

# **LESS RESTRICTIVE ALTERNATIVES TO GUARDIANSHIP**

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## I. INTRODUCTION

### A. Guardianship Policy of the State of Texas

The policy of the State of Texas relating to guardianships is to limit the guardianship to that which is necessary to promote and protect the well-being of the person. The Court is to design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person. §602 Tex. Probate Code.

### B. When Do You Need A Guardian

If a person is “incapacitated” as defined by Texas Probate Code, Section 601(13)(A),(B), or (C), the Code directs that a court of competent jurisdiction shall appoint the incapacitated person a guardian of his or her person and/or estate who shall the powers granted by the court to make decisions regarding that person’s health, welfare, and property. An adult with capacity is entitled to name who they would like to serve as guardian of their person and/or their estate and to disqualify person from serving as the guardian of their person and/or their estate. A form for such as declaration is attached as Appendix A which is called a Declaration of Guardian in the Event of Later Incapacity or Need of Guardian.

### C. What Is An Incapacitated Person

An “Incapacitated person” is defined in the Texas Probate Code, Section 601(13) as:

1. a minor;
2. an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual’s own physical health, or to manage the individual’s own financial affairs; or
3. a person who must have a guardian appointed to receive funds due the person from any governmental source.

The Code goes on to say, in *Section 676(b)*, that parents are the *natural guardians of the person* of the minor children born to the parents by marriage. However, parents are *not the legal guardians of their children’s estates* unless they are so appointed by a court of competent

jurisdiction, and provided further that, only one parent, not both, can be appointed by the court to serve as guardian of a child’s estate. As a child’s natural guardian, parents have the legal authority to make decisions regarding the child’s health care, residence, and schooling, etc. but parents do not have the legal authority to independently control or possess any property that belongs to their children. This means, for example, that if a child under the age of eighteen (18) were to inherit property directly from a grandparent or another person, the child’s parent could not legally hold or possess the property for the minor; instead one of the parents would have to apply to the court to be appointed the guardian of the child’s estate and the court would then have the power to monitor and control how the property was held for the minor and whether or not any expenditures could be made from the guardianship estate for the minor’s benefit.

Once a child turns eighteen (18), however, the parents are no longer seen in law as the natural guardians of the child’s person and they lose the legal authority to control the child’s health care, residence, and schooling, etc. Also, if a parent had been appointed as guardian of the estate for their minor child, when the child turns eighteen (18), that guardianship should terminate and the parent then must turn the estate property over to the child.

## II. METHODS TO AVOID GUARDIANSHIPS OF THE PERSON FOR INCAPACITATED ADULTS

### A. Medical Treatment

1. Medical Power of Attorney - A competent adult may execute a medical power of attorney pursuant to §166.151 et seq., Tex. Health & Safety Code. The disclosure form which the client must sign is located at §166.163 of the Health & Safety Code and the actual form for the medical power of attorney is located at §166.164 of the Health & Safety Code. A copy of the disclosure and of the medical power of attorney are included at Appendix “B.”

**NOTE:** Appointment of a Guardian now does not automatically revoke a medical power of attorney. Under §166.156, if a guardianship is instituted, the probate court has authority to determine whether to suspend or revoke the authority of an agent under a medical power of

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attorney and must consider the preferences of the principal expressed in the medical power of attorney.

2. Consent to Medical Treatment Act - To be used in non-emergency situations for incapacitated adult patients whose medical conditions do not involve the withholding or withdrawal of life-sustaining treatment and used only where the patient has not executed a medical power of attorney. See §313.001 et seq., Tex. Health & Safety Code Ann. The following adult persons in the following order of priority may make a medical decision for an incapacitated adult patient:

- a. the patient's spouse;
- b. an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as sole decision maker;
- c. a majority of the patient's reasonable available adult children;
- d. the patient's parents; or
- e. the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

**NOTE:** a surrogate decision maker under the Consent to Medical Treatment Act may not consent to: (1) voluntary inpatient mental health services; (2) electro-convulsive treatment; or (3) the appointment of another surrogate decision-maker.

which can be executed by a competent adult which is commonly known as a "living will." This directive advises medical personnel and family members or a surrogate decision maker of what treatment is preferred by the declarant in the event of a terminal illness or irreversible condition. Section 166.033, Tex. Probate Code has the current form of the directive authorized by the Texas Legislature effective September, 1, 1999. A copy of the current form is attached as Appendix C.

