PROBATE AND PLANNING

A Guide to Planning for the Future

From the Office of the

Minnesota Attorney General

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keith and sheila

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Introduction

The process of planning ahead for the end of life is something that many want to avoid. Although planning for such a time may not be comfortable, it is an important step to help those who will care for you and your affairs. In fact, some people find it reassuring to know that they have prepared a will to direct how their property should be allocated, or a health care directive to tell their family and caregivers about the medical treatment they want.

These issues and more are discussed in this handbook, *Probate and Planning: A Guide to Planning for the Future*. The book addresses wills and the probate process first. Next, it describes living trusts, conservatorships, and powers of attorney. Finally, it addresses health care directives and planning a funeral.

This publication contains some legal or technical words that may need further explanation. You may want to scan the "Glossary of Terms" starting on page 24 before reading ahead.

Wills

What Is a Will?

A will is a legal document that allows you to transfer your property at your death.

A will is a simple way to ensure that your money, property, and personal belongings will be distributed as you wish after your death. A will also allows you to have full use of your property while you are alive.

Does Everyone Need a Will?

The law does not require that you have a will. However, a will is a useful tool that provides you with the ability to control how your estate will be divided.

If you die without a will, Minnesota's inheritance laws will control how your estate will be divided. Your property will go to your spouse or closest relatives. If you have a spouse and children, the property will go to them by a set formula. If not, the property will descend in the following order: grandchildren, parents, brothers and sisters, or more distant relatives if there are no closer ones. A "Table of Minnesota Heirship" is included at the back of this booklet on page 26.

You may not need a will if you have made provisions so that your assets will pass without one, for example, by establishing trusts, life insurance policies with named beneficiaries, or joint property interests such as real estate or bank accounts.

A will is necessary if you want to leave property to a friend or a charity, to give certain items to certain people, or to leave someone out who would otherwise inherit from you. You may also wish to appoint a specific person to handle your estate. Thus, often it is best to write a will so your intentions can be met.

What Rules Apply to Wills?

In Minnesota, the following rules apply to wills:

- You must be at least 18 years old and of sound mind to make a will;
- The will must be in writing;
- The will must be signed by you, by another person at your direction and in your presence, or by your conservator pursuant to a court order;
- The will must be witnessed by at least two people, both of whom must also sign the will; and
- You must intend for the document to operate as a will.

What Is a Self-Proved Will?

A will is self-proved when you and witnesses acknowledge in affidavits that you signed and executed the will voluntarily, within the presence of at least two witnesses, that you are over 18 years old, not under undue influence, and of sound mind. A will may be made self-proved at the time it is executed or at any time thereafter. You may want to consider this procedure as it helps establish that your will was properly executed, should it be contested in court.

What Is in a Will?

Generally, the following basic elements are included in a will:

- Your name and place of residence;
- A description of any assets you wish to give to a specific person;
- Names of spouse, children, and other beneficiaries, such as charities or friends;
- Alternative beneficiaries, in the event a beneficiary dies before you do;
- Establishment of trusts, if desired;
- Cancellation of debts owed to you, if desired;
- Name of a trustee for any trusts created;
- Name of a personal representative to manage the estate;
- Name of a guardian for minor children;
- Name of an alternative guardian, in the event your first choice is unable or unwilling to act;
- Your signature; and
- Witnesses' signatures.

Your will should clearly state who will get your property upon your death. You should also indicate, in an itemized and organized manner, how much each person will receive. You should be sure to name a guardian for your minor children and name a personal representative for your will.

Can I Leave My Spouse or My Children Out of My Will?

In Minnesota, if you want to leave your spouse out of your will, it must have language that specifically and expressly excludes your spouse. Even if you expressly attempt to do so in your will, your spouse may not be completely disinherited in Minnesota. A disinherited spouse may still claim up to one half of your estate, depending on how long you were married. Your spouse has an option of whether or not to take this amount.

You may also disinherit a child in your will. Like a spouse, if you want to disinherit your child, its best to state so specifically and expressly in your will. If a child appears to have been omitted from a will by error or because the child was born after the parent's death, the child may still be entitled to a portion of the deceased parent's estate.

What Is a Personal Representative?

A personal representative (also known as an "executor" or "administrator") is the person who oversees payment of your debts and distribution of your assets according to your will. A personal representative is considered a fiduciary. This means that he or she must observe a high standard of care when dealing with the estate. You should identify a personal representative by name in your will. Most people choose their spouse, an adult child, a relative, a friend, a trust company, or an attorney to fulfill this duty, but anyone can be named personal representative in a will. Since your personal representative will handle your assets, you should always pick someone you trust.

You may also appoint more than one personal representative. When there is more than one personal representative, all representatives must agree on any decision regarding the estate unless the will provides otherwise.

If no personal representative is named in a will, a judge will appoint one for you to oversee the distribution of your assets.

Responsibilities usually undertaken by a personal representative include:

- Filing your will, an inventory of your assets, and other documents with the court;
- Paying valid creditors;
- Paying taxes;
- Notifying Social Security and other agencies and companies of the death;
- Canceling credit cards, magazine subscriptions, and similar consumer items; and
- Distributing assets according to your will.

What Is a Guardian?

In most cases, a surviving parent assumes the role of sole guardian of your minor children. However, if neither spouse survives or if neither is willing and able to act, it is very important to name a guardian in your will. The guardian you choose should be over 18 and willing to assume the responsibility. Talk to the potential guardian about what you are asking before naming that person in your will. You can name a couple as co-guardians, but that may not be advisable. It is always possible the guardians may choose to separate at some later date; if so, a custody battle could ensue. If you do not name a guardian to care for your children, a judge will appoint one.

How Do I Prepare a Will?

You should outline your objectives, inventory your assets, estimate your outstanding debts and prepare a list of family members and other beneficiaries. You should then use this information to consider how you want to distribute your assets. Some questions you should ask yourself include the following:

- Is it important to pass my property to my heirs in the most tax-efficient manner?
- Should I establish a trust to provide for my spouse or other beneficiaries?
- How much money will my grandchild need for college?
- Do I need to provide for a child who has a disability?

Assets that you do not specifically address in your will may fall into a "catch-all" clause in your will. This catch-all provision is often called a "residuary clause" since it generally states, "I give the residue of my estate to…" Without this clause, the items you do not specifically mention will be distributed in accordance with state law. When it comes to actually writing your will, you may find it helpful to contact an attorney. In the "Referral Guide" section of this book on page 23, phone numbers are available for various attorney referral and legal aid services.

How Do I Change or Update a Will?

You may want to update or change your will if:

- Your marital status changes;
- A child or grandchild is born;
- There is a death in the family;
- You move to a new state;
- The value and kind of property you own changes substantially;
- Your personal representative moves away or dies; or
- Tax laws change.

Wills can be changed either by writing and executing a new one or by adding a "codicil," which is an amendment to a will. The codicil must be written, signed, and witnessed the same way as the will and should be kept with the original will.

Do not try to change your will by simply crossing out language or writing in new provisions. Crossing out language raises the question of whether you intended to revoke your whole will or just a part of it. Writing new provisions will be ineffective unless the proper procedures are followed, including that the new provisions are signed by you and two witnesses.

The only part of your will that can be changed without being rewritten and executed is a separate personal property distribution list. If your will specifically states that you are distributing personal property by a separate document, you may simply write out a statement describing how you want to distribute your personal property. The statement can be written after the will is signed and it can be changed without revising the will itself. If you use such a statement, always be sure to date and sign it, and clarify whether you wish to revoke any prior statements. If an item is distributed to different persons in different writings, the most recent statement controls the disposition of the property, and all statements may be ineffective if their order cannot be determined.

