

THE C & D NEWSLETTER



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The Durable Power of Attorney and Living Will Protecting your health, dignity and assets

At some point in your life, you may be confronted with various situations, such as deteriorating health, an accident or other unforeseen circumstances, which may cause you to be unable to make decisions about your own medical care and personal finances. However, by executing a Durable Power of Attorney and Living Will, you can ensure that any medical wishes you have will be respected and your personal and business affairs will be kept in order. Advance preparation and comprehensive estate planning is the key.

The Durable Power of Attorney. A Power of Attorney is a legal document whereby one person, called the principal, appoints a second person, called the agent or attorney-in-fact, to act on his or her behalf. The agent has only those powers which are granted to him by the principal. Thus, a "general" power permits the agent to handle virtually any kind of transaction, while a "limited" power authorizes only specific acts. For example, some Powers of Attorney apply only to medical and healthcare decisions, while others confer upon the agent the ability to access checking and savings accounts, pay bills, buy and sell property, or enter into any other business or financial transactions that the principal would otherwise be able to. The agent can be granted the authority to act immediately or only in the event the principal becomes incapacitated; however all powers cease upon the principal's death. Although created for a variety of reasons, a Power of Attorney can be especially beneficial when used in situations involving disabled or elderly persons.

A Power of Attorney can only be established by someone who is competent at the time he or she signs the document. Therefore, it is important to draft a document of this kind before it is actually needed. Without the proper estate plan or Power of Attorney, your finances and other affairs may become a public matter for the court to handle in the event you are unable to.

The Living Will. In 1990, the United States Supreme Court ruled that a competent person has a constitutional right to refuse life sustaining or any other kind of medical treatment, *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261 (1990). Specifically, the Court held that forcible medical treatment given to a non-consenting individual represents a substantial interference with that individual's liberty.

A Living Will, also called a Declaration or Directive to Physicians, is a legal document that demonstrates your consent, should you become unable to communicate with your doctors, to refuse such life sustaining treatment in the event of terminal illness. However, it is important to note that the final decision regarding your medical treatment, if you are incapacitated, lies with the person you appoint in your Durable Power of Attorney for Healthcare.

Conclusion. In emergency situations, medical and financial decisions often times must be made quickly. Review the Durable Powers of Attorney and Living Will in depth with your agent, in addition to verbally expressing your wishes, to make sure he or she understands them completely. In appointing your agent, consider choosing someone who lives nearby and can handle your affairs with relative ease. It is also a good idea to give copies of these documents to your agent as well as your physician.

This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.