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The prerequisites for consent by a surrogate decision maker is that the adult patient must be in a hospital or nursing home and be comatose, incapacitated, or otherwise mentally or physically incapable of communication and in need of medical treatment. If the surrogate decision maker's consent to medical treatment is not made in person, the consent must be reduced to writing in the patient's medical record and signed by the hospital or nursing home staff receiving the consent. See § 313.005 Tex. Health & Safety Code Ann.

3. Emergency Medical Treatment - Consent for emergency medical care of an individual is not required if an individual is unable to communicate because of injury, accident or illness and is suffering from a life-threatening injury. See §773.008 Tex. Health & Safety Code.

4. Advanced Directives - Other advanced directives are set forth in the Advanced Directives Act, §166.001 et seq., Tex. Health & Safety Code A directive is defined as "an instruction...to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition" and apply to "qualified patients" which are defined as patients with a terminal or irreversible condition as certified by their attending physician" under §166.031 Tex. Health & Safety Code Ann. Some examples of the Advanced Directives are as follows:

a. Written Directive by Competent Adult - See §166.032, Tex. Health & Safety Code Ann.

b. Directive to Physicians and Family or Surrogates - A written advanced directive

c. Nonwritten Directive by Competent Adult:

Under §166.034, a nonwritten directive must be made by a competent adult declarant in the presence of the attending physician and two witnesses and the physician must then make the existence of the directive part of the declarant's medical record and record the name of the two witnesses.

5. Out of Hospital DNR orders

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- a. Written Out-of-Hospital DNR Order by Competent Patients - A competent person may execute a written out-of-hospital DNR directive to out-of-hospital health care professionals to withhold cardiopulmonary resuscitation and certain other life sustaining treatment. See §166.082 Tex. Health & Safety Code. This document is to be prepared on a standard form as specified by the Texas Department of Health. This order may be revoked at any time without regard to the Declarant's mental capacity. See §166.092 Tex. Health & Safety Code.
- b. Written Out-of-Hospital DNR for Incapacitated Patients - Additionally, the following persons may execute an out-of-hospital DNR on behalf a patient who in incapacitated:
- (i) if there is a previous Directive to Physician, an incapacitated person's physician can execute an out-of-hospital DNR order;
  - (ii) if there is a previous directive to physician with a proxy named, the proxy may execute an out-of-hospital DNR order; or
  - (iii) if no out-of-hospital DNR order and patient is now incapacitated but had previously executed a medical power of attorney, the agent named in the medical power of attorney may sign the out-of-hospital DNR order.
- c. Nonwritten Out-of-Hospital DNR Orders by Competent Patients - Must be issued by an adult competent person in the presence of an attending physician and two witnesses and the physician must reduce it to writing. See §166.084 Tex. Health & Safety Code Ann.
- d. Nonwritten Out-of-Hospital DNR by Incapacitated Patients - these are permissible under §166.088 Tex. Health & Safety Code Ann. if the decision is

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based upon knowledge of what the patient would have desired:

- (i) if no out-of-hospital DNR and patient is incapacitated or incapable of communication, the attending physician and the person's legal guardian or agent with the medical power of attorney may execute an out-of-hospital DNR order under §166.088(a) Tex. Health & Safety Code.
  - (ii) If patient is incapacitated or incapable of communication and there is no guardian or agent under a medical power of attorney, the attending physician and a qualified relative may execute an out-of-hospital DNR.
  - (iii) If patient is incapacitated or incapable of communication and there is no qualified relative available, an out of hospital DNR order may be concurred with by another doctor who is not treating the patient and who is a representative of the ethics or medical committee of the health care facility in which the person is a patient.
- e. Challenges to Out-of-Hospital DNR Orders - May be made by applying for temporary guardianship under Section 875, Texas Probate Code by any of the following persons: (1) patient's spouse; (2) patient's reasonably available adult children; (3) patient's parents; or (4) patient's nearest living relative. §§166.088(g) and 166.039(b) Tex. Health & Safety Code

**NOTE:** an out-of hospital DNR order may be revoked by a Declarant at any time without regard to a Declarant's mental capacity. See §166.092, Tex. Health & Safety Code.

