James Cissell

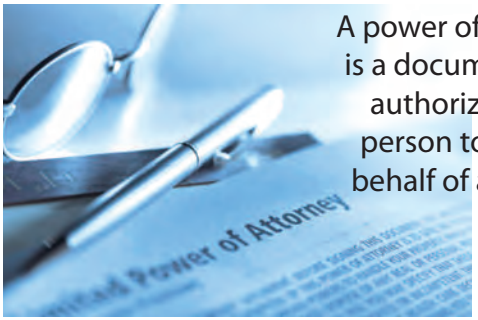
JUDGE, PROBATE COURT
HAMILTON COUNTY, OH

Informational guide about Advanced Directives

ADVANCED DIRECTIVES

Advanced directives are documents that can be used to express your desires as to how your medical treatment, business and personal affairs should be handled when you are not able to express those matters yourself. Such directives relieve your loved ones of having to make decisions in difficult times. Advanced directives provide peace of mind and ensure that your affairs will be carried out as you would want them to be.

POWER OF ATTORNEY



A power of attorney is a document that authorizes one person to act on behalf of another.

The person granting the power is known as the grantor or principal. The person authorized to act is known as the attorney-in-fact. A power of attorney can be either durable or non-durable. If the instrument is durable, the powers granted therein to the attorney-in-fact will survive the incapacity or incompetence of the person granting the power. If the instrument is non-durable, the power granted therein will terminate upon the incapacity or incompetence of the person granting the power. All powers of attorney cease upon the death of the principal and may no longer be used.

The named attorney-in-fact is able to act in the place of the principal. The attorney-in-fact will be able to transact business on the principal's behalf just as the principal could if he or she were present.

Powers of attorney can be divided into four types:

General Power of Attorney This instrument permits the attorney-in-fact to act on behalf of the principal in business and personal transactions. This instrument cannot be used to make medical decisions. A general power of attorney is normally broad in nature. Typical powers granted are the right to execute, modify and terminate contracts; to buy, sell or transfer real or personal property; to adjust, compromise and settle claims; to conduct and carry on the business affairs of the principal. Most general powers of attorney are revocable. Thus, the principal can revoke the power given to the attorney-in-fact by delivery of a written document which gives notice of the revocation.

Specific Power of Attorney This instrument permits an attorney-in-fact to act on behalf of the principal in specific and limited situations. Examples of a specific power of attorney would be: authorizing an attorney-in-fact to act on your behalf at a real estate closing; permitting an attorney-in-fact to act on your behalf to obtain license plates for your vehicle. Specific powers of attorney can also be revoked by the principal upon delivery of a written notice to the attorney-in-fact.

Financial Power of Attorney This instrument gives the attorney-in-fact authority to handle the principal's financial affairs, such as bill payment, banking and investments. Financial powers of attorney can be effective immediately or can be activated upon the occurrence of a certain event, such as the incompetency or incapacitation of the principal. Financial powers of attorney can be unlimited in duration or terminate at a date certain. Financial powers of attorney may be durable. Financial powers of attorney can be revoked upon delivery of a written notice to the attorney-in-fact.

Durable Power of Attorney for Health Care This instrument is used exclusively for authorizing the attorney-in-fact to make medical and health care decisions for the principal when the principal is no longer capable of making decisions for him or herself. A licensed physician will determine when the principal is no longer capable of making decisions. This instrument requires the attorney-in-fact to make health care decisions which are consistent with the wishes of the principal. The instrument will not overrule a living will. The person named as the attorney-in-fact must be an adult who is not your physician or the administrator of the facility in which you are receiving medical services.

LIVING WILL

A living will is a document that expresses the wishes of a person regarding life sustaining treatment

once the person has become terminally ill or permanently unconscious. The living will becomes effective only when you are unable to communicate your wishes and are terminally ill or permanently unconscious. The instrument gives your treating physicians authority to follow your instructions regarding the use or non use of life sustaining treatment when you are permanently unconscious or terminally ill. A living will can be changed or revoked by you at any time. No other person may revoke or modify your living will. The determination as to whether you are in a permanently unconscious state or terminally ill, beyond medical help, with little chance of recovery will be made by two physicians who are required to examine you and agree that you are in the aforementioned condition. A living will gives instructions on the use of cardiopulmonary resuscitation ("CPR") and the use of hydration and nutrition devices.