A will is effective until you change, revoke, or cancel it, so it is a good idea to periodically review your will.

Where Do I Keep a Will?

Your will should be kept in a safe place. The original will should be placed where it can easily be found after your death. Make sure your personal representative and a close friend or relative know where to find it and can access it, particularly if you are considering a safe deposit box.

In Minnesota, the probate court or court administrator's office will accept wills for safekeeping at no charge or for a nominal fee. You have the right to get your will back at any time. If an attorney prepares your will, he or she may be willing to hold it for safekeeping. If you do this, be sure to tell your family that the attorney has it.

Probate

What Is Probate?

Probate is the legal process of settling your estate in court after you die. Your property is gathered and inventoried, your debts are paid, and everything left over is divided among your heirs. Your personal representative is responsible for "probating" your will. If you have no will or did not name a personal representative, the court will appoint one for you.

Probating a will begins by filing an application with the probate court. Probate ends when all debts and taxes are paid and all assets are distributed. If there is disagreement over your will, a probate judge will resolve the differences.

When Is Probate Necessary?

Probate laws in Minnesota apply to the estates of people who were residents of Minnesota at the time of their death. Probate also applies to other states' residents who own real property in Minnesota. Having a will does not avoid probate. The need for probate depends on the amount of property you own, the type of property you own, and whether you own it alone or with others.

Real Estate

Unless real estate is owned in joint tenancy with right of survivorship or placed into a trust, it must be probated. Joint tenancy means that the property is owned by two or more people who have an undivided interest in the property and that interest continues in the survivor after other owners die. If you are a resident of Minnesota and own real estate in another state at the time of your death, the probate laws of that state will apply to that real estate. In other words, real estate is probated in the state where it is located.

Personal Property

If your estate is worth $75,000 or less, your heirs may be able to collect the property without going to court by using an ***Affidavit for Collection of Personal Property***. Heirs may not take your personal property until 30 days after your death. If your personal property exceeds $75,000 or you own real estate in your name alone, your estate must be probated.

What Items Are Not Subject to Probate?

Some kinds of property and assets do not need to be probated. These include property owned as joint tenants, jointly held bank accounts, payable-on-death accounts, life insurance proceeds to a specific beneficiary, and pension benefits with a designated beneficiary in the event you die.

Joint Tenancy Property

As discussed previously, holding title to property in joint tenancy means that you and another person each have an undivided interest in the property and a right to own it after the other person dies. In the case of real property, this fact would be stated in your title documents. When a co-owner dies, the surviving property owner must file a certified copy of the death certificate of the deceased property owner and an affidavit of survivorship with the county recorder or registrar.

Jointly Held Bank Accounts

As in joint tenancy of real property, you and one or more people may be listed as account holders of the same account. If one of the joint account holders dies, the other joint account holders own the money in the shared bank account.

Payable-On-Death Accounts (PODs)

A payable-on-death account is an account in which you choose someone else to receive the funds in your account upon your death. The beneficiary, or person getting the money upon your death, has no right to these funds until your death. You may set up a POD by contacting your financial institution. You may change the beneficiary by completing a new signature card at any time.

Life Insurance Proceeds

Your life insurance policy can indicate a specific person, called a "beneficiary," who will receive your insurance proceeds when you die. Call your insurance agent or company if you are interested in naming a specific person or persons to receive your life insurance money.

How Is an Estate Probated?

Your personal representative starts a probate proceeding by filing an application or petition with the probate court in the county where you lived at the time of your death. Probate proceedings in Minnesota may be either formal or informal and generally must be initiated within three years after the decedent's death. The services of an attorney may be needed in order to correctly probate an estate.

Informal

The informal probate process is initiated by filing an application with the probate court. In some counties, you must file the application in person. If the probate registrar determines the application is complete, the registrar will issue a statement of probate and appoint a personal representative. In the informal process, the personal representative may pay debts and inheritances and may otherwise administer the estate without the court's supervision.

Applications for informal probate should include the following:

- The applicant's interest in the proceeding (i.e. spouse, child, attorney, personal representative, etc.);
- The decedent's name, dates of birth and death, and the county and state of residence at the time of death;
- The names and addresses of the decedent's spouse, children, heirs, and any others named in the will if there is one, and the age of any minors in this list;
- Statement showing venue if decedent did not reside in Minnesota at the time of death;
- The name and address of the person who is, or should be, named personal representative; and
- Statement of applicant's knowledge of any probate or appointment proceeding concerning decedent filed in Minnesota or elsewhere.

If there is a will, the following also must be included in the application:

- A statement that the original will is in the court's possession, accompanies the application, or an authenticated copy of a will probated in another jurisdiction is attached to the application;
- A statement that the will has been validly executed;

- A statement that the applicant is not, upon investigation, aware that the will has been revoked; and
- A statement that the time for beginning informal probate proceedings has not expired, which is generally three years after the decedent's death.

The probate registrar has discretion to either accept or reject the application. It is not a final determination if the registrar rejects an application for informal probate and any such rejection does not prevent the will from undergoing formal probate proceedings.

Formal

Formal probate typically involves complex estates where a judge is needed to make determinations. Formal probate proceedings are commenced by filing a petition for formal probate with the court. The petitioner then must appear before a court at a hearing. Formal probate matters can be either supervised or unsupervised by the court. Because most people lack experience in formal probate proceedings, it is best to consult an attorney if an informal probate proceeding cannot resolve the estate. If the court finds that the petition is complete, the court will issue an order for probate and appointment of the personal representative.

How Will the Estate Be Distributed to Heirs?

If there is a will, the personal representative should distribute the estate property according to the will. If there is no will, the estate property will be distributed according to state intestate succession laws. A "Table of Minnesota Heirship" is located on page 26.

The law generally provides that, without a will, your estate will pass to your spouse, if still alive, but in situations where either spouse has children from other marriages, the spouse's share may be less than the entire estate. If your spouse is not alive, your estate will pass to your children in equal shares. You should consult an attorney to determine exactly how your estate will be divided if you do not have a will.

Sometimes, relatives cannot be located or traced. In this case, assets of the estate that cannot be distributed are deposited with the county treasurer until claimed.

Determination of Descent

If a person has been deceased for more than three years, and the estate was not probated, an interested party must petition the Court for "Determination of Descent" in order to transfer the decedent's probate property either in accordance with the deceased's will or, if there is no will, Minnesota's inheritance laws.

What Taxes Must Be Paid?

Federal law provides that an individual can transfer up to a certain threshold amount to someone other than a spouse before incurring estate tax. As this amount varies year to year, visit the Internal Revenue Service's website at *www.irs.gov* for the most current federal estate tax exclusion amount. If you are married, you can transfer any amount of property to a spouse during your lifetime or after your death without incurring federal estate tax. Individual state tax laws may vary, however, and you should review the tax laws of the states where you have property. The Minnesota estate tax is separate from the federal estate tax and applies to estates over $2,400,000. As of 2019, only estates with over $2,700,000 will be subject to the tax. There are various programs and deductions that can reduce an

estate's liability for the tax. For example, transfers between spouses are generally not taxable. Additionally, the State exempts certain types of farm property from the tax. An experienced attorney or accountant can help you plan for the impact of estate tax, and can help develop a plan to minimize the tax as much as possible.

Living Trusts

What Is a Trust?

A trust manages the distribution of your assets. A trust is created by the transfer of property by the owner (sometimes called the "grantor," "donor," or "settlor") to another person (the "trustee"). A trustee can be a professional with financial knowledge, a relative or friend, or a professional trust company. The trustee holds the title to the property and manages the property for the benefit of the beneficiaries who may be a specific person, a group of people, or an organization.

What Are the Basic Types of Trusts?