## B. Mental Health Treatment

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1. Declaration for Mental Health Treatment - Can only be executed by a person with capacity. See §137.001 et seq., Tex. Civil Practice & Remedies Code. A copy of a Declaration for Mental Health Treatment is included as Appendix “D.”

a. Limitation: the declaration is only effective upon execution, however, it is valid for only three years from date of execution unless declarant is incapacitated at three year anniversary in which case it stays in effect until incapacity has concluded.

b. What Can Be Included in the Declaration: The declaration may include consent to or refusal of mental health treatment. See §137.002 Tex. Civil Practice & Remedies Code.

c. Form of the Declaration: See §137.011 Tex. Civil Practice & Remedies Code.

2. Commitments pursuant to Mental Health Act

Allows for commitments of mentally ill persons, chemically dependent persons, and mentally retarded persons if a temporary commitment may be more advantageous than a guardianship. See §§ 462.001, 571.001 and 591.001 of the Mental Health Code.

**III. AVOIDING GUARDIANSHIPS OF THE ESTATE FOR AN ADULT INCAPACITATED PERSON**A. Durable Power of Attorney Act

Allows for Powers of Attorney which will continue in the event of future incapacity of the principal. See §481 Tex. Probate Code.

1. Statutory Durable Power of Attorney - See §490 Tex. Probate Code for form. The disclosure form and the Statutory Durable Power of Attorney as modified by Glenn Karisch of Barnes & Karisch, P.C. is attached as Appendix “E.”

B. Revocable Trusts or Management Trusts

Allows for creation of a “living” trust if a Ward has capacity to create the trust. See §112.001 et seq., Tex Property Code.

C. Community Administration

Commonly used where there is an incapacitated spouse. Requires a judicial declaration of incapacity of a spouse and the other spouse with capacity. The spouse with capacity acquires full power to manage, control & dispose of the entire community estate, including sole manage community property of the incapacitated spouse without an administration under §883 Tex. Probate Code. There is no guardianship necessary unless the incapacitated spouse owns separate property. Even if a guardian is appointed, the spouse who has capacity has the right to manage the community property.

D. Sale of Property of Ward without a Guardianship of the Estate

1. Requirements See §890 Tex. Probate Code:

- a. \$50,000 or less in value of property to be sold;
- b. Guardian of the Person must apply for permission to sell property; and
- c. Funds must be deposited into the court registry after sale.

E. Court Created Management Trusts

Allows for the Texas Probate Court to create a management trust with a Ward’s funds. See §867, Tex. Probate Code.

1. Benefits - will generally save costs to a Ward’s estate over guardianship of an estate.

2. Requirements - a corporate trustee required. Generally requires estates over \$100,000 to find a corporate trustee to handle it.

F. Section 142 Trust

Allows for management of property recovered in a suit by a next friend or guardian ad litem in a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem. The court, on application and hearing, may provide by decree for the investment of funds accruing to the minor or incapacitated person under the judgment in the suit. See §142.001 et seq. Tex. Property Code.

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### G. Payment of Claims Without a Guardianship

Allows a creditor of an incapacitated person or a minor who owes the incapacitated person or minor \$50,000 or less to pay those funds into the registry of the Court without the necessity of creation of a guardianship. See §887, Tex. Probate Code.

### H. Medicaid Qualification Trust (“Miller Trust”)

Allows a person needing long-term nursing home care to qualify for Medicaid for such care where the person’s income exceeds the amount required under state sponsored Medicaid programs. See 42 U.S.C. 1396p(1)(d)(4)(B)(i)&(ii).

