D. Codified Laws § 59-7-2.3.

Powers

Every act which may legally be done by or to any person, may be done by or to the agent of such person for that purpose unless a contrary intention plainly appears. S.D. Codified Laws § 59-3-1. Every agent has actually such authority as prescribed by this title on "agency" unless specially deprived thereof by the principal, and even then has such authority ostensibly except as to persons who have actual or constructive notice of the restriction upon his authority. S.D. Codified Laws § 59-3-4, *et seq.*

An authority expressed in general terms, however broad, does not authorize an agent to do any act which a trustee is forbidden to do by the law on trusts. S.D. Codified Laws § 59-3-11.

Revocation and Termination

1. An agency is terminated as to every person having notice thereof in all cases by: (a) expiration of its term; (b) extinction of its subject; (c) death of the agent; (d) renunciation by the agent; or (e) incapacity of the agent to act as such [unless durable as described under creation of durable power of attorney, above]. S.D. Codified Laws § 59-7-1.

2. Unless the power of the agent is coupled with an interest in the subject of the agency, an agency is terminated as to every person having notice thereof by: (a) revocation by the principal; (b) death of the principal; or (c) his incapacity to contract. S.D. Codified Laws § 59-7-2.

3. The death, disability, or incompetence of a principal who has executed a power of attorney in writing other than a durable power of attorney, does not revoke or terminate the agency of an attorney in fact, an agent, or any other person, who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Such action, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees and personal representatives. S.D. Codified Laws § 59-7-3; *see also* S.D. Codified Laws § 59-7-1, *et seq.*

Living Wills

General Description

A competent adult ("Declarant") may at any time execute a declaration governing the withholding or withdrawal of life-sustaining treatment. S.D. Codified Laws § 34-12D-2.

Legal Requirements

1. To be valid, declaration must be: (a) signed by the Declarant or another at the Declarant's direction; and (b) witnessed by two (2) adults. S.D. Codified Laws § 34-12D-2.

2. Declaration may be notarized. S.D. Codified Laws § 34-12D-2.

3. Use of the statutory form is optional. (Form available at S.D. Codified Laws § 34-12D-3.)

4. Declaration becomes operative when: (a) the Declarant is determined by attending physician to be in a terminal condition; (b) death is imminent; and (c) the Declarant is no longer able to communicate decisions about medical care. S.D. Codified Laws § 34-12D-5.

Revocation

1. The Declarant may revoke declaration at any time and in any manner without regard to the Declarant's mental or physical condition. S.D. Codified Laws § 34-12D-8.

2. A revocation is effective upon communication to the Declarant's healthcare provider. The healthcare provider should make revocation a part of the Declarant's medical record. S.D. Codified Laws § 34-12D-8.

3. If a provision of declaration conflicts with durable power of attorney, instrument last executed prevails to extent of conflict. S.D. Codified Laws § 34-12D-4.

Wills

General Description

A person 18 or more years of age and who is "of sound mind" may make a will. S.D. Codified Laws § 29A-2-501.

Legal Requirements

1. A will is valid as a holographic will, whether or not witnesses, if the signature and material portion of the document are in the testator's handwriting. S.D. Codified Laws § 29A-2-502.

2. A will not valid as a holographic will must be in writing:

   (a) Signed by the testator or in the testator's name by another individual in the testator's conscious presence and by the testator's direction; and

   (b) Signed in the conscious presence of the testator by at least two (2) individuals, each of whom witnessed in the conscious presence of the testator either the signing or the testator's acknowledgement of that signature.

   S.D. Codified Laws § 29A-2-502.

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. S.D. Codified Laws § 29A-2-510.

4. A will can devise property to the trustee of a trust established or to be established, whether or not the trust is amendable or revocable. S.D. Codified Laws § 29A-2-511.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. (*i.e.*, execution or revocation of another person's will). S.D. Codified Laws § 29A-2-512.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). S.D. Codified Laws § 29A-2-513.

7. A will may be simultaneously executed, attested, and made self-proved, by acknowledgment by the testator and affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form. S.D. Codified Laws § 29A-2-504.

Revocation/Modification

1. A will or any part thereof is revoked:

   (a) by executing a subsequent will which revokes the prior will or part expressly or by inconsistency; or

   (b) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his or her presence and by his or her direction; or

   (c) by a subsequent will if the testator intended the subsequent will to replace rather than supplement the previous will.

   S.D. Codified Laws § 29A-2-507.

2. Revival of revoked will.

   (a) The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

   (b) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act, a revoked part of the previous will is revived unless it is evident that the testator did not intend the revoked part to take effect as executed.

   S.D. Codified Laws § 29A-2-509.

3. If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later, will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect. S.D. Codified Laws § 29A-2-509.

TENNESSEE

Power of Attorney – Healthcare

General Description

A durable power of attorney for healthcare is effective to authorize the attorney in fact to make healthcare decisions for the principal. Tenn. Code Ann. § 34-6-202(a).

Legal Limitations

1. Neither the treating healthcare provider nor an employee of the treating healthcare provider, nor an operator of a healthcare institution nor an employee of an operator of a healthcare institution may be designated as the attorney in fact to make healthcare decisions under a durable power of attorney for healthcare. Tenn. Code Ann. § 34-6-203(b)(1).

2. A healthcare provider or employee of a healthcare provider may not act as an attorney in fact to make healthcare decisions if the healthcare provider becomes the principal's treating healthcare provider. Tenn. Code Ann. § 34-6-203(b)(2).

Legal Requirements

1. Subject to any limitations in the durable power of attorney for healthcare, the attorney in fact designated in the durable power of attorney may make healthcare decisions for the principal, before or after the death of the principal, to the same extent as the principal could make healthcare decisions for the principal if the principal had the capacity to do so, including:

   (a) Making a disposition under the Uniform Anatomical Gift Act;

   (b) Authorizing an autopsy pursuant to the Post Mortem Examination Act; and

   (c) Directing the disposition of remains.

   Tenn. Code Ann. § 34-6-204(b).

2. An attorney in fact under a durable power of attorney for healthcare may not make healthcare decisions unless all of the following requirements are satisfied:

   (a) The durable power of attorney for healthcare specifically authorizes the attorney in the fact to make health care decisions;

   (b) The durable power of attorney for healthcare contains the date of its execution; and

(c) The durable power of attorney for healthcare must be in writing and signed by the principal.

(i) The durable power of attorney for healthcare is valid if the principal's signature is either attested by a notary public with no witnesses or witnessed by two witnesses without attestation by a notary public.

(ii) A witness is a competent adult, who is not the agent, and at least one of whom is not related to the principal by blood, marriage, or adoption and would not be entitled to any portion of the estate of the principal upon the death of the principal under any will or codicil.

(iii) The durable power of attorney for healthcare shall contain an attestation clause that attests to the witnesses' compliance with the requirements of this subdivision.

Tenn. Code Ann. § 34-6-203(a).

Revocation

1. The principal may, after executing a durable power of attorney for healthcare, do any of the following:

(a) Revoke the appointment of the attorney in fact under the durable power of attorney for healthcare by notifying the attorney in fact orally or in writing; or

(b) Revoke the authority granted to the attorney in fact to make healthcare decisions by notifying the healthcare provider orally or in writing.

Tenn. Code Ann. § 34-6-207(a).

2. If the principal notifies the healthcare provider orally or in writing that the authority granted to the attorney in fact to make healthcare decisions is revoked, the healthcare provider shall make the notification a part of the principal's medical records and shall make a reasonable effort to notify the attorney in fact of the revocation. Tenn. Code Ann. § 34-6-207(b).

3. Unless it provides otherwise, a valid durable power of attorney for healthcare revokes any prior durable power of attorney for healthcare. Tenn. Code Ann. § 34-6-207(d).

Power of Attorney – Property

Creation of Durable Power of Attorney

A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of

attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable, notwithstanding the principal's subsequent disability or incapacity. Tenn. Code Ann. § 34-6-102.

Effect of Acts During Period of Disability

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successor in interest as if the principal were competent and not disabled. Tenn. Code Ann. § 34-6-103.

Revocation and Termination

The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Tenn. Code Ann. § 34-6-105.

Powers

1. The following powers must be explicitly incorporated to grant to the attorney in fact.

    (a) Make gifts, grants, or other transfers without consideration, except in fulfillment of charitable pledges made by the principal while competent;

    (b) Exercise any powers of revocation, amendment, or appointment that the principal may have over the income or principal of any trust;

    (c) Act on behalf of the principal in connection with any fiduciary position held by the principal, except to renounce or resign the position;

    (d) Exercise any incidents of ownership on any life insurance policies owned by the principal on the life of the attorney in fact;

    (e) Change beneficiary designations on any death benefits payable on account of the death of the principal from any life insurance policy, employee benefit plan, or individual retirement account;

    (f) Change, add or delete any right of survivorship designation on any property, real or personal, to which the principal holds title, alone or with others;

    (g) Renounce or disclaim any property or interest in property or powers to which the principal may become entitled, whether by gift or testate or intestate succession;

(h) Exercise any right, or refuse, release or abandon any right, to claim an elective share in any estate or under any will; or

(i) Make any decisions regarding medical treatments or healthcare, except as incidental to decisions regarding property and finances.

Tenn. Code Ann. § 34-6-108.

Gifts

1. If any power of attorney or other writing: (1) Authorizes an attorney-in-fact or other agent to do, execute or perform any act that the principal might or could do; or (2) Evidences the principal's intent to give the attorney-in-fact or agent full power to handle the principal's affairs or to deal with the principal's property; then the attorney-in-fact or agent shall have the power and authority to make gifts, in any amount, of any of the principal's property, to any individuals, or to organizations described in §§ 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of the federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. This section shall not in any way limit the right or power of any principal, by express words in the power of attorney or other writing, to authorize, or limit the authority of, any attorney-in-fact or other agent to make gifts of the principal's property. Tenn. Code Ann. § 34-6-110.

2. If subsection (a) does not apply, an attorney-in-fact or other agent acting under a durable general power of attorney or other writing may petition a court of the principal's domicile for authority to make gifts of the principal's property to the extent not inconsistent with the express terms of the power of attorney or other writing. The court shall determine the amounts, recipients and proportions of any gifts of the principal's property after considering all relevant factors including, without limitation: (1) the value and nature of the assets of the principal's estate; (2) the principal's foreseeable obligations and maintenance needs; (3) the principal's existing estate plan; and (4) the gift and estate tax effects of the gifts. Tenn. Code Ann. § 34-6-110.

3. This section is declaratory of existing law in the state of Tennessee; provided, that this section shall not be construed as authorizing the refund of any taxes imposed by title 67, chapter 8 of the Tennessee Code. Tenn. Code Ann. § 34-6-110.

Bond

The next of kin of any principal who has executed a durable power of attorney under this part may, upon the disability or incapacity of the principal, petition a court of competent jurisdiction to require a bond of the attorney in fact. If, after consideration of the interests of all parties involved, the court deems a bond necessary, it shall have the authority to order the attorney in fact to execute a bond in an amount deemed appropriate by the court. Tenn. Code Ann. § 34-6-106.

