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Are Your End-of-Life Documents in Order?

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Recently, I've gotten a number of requests from folks wondering what end-of-life documents they should have in place and whether there are forms they can use in order to do so. For Texas residents, there are actually a number of statutory forms that can be used for many of the end-of-life documents one should have in place.

Importantly, understand these are merely end-of-life documents. There are many other considerations to consider as part of a broader estate plan for which statutory forms do not exist. This includes wills, trusts, and Transfer on Death Deeds, just by way of example. I strongly recommend that everyone—particularly those involved in agriculture—work with an attorney to develop a comprehensive estate plan to transfer asset ownership and business operations.

With that caveat, there are four end-of-life documents that I believe every Texan should have in place. I will beg you—do not wait until you’re in an emergency situation before you get these documents in place. Sitting in a hospital room is never the time you want to try and figure out how to get these documents executed. If you’d like to hear more about these documents, [click here](#) to hear a podcast interview with myself and Andrew Crocker, an Extension Specialist focused on gerontology and health.

Medical Power of Attorney

A medical power of attorney allows the person executing the form (the “principal”) to appoint another person (the “agent”) to act on the principal’s behalf to make medical decisions in the event the principal is incapacitated. For example, if a person is knocked unconscious and is unable to make decisions regarding treatment or testing, the medical power of attorney would allow the appointed agent to make such decisions.

It is important to carefully consider who a person chooses to designate as his or her agent to make medical decisions. Serving in this role could lead to an agent having to make very difficult, painful decisions and ensuring someone is selected who is capable of making the decisions the principal would want is critical. Also, it is extremely important to have conversations with the person selected as the agent to ensure they understand the principal’s wishes in various potential situations and are willing and able to ensure those wishes are carried out.

In Texas, the legislature has drafted a statutory form Medical Power of Attorney that is [available online](#).

To be valid, Texas law allows a Medical Power of Attorney to either be signed before a Notary Public or to be signed in the presence of two adult witnesses. If the principal elects to use witnesses, there are certain rules with regard to who may serve in that role. One of the witnesses may not be the person designated as agent; a person related by blood or marriage; a person entitled to any part of the estate after death by will or operation of law; the principal’s physician; an employee of the principal’s physician; an employee of a healthcare facility of which the principal is a patient if the employee is an officer, director, partner, or business office employee of the facility; or a person who has a claim against the principal’s estate

after death. For someone electing to execute before witnesses rather than a notary, I always recommend (if possible) using two disinterested witnesses.

Authorization to Disclose Protected Health Information

Another important document to allow a person to make medical decisions is an Authorization to Disclose Protected Health Information. Essentially, this document allows the patient to authorize the disclosure of health information that would normally be protected from such disclosure to identified persons. The form is simple, requiring only the name of the person executing, name of person to whom information may be released, and the identification of the types of information that may be released.

The Texas Attorney General's Office has developed a form [available online](#).

The form just needs to be signed by the person executing. There is no notary or witness required.

Directive to Physicians and Family or Surrogates (aka Advanced Directive)

An advanced directive provides instructions to a physician regarding the patient's desire for artificial, life-sustaining measures to be taken in the event the patient is diagnosed with an irreversible or terminal condition. Importantly, this document only becomes effective upon a diagnosis the patient is terminal or has an irreversible condition, which differs greatly from the medical power of attorney discussed above which is effective upon incapacity. Under Texas law, "terminal" is defined as "an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within 6 months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care." An "irreversible condition" is a condition, injury, or illness that "may be treated, but never cured or eliminated; that leaves a person unable to care for or make decisions for the person's own self; and that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal."

In Texas, the legislature has drafted a statutory form advanced directive [available online](#). It may be signed by two witnesses, with the limitations on whom may do so

as noted above in the Medical Power of Attorney section or signed before a Notary Public.

The main consideration for a person executing an advanced directive is whether he or she wishes for treatments other than those needed to make the patient comfortable to be discontinued or withheld or whether the patient wants to be kept alive using available life-sustaining treatment. It is critical to communicate these wishes to family members to ensure that the person's wishes are respected and followed.

What's the main difference between a Medical Power of Attorney and an Advanced Directive? A Medical Power of Attorney basically authorizes someone to act on the patient's behalf in medical decision-making. An Advanced Directive expresses the patient's wishes and requests physicians and family members honor those wishes.

Durable Power of Attorney

As the name suggests, a durable power of attorney functions much like the medical power of attorney, except it allows decisions to be made and actions to be taken with regard to financial assets and business matters, rather than medical decisions. Thus, the principal who executes the document will appoint an agent to carry out financial and business matters on behalf of the principal. Generally, this includes the authority to do things like executing contracts, paying debts, and purchasing or selling property, although a principal certainly may place limits or restrictions on these powers.

In Texas, the legislature has drafted a statutory form Power of Attorney that is [available online](#). Texans may simply fill in the blanks and check the appropriate boxes on the form to draft a valid Power of Attorney. Once the Power of Attorney has been completed, it must be signed before a Notary Public. Witnesses are not sufficient for valid execution.

There are a number of decisions that a principal must make when completing the statutory durable power of attorney form. First, the principal may limit any powers granted to the agent. Second, the principal can determine whether the agent will be compensated for his or her service. Third, if the principal appoints more than one agent, the principal must decide whether those co-agents may act independently of

each other. Fourth, the principal must determine when the durable power of attorney will take effect. It may either go into effect immediately upon signing, or can go into effect only upon the incapacitation of the principal.

Do keep in mind that a statutory durable power of attorney ends at death or if a court appoints a legal guardian for the principal. Once someone dies, there will have to be an executor appointed for his or her estate in order to take action with regard to the estate's business and finances.