There are two basic types of trusts. A "testamentary" or "after-death trust" is created by the settlor's will which transfers property to the trust. A "living" or "intervivos" trust is created during the lifetime of the grantor when all or part of the grantor's property is transferred into the trust.

Testamentary or After-Death Trusts

An after-death trust will be created by a will after a person's death. The assets to fund these trusts must usually go through the probate process and may be supervised by the court even after the estate is closed. An example of an after-death trust would be one created by a parent leaving land to a trust to benefit a minor child in his or her will. The will establishes the trust to which the land is transferred, to be administered by a trustee until the child reaches a stated age, at which point title to the land is transferred to the child outright.

Living Trusts

A living trust is a trust made while the person establishing the trust is still alive. In this case, a parent could establish a trust for a child during his or her lifetime, designating himself or herself as trustee and the child as beneficiary. As the beneficiary, the child does not own the property, but instead receives income derived from it. Living trusts can be revocable or irrevocable.

The most popular type of trust is the revocable living trust, which allows the settlor to make changes to the trust during his or her lifetime. A revocable trust usually directs the trustee to pay all income to the settlor for life and to pay the trust assets to named persons after the settlor's death. Revocable living trusts avoid the often lengthy probate process but, by themselves, don't provide shelter for assets from federal or state taxes. These trusts are often considered tax-neutral as the tax consequences for the grantor are usually the same whether or not the property is placed in a trust.

An irrevocable living trust is usually set up to reduce estate or income taxes. For tax purposes, the trust becomes a separate entity; the assets cannot be removed nor can changes be made by the settlor. In most cases, the settlor cannot be sole trustee of an irrevocable trust without losing the intended tax benefits.

Specific-Use Trusts

Trusts can be tailored to fit your goals. An attorney can help you evaluate your particular needs in light of your overall estate planning objectives. Here are a few special uses for trusts:

- **A charitable trust** is used to make donations and realize tax savings for an estate. Typically, you transfer property, such as art or real estate, to a trust. The trust holds the asset until it is transferred to a charity, usually after your death. The donor may continue to enjoy the use of the property and also realize estate tax savings by donating it to a charity.
- **A bypass trust** allows a married couple, in certain cases, to shelter more of their estate from estate taxes. The first spouse to die can leave assets in a trust which provide income to the surviving spouse. Upon the death of the second spouse, the assets in the trust belong to the children or other beneficiaries, without being taxed at the second spouse's death.
- **A spendthrift trust** can be a good idea if the beneficiary is too young or does not have the mental capacity to handle money. The trust can be established so that the beneficiary receives small amounts of money at specified intervals. It is designed to prevent the young person from squandering money or losing the principal in a bad investment. Further, creditors will not be able to take a beneficiary's income from this trust.
- **A life insurance trust** is often used to give an estate liquidity. In this case, the trustee of the trust is named as the beneficiary of the life insurance policy. The trust then receives the life insurance proceeds upon the death of the insured.

What Are the Pros and Cons of a Revocable Living Trust?

Revocable trusts offer some advantages. **First,** a revocable living trust enables you to have a trustee with financial expertise manage your assets during your lifetime. The trustee with financial experience might charge a fee of around one percent of the total amount of the property in the trust. This arrangement is particularly useful if you are having difficulty managing your financial affairs. A trustee could invest your assets, arrange for payment of bills and debts, and file your tax returns. If you wish, you can establish yourself as a co-trustee.

Second, a revocable living trust can protect your privacy regarding the distribution of your assets. With a will, the probate laws require that an inventory of the estate's assets be filed with the court. The will and the inventory are public information. With a revocable living trust, generally only the beneficiaries of the trust will be informed of the nature and the value of the assets. The important thing is to make sure that all of your property is in the trust.

Third, by placing your assets in a revocable living trust instead of a will, you can avoid the time delays that are typical of probating a will. Trust assets, in most situations, can be distributed to beneficiaries almost immediately after the death of the grantor.

Fourth, if you own land in another state, a revocable living trust might help you avoid a probate proceeding in the other state for that property. For example, if you have a cabin in Wisconsin and place it in a revocable living trust, you may be able to avoid a Wisconsin probate proceeding.

There are some potential drawbacks to a revocable living trust. First, transferring property into a revocable living trust may make you ineligible for Medical Assistance. Second, when the grantor is also the trustee, the grantor has

a fiduciary obligation to the beneficiaries for both present and future income. A fiduciary duty is a high standard that requires the trustee to follow the terms of the trust and the law in good faith and with loyalty, confidence, and candor to the beneficiaries.

How Do I Establish a Trust?

Establishing a trust requires a document that specifies your wishes, lists beneficiaries, names a trustee or trustees to manage the assets, and describes what the trustee or trustees may do. For a living trust, you can name yourself as trustee, but if you do, you should also name a successor trustee to take over if you should become disabled or die. Once the document is completed, you must transfer the assets to the trust. Keep in mind that in the case of certain assets such as real estate, you may incur fees and transfer taxes.

If the living trust contains all of your property, a will may be unnecessary and you can avoid probate. If the trust contains only part of your property, you need a will for the rest of it. If you want your property to go into the trust after your death, your will should include a "pour-over" provision to put the remaining property into the trust upon your death. Also, a will can be used to distribute personal belongings, identify guardians for your children, and provide for a personal representative to handle any unfinished business. If assets are not put into a trust and are disposed of by a will, they will have to be probated, which negates the advantage of the living trust.

Prepared forms or kits used to establish living trusts are currently marketed through magazines, brochures, and door-to-door salespeople. Review these forms carefully; they may be too generic to suit you and your situation.

Watch out for investment scams advocating unrealistic benefits of a trust. Also beware of workshops conducted by people with the intent to sell you something rather than to provide objective information. If you want to set up a trust, be sure to talk with people who are credible and trustworthy.

You may want to consider contacting an attorney if you would like to set up a trust. An attorney can help you evaluate the need and uses of a trust in light of your overall estate planning objectives.

What Is the Role of the Trustee?

The trustee is considered a fiduciary and therefore must adhere to a high standard of care with respect to the trust. This standard includes the duty to protect trust property, to manage trust investments prudently, to refrain from engaging in self-dealing or receiving improper benefits from the trust, and to not mingle trust assets with the trustee's own assets. The trustee has a duty to manage the trust's assets in the best interests of the beneficiary or beneficiaries. This might include managing rental properties, investing funds, or paying income to the beneficiary.

Trusts differ in how a trustee can distribute trust income. A simple or mandatory trust requires the trustee to distribute income to the beneficiary. A complex or discretionary trust may afford the trustee discretion over the principal and income to be distributed. The requirements imposed on the trustee should be specified in the trust.

If you want to name someone as a trustee, talk with that individual or entity about the trust. Be sure the person not only agrees to serve as trustee but can comply with the terms of the trust. Because the fiduciary standard imposes such a high standard of duty and corresponding potential liability, the trustee cannot be forced into becoming a trustee just because he or she is named in a trust document or will. If your designated trustee is unable or unwilling

to perform, the court will appoint a trustee for you, unless a successor trustee, such as a corporate trustee, is designated, or the beneficiaries of the trust unanimously agree to appoint a new trustee.

Conservatorship & Guardianship

What Is Conservatorship and Guardianship?

Conservatorship and guardianship typically result from court proceedings in which the court appoints someone (a "conservator" or "guardian") to manage another person's financial affairs or personal care decisions. Generally, those proceedings are permitted only when a person becomes so incapacitated or impaired that he or she is unable to make financial or personal decisions, and has no other viable option for delegating these duties to another (e.g., through a durable power of attorney, living trust, or some other means). Using these standards, conservatorships or guardianships might be established for people who are in a coma, suffering from advanced stages of Alzheimer's disease, or have other serious injuries or illnesses.