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Living Wills

General Description

Any competent adult person ("Principal") may execute a declaration directing the withholding or withdrawal of medical care to the person, to become effective on loss of competency. Tenn. Code Ann. § 32-11-104(a).

Legal Requirements

1. To be valid, a declaration must be:

   (a) In writing and signed by the Principal; and

   (b) Either (1) attested by a notary public or two (2) witnessed by two competent adults.

      (i) Must attest or witness the Principal's signature.

      (ii) Witness may not be the agent.

      (iii) At least one (1) witness must neither be (a) related to the Principal by blood, marriage, or adoption nor (b) entitled to any portion of the Principal's estate under any will or codicil made by the Principal existing at the time of execution of the declaration or by operation of law then existing.

      (iv) The witnesses must attest that they comply with requirements.

   Tenn. Code Ann. § 32-11-104(a).

2. Statutory form must be substantially followed. (Form available at Tenn. Code Ann. § 32-11-105.)

3. Declarant, or someone acting on the Declarant's behalf, is responsible for delivering a copy of the declaration to attending physician and/or other concerned healthcare provider. Such healthcare provider should include the declaration in the Declarant's medical record. Tenn. Code Ann. § 32-11-104(b).

Revocation

1. Declaration may be revoked at any time by the Declarant, without regard to the Declarant's mental state or competency, by:

   (a) Written revocation by the Declarant, dated and signed by the Declarant, and effectively communicated to attending physician or other concerned healthcare provider; or

(b) Oral statement or revocation made by the Declarant to attending physician. Attending physician should make revocation part of the Declarant's medical record.

Tenn. Code Ann. § 32-11-106.

2. If more than one declaration, latest known to attending physician takes precedence. Tenn. Code Ann. § 32-11-107.

Wills

General Description

Any person of sound mind 18 years of age or older may make a will. Tenn. Code Ann. § 32-1-102.

Legal Requirements

1. Under Tennessee Code § 32-1-104, the execution of a written will must be by the signature of the testator and of at least two (2) witnesses as follows:

   (a) The testator shall signify to the attesting witnesses that the instrument is the testator's will and either sign, acknowledge the signature already made, or at the testator's direction and in the testator's presence, have someone else sign the testator's name.

   (b) The attesting witnesses must sign in the presence of the testator and in the presence of each other.

      (i) No will is invalidated because attested by an interested witness, but any interested witness shall, unless the will is also attested by two (2) disinterested witnesses, forfeit so much of the provisions made for the interested witness as in the aggregate exceeds in value, as of the date of the testator's death, what the interested witness would have received had the testator died intestate. Tenn. Code Ann. § 32-1-103.

      (ii) No witness is interested unless the will gives him/her some personal and beneficial interest. Tenn. Code Ann. § 32-1-103.

      (iii) A will may be deposited, for safekeeping, with the court exercising probate jurisdiction in the county where the testator lives. Tenn. Code Ann. § 32-1-112.

2. A devise or bequest may be made to the trustee or trustees of a trust established or to be established if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will). Tenn. Code Ann. § 32-3-106.

3. Unless a contrary intent is evidenced by the terms of the will, powers of appointment are broad. Tenn. Code Ann. § 32-3-110.

Revocation/Modification

1. A will or any part thereof is revoked by:

   (a) A subsequent will, other than a nuncupative will, that revokes the prior will or part expressly or by inconsistency;

   (b) A document of revocation, executed with all the formalities of an attested will or a holographic will, that revokes the prior will or part expressly;

   (c) Being burned, torn, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking it, by the testator or by another person in the testator's presence and by the testator's direction; or

   (d) Both the subsequent marriage and the birth of a child of the testator, but divorce or annulment of the subsequent marriage does not revive a prior will.

   Tenn. Code Ann. § 32-1-201.

2. If after executing a will the testator is divorced or the testator's marriage annulled, the divorce or annulment revokes anything in the will in favor of the former spouse, unless the will expressly provides otherwise. Tenn. Code Ann. § 32-2-102.

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TEXAS

Power of Attorney – Healthcare

Legal Limitations

1. Each witness must be a competent adult; and at least one of the witnesses must be a person who is not:

   (a) A person designated by the declarant to make a treatment decision;

   (b) A person related to the declarant by blood or marriage;

   (c) A person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;

   (d) The attending physician;

   (e) An employee of the attending physician;

   (f) An employee of a healthcare facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the healthcare facility; or

   (g) A person who, at the time the written advance directive is executed or, if the directive is a nonwritten directive, at the time the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death.

   Tex. Health & Safety Code Ann. § 166.003.

2. A person may not exercise the authority of an agent while the person serves as: (a) the principal's healthcare provider; (b) an employee of the principal's healthcare provider unless the person is a relative of the principal; (c) the principal's residential care provider; or (d) an employee of the principal's residential care provider unless the person is a relative of the principal. Tex. Health & Safety Code Ann. § 166.153.

3. An agent may not consent to: (a) voluntary inpatient mental health services; (b) convulsive treatment; (c) psychosurgery; (d) abortion; or (e) neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal. Tex. Health & Safety Code Ann. § 166.152(f).

4. Notwithstanding any other provisions of this subchapter, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection: (a) a medical power of attorney is in effect; or (b) the principal is competent. Tex. Health & Safety Code Ann. § 166.152(c).

Legal Requirements

1. Subject to any express limitation on the authority of the agent contained in the medical power of attorney, the agent may make any healthcare decision on the principal's behalf that the principal could make if the principal were competent. Tex. Health & Safety Code Ann. § 166.152(a).

2. An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent. Tex. Health & Safety Code Ann. § 166.152(b).

3. The medical power of attorney must be signed by the principal in the presence of two (2) witnesses. The witnesses must sign the document. Tex. Health & Safety Code Ann. § 166.154(a).

    (a) The principal, in lieu of signing in the presence of the witnesses, may sign the medical power of attorney and have the signature acknowledged before a notary public. Tex. Health & Safety Code Ann. § 166.154(b).

    (b) If the principal is physically unable to sign, another person may sign the medical power of attorney with the principal's name in the principal's presence and at the principal's express direction. Tex. Health & Safety Code Ann. § 166.154(c).

Revocation

1. A medical power of attorney is revoked by:

    (a) Oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state;

    (b) Execution by the principal of a subsequent medical power of attorney.

    Tex. Health & Safety Code Ann. § 166.155(a).

Power of Attorney – Property

Creating a Durable Power of Attorney

A "durable power of attorney" means a written instrument that:(1) designates another person as attorney in fact or agent; (2) is signed by an adult principal; (3) contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal," or "This power of attorney becomes effective on the disability or incapacity of the principal," or similar words showing the principal's intent that the authority conferred on the attorney in fact or agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; and (4) is

acknowledged by the principal before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this state or any other state. Tex. Prob. Code Ann. § 482.

Statutory Form Power of Attorney

A person may use a statutory durable power of attorney to grant an attorney in fact or agent powers with respect to a person's property and financial matters. Tex. Prob. Code Ann. § 490.

Effect During Period of Disability

All acts done by an attorney in fact or agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were not disabled or incapacitated. Tex. Prob. Code Ann. § 484.

Divorce and Annulment from Attorney in Fact

If, after execution of a durable power of attorney, the principal is divorced from a person who has been appointed the principal's attorney in fact or agent or the principal's marriage to a person who has been appointed the principal's attorney in fact or agent is annulled, the powers of the attorney in fact or agent granted to the principal's former spouse shall terminate on the date on which the divorce or annulment of marriage is granted by a court, unless otherwise expressly provided by the durable power of attorney. Tex. Prob. Code Ann. § 485A.

The divorce of a principal from a person who has been appointed the principal's attorney in fact or agent before the date on which the divorce is granted or the annulment of the marriage of a principal and a person who has been appointed the principal's attorney in fact or agent before the date the annulment is granted does not revoke or terminate the agency as to a person other than the principal's former spouse if the person acts in good faith under or in reliance on the power. Tex. Prob. Code Ann. § 486.

Revocation and Termination

The revocation by, the death of, or the qualification of a guardian of the estate of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the termination of the power by revocation, by the principal's death, or by the qualification of a guardian of the estate of the principal, acts in good faith under or in reliance on the power. Tex. Prob. Code Ann. § 486. Unless otherwise provided by the durable power of attorney, a revocation of a durable power of attorney is not effective as to a third party relying on the power of attorney until the third party receives actual notice of the revocation. Tex. Prob. Code Ann. § 488.

Powers

The principal, by executing a statutory durable power of attorney that confers authority with respect to any class of transactions, empowers the attorney in fact or agent for that class of

transactions to do a variety of tasks listed in Tex. Prob. Code § 491 and in general, do any other lawful act that the principal may do with respect to a transaction. Specific subsections outline powers relating to various specific subject matters. Tex. Prob. Code Ann. § 492, *et seq.*

Recordation

A durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, or other claim or right to real property, shall be recorded in the office of the county clerk of the county in which the property is located. Tex. Prob. Code Ann. § 489.

Living Wills

General Description

A competent adult ("Declarant") may execute a directive to administer, withhold or withdraw life-sustaining treatment in the event of a terminal or irreversible condition. Tex. Health & Safety Code §§ 166.031, 166.032 & 166.034.

Legal Requirements

1. To be valid, a directive must be:

   (a) Written (except as provide below);

   (b) Signed by the Declarant; and

   (c) Either (i) witnessed by two (2)competent adults or (ii) acknowledged by notary public.

      (i) Both witnesses must be present when the Declarant signs and sign directive.

      (ii) At least one (1) of witness must not be (a) designated by the Declarant to make treatment decisions, (b) related to the Declarant by blood or marriage, (c) entitled to any part of the Declarant's estate under the Declarant's will or codicil or by operation of law, (d) the attending physician, (e) an employee of the attending physician, (f) an employee of a healthcare facility in which the Declarant is a patient if employee (i) is providing direct patient care to the Declarant or (ii) is an officer, director, partner, or business office employee of healthcare facility or such facility's parent organization, or (g) a person who, when directive executed or issued, has a claim against any part of the Declarant's estate after the Declarant's death.

Tex. Health & Safety Code §§166.003, 166.032(a), (b) & (b-1).

2. A directive can be nonwritten if issued by a patient with a terminal or irreversible condition, diagnosed and certified in writing by attending physician.

   (a) Declarant must issue nonwritten directive in the presence of attending physician and two (2) witnesses (same limitations regarding witnesses apply as above).

   (b) Attending physician must note the existence of nonwritten directive in the Declarant's medical record and include the names of the witnesses.

   Tex. Health & Safety Code § 166.034.

3. Use of the statutory form is optional and declaration may include additional directions. (Form available at Tex. Health & Safety Code § 166.033.)

4. Declarant is responsible for notifying attending physician of written directive. If the Declarant is incapable, another person may provide notification. Attending physician must make the directive part of the Declarant's medical record. Tex. Health & Safety Code § 166.032(d).

Revocation

1. Directive may be revoked at any time by:

   (a) Declarant, or someone in the presence of and at the direction of the Declarant, canceling, defacing, obliterating, burning, tearing, or otherwise destroying directive;

   (b) Declarant signing and dating a written revocation expressing intent to revoke; or

   (c) Declarant orally stating intent to revoke directive.

