



**FUTURE CARE and ESTATE PLANNING:
ISSUES and DOCUMENTS to CONSIDER**

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Pennsylvania LINK to Aging
and Disability Resources



What is Future Care Planning?

- Preparing the legal documents you need **now** to make sure your wishes are clear if you become unable to handle your own affairs or unable to communicate in the future.
- The benefits of future care planning include:
 - Taking stock of what you have
 - Maintaining control
 - Gaining a better sense of what to expect

POWERS OF ATTORNEY: TERMINOLOGY

Power of Attorney – legal document in which you name an Agent (or Agents) to act for you and in your place, under specific circumstances. Sometimes called “Durable” Power of Attorney.

Principal – the maker/signer of the Power of Attorney is the Principal.

Agent – the Principal appoints an Agent to act on his or her behalf. The Principal may also name successor Agents.

Financial Power of Attorney – A POA to name an Agent to manage finances and property.

HealthCare Power of Attorney – A POA to name an Agent to make health care and related decisions.



Choosing an Agent.

- The Agent should be someone you trust with your money, property, and/or health care decisions.
- Effective date: Immediate versus upon some future occurrence.
- The Agent must agree to serve by signing an Acknowledgement that states:

“I shall act in accordance with the principal's reasonable expectations to the extent actually known by me and, otherwise, in the principal's best interest, act in good faith and act only within the scope of authority granted to me by the principal in the power of attorney.”
- Multiple Agents – Joint vs. Joint and Several
- Successor Agent(s)

DUTIES OF AN AGENT/FIDUCIARY

- ❖ Act loyally and in good faith for Principal's benefit
- ❖ Do not commingle funds unless
 - Spouse, or
 - Funds were held jointly at time of execution
- ❖ Do not borrow from Principal
- ❖ Watch for conflicts of interest
- ❖ Keep records and receipts – Accounting
- ❖ Cooperate with Health Care Agent, if it's another person
- ❖ Attempt to preserve Principal's estate plan

Agents can avoid liability if they act in good faith and in the best interest of the Principal.

AGENT POWERS

What can you appoint an Agent to do for you?

- “To make limited gifts.”
- “To create a trust for my benefit.”
- “To make additions to an existing trust for my benefit.”
- “To claim an elective share of the estate of my deceased spouse.”
- “To renounce fiduciary positions.”
- “To withdraw and receive the income or corpus of a trust.”
- “To authorize my admission to a medical, nursing, residential or similar facility and to enter into agreements for my care.”
- “To authorize medical and surgical procedures.”
- “To engage in real property transactions.”
- “To engage in tangible personal property transactions.”
- “To engage in stock, bond and other securities transactions.”
- “To engage in commodity and option transactions
- “To engage in banking and financial transactions.”
- “To borrow money.”
- “To enter safe deposit boxes.”
- “To engage in insurance and annuity transactions.”
- “To engage in retirement plan transactions.”
- “To handle interests in estates and trusts.”
- “To pursue claims and litigation.”
- “To receive government benefits.”
- “To pursue tax matters.”
- “To make an anatomical gift of all or part of my body.”



HOT POWERS



Specific Authority Needed to:

- Create, amend, revoke or terminate an inter vivos trust other than as permitted under section 5602(a)(2), (3) and (7) (relating to form of power of attorney – general authority)
- Make a gift
- Create or change rights of survivorship.
- Create or change a beneficiary designation.
- Delegate authority granted under the power of attorney.
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- Exercise fiduciary powers that the principal has authority to delegate.
- Disclaim property, including a power of appointment.
- ❖ **Anyone other than your ancestor, spouse or descendant may not exercise these powers unless specifically authorized.**

VALIDITY OF A POA DOCUMENT

To be Valid, a Power of Attorney Document must:

1. Be signed and Dated by the Principal (by signature or mark);
2. The signature (or mark) must be witnessed by two witnesses and a notary;
3. The agent(s) must sign an acknowledgement; and
4. The statutory Notice, in all capital letters, must be included as the first page.

NOTICE

THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU.