### I. Receivership

If an incapacitated person’s estate is in danger of injury, loss or waste section 885, Tex. Probate Code allows for the appointment of a receiver to manage the property until the estate is out of danger.

## IV. AVOIDING GUARDIANSHIPS OVER A MINOR

### A. General Information

Many of the same laws outlined above will also be effective to avoid guardianship for a minor. In addition, there are other statutes which are specifically drafted to provide for minors without a guardianship.

### B. Managing Conservatorship

The Texas Family Code allows for managing conservatorships over a minor. Because there is no good management of a minor’s property under the Texas Family Code, the managing conservatorship is best to use as an alternative to “guardianship over the person” only. See §154.301 et seq., Tex. Family Code.

**NOTE:** A managing conservatorship could be used in conjunction with sale of a minor’s interest in property (discussed below) under §889, Tex. Probate Code or with Payment of Claims Without a Guardianship under §887,

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Tex. Probate Code if the property or claim is \$50,000 or less.

### C. Sale of Property of a Minor Without a Guardianship.

This section of the Probate Code allows the sale of either real or personal property of a minor by a parent without the need of a guardian. See § 889, Tex. Probate Code.

#### 1. Requirements:

- a. minor’s interest in the property must be less than \$50,000.
- b. to avoid having to pay the funds into the court registry, the parent may make a statement that the funds shall be used to benefit the minor. See § 889(b), Tex. Probate Code.

### D. School Admission Procedures

The Texas Education Code allows a school district to establish rules for admission regarding who can attend a public school. See §25.001, Tex. Education Code.

### E. Medical Treatment for Minors

1. All Medical Treatment for Minors - a parent or managing conservator can consent for medical, dental, psychological, and surgical treatment, both emergency and non-emergency treatment. See § 153.073 Tex. Family Code.

a. Consent by Non-Parent. Section 32.001 et seq. of the Tex. Family Code provides that the following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

- (1) a grandparent of the child;
- (2) an adult brother or sister of the child;
- (3) an adult aunt or uncle of the child;

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- (4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;
- (5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;
- (6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject;
- (7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or
- (8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.

2. Emergency Medical Treatment for Minors - Consent for emergency care of a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parent, managing or possessory conservator, or guardian is not available is not required. See §773.008, Tex. Health & Safety Code.

3. Advanced Directives for Minors - Under §166.035, Tex. Health & Safety Code, an advanced directive may be executed on behalf of a qualified patient (defined as person suffering from a terminal illness or irreversible condition that has been diagnosed and certified in writing as such by the attending physician) who is younger than 18 years of age by the following persons:

- a. spouse of the patient if the spouse is an adult;

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- b. parent of a patient; or
- c. patient's legal guardian.

NOTE: The desire of a qualified patient, including someone who is under 18 years of age will always supersede the effect of an advanced directive. See §166.037, Tex. Probate Code.

4. Out-of-hospital DNR orders for Minors - Under §166.085, Tex. Health & Safety Code, an out-of-hospital DNR order can be signed on behalf of a minor by the following persons:

- a. spouse of the patient if the spouse is an adult;
- b. parent of a patient; or
- c. patient's legal guardian.

### F. Payment of Claims to a Minor Without a Guardianship

Allows a creditor of a minor who owes the minor \$50,000 or less to pay those funds into the registry of the Court without the necessity of creation of a guardianship. The minor receives the funds on reaching majority unless a further incapacity is determined. See §887, Tex. Probate Code.

### G. Uniform Transfers to Minors Act

This act allows a variety of transfers on behalf of minors pursuant to §141.001 et seq., Tex Property Code.

### H. Receivership

If an minor's estate is in danger of injury, loss or waste, section 885 of the Texas Probate Code allows for the appointment of a receiver to manage the property until the estate is out of danger. The receiver must seek some direction of court on use of the funds, but the statute gives broad authority to seek investment, make loans, etc. with the funds of the minor or otherwise incapacitated person.