Under Minnesota law, conservatorships and guardianships are used to appoint a person when an individual is unable to make personal decisions or is unable to meet his or her financial needs, even with appropriate technological assistance. The court orders the appointment of a person (a "conservator" or "guardian") to act as a decision maker for another person (the "protected person" or "ward"). A court must base this decision on clear and convincing evidence that the protected person or ward has been found to be unable to make necessary decisions on his or her own behalf. Once a court makes a finding of incapacity or impairment, the person no longer has the right to manage his or her affairs until proven capable.

What Is the Difference Between a Conservatorship and a Guardianship?

A conservator is appointed to make financial decisions for a protected person. The conservator typically has the power to collect all the conservated assets, pay bills, make investments and perform other financial functions, as well as engage in estate planning, including the right to amend or revoke the protected person's will. However, the conservator must seek court approval for transactions such as the purchase or sale of real property, gifting of assets, or engaging in estate planning for the protected person.

A guardian is appointed to perform duties related to personal care, custody, and control. The guardian has the authority to make decisions such as where the ward will live and what medical treatment they will receive.

What Are the Duties of a Conservator?

Within 60 days after being appointed, a conservator must inventory the protected person's estate, including any real estate, furniture, clothing, mortgages, bonds, notes or debts, and any other personal property. Thereafter, the conservator must file an annual accounting with the court showing, in detail, all property received and disbursed, and listing all property on hand. The conservator must pay for the support, maintenance, and education of a protected person, using government benefits when available; pay the protected person's debts; and manage the protected person's estate. Often the conservator must also post a bond—a kind of insurance policy that pays if

the conservator steals or misuses property. The conservator may also have to receive court approval for certain transactions, such as selling real estate or making slightly risky investments. A conservator's duties terminate at death or upon order of the court.

What Are the Duties of a Guardian?

A guardian has the duty to assure that provisions have been made for the ward's care and comfort, including food, health care, and social requirements. Whenever possible, the guardian should meet these needs through governmental benefits or services to which the ward is entitled, rather than from the ward's estate.

A guardian has the power to give consent to enable the ward to receive necessary medical or professional care, but the guardian shall not consent to care which would violate the moral or religious beliefs of the ward.

A guardian shall also take reasonable care of the ward's clothing, furniture, and other personal effects. The guardian must file a notice of intent to dispose prior to the disposition or sale of the ward's personal effects.

The guardian must file with the court a report of the ward's personal well-being, at least annually or whenever ordered by the court. The report must contain the current mental, physical, and social condition of the ward; the living arrangements for all addresses of the ward during the period of the report; the medical, educational, vocational, and other services provided to the ward; and a recommendation as to the need for continued guardianship. A guardianship terminates upon death of the ward or order of the court.

Does a Conservator or Guardian Have Absolute Power and Authority?

The law allows the court to grant the conservator or guardian limited power to exercise authority over the ward or protected person. A conservator or guardian may only use their authority as necessary to provide care and services for the ward or protected person. The court should ensure that decisions of a conservator or guardian will not be overly restrictive of the ward's or protected person's rights.

Why Might I Need a Conservator or Guardian?

If you have other informal arrangements with relatives or formal planning arrangements, such as a durable power of attorney, you may not need to do conservatorship or guardianship planning. However, if it is likely that someone would challenge your planning arrangements (for example, if there might be disagreements within the family), you may want to consider using conservatorship or guardianship planning as a "backup" to your other planning arrangements. Remember, anyone can petition to be a conservator or guardian for an incapacitated or impaired person, and a conservator or guardian can revoke or terminate some prior planning arrangements. By choosing a person you would want to be your conservator or guardian, you protect yourself against the appointment of someone you would not want to be in this position.

How Do I Establish a Conservatorship?

"Conservatorship planning" (also called "nomination of conservator") involves a written document, like a will, in which you name the person you want for your conservator. You can also include instructions on how you want your

financial matters handled by your conservator. For example, the conservator could be instructed to manage your property and be informed about your wishes regarding estate planning. Then, if you should become impaired and need a conservator, the court must name the person you chose and order that your instructions be followed, unless the court finds that this would not be in your best interests. Be aware that the person you choose is not required to serve as your conservator—so choose a reliable person and discuss your plan with the person in advance to make sure he or she agrees with it. You should consult an attorney for conservatorship planning. Any person may petition the court for the appointment of a conservator of an individual who is unable to manage property and business affairs because of an impairment in the ability to make decisions. Once a petition is filed with the court, a court investigator may be appointed to interview the proposed protected person. The investigator reports back to the court with an opinion on whether or not the appointment of a conservator is justified. The petition is set for hearing and the protected person must appear in court unless excused by the court for good cause. The judge determines, based on the petition, the investigator's report, and any evidence taken during the hearing, whether or not the conservatorship is required and what types of special powers may be granted to the conservator. The proposed protected person has a right to have an attorney represent his or her interests in conservatorship proceedings.

What Are the Advantages of a Conservatorship?

Conservatorships are subject to court supervision, which provides a powerful safeguard for an impaired adult's property. Because the conservator is required to file an inventory of the protected person's property and provide accountings and other reports to the court, a conservatorship offers a higher degree of protection to the protected person than other management mechanisms. A conservatorship also allows for the management of an impaired person's financial affairs when he or she does not have an alternative mechanism in place to do so. Another advantage to a conservatorship proceeding is that it provides a method to assist an impaired individual who may be unwilling to accept such assistance.

What Are the Disadvantages of a Conservatorship?

Conservatorships are time consuming and expensive; they often require court hearings and the ongoing assistance of a lawyer. The paperwork can also be a hassle because the conservator must keep detailed records and file court papers on a regular basis.

The conservatorship can also be a cumbersome method of managing a person's financial affairs, as the conservator must return to court for approval of certain transactions, such as the sale of real property, borrowing money, setting up a trust, etc. These formal court hearings require additional attorney fees and can create delays in completing these transactions.

In addition, as noted above, a conservator must usually post a bond. The bond premiums are paid by the protected person's estate. Bonds are usually required, but may prove to be an unnecessary expense if the conservator is competent and trustworthy.

Another disadvantage is that occasionally a conservator will mismanage a protected person's assets. Common abuses range from reckless handling of the protected person's assets to outright theft. Although each state has rules and procedures designed to prevent mishandling of assets, few have the resources to keep an eye on conservators and follow through if they spot trouble. Many cases of incompetence or abuse go unnoticed.

Finally, a conservatorship can be emotionally trying for the protected person. The court proceedings and documents are often public records, which can be embarrassing for someone who values independence and privacy.

What Are the Alternatives to a Conservatorship or Guardianship?

Revocable Living Trust

Through the establishment of a revocable living trust the individual can appoint a trustee to manage his or her financial affairs and thus can avoid the need for an appointment of a conservator of the estate. A person must be competent to establish a living trust.

Durable Power of Attorney for Asset Management

A durable power of attorney is a document in which the individual can delegate to an agent the power to make financial transactions on his behalf if he is unable to do so himself. However, the individual must be competent to execute a durable power of attorney, and the agent acting under the durable power of attorney is not subject to regular court review of his or her actions.

Health Care Directive

An individual can nominate an agent to make health care decisions on his behalf in a health care directive. These health care decisions can include the decision to suspend or continue the provision of life support treatment. The individual can also give specific instructions as to health care in the directive. As with a living trust and durable power of attorney for asset management, a person must be competent to execute a health care directive.