THIS POWER OF ATTORNEY DOES NOT IMPOSE A DUTY ON YOUR AGENT TO EXERCISE GRANTED POWERS, BUT, WHEN POWERS ARE EXERCISED, YOUR AGENT MUST USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS POWER OF ATTORNEY.

YOUR AGENT MAY EXERCISE THE POWERS GIVEN HERE THROUGHOUT YOUR LIFETIME, EVEN AFTER YOU BECOME INCAPACITATED, UNLESS YOU EXPRESSLY LIMIT THE DURATION OF THESE POWERS OR YOU REVOKE THESE POWERS OR A COURT ACTING ON YOUR BEHALF TERMINATES YOUR AGENT'S AUTHORITY.

YOUR AGENT MUST ACT IN ACCORDANCE WITH YOUR REASONABLE EXPECTATIONS TO THE EXTENT ACTUALLY KNOWN BY YOUR AGENT AND, OTHERWISE, IN YOUR BEST INTEREST, ACT IN GOOD FAITH AND ACT ONLY WITHIN THE SCOPE OF AUTHORITY GRANTED BY YOU IN THE POWER OF ATTORNEY.

THE LAW PERMITS YOU, IF YOU CHOOSE, TO GRANT BROAD AUTHORITY TO AN AGENT UNDER POWER OF ATTORNEY, INCLUDING THE ABILITY TO GIVE AWAY ALL OF YOUR PROPERTY WHILE YOU ARE ALIVE OR TO SUBSTANTIALLY CHANGE HOW YOUR PROPERTY IS DISTRIBUTED AT YOUR DEATH. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD SEEK THE ADVICE OF AN ATTORNEY AT LAW TO MAKE SURE YOU UNDERSTAND IT.

A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT FINDS YOUR AGENT IS NOT ACTING PROPERLY.

THE POWERS AND DUTIES OF AN AGENT UNDER A POWER OF ATTORNEY ARE EXPLAINED MORE FULLY IN 20 PA.C.S. CH. 56.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER OF YOUR OWN CHOOSING TO EXPLAIN IT TO YOU.

I HAVE READ OR HAD EXPLAINED TO ME THIS NOTICE AND I UNDERSTAND ITS CONTENTS.



Revocation

- The Principal may revoke the power of attorney at any time, as long as the Principal is competent to do so.
- Revocation should be in writing, with notice to the agent and any person relying on the power of attorney.
 - Certified mailing
 - Notice to banking institutions
- Power of attorney is effective while the principal is alive. Exception: authority for disposal of remains and final arrangements may be included in the POA

GUARDIANSHIP

- If a person becomes incapacitated, and cannot handle his or her own affairs or make informed decisions, a Court of Common Pleas may appoint a competent adult to be the legal Guardian.
- A Guardianship proceeding is time-consuming, expensive, and often emotionally exhausting.
- A physician will be required to testify and offer a medical opinion that the Alleged Incapacitated Person (AIP) is either partially or completely unable to make and communicate decisions related to his or her medical care and/or finances.
- Making a Power of Attorney when competent can avoid the need for family or an agency to seek Guardianship.
- If the Power of Attorney is not broad enough, a Guardianship may still be needed.



HEALTH CARE DECISIONS

- ❖ Health Care Powers of Attorney
- ❖ Health Care Representative
- ❖ Living Wills and Advanced Directives
- ❖ Do Not Resuscitate Orders (DNR)
- ❖ POLST

Health Care Agent under Power of Attorney

An individual of sound mind may make a health care power of attorney if the individual:

- (1) is 18 years of age or older;
- (2) has graduated from high school;
- (3) has married; or
- (4) is an emancipated minor.

VALIDITY

- Dated and signed by the principal by signature or mark, and
- Witnessed by two individuals, each of whom is 18 years of age or older.

EFFECTIVE WHEN

- A copy is provided to the attending physician; and
- The attending physician determines that the principal is incompetent.

Health Care Representative (Act 169)

A health care representative may make health care decisions for an incompetent adult whose (1) physician has determined he or she is incompetent, and (2) has no controlling living will, health care power of attorney, or guardian of the person appointed.