## V. MISCELLANEOUS PROVISIONS USEFUL IN AVOIDING GUARDIANSHIPS

### A. Representative Payee

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A representative payee may be appointed by the Social Security Administration to handle the social security benefits of a minor or other incapacitated person. See 42 U.S.C.A. §1382(a)(2). Social security benefits are not considered part of a Ward's estate, therefore, guardianship is not required to receive these benefits.

### **B. Veterans' Benefits Fiduciary**

The Department of Veterans' Affairs allows the appointment of a fiduciary to handle the administration of a veteran's benefits without the appointment of a guardian. See 38 U.S.C.A. §5502(a)(1).

### **C. Commitment Actions for Veterans**

The Department of Veterans' Affairs provides for commitment actions by the Department on behalf of mentally incompetent veterans. See 38 U.S.C.A. §5501.

### **D. Suits by Next Friend**

The Texas Rules of Civil Procedure provide for civil suit to be brought on behalf of a minors and incapacitated persons (identified in rule as: "lunatics, idiots, or persons non-compos mentis") without the need of a guardianship. See Rule 44, Tex. Rules of Civil Procedure.

**APPENDIX A**

**DECLARATION OF GUARDIAN IN THE EVENT OF  
LATER INCAPACITY OR NEED OF GUARDIAN**

I, \_\_\_\_\_, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

1. I designate \_\_\_\_\_ to serve as guardian of my person, \_\_\_\_\_, as first alternate guardian of my person, and \_\_\_\_\_ as second alternate guardian of my person.

2. I designate \_\_\_\_\_ to serve as guardian of my estate, \_\_\_\_\_, as first alternate guardian of my estate, and \_\_\_\_\_ as second alternate guardian of my person.

3. If any guardian or alternate guardian dies, fails, or refuses to qualify, or resigns, the next named alternate guardian succeeds the prior named guardian and becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person: \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

5. I expressly disqualify the following persons from serving as guardian of my estate:

\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.  
SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
\_\_\_\_\_, Declarant

\_\_\_\_\_  
Witness \_\_\_\_\_

\_\_\_\_\_  
Witness \_\_\_\_\_

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Before me, the undersigned authority, on this date personally appeared the declarant, and \_\_\_\_\_ and \_\_\_\_\_ as witnesses, and all being duly sworn, the declarant said that the above instrument was his/her Declaration of Guardian and that he/she had made and executed it for the purposes therein expressed. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

\_\_\_\_\_  
\_\_\_\_\_, Declarant

\_\_\_\_\_

\_\_\_\_\_  
Witness \_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE ME by the above named declarant and affiants of this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Notary Public, State of Texas

**APPENDIX B****INFORMATION CONCERNING  
THE MEDICAL POWER OF ATTORNEY**

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your

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execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:**

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

**I HAVE RECEIVED AND READ THE ABOVE DISCLOSURE STATEMENTS AND UNDERSTAND ITS CONTENTS.**

---

Typed Name of Client

**MEDICAL POWER OF ATTORNEY**

DESIGNATION OF HEALTH CARE AGENT.

I, \_\_\_\_\_ (insert your name) appoint:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

\_\_\_\_\_  
\_\_\_\_\_

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_

B. Second Alternate Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_

The original of this document is kept at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The following individuals or institutions have signed copies:

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Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**DURATION.**

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: \_\_\_\_\_

**PRIOR DESIGNATIONS REVOKED.**

I revoke any prior medical power of attorney.

**ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.**

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)

I sign my name to this medical power of attorney on \_\_\_\_\_ day of \_\_\_\_\_ (month, year)

at \_\_\_\_\_ (City and State).

