

Evaluating Your Estate Plan: Powers of Attorney and Other Forms of Substitute Decision Making

Ag Decision Maker

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As we think about lifetime transitions and estate planning, one aspect is to consider the times in life where it may be necessary for someone to step into your shoes and make decisions for you. We never know – at any age – when we may be unable to speak for ourselves. With proper planning, there are a variety of tools that can be used for what is sometimes referred to as Substitute Decision Making.

In Iowa, the concept of substitute decision making is addressed in various sections of the Iowa code. For example, in 2008 the Iowa legislature passed chapter 231E, the “Substitute Decision Maker Act.” Although the State Office of the Substitute Decision Maker has been defunded by the legislature at this writing, the law still provides some guidelines and definitions. The concept of substitute decision making generally means the provision of decision making services by guardian, conservator, representative payee or an attorney-in-fact under a power of attorney, or personal representative.

Power of Attorney (POA) and Related Documents

A Power of Attorney or “POA” is a legal document that grants authority to another person to manage your affairs on your behalf. You may be referred to as the **principal** while the person who is given the authority to act on your behalf is referred to as an **attorney-in-fact** or **agent**. Most POAs are intended to grant authority when you become unable to manage your own affairs. Although you must be competent at the time a POA is executed, many POAs are durable, which means that they remain in effect during a time of incompe-

tency. Likewise, a POA may be revoked as long as you are competent to do so. A POA may be plenary, meaning it grants complete and unqualified authority to the attorney-in-fact. However, most POAs are express, which means that the POA grants specific, limited powers to the attorney-in-fact.

Pursuant to Iowa law, the Iowa State Bar Association has prepared several forms which can be used for substitute decision making purposes. These forms will be identified and discussed here. **However, it is very important that you not rely on forms alone for your legal advice and decisions. Such forms may or may not fit your needs and wishes in the event that you become incompetent to manage your own affairs.** You should consider and discuss your specific needs and wishes with your family and with your own legal professionals.

General Power of Attorney

Iowa State Bar Association Form No. 120 is a General Power of Attorney. This POA lists a broad range of specific powers that may be exercised by the attorney-in-fact that tend to focus on financial and business decisions. Examples include selling property, paying debts, maintaining bank and other financial accounts, paying taxes, and voting on corporate matters. Paragraph 7 of the form contains provisions to allow you to designate whether the POA becomes effective immediately, upon a certain date or only upon your disability as designated by a physician. Should you wish to execute a general POA, this form may be appropriate; or, you may wish to have your attorney prepare a POA that covers your specific needs and desires.

Durable Power of Attorney for Health Care Decisions

Iowa State Bar Association Form No. 121 is a Durable Power of Attorney for Health Care Decisions, alternatively known as a Medical Power of Attorney. The purpose of this form is to designate another person (your attorney-in-fact or agent) to make health care decisions for you in the event you are unable to make these decisions or to speak for yourself.

Declaration Relating to Use of Life-Sustaining Procedures (Living Will)

Iowa State Bar Association Form No. 122 is not a Power of Attorney. However, it may be used by your attorney-in-fact or agent on a Durable Power of Attorney for Health Care Decisions to understand what your wishes would be in the event you are unable to speak for yourself. This Living Will document can be provided to your attending physician or other health care provider. It can be executed and revoked with less formality than a Power of Attorney because POAs must be notarized, while a Living Will does not need to be notarized to be effective.

Combination Durable POA for Health Care and Living Will

Iowa State Bar Association Form No. 123 is a combination document – a Durable Power of Attorney for Health Care Decisions (Medical Power of Attorney) combined with a Declaration Related to Life-Sustaining Procedures. Again, because this document is a Power of Attorney, it is more formal and should be notarized for it to be effective.

Do Not Resuscitate Orders

Sometimes people ask about the purpose of “Do Not Resuscitate” (DNR) orders. Iowa law allows emergency care providers and others in settings outside of a hospital to rely upon

a physician-issued do-not-resuscitate (DNR) order for an adult individual in a terminal condition. An attending physician must certify that the patient is over age 18, has a terminal diagnosis and that after consulting with the patient, it is the patient’s wish (and the physician’s order) that health care providers, including qualified emergency medical services (EMS) personnel shall withhold or withdraw certain life-sustaining procedures. You should consult with your physician if this is of interest to you.

Iowa Department of Revenue Power of Attorney Form

Iowa taxpayers should be aware that the Iowa Department of Revenue requires that its Form 2828 be on file before the Department will discuss confidential tax information with any person other than the taxpayer. This POA is available on the Department’s website (www.iowa.gov/tax/forms/14101.pdf) or from your tax professional or attorney. The Department requires this POA when the taxpayer wishes to authorize another person to receive copies of notices, documents or checks as well as making other requests from the Department or to represent a taxpayer in meetings, hearings or appeals before the Department.