   Tex. Health & Safety Code § 166.042(a).

2. Written and oral revocation becomes effective once the Declarant or a person acting on the Declarant's behalf notifies attending physician.

   (a) For written revocation, attending physician must (1) record in the Declarant's medical record the time and date when physician received notice and (2) write "VOID" on each page of directive in the Declarant's medical record.

   (b) For oral revocation, attending physician must (1) record in the Declarant's medical record the time, date and place of revocation, and, if different, the time, date and place that physician received notice and (2) write "VOID" an each page of directive in the Declarant's medical record.

   Tex. Health & Safety Code §§ 166.042(b) & 166.042(c).

3. To the extent that a treatment decision or an advance directive validly executed or issued conflicts with another treatment decision or a prior advance directive, the treatment decision made or the advance directive executed later in time controls. Tex. Health & Safety Code § 166.008.

Wills

General Description

Every person who has attained the age of 18 years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof or of the maritime service at the time the will is made, being of sound mind, shall have the right and power to make a last will and testament, under the rules and limitations prescribed by law. Tex. Prob. Code Ann. § 57.

Legal Requirements

1. Under Texas Probate Code § 59, a written will shall be:

   (a) Signed by the testator in person or by another person for him by his direction and in his presence; and

   (b) Be attested by two (2) or more credible witnesses above the age of 14 years who shall subscribe their names thereto in their own handwriting in the presence of the testator.

      (i) If a witness is also a legatee or devisee under the will, the bequest is void unless the will is corroborated by one or more disinterested and credible persons. But, if the witness would have been entitled to a share of the estate of the testator had there been no will, he/she shall be entitled to as much of such share as shall not exceed the value of the bequest to him in the will. Tex. Prob. Code Ann. §§ 61 & 62.

2. A will may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths under the laws of this State. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will. Tex. Prob. Code Ann. § 59 (see statute for sample language).

3. A will may validly transfer property to the trustee of a trust established or to be established:

   (a) During the testator's lifetime; or

(b) At the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will.

Tex. Prob. Code Ann. § 58a.

4. A devise or bequest of property in a will is void if the devise or bequest is made to an attorney (or his relatives, spouse, or employees) who prepares or supervises the preparation of the will. This section does not apply if the attorney is also the testator's spouse, or an ascendant or descendent of the testator, or a bona fide purchaser for value from a devisee in a will. Tex. Prob. Code Ann. § 58b.

5. A testator may not exercise a power of appointment through a residuary clause in the testator's will or through a will providing for general disposition of all the testator's property unless:

(a) The testator makes a specific reference to the power in the will; or

(b) There is some other indication in writing that the testator intended to include the property subject to the power in the will.

Tex. Prob. Code Ann. § 58c.

6. A will may be deposited by the person making it, or by another person for him, with the county clerk of the county of the testator's residence for safekeeping. Tex. Prob. Code Ann. § 71.

Revocation/Modification

1. A will can be revoked by: (a) a subsequent will, codicil, or declaration in writing, executed with the formalities of a will, or (b) the testator destroying or canceling the same, or causing it to be done in his presence. Tex. Prob. Code Ann. § 63.

2. If, after making a will, the testator's marriage is dissolved, whether by divorce, annulment, or a declaration that the marriage is void, all provisions in the will, including all fiduciary appointments, shall be read as if the former spouse and each relative of the former spouse who is not a relative of the testator failed to survive the testator, unless the will expressly provides otherwise. Tex. Prob. Code Ann. § 69.

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UTAH

Power of Attorney – Healthcare

General Description

1. An adult may make an advance healthcare directive in which the adult may: (a) appoint a healthcare agent or choose not to appoint a healthcare agent; (b) expand or limit the powers of a healthcare agent; and (c) designate the agent's access to the adult's medical records. Utah Code Ann. § 75-2a-107(1)(a).

Legal Limitations

1. The witness may not be:

   (a) The person who signed the directive on behalf of the declarant;

   (b) Related to the declarant by blood or marriage;

   (c) Entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;

   (d) The beneficiary of something held, owned, made, or established by, or on behalf of, the declarant;

   (e) Entitled to benefit financially upon the death of the declarant;

   (f) Entitled to a right to, or interest in, real or personal property upon the death of the declarant;

   (g) Directly financially responsible for the declarant's medical care;

   (h) The healthcare provider; or

   (i) The appointed agent.

   Utah Code Ann. § 75-2a-107(1)(c).

2. An agent appointed under the provisions of this section may not be a healthcare provider for the declarant, or an owner, operator, or employee of the healthcare facility at which the declarant is receiving care unless the agent is related to the declarant by blood, marriage, or adoption. Utah Code Ann. § 75-2a-107(2).

Legal Requirements

1. Unless otherwise directed in an advance healthcare directive, an advance healthcare directive or the authority of a surrogate to make healthcare decisions on behalf of an adult is effective only after a physician makes a determination of incapacity and is in effect

during any period of time in which the declarant lacks capacity to make healthcare decisions. Utah Code Ann. § 75-2a-109.

2. An advance healthcare directive may be oral or written. Utah Code Ann. § 75-2a-107(1)(b).

3. An advance healthcare directive shall be witnessed by a disinterested adult. Utah Code Ann. § 75-2a-107(1)(c).

4. The witness to an oral advance healthcare directive shall state the circumstances under which the directive was made. Utah Code Ann. § 75-2a-107(1)(d).

Revocation

1. An advance directive may be revoked at any time by the declarant by:

   (a) Writing "void" across the document;

   (b) Obliterating, burning, tearing, or otherwise destroying or defacing the document in any manner indicating an intent to revoke;

   (c) Instructing another to do one of the acts described in subsection (1)(a) or (b);

   (d) A written revocation of the directive;

   (e) An oral expression of an intent to revoke the directive in the presence of a witness who is age 18 years or older.

   Utah Code Ann. § 5-2a-114(1) (please refer to this section for additional requirements).

2. An advance healthcare directive that conflicts with an earlier advance healthcare directive revokes the earlier directive to the extent of the conflict. Utah Code Ann. § 75-2a-114(3).

Power of Attorney – Property

General

Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding: (a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or (b) the lapse of time since the execution of the instrument, unless the instrument states a time of termination. Utah Code Ann. § 75-5-501.

Notification Procedures During Disability

1. If an attorney-in-fact or agent determines that the principal has become incapacitated or disabled and the power of attorney by its terms remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent shall:

   (a) notify all interested persons of his status as the power of attorney holder within 30 days of the principal's incapacitation, and provide them with his name and address;

   (b) provide to any interested persons upon written request, a copy of the power of attorney;

   (c) provide to any interested persons upon written request, an annual accounting of the assets to which the power of attorney applies, unless the power of attorney specifically directs that the attorney-in-fact or agent is not required to do so; and

   (d) notify all interested persons upon the death of the principal. All interested persons shall be notified within 10 days if the attorney-in-fact or agent changes. The notification shall be made by the new attorney-in-fact or agent who shall then be accountable to the interested persons. "Interested person" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable. Utah Code Ann. § 75-5-501.

Powers and Effect During Period of Disability

All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled, except that a power of attorney may not be construed to grant authority to an attorney-in-fact or agent to perform any of the following, unless expressly authorized in the power of attorney: (1) create, modify, or revoke an inter vivos revocable trust created by the principal; (2) fund, with the principal's property, a trust not created by the principal or by a person authorized to create a trust on behalf of the principal; (3) make or revoke a gift of the principal's property, in trust or otherwise; or (4) designate or change the designation of beneficiaries to receive any property, benefit, or contract right on the principal's death. Utah Code Ann. §§ 75-5-501 & -503. Certain transactions evidencing conflicts of interest are voidable. Utah Code Ann. § 75-5-504.

Other Powers of Attorney Not Revoked Until Notice of Death or Disability

The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a durable power of attorney, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. This power is exercisable notwithstanding the lapse of time since the execution of the instrument, unless the instrument states a time of termination. Utah Code Ann. § 75-5-502.

Living Wills

General Description

An adult, at least 18 years old or an emancipated minor ("Declarant"), may execute a written document or make a witnessed oral statement (the "advance healthcare directive") (i) designating an agent to make healthcare decisions on the Declarant's behalf when the Declarant is unable to make or communicate such decisions or (ii) expressing the Declarant's preferences regarding healthcare decisions. Utah Code Ann. § 75-2a-103; for agency rules, *see* Utah Health Care Power of Attorney.

Legal Requirements

1. An advance health care directive ("AHCD") may be oral or written. Utah Code Ann. § 75-2a-107(1)(b).

2. To be valid, an AHCD must be:

   (a) Signed by, or on behalf of, the Declarant; and

   (b) Witnessed by a disinterested adult.

      (i) Witness may not be (a) the person who signed directive on behalf of the Declarant, (b) related to the Declarant by blood or marriage, (c) entitled to any portion of the Declarant's estate according to Utah's laws of intestate succession or under any will or codicil of the Declarant, (d) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the Declarant, (i) a life insurance policy, (ii) a trust, (iii) a qualified plan, (iv) a pay on death account, or (v) a transfer on death deed, (e) entitled to benefit financially upon the Declarant's death, (f) entitled to a right to, or interest in, real or personal property upon the Declarant's death, (g) directly financially responsible for the Declarant's medical care, (h) a healthcare provider who is providing care to the Declarant or an administrator at a healthcare facility in which the Declarant is receiving care, or (i) the appointed agent.

   Utah Code Ann. § 75-2a-107(1)(c).

3. Use of the statutory form is optional. (Form available at Utah Code Ann. § 75-2a-117.)

Revocation

1. Declarant may revoke an AHCD at any time by:

   (a) Writing "void" across document (or instructing someone to do so);

(b) Obliterating, burning, tearing or otherwise destroying or defacing document in a manner that indicates intent to revoke (or instructing someone to do so);

(c) Written revocation of AHCD, signed and dated by the Declarant or an adult signing on behalf of and at the direction of the Declarant; or

(d) Oral expression of an intent to revoke made in the presence of a witness (as limited above) who is at least 18 years old.

Utah Code Ann. § 75-2a-114(1).

2. If an advance healthcare directive conflicts with an earlier directive, it revokes the earlier directive to the extent of such conflict. Utah Code Ann. § 75-2a-114(3).

Wills

General Description

An individual 18 or more years of age who is of sound mind may make a will. Utah Code Ann. § 75-2-501.

Legal Requirements

1. Under Utah Code § 75-2-502, a written will must be:

(a) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(b) Signed by at least two (2) individuals, each of whom signed within a reasonable time after he witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.

(i) The signing of a will by an interested witness does not invalidate the will or any provision of it. Utah Code Ann. § 75-2-505.

2. A will may be self-proved t the same time as it is executed and attested, or at any time after its execution:

(a) By acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal. See statute for model language.

(b) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

Utah Code Ann. § 75-2-504.

3. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. Utah Code Ann. § 75-2-510.

4. A will may validly transfer property to the trustee of a trust established or to be established:

   (a) During the testator's lifetime; or

   (b) At the testator's death by the testator's transfer to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will.

   Utah Code Ann. § 75-2-511.

5. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event. Utah Code Ann. § 75-2-512.

6. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money). Utah Code Ann. § 15-11-513.

   (a) The statement: 1) must be signed by the testator and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) may be altered by the testator after its preparation; and 5) may be a writing that does not have significance apart from its effect on the dispositions made by the will.

7. A will may be deposited by the testator or the testator's agent with any court for safekeeping. Utah Code Ann. § 75-2-901.

Revocations/Modification

1. A will can be revoked by:

   (a) Executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

      (i) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.

   (b) By performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual

performed the act in the testator's conscious presence and by the testator's direction.

(i) Revocatory acts include burning, tearing, canceling, obliterating or destroying the will or any part of it.

Utah Code Ann. § 75-2-507.

2. Unless otherwise provided, a divorce or annulment revokes any revocable provision in favor of the former spouse in a will executed before the entry of the decree of divorce or annulment. Utah Code Ann. § 75-2-804.

VERMONT

Power of Attorney – Healthcare

General Description

An adult may appoint one or more agents and alternate agents to whom authority to make healthcare decisions is delegated and specify the scope of such authority. Vt. Stat. Ann. tit. 18, § 9702(a).

Legal Limitations

1. The principal's healthcare provider may not be the principal's agent. Unless related to the principal by blood, marriage, civil union, or adoption, an agent may not be an owner, operator, employee, agent, or contractor of a residential care facility, a healthcare facility, or a correctional facility in which the principal resides at the time of execution of an advance directive. Vt. Stat. Ann. tit. 18, § 9702(c).

2. Neither the agent appointed by the principal nor the principal's spouse, reciprocal beneficiary, parent, adult sibling, adult child, or adult grandchild may witness the advance directive. Vt. Stat. Ann. tit. 18, § 9703(c).

Legal Requirements

1. An adult with capacity may execute an advance directive at any time. Vt. Stat. Ann. tit. 18, § 9703(a).

2. The advance directive shall be dated, executed by the principal or by another individual in the principal's presence at the principal's express direction if the principal is physically unable to do so, and signed in the presence of two (2) or more witnesses at least 18 years of age, who shall sign and affirm that the principal appeared to understand the nature of the document and to be free from duress or undue influence at the time the advance directive was signed. Vt. Stat. Ann. tit. 18, § 9703(b).

Revocation

1. A principal with capacity may amend, suspend, or revoke an advance directive or any specific instruction in an advance directive by executing a new advance directive. Vt. Stat. Ann. tit. 18, § 9704(a)(1).

2. A provision in a subsequently executed advance directive amends an earlier provision in an advance directive to the extent of any conflict between them. Vt. Stat. Ann. tit. 18, § 9704(a)(2).

3. A principal with or without capacity may suspend or revoke all or part of an advance directive, including the designation of an agent:

(a) By signing a statement suspending or revoking all or part of an advance directive;

(b) By personally informing the principal's clinician, who shall make a written record of the suspension or revocation in the principal's medical record; or

(c) By burning, tearing, or obliterating the advance directive, either by the principal personally or by another person at the principal's express direction and in the presence of the principal.

Vt. Stat. Ann. tit. 18, § 9704(b)(1).

Power of Attorney – Property

Creating a Power of Attorney

1. Generally, a power of attorney shall, in order to be valid:

(a) be in writing;

(b) name one or more persons as agent;

(c) give the agent power to act on behalf of the principal; and

(d) be executed as provided in section 3503 of this title. Vt. Stat. Ann. tit. 14, § 3502.

(i) Generally, (a) a power of attorney shall be signed by the principal in the presence of at least one (1) witness and shall be acknowledged before a notary public, who shall be a person other than the witness; (b) if the principal is physically unable to sign, the power of attorney may be signed in the principal's name written by some other person in the principal's presence and at the principal's express direction, provided the person signing for the principal is not named as agent and the power of attorney states another person has signed for the principal and identifies the name of that person; (c) a person named as agent under the document may not serve as a witness or notary public with respect to the document; (d) the witness shall affirm that the principal appeared to be of sound mind and free from duress at the time the power of attorney was signed, and that the principal affirmed that he or she was aware of the nature of the document and signed it freely and voluntarily; (e)(1) no agent, including alternate or successor agents, may exercise authority granted in a power of attorney unless the agent has signed the power of attorney, attesting that the agent: (A) accepts appointment as agent; (B) understands the duties under the power of attorney and under the law; (C) understands that he or she has a duty to act if expressly required to do so in the power of attorney consistent with subsection 3506(c) of this title; and (D) understands that the agent is expected to use his or her special skills or expertise on behalf of the principal, if the expectation that the agent does so is expressly

provided for in the power of attorney consistent with subdivision 3505(a)(6) of this title, (2) An agent may sign at any time after a power of attorney has been executed and before it has been exercised for the first time. Vt. Stat. Ann. tit. 14, § 3503.

2. A durable power of attorney is created by an explicit term in the power of attorney that "This power of attorney shall not be affected by the subsequent disability or incapacity of the principal," or similar words showing the intent of the principal that the authority given the agent is intended to be exercisable notwithstanding the principal's subsequent disability or incapacity. Vt. Stat. Ann. tit. 14, § 3508.

3. If the principal intends that the power of attorney become effective upon the principal's subsequent disability or incapacity, the power of attorney shall state that fact, and specify the manner in which the disability or incapacity is to be determined. Vt. Stat. Ann. tit. 14, § 3508.

4. All acts done by an agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal shall have the same effect as if the principal were not disabled or incapacitated. Vt. Stat. Ann. tit. 14, § 3508.

Powers

1. The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney, subject to the fact there is no duty to exercise authority unless specifically provided and the following. Vt. Stat. Ann. tit. 14, § 3504.

2. No power of attorney created under this subchapter may give an agent the authority to: (1) make health care decisions, as that term is defined in chapter 121 Vermont's statutes; (2) execute, modify or revoke a durable power of attorney for health care for the principal; (3) execute, amend or revoke a will for the principal; (4) execute, modify or revoke a living will for the principal; (5) require the principal, against his or her will, to take any action or to refrain from taking any action; (6) exercise, by delegation, the fiduciary responsibility of the principal as executor of a will or administrator of an estate; (7) exercise, by delegation, the fiduciary responsibility of a trustee, unless the instrument creating or amending the trust specifically authorizes the delegation; or (8) take any action specifically forbidden by the principal, notwithstanding any provision of the power of attorney giving the agent the authority to take such action. Vt. Stat. Ann. tit. 14, § 3504.

3. No agent may convey lands belonging to the principal or an estate or interest therein unless the terms of the power of attorney explicitly provide the agent has such authority and the power of attorney meets the specific execution requirements of section 3503 of this title. Vt. Stat. Ann. tit. 14, § 3504.

4. No agent may compensate him or herself for duties performed under a power of attorney with funds or property belonging to the principal unless the terms of the power of attorney explicitly provide for compensation. Reasonable reimbursement for actual out-

of-pocket expenditures by the agent for the benefit of the principal shall not be considered compensation. Vt. Stat. Ann. tit. 14, § 3504.

5. No agent may make a gift or a loan to a third party unless the terms of the power of attorney explicitly provide for the authority to make gifts or loans. Vt. Stat. Ann. tit. 14, § 3504.

6. No agent may make a gift or a loan to him or herself of property belonging to the principal unless the terms of the power of attorney explicitly provide for the authority to make gifts or loans to the agent. Vt. Stat. Ann. tit. 14, § 3504.

7. No agent may appoint another person as alternate or successor agent unless the terms of the power of attorney explicitly provide for the authority to appoint an alternate or successor agent. Vt. Stat. Ann. tit. 14, § 3504.

8. A power of attorney may specify that accountings shall be made by the agent at specific times or upon the occurrence of specified events or that accountings be made to specified third parties. The authority of the principal to request accountings at any time shall not be limited or waived. Vt. Stat. Ann. tit. 14, § 3504.

Revocation and Termination

1. Subject to the provisions of subsection (c) below, a power of attorney shall terminate upon: (1) the revocation by the principal, as provided in subsection (b) below; (2) the divorce of the principal and spouse, where the spouse is the agent; (3) the death of the principal; (4) the disability or incapacity of the principal, except for durable powers of attorney; (5) the resignation or death of the agent, unless an alternate agent is named in the power of attorney or by the agent; (6) a termination date specified in the power of attorney, if any; (7) the occurrence of a termination event explicitly specified in the power of attorney; or (8) the order of a court of competent jurisdiction. Vt. Stat. Ann. tit. 14, § 3507(a).

2. Generally, a principal may revoke a power of attorney, whether durable or not, at any time by notification to the agent orally, or in writing, or by any other act evidencing a specific intent to revoke. An agent must comply with his or her principal's revocation notwithstanding the actual or perceived disability or incapacity of the principal. Vt. Stat. Ann. tit. 14, § 3507(b).

3. The occurrence of a terminating circumstance listed in subsection (a) of this section does not terminate a power of attorney, whether durable or not, as to the agent or other person, who, without actual knowledge of the terminating circumstance, acts in good faith under the power of attorney. Vt. Stat. Ann. tit. 14, § 3507(c).

Living Wills

General Description

An adult with capacity ("Principal") may execute a written advance directive, which may include, among other things, appointment of an agent, identification of a preferred primary care clinician, instructions on healthcare desires or treatment goals, an anatomical gift, disposition of remains, and funeral goods and services. Vt. Stat. Ann. tit. 18, §§ 9701(1) & 9702(a).

Legal Requirements

1. To be valid, an advance directive must be:

   (a) Dated;

   (b) Executed by the Principal or, if the Principal is physically unable to do so, by an individual in presence of and at the direction of the Principal; and

   (c) Signed in the presence of two (2) or more witnesses, at least 18 years old, who sign and affirm that the Principal appeared to understand the nature of the document and was free from duress or undue influence at the time of signing.

      (i) A witness of the advance directive may not be the Principal's (a) appointed agent, (b) spouse, (c) reciprocal beneficiary, (d) parent, (e) sibling, (f) child, or (g) grandchild. Vt. Stat. Ann. tit. 18, § 9703(c).

   Vt. Stat. Ann. tit. 18, § 9703(b).

2. No statutory form available.

3. An advance directive becomes effective when the relevant conditions set forth under Section 9706 have been satisfied. Vt. Stat. Ann. tit. 18, § 9706.

   (a) An advance directive is not effective if, at the time of execution, principal is being admitted to or is a patient in a hospital, unless a person specified under this provision signs a statement that such person explained the nature and effect of the advance directive to the Principal. Vt. Stat. Ann. tit. 18, § 9703(d).

Revocation

1. A Principal may revoke or suspend all or part of an advance directive (including the appointment of an agent) by:

   (a) Signing a statement revoking or suspending all or part of the advance directive;

   (b) Personally informing the Principal's clinician, who must make written record of it in the Principal's medical record; or

(c) Burning, tearing or obliterating the advance directive, either by the Principal or by a person in the presence of and at the direction of the Principal.

Vt. Stat. Ann. tit. 18, § 9704(b)(1).

2. A Principal with capacity may amend, suspend or revoke an advance directive (or a specific instruction therein) by executing a new advance directive or instruction pursuant to § 9703. A provision in a subsequently executed advance directive amends a provision in a prior advance directive to the extent of any conflict. Vt. Stat. Ann. tit. 18, § 9704(a).