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print Name)

**STATEMENT OF FIRST WITNESS.**

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

**SIGNATURE OF SECOND WITNESS.**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

**APPENDIX C****DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES**

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

**DIRECTIVE**

I, \_\_\_\_\_, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

\_\_\_\_\_ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

\_\_\_\_\_ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

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\_\_\_\_\_ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

\_\_\_\_\_ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed \_\_\_\_\_ Date \_\_\_\_\_

City, County, State of Residence \_\_\_\_\_

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care

**Chapter 17**

**Less Restrictive Alternatives to Guardianship**

facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witness 2: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**Definitions:**

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person's own self; and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with

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available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

**APPENDIX D**

**NOTICE TO PERSON MAKING A DECLARATION  
FOR MENTAL HEALTH TREATMENT**

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy, and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapacitated to make treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

This document will continue in effect for a period of three years unless you become incapacitated to participate in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapacitated.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapacitated. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT TO BE INCAPACITATED.** A revocation is effective when it is communicated to your attending physician or other health care provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration is not valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

**DECLARATION FOR MENTAL HEALTH TREATMENT**

I, \_\_\_\_\_, being an adult of sound mind, wilfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that I lack the capacity to make mental health treatment decisions. "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness and psychoactive medication, and preferences regarding emergency mental health treatment.

**[Optional]** I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms \_\_\_\_\_ may \_\_\_\_\_ include

\_\_\_\_\_  
\_\_\_\_\_

**Less Restrictive Alternatives to Guardianship**

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**Psychoactive medications.** If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

\_\_\_\_\_ I consent to the administration of the following medications:  
\_\_\_\_\_

\_\_\_\_\_ I do not consent to the administration of the following medications:  
\_\_\_\_\_

\_\_\_\_\_ I consent to the administration of a federal Food and Drug Administration approved medication that was only approved and in existence after my declaration and that is considered in the same class of psychoactive medications as stated below:  
\_\_\_\_\_

\_\_\_\_\_ Conditions of limitations:  
\_\_\_\_\_

**Convulsive Treatment.** If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

\_\_\_\_\_ I consent to the administration of convulsive treatment.

\_\_\_\_\_ I do not consent to the administration of convulsive treatment.

Conditions or limitations: \_\_\_\_\_  
\_\_\_\_\_

**Preferences for emergency treatment.**

In an emergency, I prefer the following treatment **FIRST** (circle one)  
restraint/seclusion/medication

In an emergency, I prefer the following treatment **SECOND** (circle one)  
restraint/seclusion/medication

In an emergency, I prefer the following treatment **THIRD** (circle one)  
restraint/seclusion/medication

\_\_\_\_\_ I prefer a male/female to administer restraint, seclusion, and/or medications.

**Options for treatment prior to use of restraint, seclusion and/or medications:**

\_\_\_\_\_  
\_\_\_\_\_

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—

\_\_\_\_\_  
(Name) \_\_\_\_\_ (Date)

I declare under penalty or perjury that the principal's name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, and that I am not a provider of health or residential care to the principal, an employee of a provider of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

\_\_\_\_\_  
Witness  
Printed Name \_\_\_\_\_  
Date \_\_\_\_\_  
Address \_\_\_\_\_

\_\_\_\_\_  
Witness  
Printed Name \_\_\_\_\_  
Date \_\_\_\_\_  
Address \_\_\_\_\_

## APPENDIX E

## MEMORANDUM

To: (Client Name here)

From: Gilman, Nichols, Hebner & Rixen, P.C.

Date: \_\_\_\_\_, 2000

Re: Important Information Regarding Your Statutory Durable Power of Attorney

The Texas Durable Power of Attorney Act, Tex. Prob. Code Ann. §§ 481-506 (the "Act"), permits you to give someone you trust (called your "agent" or "attorney-in-fact") broad, sweeping power to deal with your assets. The Act permits the use of a statutory form, called a "Statutory Durable Power of Attorney." The statutory form gives the agent very broad powers, but it permits you to omit one or more broad powers by crossing out those powers if you do not wish to give your agent the authority to act in these areas. Most of our clients are able to name an agent who they believe is completely trustworthy. In most cases where the agent is trustworthy, we recommend giving all of the standard powers included in the form -- in other words, we recommend that none of the listed powers be crossed out. **If you are concerned about giving your agent such broad power, or if you have questions about what specific powers are included, please let us know, and we will be happy to discuss the Act with you.**

The statutory form permits you to give your agent limited gift-giving powers by placing your initials by the appropriate sentence on the form. This gift-giving provision in the statutory form only applies if it is initialed. The gift-giving provision in the statutory form limits gifts to any one person in any calendar year to \$10,000.