Joint Tenancy Property

While the joint tenant may make decisions regarding the property that is held in joint tenancy, there are significant risks that make this form of ownership a poor choice for the purposes of asset management. In particular, in a joint bank account, a joint tenancy allows either joint tenant to access the funds; thus one joint tenant can withdraw all the joint tenancy funds. Further, there can be adverse tax and estate planning consequences as a result of creating a joint tenancy.

Power of Attorney

What Is a Power of Attorney?

A power of attorney is a document authorizing someone to act on your behalf. You determine how much power the person will have over your affairs. Your power of attorney may be a general or limited power of attorney. A general power of attorney authorizes your agent to conduct your entire business and affairs. A limited or special power of attorney authorizes your agent to conduct specified business, perform specified acts, or make certain decisions on your behalf.

In any power of attorney, you are considered to be the “principal” and the person to whom you assign the power is your “agent” or “attorney-in-fact.” Your attorney-in-fact does not have to be a lawyer, but it should be someone you trust a great deal.

What Is a Durable Power of Attorney?

When a power of attorney is considered "durable," it remains valid even if you become incompetent or incapacitated. An ordinary power of attorney expires if a person becomes unable to make his or her own decisions. Durable powers of attorney can be prepared either to take effect immediately or to go into effect only if and when you become unable to make decisions for yourself (called a "springing power of attorney").

The power of attorney form should indicate what kind of power of attorney you want. You may want to consult an attorney regarding the type of power of attorney that is best for you.

When Should I Use a Power of Attorney?

You may want to use a power of attorney if you are unable or unwilling to handle your financial affairs yourself. You may also use a power of attorney to allow another individual to take care of your responsibilities if you become incapacitated. Having a power of attorney does not restrict you from doing these things on your own but instead shares these responsibilities with someone else.

How Much Power Does a Power of Attorney Have?

You may give your attorney-in-fact as much or as little power as you wish. You could choose to give your attorney-in-fact power to do some or all of the following:

- Use your assets to pay your everyday expenses and those of your family;
- Buy, sell, maintain, mortgage, or pay taxes on real estate and other property;
- Manage benefits from Social Security, Medicare, or other government programs, or civil or military service;
- Invest your money in stocks, bonds, and mutual funds;
- Handle transactions with your bank and other financial institutions;
- Buy and sell insurance policies and annuities for you;
- File and pay your taxes;
- Operate your small business;
- Claim property you inherit or are otherwise entitled to;
- Hire someone to represent you in court; and
- Manage your retirement accounts.

How Do I Create a Power of Attorney?

You don't need an attorney to prepare a power of attorney. However, you should know that powers of attorney are required to be:

- In writing;
- Signed by you in front of a notary public;
- Dated appropriately; and
- Clear on what powers are being granted.

If you want to create a durable power of attorney, you must include a statement such as: "This power of attorney shall not be affected by incapacity or incompetence of the principal."

In the back of this booklet in the "Sample Forms" section on page 27, you will find Minnesota's Standard Power of Attorney Form, as set out in Minnesota Statutes section 523.23. This form allows you to choose whether or not you want the power of attorney to be durable. In addition, an alternative form may be prepared by the Commissioner of Military Affairs for use by active service members. A legal power of attorney form can also be purchased at legal forms stores or drawn up on your own.

Some banks and brokerage companies have their own power of attorney forms. To ease your attorney-in-fact's dealings with these institutions, you may need to prepare two (or more) durable powers of attorney, one using your own form and one or more using the forms provided by the institutions with which you do business.

What Happens If I Don't Have a Durable Power of Attorney for Finances?

If you become incapacitated and you haven't prepared a durable power of attorney for finances, a court proceeding for conservatorship is probably inescapable. Your spouse, closest relatives, or companion will have to ask a court for authority over at least some of your financial affairs.

If you are married, your spouse has some authority over property you own together. He or she may pay bills from a joint bank account, for example. There are significant limits, however, on your spouse's right to sell property owned by both of you.

If your relatives go to court to get someone appointed to manage your financial affairs, they must ask a judge to rule that you cannot take care of your own affairs and request that the judge appoint a conservator. When this person is appointed, you may lose the right to control your own money and property. Conservatorships are discussed more starting on page 13.

When Does a Power of Attorney End?

If you are mentally competent, you may revoke your original power of attorney at any time with a signed document, such as the form found on page 32 in the "Sample Forms" section. The revocation is not effective until the attorney-in-fact has received notice of the revocation. If you do not revoke it, a power of attorney ends at the stated expiration date, if you name one, or at your death. If you want your attorney-in-fact to have authority to wind up your affairs after your death, use a will to name that person as personal representative.

Also, if you get a divorce and your spouse is your attorney-in-fact, your ex-spouse's authority is automatically terminated. Finally, if there is no one to serve as attorney-in-fact, the power of attorney ends. To avoid this problem, you can name an alternative attorney-in-fact in your document.

The maker of the power of attorney may hold the original power of attorney document. This can allow the maker to remain in control and generally results in a simple revocation.

Health Care Directive

What Is a Health Care Directive?

A health care directive is a written document that informs others of your health care wishes. It allows you to name a person (or "agent") to make decisions for you if you are unable to do so. Under Minnesota law, anyone 18 or older can make a health care directive.

Why Might I Need a Health Care Directive?

A health care directive is useful if you become unable to adequately communicate your health care wishes. The directive guides your physician, family and friends regarding your care at a time when you are not able to provide that information. While you do not have to create a health care directive (you will still receive medical care without one), a directive will help you get exactly the care you would like, particularly near the end of your life when your interests may not be the same as those who survive you.

How Do I Prepare a Health Care Directive?

There are forms that you can use to draft a health care directive. The "Sample Forms" section includes a sample *Health Care Directive Form* for your use on page 33. You can also create your own directive or have an attorney prepare one for you, but your directive must:

- Be in writing and dated;
- Contain your name;
- Be signed by you (or someone authorized to sign for you) when you can still understand and communicate your health care wishes;
- Have your signature verified by a notary public or two witnesses; and
- Include the appointment of an agent to make health care decisions for you and/or instructions about the health care choices you wish to make.

Before preparing your directive, you may wish to speak with your physician or other health care provider.

What Should I Include in My Health Care Directive?

Your health care directive may contain many health-related items, including:

- The name of the person you designate as your agent to make health care decisions for you. You can name alternate agents in case the first agent is unavailable or even assign joint agents;
- Directions to joint agents, if assigned, regarding the process or standards by which they are to reach a health care decision;
- Your goals, values, and preferences about health care;
- The types of medical treatment you want or do not want, including instructions about artificial nutrition and hydration;
- How you want your agent(s) to make decisions;
- Where you want to receive care;

- Your preferences regarding mental health treatments, including those that are intrusive through use of electroshock therapy or neuroleptic medications;
- Instructions if you are pregnant;
- Your desire to donate organs, tissues, or other body parts; and
- Your funeral arrangements.

You may be as specific or general as you wish in your health care directive.

What Are the Limits on My Health Care Directive?

Your health care directive is limited as follows:

- Your agent must be at least 18 years of age;
- Your agent cannot be your health care provider, unless the health care provider is a family member or you give reasons why your agent is your health care provider; and
- You cannot request assisted suicide.

Your health care provider must follow your health care directive or your agent's instructions. If your provider cannot or will not follow your agent's directions about life-sustaining treatment, your provider must permit you to be transferred to a health care provider who has the capability or is willing to follow your directives.

How Do I Change My Health Care Directive?

Your health care directive lasts until you change or cancel it. If you wish to cancel it, you may do one of the following:

- Write and date a statement saying you want to cancel it;
- Destroy it;
- Tell at least two people that you wish to cancel it; and/or
- Write a new health care directive.

Bear in mind that Minnesota law allows you to consolidate your living will, durable power of attorney and health care directive into one form for all your health care instructions.