3. Subject to the exception under § 9704(b)(3), a Principal with or without capacity may revoke any provision other than the appointment of an agent, orally, in writing, or by any other act evidencing an intent to revoke. Vt. Stat. Ann. tit. 18, § 9704(b)(2).

4. A clinician, healthcare provider, healthcare facility, or residential care facility aware of an amendment, suspension, or revocation while treating a Principal with capacity must, among other things, record in the Principal's medical record. Vt. Stat. Ann. tit. 18, § 9704(c).

Wills

General Description

A person of age and who is "of sound mind" may make a will. Vt. Stat. Ann. tit. 14, § 1.

Legal Requirements

1. Under Vermont Statutes, Title 14, § 5, every will shall be in writing:

   (a) Signed by the testator or in the testator's name by another individual in the testator's conscious presence and by the testator's direction; and

   (b) Attested and subscribed by at least two (2) credible witnesses in the presence of the testator and of each other.

      (i) If a person, other than an heir at law, attests the execution of a will whereby he or his wife or her husband is given a beneficial devise, legacy or interest in or affecting real or personal estate, such devise, legacy or interest shall be void so far only as concerns such person or his wife or her husband or one claiming under such person, husband or wife, unless there are three other competent witnesses to such will. Vt. Stat. Ann. tit. 14, § 10.

2. A testator may deposit a will for safekeeping in the probate court for the district in which the testator resides on the payment of a fee of $2.00 to the court. During the life of the testator that will shall be delivered only to the testator, or in accordance with the testator's order. Vt. Stat. Ann. tit. 14, § 2.

Revocation/Modification

1. A will or any part thereof is revoked: (a) by executing a subsequent will, codicil or other writing; or (b) by being burned, torn, canceled, or obliterated, with the intent of revoking it by the testator or by another person in his or her presence and by his or her express direction. Vt. Stat. Ann. tit. 14, § 11.

VIRGINIA

Power of Attorney – Healthcare

General Description

Any adult capable of making an informed decision may, at any time, make a written advance directive to address any or all forms of healthcare in the event the declarant is later determined to be incapable of making an informed decision. Va. Code Ann. § 54.1-2983.

Legal Requirements

1. A written advance directive shall be signed by the declarant in the presence of two (2) subscribing witnesses and may (i) specify the healthcare the declarant does or does not authorize; (ii) appoint an agent to make healthcare decisions for the declarant; and (iii) specify an anatomical gift. Va. Code Ann. § 54.1-2983.

2. Further, any adult capable of making an informed decision who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance directive (i) directing the specific healthcare the declarant does or does not authorize in the event the declarant is incapable of making an informed decision, and (ii) appointing an agent to make healthcare decisions for the declarant under the circumstances stated in the advance directive. Va. Code Ann. § 54.1-2983.

    (a) An oral advance directive shall be made in the presence of the attending physician and two (2) witnesses.

3. An advance directive may authorize an agent to take any lawful actions necessary to carry out the declarant's decisions, including, but not limited to, granting releases of liability to medical providers, releasing medical records, and making decisions regarding who may visit the patient. Va. Code Ann. § 54.1-2983.

4. In the event that any portion of an advance directive is invalid or illegal, such invalidity or illegality shall not affect the remaining provisions of the advance directive. Va. Code Ann. § 54.1-2983.

Revocation

1. An advance directive may be revoked at any time by the declarant who is capable of understanding the nature and consequences of his actions: (a) by a signed, dated writing; (b) by physical cancellation or destruction of the advance directive by the declarant or another in his presence and at his direction; or (c) by oral expression of intent to revoke. Va. Code Ann. § 54.1-2985.

2. A declarant may make a partial revocation of his advance directive, in which case any remaining and nonconflicting provisions of the advance directive shall remain in effect. Va. Code Ann. § 54.1-2985.

Power of Attorney – Property

Creating a Power of Attorney

A power of attorney shall be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A power of attorney in order to be recordable shall satisfy the requirements of Va. Code § 55-106. Va. Code Ann. § 26-76.

Powers

1. Customary powers, including real property powers and powers of incorporation are available under general grants of authority for various subject matters unless limited by the power of attorney. Va. Code Ann. § 26-95.

2. An agent under a power of attorney may do any of the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and the exercise of that authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject: (a) create, amend, revoke, or terminate an inter vivos trust; (b) make a gift; (c) create or change rights of survivorship; (d) create or change a beneficiary designation; (e) delegate authority granted under the power of attorney; (f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; and (g) exercise fiduciary powers that the principal has authority to delegate. Va. Code Ann. § 26-95.

3. Notwithstanding a grant of authority to do an act as described in the preceding paragraph unless the power of attorney otherwise provides, an agent who is not a spouse or descendant of the principal, may not do any of the following: (a) exercise authority under a power of attorney to create in the agent an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise; or (b) exercise authority under a power of attorney to create in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise. Va. Code Ann. § 26-95.

Durable

A power of attorney created is durable unless it expressly provides that it is terminated by the incapacity of the principal. Va. Code Ann. § 26-75.

Effective Date

If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine that the

event or contingency has occurred. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person so authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination by the persons, including a licensed physician or psychologist listed in Va. Code § 26-80. Va. Code Ann. § 26-80.

Revocation and Termination

1. A power of attorney terminates when any of the following occurs: (a) the principal dies; (b) the principal becomes incapacitated, if the power of attorney is not durable; (c) the principal revokes the power of attorney; (d) the power of attorney provides that it terminates; (e) the purpose of the power of attorney is accomplished; or (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney. Va. Code Ann. § 26-810.

2. An agent's authority terminates when any of the following occurs: (a) the principal revokes the authority; (b) the agent dies, becomes incapacitated, or resigns; (c) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or (d) the power of attorney terminates. Va. Code Ann. § 26-81.

3. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. Va. Code Ann. § 26-81.

Living Wills

General Description

An adult capable of making an informed decision ("Declarant") may execute an advance directive to address any or all forms of healthcare in the event Declarant is later determined to be incapable of making an informed decision. Va. Code Ann. § 54.1-2983.

Legal Requirements

1. To be valid, a written advance directive must be: (a) signed by the Declarant; and (b) subscribed by two (2) witnesses, at least 18 years old, present when the Declarant signs. Va. Code Ann. § 54.1-2983.

2. An oral advance directive is permissible if the Declarant is diagnosed with a terminal condition by the Declarant's attending physician. To be valid, such oral advance directive must be in the presence of (a) the attending physician; and (b) two (2) witnesses, at least 18 years old. Va. Code Ann. § 54.1-2983.

3. For both oral and written advance directive, the witness may be the Declarant's spouse or blood relative and/or employees of health care facilities and physician's offices who act in good faith. Va. Code Ann. § 54.1-2982.

4. Use of the statutory form is optional. Directives are severable. (Form available at Va. Code Ann. § 54.1-2984.)

5. Declarant is responsible for notifying attending physician of advance directive. If the Declarant incapable of communicating, any other person may notify attending physician. Attending physician must make advance directive, or the fact that the advance directive exists (if oral), part of the Declarant's medical records. Va. Code Ann. § 54.1-2983.

Revocation

1. A declarant who understands the nature and consequences of own actions may revoke an advance directive by: (a) a signed, dated writing; (b) physical cancellation or destruction of the advance directive by the Declarant or a person in the presence of and at the direction of the Declarant; or (c) oral expression of intent to revoke. Va. Code Ann. § 54.1-2983.

2. A partial revocation of an advance directive is permitted; any remaining and non-conflicting provisions remain in effect. Va. Code Ann. § 54.1-2985.

3. Revocation is effective when communicated to the attending physician. Va. Code Ann. § 54.1-2985.

Wills

General Description

A person 18 or more years of age and who is "of sound mind" may make a will. Va. Code Ann. § 64.1-46.

Legal Requirements

1. Under Virgina Code § 64.1-49, every will shall be in writing:

   (a) Signed by the testator or by another individual in the testator's presence and by the testator's direction in such a manner that the name is intended as a signature; and

   (b) Unless it be wholly in the handwriting of the testator, signed by at least two (2) individuals present at the same time, each of whom shall sign in the presence of the testator. If the will be wholly in the handwriting of the testator that fact shall be proved by at least two disinterested witnesses.

(c) Although a document, or a writing added upon a document, was not executed in compliance with the above, the document or writing shall be treated as if it had been executed in compliance with the above if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute (i) the decedent's will, (ii) a partial or complete revocation of the will, (iii) an addition to or an alteration of the will, or (iv) a partial or complete revival of his or her formerly revoked will or of a formerly revoked portion of the will. Va. Code Ann. § 64.1-49.1.

3. Incorporation by reference.

(a) The following may be incorporated by reference if they are signed and notarized and do not conflict with and are not inconsistent with a provision of the incorporating will, power of attorney or trust instrument:

(i) A letter or memorandum to the fiduciary or agent as to the interpretation of discretionary powers of distribution where the will, power of attorney or trust instrument provides the fiduciary or agent the power to make distributions to beneficiaries in the discretion of the fiduciary or agent; and

(ii) A letter or memorandum stating the views or directions of the maker of the will, power of attorney or trust instrument as to the exercise of discretion by the fiduciary or agent in making health care decisions for the maker.

Va. Code Ann. § 64.1-45.2.

4. Devise to trustees. Va. Code Ann. § 64.1-73.

5. Separate writing identifying devise of personal property. Va. Code Ann. § 64.1-45.1.

6. Self-proved will. Va. Code Ann. § 64.1-87.1.

7. Deposit of will with court in testator's lifetime. Va. Code Ann. § 64.1-56.

(a) A will may be deposited for safekeeping by the testator or his or her attorney on his or her behalf with the clerk of a court having probate jurisdiction in the county or city of his or her residence any will executed by such person.

Revocation/Modification

1. A will is revoked: (a) by executing a subsequent will which revokes the prior will or part thereof expressly or by inconsistency; or (b) by being cut, torn, burned, obliterated, canceled or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his or her presence and by his or her direction. Va. Code Ann. § 64.1-58.1)

2. No will shall be revived other than by the reexecution thereof, or by a legally executed codicil, and then only to the extent to which an intention to revive the same is shown. Va. Code Ann. § 64.1-60.

WASHINGTON

Power of Attorney – Healthcare

Legal Limitations

1. A witness may not be any of the following:

   (a) A person designated to make healthcare decisions on the principal's behalf;

   (b) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;

   (c) An owner, operator, employee, or relative of an owner or operator of a healthcare facility or long-term care facility in which the principal is a patient or resident;

   (d) A person who is related by blood, marriage, or adoption to the person or with whom the principal has a dating relationship;

   (e) A person who is declared to be an incapacitated person; or

   (f) A person who would benefit financially if the principal making the directive undergoes mental health treatment.

   Wash. Rev. Code § 71.32-090.