It has been our experience that most of our clients are willing to give the agent broader gift-giving powers than the statutory form's standard provision. Therefore, we have modified the statutory form to give you a choice as to gift giving powers. By initialing the appropriate box, you can:

- Give your agent no gift-giving powers (which may frustrate planning if you become disabled but which protects you from unwise gifts by your agent);
- Give your agent the gift-giving powers provided for in the statutory form (the power to make gifts up to \$10,000 per calendar year per donee); or
- Give your agent the power to make larger gifts, including gifts to charity (which power gives your agent more flexibility if you become disabled but which may leave you vulnerable to excessive gifts by your agent and may cause your agent tax problems if he is within the group of persons to whom gifts are permitted).

**You should choose which of these three alternatives you wish to select and initial only one box on the form.** If you have questions about this matter or wish to further expand or limit gift-giving powers, please let us know and we will be happy to discuss it with you.

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## Less Restrictive Alternatives to Guardianship

We also recommend that you give your agent the power to create a trust and/or make transfers to a trust. While this power is not included in the statutory form, it can be quite helpful if you are faced with a long-term disability. If you do not wish for one or more of these additional powers to be included, you must cross through it and initial it when you sign the power of attorney.

Of course, in any given case there may be good reasons to include or exclude one or more standard powers or additional powers. For example, as discussed above, you may trust your agent and wish to give him or her broad authority, but you may not wish to give the agent gift-giving powers. The gift-giving power gives your agent the authority to make gifts to himself or herself (if your agent is a beneficiary under your will or one of your heirs under Texas law). This gift-giving authority may help your family save taxes, but you may be uncomfortable giving your agent this much power. If you have any questions about these powers, please consult us.

The Act permits you to make the power immediately effective (in other words, effective the day you sign it, even if you are not incapacitated or disabled) or effective only upon your disability or incapacity. You make this choice by crossing out the alternative you do not wish to include. If you cross out neither alternative, the Act provides that the power is immediately effective. If you wish to make the power effective only upon your disability or incapacity (called a "springing power"), please consider the following:

- Your agent may have difficulty getting springing powers accepted by third parties, such as banks. These third parties are reluctant to rely on the springing power only to have a court determine later that the principal was not in fact incapacitated when the power was used.
- To help gain greater acceptance of springing powers in Texas, the Act provides that a third party, such as a bank, acting in good faith may rely on an affidavit of the agent that the principal is disabled or incapacitated. This means that the agent needs to provide no further proof of disability or incapacity than his or her own sworn statement. This may make it easier to get a springing power accepted, but it also may undermine the reason to use a springing power in the first place.

We have added a provision to the statutory form revoking all previous powers of attorney executed under the Act or its predecessor. (The provision makes clear that you are not revoking other agency-type arrangements, such as health care powers of attorney, directives to physicians, multi-party account agreements, etc.) If you have previously executed a power of attorney which has special revocation requirements (such as requiring the instrument revoking the power to be filed in the public records), please let us know. Otherwise, we will assume that the provision we added is effective to revoke any old powers of attorney you may have executed.

The standard statutory form provides that the power of attorney can be revoked only by *actual* notice to third parties, making it very difficult to revoke if your agent has moved any of your assets without disclosing such to you. You may provide that the power of attorney may be revoked by recording a revocation in the records of the county clerk where you live, but this may make the power of attorney more difficult for your agent to use. We have modified the form so that you may choose if you want the power to be revoked by actual notice to third parties or by recording in the public records.

I have been given an opportunity to read the foregoing Memorandum and to ask about the scope of any powers that I do not fully understand.

