



**PREPARING FOR
INCAPACITY—
YOUR FAMILY
WILL THANK YOU**

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AGENDA

- Medical Power of Attorney
- Living Will
- Durable Power of Attorney
- Family Members and Other Decision-Makers
- Guardianship, Temporary and Permanent
- Wills



- **This presentation is intended for informational purposes only and is not intended to provide legal advice. Please consult an estate planning attorney.*

DOCUMENTS YOU MAY NEED

1

Medical POA

2

Living Will

3

Durable
Financial
POA

4

Will

MEDICAL POA

A medical power of attorney (MPOA) is a legal document that lets you name someone to make healthcare decisions for you if you cannot.

The agent can make decisions about your healthcare in accordance with your wishes.

The MPOA lasts until you are again competent, the MPOA is revoked, or it expires.

You should consider the agent's ability and willingness to make difficult decisions for you.

MEDICAL POA EXECUTION

Must be signed before two witnesses and notarized.

A form can be obtained from your local hospital or work with an attorney.

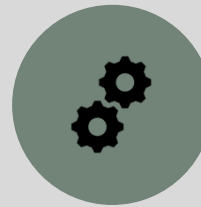
Texas Health and Human Services also provides a form with instructions at:

<https://www.hhs.texas.gov/regulations/forms/advance-directives/medical-power-attorney-designation-health-care-agent-mpoa>

LIVING WILL



Allows you to specify your medical care preferences, also known as a directive to physicians.



Includes your preferences for life-sustaining treatments, pain management, and end of life care.



Can include your selection of a medical decision-maker if you do not have a separate MPOA.



Also signed in front of two witnesses and a notary.

DURABLE FINANCIAL POA

Takes effect when you become incapacitated. A financial POA is very important in the event you need placement in a facility for care and your POA needs to help you arrange funding for it, either through your own assets or Medicaid.

According to Section 751.00201 of the Texas Estates Code, a person is considered "incapacitated" for the purposes of a durable power of attorney if a doctor's examination finds he or she is not able to manage his or her own finances. The doctor must provide a written statement certifying this finding of incapacity.

Texas's statutory form of durable power of attorney is found in Section 752.051 of the Texas Estates Code. It is a financial durable power of attorney - this means that it only allows the agent to handle financial matters.

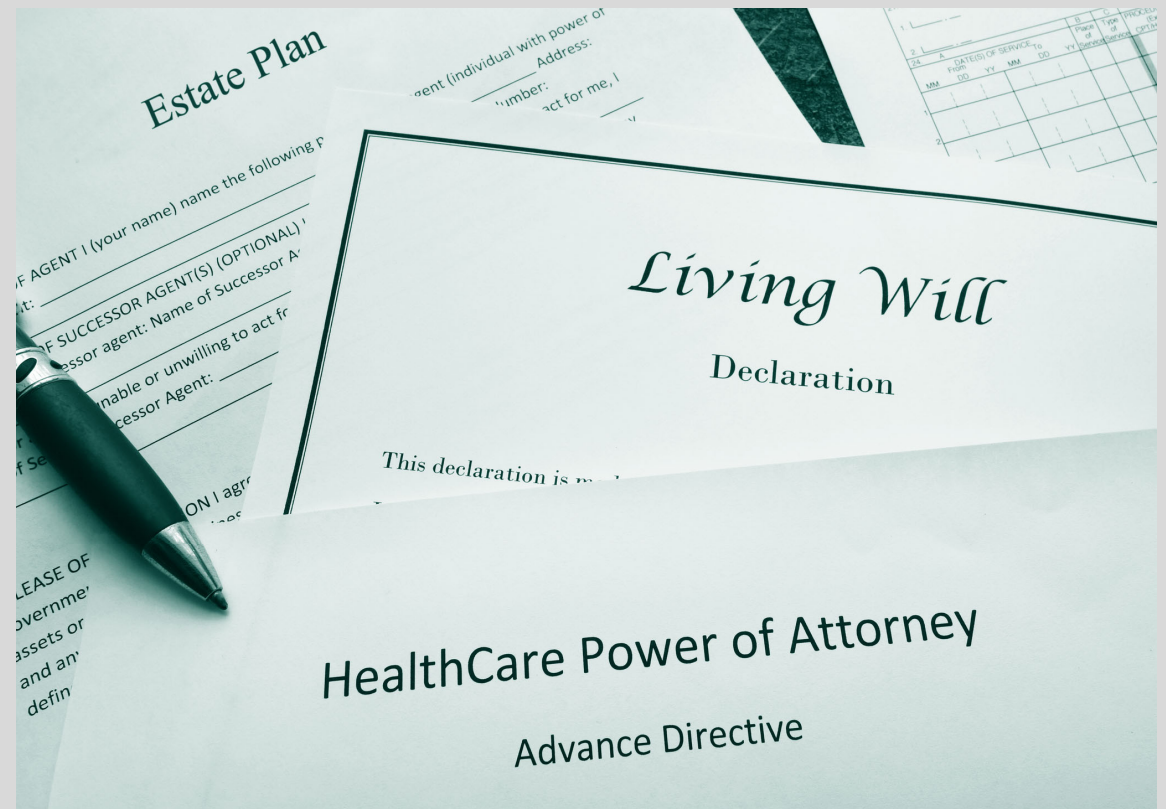
Lasts until the principal dies, the principal revokes it, the conditions of termination have been fulfilled, or a guardian is appointed for the principal.