Legal Requirements

1. A directive shall:

   (a) Be in writing;

   (b) Contain language that clearly indicates that the principal intends to create a directive;

   (c) Be dated and signed by the principal or at the principal's direction in the principal's presence if the principal is unable to sign;

   (d) Designate whether the principal wishes to be able to revoke the directive during any period of incapacity or wishes to be unable to revoke the directive during any period of incapacity; and

   (e) Be witnessed in writing by at least two (2) adults, each of whom shall declare that he or she personally knows the principal, was present when the principal dated and signed the directive, and that the principal did not appear to be incapacitated or acting under fraud, undue influence, or duress.

   Wash. Rev. Code § 71.32-060(1).

2. A directive is valid upon execution, but all or part of the directive may take effect at a later time as designated by the principal in the directive. Wash. Rev. Code § 71.32-060(3).

Revocation

1. A principal with capacity may, by written statement by the principal or at the principal's direction in the principal's presence, revoke a directive in whole or in part. Wash. Rev. Code § 71.32-080(1)(a).

2. An incapacitated principal may revoke a directive only if he elected at the time of executing the directive to be able to revoke when incapacitated. Wash. Rev. Code § 71.32-080(1)(b).

3. The revocation need not follow any specific form so long as it is written and the intent of the principal can be discerned. Wash. Rev. Code § 71.32-080(2).

4. A directive also may: (a) be revoked, in whole or in part, expressly or to the extent of any inconsistency, by a subsequent directive; or (b) be superseded or revoked by a court order, including any order entered in a criminal matter. Wash. Rev. Code § 71.32-080(5).

Power of Attorney – Property

Creating a Durable Power of Attorney

Whenever a principal designates another as his or her attorney-in-fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney-in-fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. Wash. Rev. Code § 11.94.010.

Effect of Acts During Period of Disability of Principal

All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. Wash. Rev. Code § 11.94.010.

Revocation of Non-Durable Power of Attorney.

The durable power of attorney provided for under this chapter shall continue in effect until revoked or terminated by the principal, by a court-appointed guardian, or by court order. Wash. Rev. Code § 11.94.043.

Non-Durable Powers of Attorney During Period of Disability of Principal

The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than the above described durable power of attorney, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives. Wash. Rev. Code § 11.94.020.

Powers

Although a designated attorney-in-fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney-in-fact or agent shall have all the powers the principal would have if alive and competent, the attorney-in-fact or agent shall not have the power to make, amend, alter, or revoke the principal's wills or codicils, and shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's life insurance, annuity, or similar contract beneficiary designations, employee benefit plan beneficiary designations, trust agreements, registration of the principal's securities in beneficiary form, payable on death or transfer on death beneficiary designations, designation of persons as joint tenants with right of survivorship with the principal with respect to any of the principal's property, community property agreements, or any other provisions for nonprobate transfer at death contained in nontestamentary instruments; to make any gifts of property owned by the principal; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust, or to disclaim property. Wash. Rev. Code § 11.94.050; *see also* Wash. Rev. Code § 11.94.060 regarding powers over the principal's homestead.

Limitations on Persons Named as Attorney in Fact

1. An appointment of a principal's spouse or state registered domestic partner, as attorney-in-fact, including appointment as successor or coattorney-in-fact, under a power of attorney shall be revoked upon entry of a decree of dissolution or legal separation or declaration of invalidity of the marriage or termination of the state registered domestic partnership of the principal and the attorney-in-fact, unless the power of attorney or the decree provides otherwise. Wash. Rev. Code § 11.94.080.

2. Unless he or she is the spouse, state registered domestic partner, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility or long-term care facility where the principal resides or receives care. Wash. Rev. Code § 11.94.010.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

Living Wills

General Description

An adult, at least 18 years old ("Declarer"), may execute a written document (the "Directive") directing the withholding or withdrawal of life-sustaining treatment in a terminal condition or permanent unconscious condition. The Directive must be voluntarily executed and signed by declarer in the presence of two (2) witnesses. Wash. Rev. Code § 70.122.030(1).

Legal Requirements

1. To be valid, the Directive must be:

    (a) Signed by Declarer in the presence of two (2) witnesses;

        (i) Neither witnesses may be (a) related to the Declarer by blood or marriage, (b) entitled to any portion of the Declarer's estate under any will of the Declarer or any codicil thereto (then existing), (c) the attending physician or an employee of the attending physician or a health facility where the Declarer is a patient, or (d) any person with a claim against any portion of the Declarer's estate upon the Declarer's death at the time of execution of the Directive.

    Wash. Rev. Code § 70.122.030(1).

2. Use of the statutory form is optional. (Form available at Wash. Rev. Code § 70.122.030(1).)

3. The directive, or a copy thereof, must be made part of the Declarer's medical records retained by the attending physician. Wash. Rev. Code § 70.122.030(1).

4. Declarer may submit directive (and revocation) to the department of health's statewide registry. Wash. Rev. Code § 70.122.130.

5. Prior to withholding or withdrawing life-sustaining treatment pursuant to a Directive, the diagnosis of a terminal condition by the attending physician or the diagnosis of a permanent unconscious state by two (2) physicians must be entered in writing in the Declarer's medical records. Wash. Rev. Code § 70.122.030(2).

Revocation

1. A Directive may be revoked at any time by the Declarer (without regard to the Declarer's mental state or competency) by:

    (a) Canceling, defacing, obliterating, burning, tearing or otherwise destroying by declarer or by some person directed by and in the presence of the Declarer;

(b) Written revocation of the Declarer, signed and dated by the Declarer, expressing intent to revoke;

(c) Verbal expression by the Declarer of his/her intent to revoke the Directive; or

(d) An online method established by the department of health if the Directive is stored in the health care declarations registry pursuant to Wash. Rev. Code. § 70.122.130.

Wash. Rev. Code § 70.122.040.

2. Written or verbal revocation only becomes effective when communicated to attending physician by the Declarer or by a person acting on behalf of the Declarer. Attending physician must record in the Declarer's medical record the time and date (and place if oral) of receipt of notification of the written revocation (and if oral, time, date and place of revocation). Wash. Rev. Code § 70.122.040.

Wills

General Description

A person who 18 or more years of age and who is "of sound mind" may make a will. Wash. Rev. Code § 11.12.010.

Legal Requirements

1. Under Washington Revised Code § 11.12.020, every will shall be in writing:

   (a) Signed by the testator or in the testator's name by another individual in the testator's conscious presence and by the testator's direction; and

   (b) Signed by at least two (2) competent witnesses, by subscribing their names to the will, or by signing an affidavit, while in the presence of the testator and at the testator's direction or request.

2. A will or any of its provisions is not invalid because it is signed by an interested witness. Unless there are at least two other subscribing witnesses to the will who are not interested witnesses, the fact that the will makes a gift to a subscribing witness creates a rebuttable presumption that the witness procured the gift by duress, menace, fraud, or undue influence. If the presumption applies and the interested witness fails to rebut it, the interested witness shall take so much of the gift as does not exceed the share of the estate that would be distributed to the witness if the will were not established. Wash. Rev. Code § 11.12.160.

3. Incorporation by reference. Wash. Rev. Code § 11.12.255.

4. A will can devise property to the trustee of a trust whether or not the trust is amendable or revocable. Wash. Rev. Code § 11.12.255.

5. A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than property used primarily in trade or business). Wash. Rev. Code § 11.12.260.

Revocation/Modification

1. A will or any part thereof is revoked:

   (a) by a subsequent will which revokes, or partially revokes, the prior will expressly or by inconsistency; or

   (b) by being burnt, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in his or her presence and by his or her direction. If such act is done by any person other than the testator, the direction of the testator and the facts of such injury or destruction must be proved by two witnesses. Wash. Rev. Code § 11.12.040.

   (c) If, after making a will, the testator's marriage or domestic partnership is dissolved, invalidated, or terminated, all provisions in the will in favor of or granting any interest or power to the testator's former spouse or former domestic partner are revoked, unless the will expressly provides otherwise. Wash. Rev. Code § 11.12.051.

2. Revival of revoked will.

   (a) If, after making any will, the testator shall execute a later will that wholly revokes the former will, the destruction, cancellation, or revocation of the later will shall not revive the former will, unless it was the testator's intention to revive it.

   (b) Revocation of a codicil shall revive a prior will or part of a prior will that the codicil would have revoked had it remained in effect at the death of the testator, unless it was the testator's intention not to revive the prior will or part.

   (c) Evidence that revival was or was not intended includes, in addition to a writing by which the later will or codicil is revoked, the circumstances of the revocation or contemporary or subsequent declarations of the testator.

   Wash. Rev. Code § 11.12.080.

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WEST VIRGINIA

Power of Attorney – Healthcare

General Description

1. The medical power of attorney representative or surrogate shall have the authority to release or authorize the release of an incapacitated person's medical records to third parties and make any and all healthcare decisions on behalf of an incapacitated person, except to the extent that a medical power of attorney representative's authority is clearly limited in the medical power of attorney. W. Va. Code § 16-30-6(c).

2. The medical power of attorney representative or surrogate shall have the same right of access to the incapacitated person's medical information and right to discuss that information with the incapacitated person's healthcare providers that the incapacitated person would have if he was not incapacitated. W. Va. Code § 16-30-6(e).

Legal Limitations

1. A witness may not be:

   (a) The person who signed the medical power of attorney on behalf of and at the direction of the principal;

   (b) Related to the principal by blood or marriage;

   (c) Entitled to any portion of the estate of the principal under any will of the principal or codicil;

   (d) Directly financially responsible for principal's medical care;

   (e) The attending physician; or

   (f) The principal's medical power of attorney representative or successor medical power of attorney representative.

   W. Va. Code § 16-30-4(b).

2. The following persons may not serve as a medical power of attorney representative or successor medical power of attorney representative:

   (a) A treating healthcare provider of the principal;

   (b) An employee of a treating healthcare provider not related to the principal;

   (c) An operator of a healthcare facility serving the principal; or

(d) Any person who is an employee of an operator of a healthcare facility serving the principal and who is not related to the principal.

W. Va. Code § 16-30-4(c).

Legal Requirements

1. The medical power of attorney representative or surrogate's authority shall commence upon a determination of the incapacity of the adult.

   (a) In the event the person no longer is incapacitated or the medical power of attorney representative or surrogate is unwilling or unable to serve, the medical power of attorney representative or surrogate's authority shall cease.

   (b) A medical power of attorney representative or surrogate's authority terminates upon the death of the incapacitated person except with respect to decisions regarding autopsy, funeral arrangements or cremation and organ and tissue donation.

   W. Va. Code § 16-30-6(d).

2. Any competent adult may execute at any time a medical power of attorney. W. Va. Code § 16-30-4(a).

3. A medical power of attorney made pursuant to this article shall be:

   (a) In writing;

   (b) Executed by the principal or by another person in the principal's presence at the principal's express direction if the principal is physically unable to do so;

   (c) Dated;

   (d) Signed in the presence of two (2) or more witnesses at least 18 years of age; and

   (e) Signed and attested by such witnesses whose signatures and attestations shall be acknowledged before a notary public.

   W. Va. Code § 16-30-4(a).

Revocation

1. It shall be the responsibility of the principal or his or her representative to provide for notification to his or her attending physician of a revocation of a medical power of attorney. W. Va. Code § 16-30-4(d).