ORDER OF PRIORITY

- 1- spouse and adult child who is not also the child of the spouse
- 2 - adult child
- 3 - parent
- 4 - adult sibling
- 5 - adult grandchild
- 6 - close friend

HEALTH CARE DECISIONS



Advanced Directives/Living Wills

- End of Life wishes, if you are unable to communicate.
- Applies **ONLY** if someone who has been found to be incompetent, and who is certified by a physician to have an end-stage medical condition or who is permanently unconscious
- May request that care be limited to keeping you comfortable.
- Can specify what procedures you will, or will not allow in that circumstance, including: initiation, continuation, withholding or withdrawal of life-sustaining treatment

Do Not Resuscitate

The Pennsylvania Out-Of-Hospital DNR

- DNR is not automatic based on the terms of a Living Will or HCPOA, especially out of hospital setting.
- DNR Order, Bracelet, or Necklace must be issued by attending physician.
- A candidate for a DNR:
 - Has an end stage or terminal medical condition or is permanently unconscious; and
 - Requests the Order personally, or through an appointed Agent.

If no Order, Bracelet or Necklace is visible to EMTs, they will proceed with resuscitation efforts.



Physician's Order for Life Sustaining Treatment - POLST

- For persons who are chronically ill or terminally ill, with shortened life expectancy.
- Medical Order signed by physician, physician's assistant or certified registered nurse and Patient or Patient's surrogate.
- More control over end-of-life care.
- Form is printed on Pink Card Stock and form sent with patient when discharged. Should then be used in combination with Out-Of-Hospital DNR.

Last Will and Testament vs. Powers of Attorney

A Power of Attorney empowers another (your “Agent”) to act for you **while you are living** but cannot act for yourself.

An **Agent’s authority terminates on your death**; except if empowered regarding disposal of remains, autopsy or funeral arrangements.

A Will is a document that specifies your wishes after death. The person whom you appoint to administer your Last Will and Testament is your **Executor or Executrix**.

Why Make A Will?

- ❖ Executor or Executrix – Select the person you want to be in charge of estate.
- ❖ Your Beneficiaries – Name who will receive specific bequests or your entire estate. Avoid intestacy.
- ❖ Name a Guardian for your minor children
- ❖ Name a Trustee for funds intended for a minor or an incapacitated beneficiary. Decide at what age your minor beneficiaries will receive their inheritance.

VALIDITY OF A WILL

To be Valid, a Last Will and Testament must:

1. Be executed by a person over 18 years of age who is of sound mind.
 2. Be made in writing and signed by the testator at the end.
- A Will is self-proving when it is witnessed by two individuals signed before a notary.
 - A Will may be handwritten in PA.

PROBATE

Property, real or personal, to which you hold legal title at the time of your death.

NON - PROBATE

- Personal Property that has:
 - Beneficiary Designation
 - Transfer on Death provision
 - Jointly held accounts
- Real Property that:
 - Is owned as joint tenants with right of survivorship
- Property held in trust
- Survivor benefits

PROBATE v. NON-PROBATE ASSET



Estate Considerations

Taxes

- Federal and State Estate Tax: applied to estates with combined gross assets and prior taxable gifts exceeding **\$5.43 million per person in 2015.**
- Annual gift exclusion amount for 2015 is \$14,000
- Pennsylvania Inheritance Tax on probate assets. Rate depends on identity of beneficiaries:
 - Spouse – 0%
 - Lineal heirs – 4.5%
 - Siblings – 12%
 - Other – 15% (except charities)

No Will?

- Probate assets will pass through intestate estate in order of statutory priority:
 - Spouse (limited)
 - Issue
 - Parents
 - Brothers, sisters, their issue
 - Grandparents
 - Uncles, aunts, cousins, their issue
 - Commonwealth of PA



DISCLAIMER

The contents of this presentation are general in nature, and do not constitute legal advice. Consult a legal or financial professional for advice that is specific to your situation.

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