DURABLE POA FORM

- Form available on Texas Health and Human Services Website at:
- <https://www.hhs.texas.gov/regulations/forms/advance-directives/statutory-durable-power-attorney-sdpoa>

COPIES OF DOCUMENTS

Give copies of all documents to a trusted family member, your healthcare agent on the MPOA, and your durable financial POA.



WITHOUT THESE DOCUMENTS, WHO MAKES HEALTHCARE DECISIONS FOR YOU?

The Texas Consent to Medical Treatment Act allows that when there is no legal guardian or medical power of attorney, the following individuals may make medical decisions (in priority order):

- *The patient's spouse.*
- *The patient's adult children.*
- *The patient's parents.*
- *The patient's nearest living relative.*



WITHOUT THESE
DOCUMENTS OR A
FAMILY MEMBER, WHO
MAKES HEALTHCARE
DECISIONS?



Two physicians can also make health care decisions for you if you are incapacitated and have no family member available.

WHAT IS GUARDIANSHIP?

According to the Texas Department of Health & Human Services¹: Some people may need a guardian if they are unable to make decisions, care for themselves, or manage personal or financial affairs due to a mental or physical disability.

Guardianship is a legal relationship where an individual (the guardian) is appointed by a court to make decisions and manage the personal and financial affairs of an incapacitated person (the ward).

Guardianship takes away a person's rights. Before filing a guardianship application, other options are usually tried first. (It's much better to have handled this with incapacity planning and having a MPOA and POA.)

Once a guardian is appointed, it takes court action to change the guardianship.

¹<https://www.hhs.texas.gov/regulations/legal-information/guardianship>



WHEN IS GUARDIANSHIP APPROPRIATE?

- You are incapacitated and did not prepare an MPOA, Living Will, or Durable POA while you had capacity.
 - *“Incapacitated” refers to:*
 - A minor, or
 - An adult who, because of a physical or mental condition, is substantially unable to provide food, clothing or shelter for himself or herself, care for his/her own physical health, or manage his/her own financial affairs, or
 - A person who must have a guardian appointed for the person to receive funds due from a governmental source.¹
- Family members cannot be located, are unwilling to take responsibility, or have insufficient access to your financial information.
- A hospital care manager or someone where you live needs someone to assist with the financial aspects of getting you to an appropriate facility.
- You need a decision-maker to determine where you should be placed.

¹ Texas Estates Code §1002.017

ALTERNATIVES TO GUARDIANSHIP

1. Guardianship applications typically take months and entail legal fees, court costs, and guardian's fees.
2. Some counties are reluctant to approve guardianship applications.
3. A guardian is not always the best answer.

The law requires the exploration of additional options before a guardian may be appointed. Some other avenues to consider:

- Involvement of family members.
- Durable power of attorney and/or medical power of attorney.
- Joint bank account with co-signer.

TEMPORARY VS. PERMANENT GUARDIANS

Temporary:

- Lasts for 60 days or less.
- May be implemented while the application for permanent guardianship is pending.
- Requires “imminent danger” to person or property.
 - Counties vary, but it may be difficult to convince a judge of imminent danger.

Permanent:

- Of either the person or estate or both.
- Lasts until the ward passes away, is found to have full capacity, is no longer a minor, or no longer requires a guardian to receive funds from a governmental source.



WHO CAN BE A GUARDIAN?

1. A relative.
2. A friend.
3. A professional guardian.
 - *If you do not have anyone (or no one can be located) who is willing to assist, a court may appoint a paid professional guardian to look out for your interests.*
4. Individuals who are disqualified are those who are:
 - *Minors.*
 - *People whose conduct is notoriously bad.*
 - *Incapacitated individuals.*
 - *Anyone indebted to the ward.*
 - *Anyone found unsuitable by the court.*

ESTATE PLANNING: DO YOU NEED A WILL?

- You need a Will if you have significant assets, own real property, or have children.
- A Will distributes assets, appoints a guardian for minor children, designates an executor, addresses disinheritance, makes gifts and donations, communicates funeral planning.
- Ensures your wishes are carried out, avoids conflicts and simplifies process for heirs, accomplishes tax and charitable donation planning.
- If you die without a Will, any estate assets will be distributed by the laws of intestacy in Texas.
- But if most of your assets would pass outside your estate, you may not need a will. For example, all of your assets would pass to designated beneficiaries without passing through your Estate—in bank accounts, retirement accounts, or life insurance.
- Please consult an attorney. Do not use forms for Wills.

TRUSTS

Trusts are effective immediately upon signing and funding. If you think you may need a Trust , a Special Needs Trust, or a Qualified Trust (to protect assets and qualify for Medicaid), please consult an attorney and financial planner. Trusts are beyond the scope of this presentation.

