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Powers of Attorney: Property and Health

The Illinois Legislature has made drafting powers of attorney a seemingly simple matter by providing standardized forms for property and healthcare. These forms however, may not always be the best for you. When using these forms, please remember that they are but a starting place, to be adapted to your particular circumstances.

The Illinois durable powers of attorney allow you to appoint an agent to act on your behalf, even during disability. The agent is not required to exercise the power but, if they do, they must use due care. Thus, the agent is prohibited from wasting your assets or using them for their own benefit.

The property power of attorney usually authorizes the agent "to perform every act of every kind and nature which may be deemed desirable or advisable to be performed.." This power is not unlimited, however. It specifically excludes certain powers. Excluded powers include the power to make gifts, and the power to change any beneficiary under any will, trust, joint tenancy, retirement plan or life insurance contract. Neither can an agent name themselves as a trust beneficiary. You may wish the agent to have some or all of these powers. Your attorney, in preparing a power of attorney, should carefully inquire into your wishes and needs. If the power to make gifts, for example, is desired, it will need to be specifically included in the power of attorney document. The power to make gifts includes charitable gifts, gifts to family members or to third parties. Thus, even though a person has a long history of making gifts to family or to charity, if they become disabled and are unable to act on their own behalf, the agent, without specific language granting the power, will not be able to continue such gifts.

The healthcare power of attorney is another document that names an agent to act on your behalf but for healthcare decisions. Again, this includes very broad powers and operates during periods of disability. The power of attorney for healthcare form enables you to grant to the agent full power to make an anatomical gift of organs upon death. The document can be customized to limit the powers of the agent if you have a specific religious or personal belief about any type of treatment. Again, great care must be taken in drafting a power of attorney to be certain that it meets your wishes and needs.

The healthcare power of attorney also provides statements about life-sustaining treatment similar to a living will. While there is an Illinois Living Will Act, a separate living will is not effective as long as an agent is available and is authorized to act pursuant to a properly executed power of attorney for healthcare.

By properly considering and executing healthcare and a property powers of attorney, a court appointed guardian will be unnecessary. A properly tailored healthcare power of attorney and property power of attorney is advisable to any person, regardless of age or medical condition. Your attorney should be used when drafting the power of attorney that is right for you.

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