Visit Honoring Choices Minnesota to obtain a health care directive form: *www.honoringchoices.org/health-care-directives*.

When Does My Health Care Directive Take Effect?

Your health care directive becomes effective when it meets all the requirements described on page 19 and your health care provider determines that you can no longer make health care decisions for yourself.

You may also provide for certain conditions in your health care directive that must exist for it to become effective.

Planning a Funeral

How Should I Plan My Funeral?

Under Minnesota law, you may include directions regarding your funeral and burial in your will or in a special document you sign for that purpose. You may appoint a person who has authority to make arrangements after your death. Some things to keep in mind when planning a funeral:

- Your budget and true desires should guide your choice of arrangements. You generally have the option of choosing cremation, burial in a cemetery plot, or burial in a mausoleum; and
- You may wish to involve several members of your family, close friends, and/or clergy members when you make funeral arrangements.

Minnesota law and the Federal Funeral Rule give you tools to control the cost of funerals. When you request funeral information, these laws require funeral directors to provide detailed, pre-purchase price information, including a "General Price List" of all services offered that lists an effective date. Following the funeral arrangement, a detailed itemization, called the "Statement of Funeral Goods and Services Selected," must be prepared.

There are many laws in place that protect consumers from deceptive practices by the funeral industry. For example, a funeral provider cannot require that you purchase a casket for cremation. A funeral provider cannot condition the purchase of one funeral service upon the purchase of another funeral good or service. Further, it is against the law for funeral providers to charge a fee for handling, placing, or setting a funeral good based upon the fact that the good was not purchased from that funeral provider.

How Should I Pay for My Funeral?

You can make your own funeral arrangements before you die. You may set aside funds to pay for your funeral. One way to do this is to invest the needed amount of money or put it in a bank account, making sure it will be accessible to family members upon your death. A second option is to prepay for funeral goods and services.

What Safeguards Exist for Consumers Who Pay for Their Funerals in Advance?

To help safeguard prepaid funds, Minnesota law requires a funeral director or cemetery operator to place all prepaid funds in a trust account in a bank or other financial institution until the need for your funeral arises and to advise you of the financial institution's name and the trust account number. They must also annually report to you the amount of funds in your account. Minnesota law allows you to make arrangements so that you can receive a full refund of all prepaid funds at any time before services are provided.

There are also safeguards in the law to ensure that funds are available for the long-term upkeep of cemeteries and mausoleums. Certain cemetery operators must place in trust 20 percent of funds received from the sale of cemetery lots and 10 percent of funds from the sale of mausoleum space. These "permanent care and improvement" trust accounts are to ensure the future care and maintenance of cemetery grounds and buildings.

Finally, the law requires annual reporting and record keeping for both “pre-need” and the “permanent care and improvement” trust funds:

- Licensed funeral directors must file an annual report disclosing the status of the pre-need trust fund with the State Commissioner of Health;
- Cemetery operators must file an annual report disclosing the status of the permanent care and improvement trust fund with their County Auditor; and
- The Minnesota Department of Health, Mortuary Science Section offers information and takes complaints on funeral goods and services. They can be reached at (651) 201-3829 or toll free at (855) 663-3078.

Resources

Referral Guide

Office of Minnesota Attorney
General Keith Ellison
445 Minnesota Street, Suite 1400
St. Paul, MN 55101
Twin Cities Calling Area:
(651) 296-3353
Outside the Twin Cities:
(800) 657-3787
Minnesota Relay Service:
(800) 627-3529
www.ag.state.mn.us

Minnesota Board on Aging
Department of Human Services
P.O. Box 64976
St. Paul, MN 55164-0976
(651) 431-2500 or (800) 882-6262
Senior LinkAge Line:
(800) 333-2433
www.mnaging.net

Minnesota Department of Health
Mortuary Science Section
P.O. Box 64882
St. Paul, MN 55164-0882
(651) 201-3829 or (855) 663-3078
www.health.state.mn.us/divs/hpsc/mortsci/

Charities Review Council
700 Raymond Avenue, Suite 160
St. Paul, MN 55114
(651) 224-7030
www.smartgivers.org

Minnesota State Bar Association
Attorney Referral Service
www.mnfindalawyer.com

Residents of Dakota, Hennepin and Ramsey counties should call the below numbers for attorney referral.

- **Dakota:** (952) 431-3200
- **Hennepin:** (612) 752-6666
- **Ramsey:** (651) 224-1775

Minnesota Judicial Branch
Self-Help Center
(651) 435-6535
www.mncourts.gov/selfhelp

Glossary of Terms

Assets: All property owned by a person that can be used or made available to use in the payment of debts and heirs.

Attorney-In-Fact: A person who receives the powers allocated by a power of attorney, such as a right to handle another person's financial matters.

Beneficiary: A person or entity designated to receive property under a will or to receive the income or principal of a trust.

Codicil: A document that amends or supplements a will.

Conservator: A person or entity who is appointed by the court to make financial decisions on behalf of the impaired person.

Decedent: A person who is deceased.

Escheat to the State: When no heirs have made claims to either all or part of an estate, the state receives the unclaimed estate.

Estate: All of the property owned by a person, including real estate and personal property.

Guardian: A person or entity who is appointed by the court to perform duties related to the personal care, custody and control of the incapacitated person.

Health Care Directive: A legal document that lets others know one's wishes regarding medical care and treatment, funeral arrangements, organ donation, and other health care concerns.

Heirs: Those persons, including a spouse, who are entitled to the property of a decedent when the decedent has left no valid will.

Jointly Held Bank Account: A bank account that is held by two or more people, each of whom has a right of survivorship.

Joint Tenancy: A property held in joint tenancy is owned by two or more people who have an undivided interest in the property, and the interest continues even after the other owners die.

Living Trust: A living trust, also called an inter-vivos trust, is an estate planning device that allows a person to transfer assets to one or more persons before and after they die.

Payable on Death Account (POD): An account, such as a bank account, that is handed over to a specified person upon another person's death.

Personal Representative: A person responsible for the administration of an estate. This includes paying creditors and heirs.

Power of Attorney: A legal agreement that authorizes someone to handle or share in handling the financial matters of another person. A "durable" power of attorney can continue to give power to another in handling financial matters after incapacitation has occurred.

Probate: The process of settling your estate after you die, including paying creditors and heirs, and validating a will (if there is one).

Property: The money a person has and the things a person owns.

Revocation: In terms of wills, the process or act of canceling or destroying an existing will.

Will: A legal document that directs where a person's property should go after that person dies.

Sample Forms

The forms and table contained in this section can be downloaded in a separate PDF file from the Probate and Planning webpage of the Minnesota Attorney General's website at *www.ag.state.mn.us/Consumer/Handbooks/Probate*. They are available for use and are prepared according to statutory requirements.

The Minnesota Attorney General's Office is prevented from providing legal advice to private citizens. However, if you have any questions about the forms you may consider contacting the Minnesota Attorney General's Office.

The forms and table included in this section are the following:

Table of Minnesota Heirship

IF NO SPOUSE SURVIVES
(Source: Minn. Stat § 524.2-103)

To determine heirs: Start with Level 1, proceed down column from top. If no heir is available at that Level, continue to next Level, following down the columns until an heir is determined.

DECEASED

↓

Level 1	Level 2	Level 3	Level 4*	
Children	Parents	Brothers/ Sisters	Maternal Grandparents	Paternal Grandparents
↓		↓	**Level 5***	
Grandchildren		Nephews/ Nieces	Maternal Uncles/ Aunts	Paternal Uncles/ Aunts
		↓	↓	↓
		Grand Nephews/ Nieces	First Cousins	First Cousins
			↓	↓
			First Cousins once removed	First Cousins once removed
			↓	↓
			First Cousins twice removed	First Cousins twice removed

NOTE - If the appropriate heir cannot be determined by reference to Levels 1-5, additional information about heirship is included in Minnesota Statutes section 524.2-103, which you should review with the assistance of an attorney.

