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Property Preservation
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Advance Directives



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Advance Directives

Advanced Directives are used to plan for situations where a person may not be able to take care of him/herself on either a temporary or a permanent basis.

Included in the advanced directives are: (1) the Durable Financial Power of Attorney; (2) The Medical Power of Attorney; (3) the Directive to Physician and Family or Surrogates; and (4) the Designation of Guardian.

It is important to remember that if these documents are not properly completed, a stranger may be appointed to handle your affairs. Also, when reviewing these documents, care should be taken to make sure that your agent is given the authority that you want her to have, that a successor agent is appointed, and that conflicts of interests are minimized.

A Durable Financial Power of Attorney can be used to manage your affairs if you are not able to carry out your normal duties.

The Durable Financial Power of Attorney can be made effective on the happening of an event. It is a good idea to have this document become effective when it is signed. If you do this, you will have the ability to see how your agent will act, and you can terminate it while you have the ability to do so.

Sometimes, we may not be comfortable in giving another that type of control. In this instance, you can sign the document but hold it yourself until it is needed.

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You may also sign a Durable Financial Power of Attorney that becomes effective when “something” happens that may impair your ability to handle your normal business.

In this instance, you can say what the “something” is so that others will know that an agent will be able to take care of your business. It is usually a good idea to have your doctor certify that you can't handle your finances and other matters. That way, a third party who relies on the Durable Financial Power of Attorney may be protected.

After these have been completed, your agent can do whatever you can do. However, your agent has a duty to account for what is done while acting for you.

Under current law, if a permanent guardian is appointed, the Durable Financial Power of Attorney terminates when the guardian of the estate qualifies.

If a temporary guardian of the estate is appointed, a Court *may* suspend the durable financial power of attorney.

A Medical Power of Attorney lets you say who you want to make health care decisions if you are not able to make them. Texas law provides a form, and, with limited changes, this form must be used. The form is found in Section 166.164 of the Texas Health and Safety Code.

As in preparing a durable financial power of attorney, you should consider conflicts of interest,

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and you should have successors named so that someone will always be available to act for you.

A Directive to Physicians and Family or Surrogates lets you say how much care you should be given if you suffer a terminal or irreversible condition.

A terminal condition is one where, based on medical evidence, a person is expected to die within 6 months. An irreversible condition is one that may be treated but can't be cured.

Sometimes, people want to be kept alive as long as possible. Sometimes, they don't.

By having a properly completed Directive, you can say how you want to handle your terminal or irreversible condition.

A Designation of Guardian lets a person say who he/she wants the guardian to be in the event the need arises.

Guardianships can be expensive, and, if your estate is planned properly, a guardianship may be avoided. Unexpected things do occur, and you may need a Designation of Guardian. Of course, your Guardian should be someone you trust.

You can designate a guardian for you and your minor children.

For more Information, please call the ECI office at (713) 313-1139.