



Guardianship and Powers of Attorney

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Topics for Today's Discussion

- Capacity
- Planning for Future Incapacity
 - ▣ Powers of Attorney for Property
 - ▣ Powers of Attorney for Health Care
 - ▣ Living Wills
- Guardianship
- Questions

What's this “capacity” business?

Making and communicating decisions.

Who has capacity?

- a) A newborn baby.
- b) A 17 year-old girl.
- c) An 36 year-old man.
- d) A 68 year-old woman with Alzheimer's Disease.

Powers of Attorney

Delegating Decision Making

Overview

Powers of Attorney (“POAs”) create “Agencies.” Agencies are **relationships** between “Principals” and “Agents” that authorize Agents to act **on behalf of** and **from the resources of** the Principals, **according to** the Principals’ **instructions** or otherwise in the Principals’ **best interest**.

Key Concepts

- Agent(s)
- Scope of the Agent(s)' Authority
- Duration & Date of Effectiveness
- Instructions
- Forms

Types of Powers of Attorney

Health Care

- Authorizes personal care and medical treatment decisions including the withdrawal of life-sustaining treatment at the end of life
- Covers admission to hospitals, nursing homes, mental health facilities, etc.

Property

- General durable powers may authorize nearly all kinds of “property” (i.e., financial) transactions and decisions
- Special powers may only authorize someone to do a specific thing

PoA for Property Specifics

- Agent(s)
 - ▣ Who do you trust to honestly and carefully manage your financial resources if you are unable to do so?
 - ▣ Do you have a successor (backup) in mind?
- Scope of Authority
 - ▣ Will you limit the authority given to your agent?
- Duration
 - ▣ Do you need help today or at some point in the future?
- Interdependence

Property Agents' Duties

- Duties of Property Agents

PoA for Health Care Specifics

- Agent(s)
 - ▣ Your agent should be someone you know well and trust to carry out your wishes.
 - ▣ Your agent should be able to handle making potentially emotional decisions concerning your health care.
- Scope of Authority
 - ▣ Will there be limitations on the agent's authority?
- Duration
 - ▣ Standard Powers v. "Springing" Powers
- Instructions
 - ▣ How will my agent know my wishes?

Health Care Agents' Duties

- Duties of Health Care Agents

Health Care Surrogacy Act

These individuals are authorized to make health care decisions* for you if you are incapacitated and have not otherwise authorized someone else.

- 1) the guardian of your person;
- 2) your spouse;
- 3) any of your adult children;
- 4) either of your parents;
- 5) any of your adult siblings;
- 6) any of your adult grandchildren;
- 7) one of your close friends;
- 8) the guardian of your estate.

Changing or Revoking a POA

- You may revoke a Power of Attorney for Health Care at any time and in any way calculated to inform your agent of your revocation.
- You may only revoke a Power of Attorney for Property if you still have the capacity to do so.

Living Will Declarations

Giving Final Instructions

Living Will Fundamentals

- A Living Will directs your health care provider to remove life sustaining treatment in a very limited set of circumstances
 - ▣ It cannot override the authority granted to an agent appointed under a Power of Attorney for Health Care
- It does not address other health care scenarios

Living Will Declaration

Giving Final Instructions

Living Wills v. PoA for Health Care

Power of Attorney for
Health Care

Living
Will

Guardianship

Court Declaration of Disability

Guardianship-What is it and how to get one?



Guardianship involves a court proceeding to determine if one is legally unable to make a communicate decisions.

Can anyone get a guardianship?

□ Protections

- ▣ The court may appoint a *Guardian Ad Litem* to investigate your best interests.
- ▣ The court may appoint an attorney to represent the ward

Guardianship basics

- If a person is determined to be disabled, the court will appoint a guardian of your person or your estate or both
- Guardian is required to file written reports at least yearly and to undergo training when appointed.

Types of Guardianship

Person

- Responsible for making personal decisions, such as medical treatment, where a person lives, goes to school.
- Guardians must seek court permission to admit ward into a nursing home or move out of state

Estate

- Responsible for making decisions concerning the ward's finances.
- Must account for the ward's income and expenses and assets

How long does a guardianship last?

- Lasts until terminated by Court Order
- For minor guardianships, ends when the minor turns 18

Effects of Guardianship

- Ward has no legal capacity to make decisions
- Guardianship can affect the ability to get a driver's license.
- Section 103 of the Illinois Vehicle Code provides a drivers license shall not be issued to any person the Secretary of State has good cause to believe, because of mental or physical disability “would not be able to safely operate a motor vehicle upon the highways” UNLESS that person can provide a verified written statement from a competent medical specialist saying that the disability will not cause the driver to be a danger to public safety.

Effects of Guardianship continued

- Need court approval to get married
- Effects ability to get a FOID card. Section 8 of the FOID Card act provides that Illinois State Police have the authority to deny an application for or revoke and seize a FOID card if the person is found to have a mental or developmental disability.
- Does not affect voting rights in IL, but laws vary by state.

Questions

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