Other Forms of Substitute Decision Making

Representative Payee (RP)

The Social Security Administration (SSA) will sometimes appoint a Representative Payee when a determination is made that a beneficiary is incapable of managing Social Security benefits. The Representative Payee may be an individual, agency, organization or other institution appointed by the SSA to receive funds on behalf of the beneficiary. The RP is responsible to meet essential needs of the beneficiary

for food, shelter, clothing, medical care and other basic needs. After those needs are met, the RP is responsible to manage and conserve the beneficiary's Social Security funds in terms of meeting past debts and planning for future needs. Appointment of a Representative Payee is a less restrictive alternative to a conservatorship. More information about the Representative Payee system can be found on the SSA website: www.ssa.gov/payee/

Conservatorship

A conservatorship is a court-appointed and supervised system wherein a person(s) is designated to have custody and control of the property of an incompetent person (referred to as a "ward"). In a full or general conservatorship, the conservator is given authority by the court to make all financial decisions on behalf of the ward, except for certain decisions that require prior court approval. In some cases, a limited conservatorship may be established for specific duties, leaving other decisions in the hands of the ward. Generally, a conservator's duties focus on financial matters such as reviewing and maintaining records, making payments (such as for health care, housing and other basic needs) and executing documents on behalf of the ward. A conservator is considered to be an officer of the court and must file inventories and annual reports with the district court. A court order is required to revoke or amend a conservatorship.

Guardianship

A guardianship is another court-appointed and supervised process wherein a person(s) is designated to have custody of an incompetent person. While a conservatorship focuses on financial matters, a guardianship focuses on per-

sonal decisions. Examples include where the ward lives, meals, health care decisions, recreation and other personal services as needed. Similar to a conservatorship, a guardianship may be general and give the guardian authority to make all decisions for the ward; while a limited guardianship specifies particular areas of decision making and leaves other decisions to the ward. The guardian is considered an officer of the court and must file annual reports with the district court.

Guardianships and Conservatorships are fairly complicated, expensive processes that generally can be avoided with planning. Persons who have planned ahead and executed POA documents have already thought about who they would like to have make decisions for them if they are unable to do so. Establishment of a Guardianship or Conservatorship requires that a petition be filed in the district court in the county of residence of the person believed to be incompetent. The standard that must be proven for a court to establish a guardianship or conservatorship is that the person's own decision making capacity is so impaired that the person is unable to care for his or her own personal safety or to provide for necessities. The person must be at actual, serious risk of physical injury or illness. The court will not establish a guardianship or conservatorship just because a person makes poor decisions. If incompetency is shown, the court will establish the least restrictive guardianship or conservatorship possible in the spirit that people should be free to make their own decisions, even if other people disagree with those decisions.

Resources for Information on POAs and Substitute Decision Making in Iowa

There are a variety of free, online resources available regarding POAs and related forms of substitute decision making.

Alternatives to Guardianship and Conservatorship for Adults in Iowa

<http://publications.iowa.gov/3372/1/AlternativesGuardianshipConservatorship.pdf>

Iowa Power of Attorney Handbook

http://publications.iowa.gov/9370/1/POA_BookletUpdate.pdf

Guide for Substitute Decision Making in Iowa – Iowa Department of Elder Affairs

Available at ISU Extension Online Store (free download) - www.extension.iastate.edu -or- at: www.uiowa.edu/~law-nhlp/A%20Guide%20for%20Substitute%20Decicision%20Making%20in%20Iowa%20pp1-20.pdf

The Gift of Peace of Mind – Writing Advance Directives in Iowa

www.uiowa.edu/hr/famserv/gift_peaceofmind.pdf

Iowa Department of Aging

www.aging.iowa.gov/publications/index.html

Iowa Legal Aid: www.iowalegalaid.org

Select Links from the home page regarding 60+Elder Law and Individual Rights.

University of Iowa – National Health Law and Policy Resource Center

www.uiowa.edu/~law-nhlp/IowaSubstituteDecisionMakingInitiative.shtml

This page has a good variety of free publications regarding Powers of Attorney and other substitute decision making alternatives.

Iowa State University Extension and Outreach does not provide legal advice. Any information provided is intended to be educational and is not intended to substitute for legal advice from a competent professional retained by an individual or organization for that purpose.



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Prepared by Melissa O'Rourke
farm and business management specialist
morourke@iastate.edu, 712-737-4230