2. An attending physician or other healthcare provider, when presented with the revocation, shall make it a part of the principal's medical records. W. Va. Code § 16-30-4(d).

Power of Attorney – Property

Potential Changes

A bill is currently in the judiciary committee of West Virginia. The bill would repeal the below summarized provisions and adopt a revised version of the Uniform Power of Attorney Act summarized for states such as Wisconsin and Virginia.

General Powers

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. W. VA. Code § 39-4-2.

No Revocation Until Notice

The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. W. VA. Code § 39-4-4.

Living Wills

General Description

A competent adult, at least 18 years old ("Principal"), may execute at any time a living will or medical power of attorney. W. Va. Code § 16-30-4(a); for medical power of attorney rules, *see* West Virginia Power of Attorney.

Legal Requirements

1. A living will must be:

   (a) In writing;

   (b) Executed by the Principal, or if principal is physically unable to do so, by another person in the presence of and at the direction of the Principal;

   (c) Dated;

   (d) Signed by the Principal, or on behalf of and at the direction of the Principal ("Proxy Signer"); and

   (e) Witnessed by two (2) persons at least 18 years old.

(i) Witnesses must be present when the Principal signs.

(ii) Witnesses' signatures and attestations must be acknowledged by a notary public.

(iii) Neither witness may be (a) the Proxy Signer, (b) related to the Principal by blood or marriage, (c) entitled to any portion of the Principal's estate under any will of the Principal or codicil thereto (unless witness unaware of being a named beneficiary), (d) directly financially responsible for the Principal's medical care, (e) the attending physician, or (f) the Principal's medical power of attorney representative or successor medical power of attorney representative.

W. Va. Code § 16-30-4(b).

2. Use of the statutory form is optional. (Form available at W. Va. Code § 16-30-4(g).)

3. The Principal (or the Principal's representative) must notify the Principal's attending physician and other healthcare providers of the existence of the living will (or its revocation). Upon receipt of a living will (or its revocation), the attending physician or healthcare provider must make a copy of such part of the Principal's medical records. W. Va. Code § 16-30-4(d).

4. Every person should, at the time of admission to any healthcare facility, be advised of the availability of living will forms and should be given assistance in completing such forms. W. Va. Code § 16-30-4(e).

Revocation

1. A living will may be revoked at any time by, or at the direction of, the Principal, by:

(a) Destruction by the Principal or some person in the Principal's presence and at the Principal's direction;

(b) Written revocation of the living will, signed and dated by the Principal (or a person acting at principal's direction); or

(c) Verbal expression of intent to revoke the living will in the presence of a witness at least 18 years old, who signs and dates a writing confirming such expression of intent to revoke.

W. Va. Code § 16-30-18(a).

2. Written or verbal revocation becomes effective when communicated to the attending physician. The attending physician must record in the principal's medical record, the time and date (and place, if verbal) such physician received notification of revocation. W. Va. Code § 16-30-18(a).

Wills

General Description

A person 18 or more years of age and who is not of unsound mind may make a will. W. Va. Code §§ 41-1-1 & 41-1-2.

Legal Requirements

1. Under West Virginia Code § 41-1-3, every will shall be in writing:

    (a) Signed by the testator or by another individual in the testator's presence and by the testator's direction in such a manner that the name is intended as a signature; and

    (b) Unless it be wholly in the handwriting of the testator, signed by at least two (2) individuals present at the same time, each of whom shall sign in the presence of the testator.

2. A will can devise property to the trustee of a trust established or to be established, whether or not the trust is amendable or revocable. W. Va. Code § 41-3-8.

Revocation/Modification

1. A will is revoked: (a) by executing a subsequent will which revokes the prior will; (b) by a writing declaring an intention to revoke the will, executed in the manner a will is required to be executed; or (c) by being cut, torn, burned, obliterated, canceled or destroyed, with the intent to revoke, by the testator or by another person in his or her presence and by his or her direction. W. Va. Code § 41-1-7.

    (a) If after executing a will the testator is divorced or his or her marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. W. Va. Code § 41-1-6.

    (b) A change of circumstances other than divorce or annulment does not revoke a will. W. Va. Code § 41-1-6.

2. No will shall be revived other than by the re-execution thereof, or by a legally executed codicil, and then only to the extent to which an intention to re-revive the same is shown. W. Va. Code § 41-1-8.

WISCONSIN

Power of Attorney – Healthcare

General Description

An individual who is of sound mind and has attained age 18 may voluntarily execute a power of attorney for health care. Wis. Stat. § 155.05(1).

Legal Limitations

1. No healthcare provider for an individual, employee of that healthcare provider or employee of a healthcare facility in which an individual is a patient or resides, or a spouse of any of those providers or employees, may be designated by the individual as a healthcare agent unless the healthcare provider, employee or spouse of the provider or employee is a relative of the individual. Wis. Stat. § 155.05(3).

2. A health care agent may not consent to admission of the principal on an inpatient basis to any of the following: (a) an institution for mental diseases; (b) an intermediate care facility for persons with mental retardation; (c) a state treatment facility; and (d) a treatment facility. Wis. Stat. § 155.20(2)(a).

3. A health care agent may not consent to experimental mental health research or to psychosurgery, electroconvulsive treatment or drastic mental health treatment procedures for the principal. Wis. Stat. § 155.20(3).

Legal Requirements

1. Unless otherwise specified in the power of attorney for healthcare instrument, an individual's power of attorney for healthcare takes effect upon a finding of incapacity by two (2) physicians, or one (1) physician and one (1) licensed psychologist, who personally examine the principal and sign a statement specifying that the principal has incapacity.

    (a) Neither of the individuals who make a finding of incapacity may be a relative of the principal or have knowledge that he is entitled to or has a claim on any portion of the principal's estate.

    (b) A copy of the statement, if made, shall be appended to the power of attorney for healthcare instrument.

    Wis. Stat. § 155.05(2).

Revocation

1. A principal may revoke his power of attorney for healthcare and invalidate the power of attorney for healthcare instrument at any time by doing any of the following:

(a) Canceling, defacing, obliterating, burning, tearing or otherwise destroying the power of attorney for health care instrument or directing another in the presence of the principal to so destroy the power of attorney for healthcare instrument;

(b) Executing a statement, in writing, that is signed and dated by the principal, expressing the principal's intent to revoke the power of attorney for healthcare;

(c) Verbally expressing the principal's intent to revoke the power of attorney for healthcare, in the presence of two (2) witnesses; or

(d) Executing a subsequent power of attorney for healthcare instrument.

Wis. Stat. § 155.40(1).

2. If an individual knows that the power of attorney for healthcare that named him as healthcare agent has been revoked, he shall communicate this fact to any healthcare provider for the principal that he knows has a copy of the power of attorney for healthcare instrument. Wis. Stat. § 155.40(3).

3. The principal's healthcare provider shall, upon notification of revocation of the principal's power of attorney for healthcare instrument, record in the principal's medical record the time, date and place of the revocation and the time, date and place, if different, of the notification to the healthcare provider of the revocation. Wis. Stat. § 155.40(4).

Power of Attorney – Property

Laws

Laws cited are effective September 1, 2010

Form

A statutory short form power of attorney may be used. Wis. Stat. § 244.61.

Execution

To execute a power of attorney the principal must sign the power of attorney or another individual, in the principal's conscious presence and directed by the principal, must sign the principal's name on the power of attorney. A signature of the principal on a power of attorney is presumed to be genuine if the principal makes an acknowledgment of the power of attorney before a notarial officer. Wis. Stat. § 244.05.

Powers

1. Customary powers, including real property powers and powers of incorporation are available under general grants of authority for various subject matters unless limited by the power of attorney. Wis. Stat. § 244.41, *et seq.*

2. An agent under a power of attorney may do any of the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and the exercise of that authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject: (a) create, amend, revoke, or terminate an inter vivos trust; (b) make a gift; (c) create or change rights of survivorship; (d) create or change a beneficiary designation; (e) delegate authority granted under the power of attorney; (f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; (g) exercise fiduciary powers that the principal has authority to delegate; and (h) disclaim property, including a power of appointment. Wis. Stat. § 244.41.

3. Notwithstanding a grant of authority to do an act as described in the preceding paragraph unless the power of attorney otherwise provides, an agent who is not a spouse or domestic partner of the principal, may not do any of the following: (a) exercise authority under a power of attorney to create in the agent an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise; or (b) exercise authority under a power of attorney to create in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise. Wis. Stat. § 244.41.

Durable Power of Attorney

A power of attorney created is durable unless it expressly provides that it is terminated by the incapacity of the principal. Wis. Stat. § 244.04.

Effective Date

If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine that the event or contingency has occurred. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person so authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination by the persons, including a licensed physician or psychologist listed in Wis. Stat. § 244.09. Wis. Stat. § 244.09.

Revocation and Termination

1. A power of attorney terminates when any of the following occurs: (a) the principal dies; (b) the principal becomes incapacitated, if the power of attorney so provides; (c) the principal revokes the power of attorney; (d) the power of attorney provides that it terminates; (e) the purpose of the power of attorney is accomplished; or (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney. Wis. Stat. § 244.10.

2. An agent's authority terminates when any of the following occurs: (a) the principal revokes the authority; (b) the agent dies, becomes incapacitated, or resigns; (c) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; (d) the power of attorney terminates; or (e) the domestic partnership of the principal and agent is terminated unless the power of attorney otherwise provides. Wis. Stat. § 244.10.

3. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. Wis. Stat. § 244.10.

Living Wills

General Description

Any person of sound mind and at least 18 years old ("Declarant") may execute a declaration authorizing the withholding or withdrawal of life sustaining procedures or of feeding tubes when person is in (i) a terminal condition or (ii) a persistent vegetative state. Wis. Stat. § 154.03.

Legal Requirements

1. To be valid, the declaration must be:

   (a) Signed by the Declarant, or if the Declarant is physically unable, signed by a person ("Proxy Signer") at the Declarant's direction and in the Declarant's presence; and

      (i) Proxy signer may be one of the witnesses.

   (b) Witnessed by two (2) adults in the Declarant's presence.

      (i) Witnesses must be present when Declarant signs. Signing by Proxy Signer must take place or be acknowledged by Declarant in the presence of both witnesses.

      (ii) Neither witness may, at the time of execution, (a) be related to the Declarant by blood, marriage or adoption, (b) have knowledge that witness is entitled to any portion of the Declarant's estate, (c) be directly financially responsible for the Declarant's healthcare, (d) be an individual healthcare provider who is serving the Declarant at the time of execution, an employee (other than the chaplain or a social worker) of the healthcare provider, or (e) an employee (other than the chaplain or a social worker) of an inpatient healthcare facility in which the Declarant is a patient.

   Wis. Stat. § 154.03(1).

2. Use of the statutory form required. (Form available at Wis. Stat. § 154.03(2).)

3. A Declarant may not authorize the withholding or withdrawal of:

   (a) Any medication, life-sustaining procedure or feeding tube if the attending physician advises that such withholding or withdrawal will cause Declarant pain or reduce his/her comfort and the pain or discomfort cannot be alleviated; or

   (b) Nutrition or hydration that is administered or otherwise received by Declarant through a means other than a feeding tube, unless the attending physician advises that the administration is medically contraindicated.