DO NOT RESUSCITATE ORDER

The Do Not Resuscitate Order, also known as the DNR Order, was created by the Ohio legislature in 1998 to permit emergency health care workers to honor a person's wishes not to have CPR when the heart or breathing stops. The DNR Order must be written by a physician, certified nurse practitioner or clinical nurse specialist. It is important that you notify your family and care providers that you have a DNR Order so that your wishes may be followed outside of the hospital and nursing home. A DNR Order may be classified as a Comfort Care Arrest Order or a Comfort Care Order. Under a Comfort Care

Arrest Order, the patient will receive all appropriate medical treatment, including resuscitation, until the patient experiences a cardiac or pulmonary arrest. Under a Comfort Care Order, the patient receives all appropriate medical treatment, with the exception of life sustaining treatment. You can revoke your DNR Order at anytime. A request for a DNR Order can be incorporated into a living will. A principal, under a durable power of attorney for health care, may authorize the attorney-in-fact to direct the principal's physician to write a DNR Order.

MENTAL HEALTH DECLARATIONS

In October 2003, the Ohio legislature enacted a new law which permits an individual to state his or her preferences regarding mental health treatment. The instrument also permits you to designate a person to serve as your proxy to make mental health care decisions for you when you cannot make those decisions for yourself. The Mental Health Declaration is only effective if it has been communicated to the declarant's mental health treatment provider and if the physician designated in the Declaration and one other physician who is not treating the declarant have examined the declarant and determined the declarant lacks capacity to consent to mental health treatment. The Declaration permits the declarant to authorize the administration or withholding of psychotropic medicines. The declarant can designate the place of treatment and the duration of treatment. The Mental Health Declaration can not be overridden by the attorney-in-fact of a durable health care power of attorney. The Declaration does not supersede a living will. The declarant is unable to revoke or cancel the Declaration when it has been determined that he or she lacks capacity to make informed decisions. The Declaration remains valid for three years, unless properly revoked. The Declaration may be renewed for another three year period if no changes are made to the original Declaration. Once the Declaration becomes operative, it will remain in full force, regardless of the date set for expiration, until the declarant is once again able to make informed decisions regarding their mental health treatment.

PROS AND CONS

- The use of properly drafted advanced directives will reduce the need for court intervention.
- The use of advanced directives provide reassurance that your affairs will be conducted in the manner you desire when you are unable to communicate your desires.
- You are entrusting the attorney-in-fact and the proxy with care and control of your life. You want to make certain that individual selected to serve in this capacity will comply with your wishes and not take advantage of you and/or your assets.
- While there are many websites from which advanced directive forms can be downloaded, it is strongly urged that you consult an attorney.

The following websites may be helpful for further information on Advanced Directives:

Ohio State Bar Association
www.ohiobar.org
Ohio Hospice and Palliative Care Organization
www.ohpco.org
Hamilton County Probate Court
www.probatect.org/services/livingwill.htm

HOURS & LOCATIONS

Main Office
William Howard Taft Center
230 East Ninth Street, 9th Floor
Cincinnati, OH 45202
Phone: 513-946-3580
Fax: 513-946-3581
Monday- Friday 8 AM- 4 PM

BE SURE TO VISIT OUR WEBSITE
www.probatect.org

Judge James Cissell
As Probate Court Judge, my goal is serve the public in the most efficient and courteous manner possible. I am providing this brochure to help with any possible questions or concerns you may have while working with the Probate Court. I hope you find this information helpful.

The information in this pamphlet is provided as a service of the court and does not constitute legal advice which can only be given to you by an attorney. Many probate and family law matters involve complex and valuable legal rights. You should always speak with an attorney before filing any papers.

Hamilton County Probate Court
James Cissell, Judge

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