***For Levels 4-5, half to each side by representation; if no survivors on one side, then all to the other side.

STATUTORY SHORT FORM POWER OF ATTORNEY
MINNESOTA STATUTES, SECTION 523.23

Before completing and signing this form, the principal must read and initial the IMPORTANT NOTICE TO PRINCIPAL that appears after the signature lines in this form. Before acting on behalf of the principal, the attorney(s)-in-fact must sign this form acknowledging having read and understood the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT that appears after the notice to the principal.

PRINCIPAL (Name and Address of Person Granting the Power)

_____
_____
_____

ATTORNEY(S)-IN-FACT
(Name and Address)

_____
_____
_____
_____
_____
_____

SUCCESSOR ATTORNEY(S)-IN-FACT

(Optional) To act if any named attorney-in-fact dies, resigns, or is otherwise unable to serve.

(Name and Address)

First Successor _____
_____
_____

Second Successor _____
_____
_____

NOTICE: If more than one attorney-in-fact is designated to act at the same time, make a check or "x" on the line in front of one of the following statements:

____ Each attorney-in-fact may independently exercise the powers granted.
____ All attorneys-in-fact must jointly exercise the powers granted.

EXPIRATION DATE (Optional)

_____ _____, _____
Use Specific Month Day Year Only

I, (the above-named Principal) hereby appoint the above named Attorney(s)-in-Fact to act as my attorney(s)-in-fact:

FIRST: To act for me in any way that I could act with respect to the following matters, as each of them is defined in Minnesota Statutes, section 523.24:

(To grant to the attorney-in-fact any of the following powers, make a check or "x" on the line in front of each power being granted. You may, but need not, cross out each power not granted. Failure to make a check or "x" on the line in front of the power will have the effect of deleting the power unless the line in front of the power of (N) is checked or "x-ed".)

____ (A) real property transactions;

I choose to limit this power to real property in _____ County, Minnesota, described as follows:

(Use legal description. Do not use street address.)

_____
_____
_____
_____

(If more space is needed, continue on the back or on an attachment.)

____ (B) tangible personal property transactions;
____ (C) bond, share, and commodity transactions;
____ (D) banking transactions;
____ (E) business operating transactions;
____ (F) insurance transactions;
____ (G) beneficiary transactions;
____ (H) gift transactions;
____ (I) fiduciary transactions;
____ (J) claims and litigation;
____ (K) family maintenance;
____ (L) benefits from military service;
____ (M) records, reports, and statements;
____ (N) all of the powers listed in (A) through (M) above and all other matters, other than health care decisions under a health care directive that complies with Minnesota Statutes, chapter 145C.

SECOND: (You must indicate below whether or not this power of attorney will be effective if you become incapacitated or incompetent. Make a check or "x" on the line in front of the statement that expresses your intent.)

____ This power of attorney shall continue to be effective if I become incapacitated or incompetent.

____ This power of attorney shall not be effective if I become incapacitated or incompetent.

THIRD: My attorney(s)-in-fact MAY NOT make gifts to the attorney(s)-in-fact, or anyone the attorney(s)-in-fact are legally obligated to support, UNLESS I have made a check or an "x" on the line in front of the second statement below and I have written in the name(s) of the attorney(s)-in-fact. The second option allows you to limit the gifting power to only the attorney(s)-in-fact you name in the statement.

Minnesota Statutes, section 523.24, subdivision 8, clause (2), limits the annual gift(s) made to my attorney(s)-in-fact, or to anyone the attorney(s)-in-fact are legally obligated to support, to an amount, in the aggregate, that does not exceed the federal annual gift tax exclusion amount in the year of the gift.

____ I do not authorize any of my attorney(s)-in-fact to make gifts to themselves or to anyone the attorney(s)-in-fact have a legal obligation to support.

____ I authorize _____ (write in name(s)), as my attorney(s)-in-fact, to make gifts to themselves or to anyone the attorney(s)-in-fact have a legal obligation to support.

FOURTH: (You may indicate below whether or not the attorney-in-fact is required to make an accounting. Make a check or "x" on the line in front of the statement that expresses your intent.)

____ My attorney-in-fact need not render an accounting unless I request it or the accounting is otherwise required by Minnesota Statutes, section 523.21.

____ My attorney-in-fact m u s t render _____
(Monthly, Quarterly, Annual)
accountings to me or _____
(Name and Address)
during my lifetime, and a final accounting to the personal representative of my estate, if any is appointed, after my death.

In Witness Whereof I have hereunto signed my name this _____day of_____, 20_____.

_____
(Signature of Principal)

(Acknowledgment of Principal)
STATE OF MINNESOTA)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ___day of_____, 20___, by _____
(Insert Name of Principal)

_____
(Signature of Notary Public or other Official)

Acknowledgement of notice to attorney(s)-in-fact and specimen signature of attorney(s)-in-fact.

By signing below, I acknowledge I have read and understand the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT required by Minnesota Statutes, section 523.23, and understand and accept the scope of any limitations to the powers and duties delegated to me by this instrument.

(Notarization not required)

_____

_____

This instrument was drafted by:

Specimen Signature of Attorney (s)-in-Fact
(Notarization not required)

_____ _____

_____ _____

_____ _____

_____ _____

IMPORTANT NOTICE TO THE PRINCIPAL

READ THIS NOTICE CAREFULLY. The power of attorney form that you will be signing is a legal document. It is governed by Minnesota Statutes, chapter 523. If there is anything about this form that you do not understand, you should seek legal advice.

PURPOSE: The purpose of the power of attorney is for you, the principal, to give broad and sweeping powers to your attorney(s)-in-fact, who is the person you designate to handle your affairs. Any action taken by your attorney(s)-in-fact pursuant to the powers you designate in this power of attorney form binds you, your heirs, and assigns, and the representative of your estate in the same manner as though you took the action yourself.

POWERS GIVEN: You will be granting the attorney(s)-in-fact power to enter into transactions relating to any of your real or personal property, even without your consent or any advance notice to you. The powers granted to the attorney(s)-in-fact are broad and not supervised. THIS POWER OF ATTORNEY DOES NOT GRANT ANY POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. TO GIVE SOMEONE THOSE POWERS, YOU MUST USE A HEALTH CARE DIRECTIVE THAT COMPLIES WITH MINNESOTA STATUTES, CHAPTER 145C.

DUTIES OF YOUR ATTORNEY(S)-IN-FACT: Your attorney(s)-in-fact must keep complete records of all transactions entered into on your behalf. You may request that your attorney(s)-in-fact provide you or someone else that you designate a periodic accounting, which is a written statement that gives reasonable notice of all transactions entered into on your behalf. Your attorney(s)-in-fact must also render an accounting if the attorney-in-fact reimburses himself or herself for any expenditure they made on behalf of you.

An attorney-in-fact is personally liable to any person, including you, who is injured by an action taken by an attorney-in-fact in bad faith under the power of attorney or by an attorney-in-fact's failure to account when the attorney-in-fact has a duty to account under this section. The attorney(s)-in-fact must act with your interests utmost in mind.

TERMINATION: If you choose, your attorney(s)-in-fact may exercise these powers throughout your lifetime, both before and after you become incapacitated. However, a court can take away the powers of your attorney(s)-in-fact because of improper acts. You may also revoke this power of attorney if you wish. This power of attorney is automatically terminated if the power is granted to your spouse and proceedings are commenced for dissolution, legal separation, or annulment of your marriage.