   Wis. Stat. § 154.03(1)

4. Declarant is responsible for notifying attending physician of the existence of the declaration. The attending physician must make the declaration part of Declarant's medical records. Wis. Stat. § 154.03(1).

Revocation

1. A declaration may be revoked by Declarant at any time by:

   (a) Being canceled, defaced, obliterated, burned, torn or otherwise destroyed by Declarant or some person who is directed by and acts in the presence of the Declarant;

   (b) A written revocation of the Declarant, signed and dated by the Declarant and expressing the intent to revoke;

   (c) A verbal expression by the Declarant of intent to revoke; such verbal revocation becomes effective only if the Declarant (or someone acting on his/her behalf) notifies the attending physician of the revocation; or

   (d) Executing a subsequent declaration.

   Wis. Stat. § 154.05.

2. The attending physician must record in the patient's medical record the: (a) time, date and place of the revocation; and (b) time, date and place (if different) that the attending physician was notified of such revocation. Wis. Stats. § 154.05(2).

Wills

General Description

A person 18 or more years of age and who is not of unsound mind may make a will. Wis. Stat. § 853.01.

The information contained within this document is intended only as a reference and is not intended, nor should be construed, as legal advice or as a comprehensive collection of all relevant laws. Please review your jurisdiction's laws for accuracy and timeliness.

Legal Requirements

1. Under Wisconsin Statute § 853.03, a will shall be in writing:

   (a) Signed by the testator or by the testator with the assistance of another person with the testator's consent or in the testator's name by another person at the testator's direction and in the testator's conscious presence; and

   (b) It must be signed by at least two (2) witnesses who signed within a reasonable time after any of the following:

      (i) The signing of the will in the conscious presence of the witnesses.

      (ii) The testator's implicit or explicit acknowledgement of the testator's signature on the will, in the conscious presence of the witnesses.

      (iii) The testator's implicit or explicit acknowledgement of the will, in the conscious presence of the witnesses.

   (c) An interested witness does not invalidate the will, but any beneficial provisions of the will for a witness or the spouse of a witness are invalid to the extent that the aggregate value of those provisions exceeds what the witness or spouse would have received had the testator died intestate, unless the will is also signed by two disinterested witnesses or there is sufficient evidence that the testator intended the full transfer to take effect. Wis. Stat. § 853.07.

   (d) A testator shall execute a Wisconsin basic will or basic will with trust by completing the blanks, boxes, and lines substantially in accordance with the instructions and signing the will. Wis. Stat. § 853.51.

2. Incorporation by reference. Wis. Stat. § 853.32.

3. Self-proved will. Wis. Stat. § 853.04.

Revocation/Modification

1. A will is revoked: (a) by executing a subsequent will which revokes the prior will or a part thereof expressly or by inconsistency; or (b) by burning, tearing, canceling, obliterating, or destroying the will, or part, with the intent to revoke, by the testator or by another person in his or her presence and by his or her direction. Wis. Stat. § 853.11.

2. Revival of revoked will.

   (a) If a subsequent will that partly revoked a previous will is itself revoked by a revocatory act, the revoked part of the previous will is revived. This does not apply if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the

testator did not intend the revoked part of the previous will to take effect as executed.

(b) If a subsequent will that wholly revoked a previous will is itself revoked by a revocatory act, the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(c) If a subsequent will that wholly or partly revoked a previous will is itself revoked by another, later will, the previous will or its revoked part remains revoked, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent that it appears from the terms of the later will, or from the testator's contemporary or subsequent declarations, that the testator intended the previous will or its revoked part to take effect.

Wis. Stat. § 853.11.

WYOMING

Power of Attorney – Healthcare

General Description

1. An adult or emancipated minor may execute a power of attorney for healthcare, which may authorize the agent to make any healthcare decision the principal could have made while having capacity. Wyo. Stat. Ann. § 35-22-403(b).

2. Unless otherwise specified in an advance healthcare directive, a person then authorized to make healthcare decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other healthcare information. Wyo. Stat. Ann. § 35-22-409.

Legal Limitations

1. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a residential or community care facility at which the principal is receiving care. Wyo. Stat. Ann. § 35-22-403(b).

2. None of the following shall be used as a witness for a power of attorney for health care:

   (a) A treating health care provider or employee of the provider;

   (b) The attorney-in-fact nominated in the writing;

   (c) The operator of a community care facility or employee of the operator or facility;

   (d) The operator of a residential care facility or employee of the operator or facility.

   Wyo. Stat. Ann. § 35-22-403(c).

Legal Requirements

1. Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity. Wyo. Stat. Ann. § 35-22-403(d).

2. The power must be in writing and signed by the principal or by another person in the principal's presence and at the principal's expressed direction. Wyo. Stat. Ann. § 35-22-403(b).

3. The durable power of attorney must be acknowledged before a notarial officer or must be signed by at least two (2) witnesses, each of whom witnessed either the signing of the

instrument by the principal or the principal's acknowledgement of the signature or of the instrument: Wyo. Stat. Ann. § 35-22-403(b).

Revocation

1. An individual with capacity may revoke the designation of an agent only by a signed writing. Wyo. Stat. Ann. § 35-22-404(a).

2. An individual with capacity may revoke all or part of an advance healthcare directive, other than the designation of an agent, at any time and in any manner that communicates an intention to revoke. Any oral revocation shall, as soon as possible after the revocation, be documented in a writing signed and dated by the individual or a witness to the revocation. Wyo. Stat. Ann. § 35-22-404(b).

3. A health care provider, agent, guardian or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the primary healthcare provider and to any healthcare institution at which the patient is receiving care. Wyo. Stat. Ann. § 35-22-404(c).

4. An advance healthcare directive that conflicts with an earlier advance healthcare directive revokes the earlier directive to the extent of the conflict. Wyo. Stat. Ann. § 35-22-404(e).

Power of Attorney – Property

General

Subject to restrictions on powers of attorney for healthcare, a person, known as the principal, may designate another person to act as the attorney in fact or agent for the principal. The authority of the attorney in fact or agent may be exercised by him on behalf of the principal according to the terms stated in the power of attorney instrument notwithstanding the subsequent disability or incapacity of the principal or uncertainty concerning whether the principal is alive or deceased. Wyo. Stat. Ann. § 3-5-1010.

Creating a Power of Attorney

The power of attorney shall be in writing and shall state: "This power of attorney shall not become ineffective by my disability," or "This power of attorney shall become effective upon my disability," or words showing the intent of the principal that the authority conferred by his power of attorney instrument shall be exercised notwithstanding his disability. Wyo. Stat. Ann. § 3-5-101.

Effect of Acts During Period of Disability of Principal

All acts done by the attorney in fact or agent pursuant to the durable power of attorney during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees

and personal representative as if the principal were alive, competent and not disabled. Wyo. Stat. Ann. § 3-5-101.

Revocation and Termination

Unless the durable power of attorney otherwise specifically provides, the durable power of attorney, may be revoked by recording an instrument of revocation with a true copy of the power of attorney attached, in the office of the county clerk of the county in which the principal resides. Constructive notice of the revocation is given from and after the date of recording the instrument of revocation. Wyo. Stat. Ann. § 3-5-103.

Living Wills

General Description

An adult, at least 18 years old, or emancipated minor ("Principal") may (i) give direction concerning such individual's healthcare decisions ("Individual Instruction") or (ii) execute a durable power of attorney for healthcare (each or both, "advance healthcare directive" or "AHCD"). Wyo. Stat. Ann. §§ 35-22-402(a) & -403; for durable power of attorney for health care rules, *see* Wyoming Health Care Power of Attorney.

Legal Requirements

1. An Individual Instruction may be oral or written. Wyo. Stat. Ann. § 35-22-403(a).

2. An Individual Instruction may be limited to take effect only if a specified condition arises. Wyo. Stat. Ann. § 35-22-403(a).

3. No statutory form available.

4. Unless otherwise specified in a written AHCD, a determination that a Principal lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, will be made by the primary physician, however, the treating primary healthcare provider may make the determination if the primary physician is unavailable. Wyo. Stat. Ann. § 35-22-403(e).

Revocation

1. An individual with capacity may revoke all or part of an AHCD (other than the designation of an agent) at any time and in any manner that communicates an intention to revoke the AHCD. Wyo. Stat. Ann. § 35-22-404(b).

    (a) In the event of an oral revocation, as soon as possible after the revocation, it must be (i) documented in writing; (ii) signed; and (iii) dated by Principal or a witness to the revocation. Wyo. Stat. Ann. § 35-22-404(b).

2. An AHCD that conflicts with a prior AHCD revokes the prior directive to the extent of any conflict. Wyo. Stat. Ann. § 35-22-404(e).

Wills

General Description

A person of legal age and who is "of sound mind" may make a will and dispose of all of his or her property by will except what is sufficient to pay his or her debts, and subject to the rights of the surviving spouse and children. Wyo. Stat. Ann. § 2-6-101.

Legal Requirements

1. Under Wyoming Statutes § 2-6-112, a will shall be in writing:

   (a) Witnessed by two (2) competent witnesses and signed by the testator or by another person in his or her presence and by his or her express direction.

   (b) No subscribing witness to any will can derive any benefit therefrom unless there are two (2) disinterested and competent witnesses to the same, but if without a will the witness would be entitled to any portion of the testator's estate, the witness may still receive the portion to the extent and value of the amount devised.

2. If a will is entirely in the handwriting of the testator and signed by the testator himself, the will is valid as a holographic will. Wyo. Stat. Ann. § 2-6-113.

3. Incorporation by reference. Wyo. Stat. Ann. § 2-6-124.

4. Separate writing identifying devise of personal property.

   (a) A will may refer to a written statement that disposes of tangible personal property not otherwise specifically disposed of by the will (other than money, evidences of indebtedness, documents of title, securities, and property used in trade or business).

      (i) The statement: 1) must be in the handwriting of the testator or signed by the testator and must describe the items and the devisees with reasonable certainty; 2) may be referred to as one to be in existence at the time of the testator's death; 3) may be prepared before or after the execution of the will; 4) it may be altered by the testator after its preparation which alteration shall be signed and dated by the testator; 5) and it may be a writing that does not have significance apart from its effect on the dispositions made by the will.

   Wyo. Stat. Ann. § 2-6-124.

5. A will may be simultaneously executed, attested, and made self-proved, by acknowledgment by the testator and affidavit of the testator and witnesses. The affidavit must be made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form. Wyo. Stat. Ann. § 2-6-114 (see statute for model language).

Revocation/Modification

1. A will is revoked: (a) by executing a subsequent will which revokes the prior will or a part thereof expressly or by inconsistency; or (b) by being burned, torn, cancelled, obliterated, or destroyed with the intent to revoke, by the testator or by another person in his or her presence and by his or her direction. Wyo. Stat. Ann.§ 2-6-117.

    (a) If after executing a will the testator is divorced or his or her marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator or guardian, unless the will expressly provides otherwise. Wyo. Stat. Ann. § 2-6-118.

2. A change of circumstances other than divorce or dissolution or annulment of the marriage does not revoke a will. Wyo. Stat. Ann. § 2-6-118.