\_\_\_\_\_  
Client name here

Date: \_\_\_\_\_

# STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, \_\_\_\_\_ (client's name & address), appoint the following as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD:**

- Real property transactions;
- Tangible personal property transactions;
- Stock and bond transactions;
- Commodity and option transactions;
- Banking and other financial institution transactions;
- Business operating transactions;
- Insurance and annuity transactions;
- Estate, trust, and other beneficiary transactions;
- Claims and litigation;
- Personal and family maintenance;
- Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- Retirement plan transactions;
- Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

**SPECIAL INSTRUCTIONS:**

Special instructions applicable to gifts (initial in front of the appropriate sentence to have it apply):

<b><i>Initial:</i></b>	<b><i>Choose One of the Following By Initialing Your Choice:</i></b>
	<b><i>No Gift-Giving Power.</i></b> My agent (attorney in fact) shall not have the

	power to make gifts.
--	----------------------

	<b><i>Gift-Giving Power Limited to Gift Tax Exclusion.</i></b> I grant my agent (attorney in fact) the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.
--	--

--	--

	<b><i>Broad Gift-Giving Power.</i></b> My agent (attorney in fact) shall have the power and authority to make gifts out of that portion of my estate that my agent determines is not required for my support during my lifetime to any one or more of the following persons or organizations without the necessity of any court approval or judicial action of any kind if my agent deems the gifts to be in the best interests of my family, for tax savings purposes or otherwise: (i) organizations to which charitable contributions may be made under the Internal Revenue Code and in which my agent reasonably believes that I have an interest; (ii) my spouse, any of my descendants, or any other person related to me by blood or marriage; (iii) any devisee or beneficiary under what my agent reasonably believes is my latest validly executed will or trust named in such will; and (iv) my agent, if my agent is eligible under either category (ii) or (iii) above. In exercising this power and authority, I remind my agent that he or she is acting in a fiduciary capacity.
--	---

**ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT:**

My agent shall have the power and authority to create a trust for my benefit, naming my agent as trustee or, if my agent so chooses, naming a bank or trust company with assets under management of \$100 million or more as trustee, which trust may also benefit my spouse and descendants, and to transfer all or any part of my property or estate to the trust so created or to any existing trust of which I am a settlor, a beneficiary, or both, even though my agent may be the trustee.

Although this instrument contains modifications of the statutory durable power of attorney form found in Tex. Prob. Code Ann. § 490, I intend for it to be a "statutory durable power of attorney" as provided in that section and to be construed as such.

UNLESS YOU DIRECT OTHERWISE BELOW, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

**CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:**

<b><i>Initial:</i></b>	<b><i>Cross Out the Alternative Not Chosen and Initial:</i></b>
------------------------	---

	(A) This power of attorney is not affected by my subsequent disability or incapacity.
--	---

	(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

**REVOCATION OF PREVIOUS POWERS OF ATTORNEY:**

I hereby revoke all previous powers of attorney previously executed by me to be effective under the Texas Durable Power of Attorney Act, Tex. Prob. Code Ann. §§ 481-506, or its predecessor, Tex. Prob. Code Ann. § 36A. However, I do not revoke other agency-type arrangements not governed by either of such statutes, including but not limited to durable powers of attorney for health care, directives to physicians, multi-party account agreements at financial institutions.

**REVOCATION OF THIS POWER OF ATTORNEY:**

<i>Initial:</i>	<i>Choose One of the Following By Initialing Your Choice:</i>
	I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.
	I agree that any third party who receives a copy of this document may act under it. This power of attorney may be revoked only by an instrument signed by me and recorded in the real property records of Travis County, Texas.

**SUCCESSOR AGENTS:**

**Less Restrictive Alternatives to Guardianship**

**Chapter 17**

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

**FIRST ALTERNATE OR SUCCESSOR AGENT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECOND ALTERNATE OR SUCCESSOR AGENT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Client name here

STATE OF TEXAS  
COUNTY OF TRAVIS

This document was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 200\_,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

**After Recording, Please Return to:**

GILMAN, NICHOLS, HEBNER & RIXEN, P.C.  
812 San Antonio Street, Suite 201  
Austin TX 78701-2224