This power of attorney authorizes, but does not require the attorney(s)-in-fact to act for you. You are not required to sign this power of attorney, but it will not take effect without your signature. You should not sign this power of attorney if you do not understand everything in it, and what your attorney(s)-in-fact will be able to do if you do sign it.

Please place your initials on the following line indicating you have read this IMPORTANT NOTICE TO THE PRINCIPAL: _____

IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT

You have been nominated by the principal to act as an attorney-in-fact. You are under no duty to exercise the authority granted by the power of attorney. However, when you do exercise any power conferred by the power of attorney, you must:

(1) act with the interests of the principal utmost in mind;
(2) exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs;
(3) render accountings as directed by the principal or whenever you reimburse yourself for expenditures made on behalf of the principal;
(4) act in good faith for the best interest of the principal, using due care, competence, and diligence;
(5) cease acting on behalf of the principal if you learn of any event that terminates this power of attorney or terminates your authority under this power of attorney, such as revocation by the principal of the power of attorney, the death of the principal, or the commencement of proceedings for dissolution, separation, or annulment of your marriage to the principal;
(6) disclose your identity as an attorney-in-fact whenever you act for the principal by signing in substantially the following manner:
Signature by a person as "attorney-in-fact for (name of the principal)" or "(name of the principal) by (name of the attorney-in-fact) the principal's attorney-in-fact";
(7) acknowledge you have read and understood this IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT by signing the power of attorney form.

You are personally liable to any person, including the principal, who is injured by an action taken by you in bad faith under the power of attorney or by your failure to account when the duty to account had arisen.

The meaning of the powers granted to you is contained in Minnesota Statutes, chapter 523. If there is anything about this document or your duties that you do not understand, you should seek legal advice.

REVOCATION OF POWER OF ATTORNEY
Minnesota Statutes §523.11

TO WHOM IT MAY CONCERN:

I _____, **revoke and declare null and void** the

POWER OF ATTORNEY I granted to _____which is dated

_____, 20_____.

Please be advised that the above-named person no longer has power to act as my attorney-in-fact in any way.

Date: _____ _____
(Principal)

STATE OF MINNESOTA

County of _____

The foregoing instrument was acknowledged before me this _____day of _____, 20____.

by _____.

_____
Notary Public

MINNESOTA STATUTE § 145C
HEALTH CARE DIRECTIVE
OF

_____

(Your Name)

I, _____, understand this document allows me to do ONE OR BOTH of the following:

Part I: Name another person (called the health care agent) to make health care decisions for me if I am unable to decide or speak for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or must act in my best interest if I have not made my health care wishes known.

AND/OR

Part II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care, and my family, in the event I cannot make decisions for myself.

Part I: Appointment of Health Agent

This is who I want to make health care decisions for me if I am unable to decide or speak for myself (I know I can change my agent or alternate agent at any time and I know I do not have to appoint an agent or an alternate agent). NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II.

When I am unable to decide or speak for myself, **I trust and appoint** _____ _____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____
Telephone number of my health care agent: _____
Address of my health care agent: _____
_____

(Optional) Appointment of Alternate Health Care Agent: If my health care agent is not reasonably available, I trust and appoint _____ to be my health care agent instead.

Relationship of alternate health care agent to me: _____
Telephone number of my alternate health care agent: _____
Address of my alternate health care agent: _____
_____

THIS IS WHAT I WANT MY HEALTH CARE AGENT
TO BE ABLE TO DO IF I AM UNABLE TO DECIDE OR SPEAK FOR MYSELF

(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to decide or speak for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive, and deciding about intrusive mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here: _____

_____

_____

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

(1) To decide whether to donate any parts of my body, including organs, tissues, and eyes, when I die.

(2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

_____

_____

_____

Part II: Health Care Instructions

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete some or all of this Part 11 if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to decide or speak for myself. These instructions must be followed (so long as they address my needs). THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE (I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:

1. My goals for my health care:_____

   _____

   _____

2. My fears about my health care:_____

   _____

   _____

3. My spiritual or religious beliefs and traditions:_____

   _____

   _____

4. My beliefs about when life would be no longer worth living:_____

   _____

   _____

5. My thoughts about how my .medical condition might affect my family:_____

   _____

   _____

6. (For a woman of childbearing age) My thoughts about how my health care should be handled in the event I am pregnant: _____

   _____

   _____

THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:
(NOTE: You can discuss general feelings, specific treatments, or leave any of them blank)

1. If I had a reasonable chance of recovery, and were temporarily unable to decide or speak for myself, I would want:_____
   _____
   _____

2. If I were dying and unable to decide or speak for myself, I would want: _____
   _____
   _____

3. If I were permanently unconscious and unable to decide or speak for myself, I would want: __
   _____
   _____

4. If I were completely dependent on others for my care and unable to decide or speak for myself, I would want:_____
   _____
   _____

5. In all circumstances, my doctors will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:_____
   _____
   _____

There are other things that I want or do not want for my health care, if possible:

1. Who I would like to be my doctor:_____
   _____
2. Where I would like to live to receive health care: _____
   _____
3. Where I would like to die and other wishes I have about dying:_____
   _____
   _____
4. My wishes about donating parts of my body when I die:_____
   _____
   _____
5. My wishes about what happens to my body when I die (cremation, burial):_____
   _____
   _____
6. Any other things:_____
   _____

Part III: Making The Document Legal

This document must be signed by me. It also must be verified either by a notary public (Option 1) OR witnessed by two witnesses (Option 2). It must be dated when it is verified or witnessed.

Iam thinking clearly, I agree with everything that is written in this document, and Ihave made this document willingly.

_____ _
My signature

If I cannot sign my name, I can ask someone to sign this document for me.

Date signed:_____ Date of birth:_____

Address:_____

_____

_____

_____ _____

Signature of person who I asked to sign this document for me

Printed name of person who I asked to sign this document for me

Option 1: Notary Public

In my presence on _____ (date), _____(name) acknowledged his/her signature on this document or acknowledged that he/she authorized the person signing this document to sign on his/her behalf. I am not named as a health care agent or alternate health care agent in this document.

Subscribed and sworn to before me this _____ day of _____, _____.

_____

Notary Public

Option 2: Two Witnesses

Two witness must sign. Only one of the two witnesses can be a health care provider or an employee of a health care provider giving direct care to me on the day I sign this document.

Witness One:

(i) In my presence on _____ (date), _____(name) acknowledged his/her signature on this document or acknowledged that he/she authorized the person signing this document to sign on his/her behalf.
(ii) I am at least 18 years of age.
(iii) I am not named as a health care agent or an alternate health care agent in this document.
(iv) If I am a health care provider or an employee of a health care provider giving direct care to the person listed above in (i), I must initial this box: [ ]

I certify that the information in (i) through (iv) is true and correct.

_____
(Signature of Witness One)

Address:_____

_____

_____

Witness Two:

(i) In my presence on _____ (date), _____(name) acknowledged his/her signature on this document or acknowledged that he/she authorized the person signing this document to sign on his/her behalf.
(ii) I am at least 18 years of age.
(iii) I am not named as a health care agent or an alternate health care agent in this document.
(iv) If I am a health care provider or an employee of a health care provider giving direct care to the person listed above in (i), I must initial this box: [ ]

I certify that the information in (i) through (iv) is true and correct.

_____
(Signature of Witness Two)

Address:_____

_____

_____

REMINDER: Keep this document with your personal papers in a safe place (not in a safe deposit box). Give signed copies to your doctors, family, close friends, health care agent, and alternate health care agent. Make sure your doctor is willing to follow your wishes. This document should be part of your medical record at your physician's office and at the hospital, home care agency, hospice, or nursing facility where you receive your care.

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