

# Advance Directives

Wills, POA's & DNR  
orders



# The Types of Legal Powers



- Will
- Power of Authority a) Durable b) Non-Durable
- Health Care POA
- Springing Health Care Power
- Living Will

# Helpful Definitions to define the Players



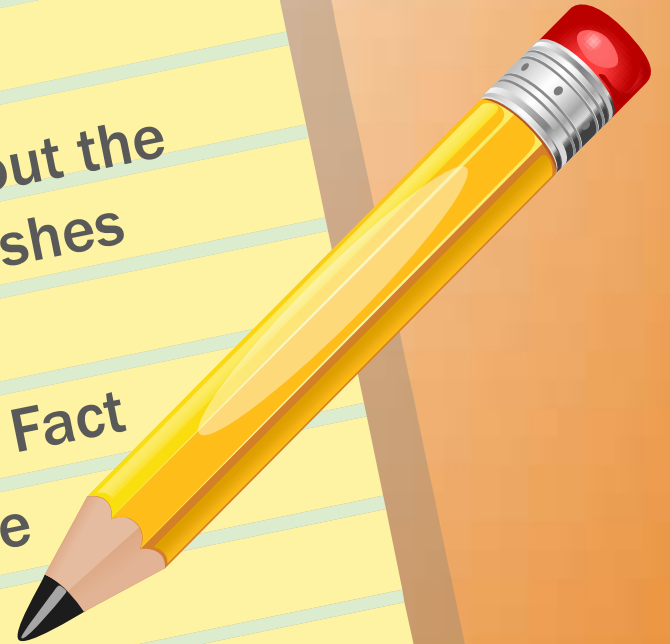
1. Testator
2. Principal
3. Grantor



## More Players

Who Will Carry out the  
Principal's Wishes

Agent  
Attorney in Fact  
Trustee







# Who Benefits

Let's call them

A.) Beneficiary

B.) Successor Beneficiary



# Dueling Powers



Differences in the Powers

# *WILLS*

*Wills ensure your property (personal & real) are given to who you want to have it.*

*Disadvantages of Wills - Are Public & Pass by operation of Law "Probate"*



# POWER OF ATTORNEY

**A General POA is Awesome!!!! This person literally Stands in your Shoes. This is the Key to the Castle. You must make certain you understand who you give your keys to and what all it means.**



Mmmm....Maybe  
you want to put  
some Limits or  
Roadblocks up???

*Maybe you want this  
Power to begin only when  
you can no longer make  
your own decisions...Time  
Specific*



**Money Money Money, Sweet**



# HEALTH CARE POWER OF ATTORNEY

## *YOU ARE GIVING:*

- *Another person access & control over both you and all your health care decisions*
- *Typically this should only take effect when you can no longer make your own decisions*
- *Example - during an operation the doctor needs to make a critical decision - you have given this person power to make that decision for you. This can be useful when a person begins to experience dementia*

1. *Limited Health Care Powers - are temporary and are useful for a specific event or time.*
2. *Example: You are generally healthy and do not expect problems - this power can be limited or Springing meaning - it only exist for a time certain*
3. *DNR - Do Not Resuscitate - You have the right to ask to discontinue any life sustaining efforts*

# *Why are these Powers Dueling with One another?*

words  
have  
power

*These Powers give different powers and have different consequences*

- *Wills - only take Effect when you die*
- *General POA - take effect when specified and can be durable or Non-Durable & affect your property, money, stock bonds, & personal property if there is not a separate HPOA - This person has the Power. If there is a dispute, this power is generally seen as the greater*
- *Health Care POA - Only affect Health Care decisions & Triggered when you can not make the decision or triggered by specific event - Power do not survive you!*
- *Living Will only applies to Health Care Professionals if your Agent is not available*

# *Principal creates a legally binding will*

1. You must be 18 & have **Testamentary Capacity**, defined as of Sound Mind and Memory
2. Appreciate and remember the objects of your bounty
3. Must comprehend the character & extent of your property
4. Must be capable of creating the plan in your own mind
5. You must have **Contract Capacity**, defined as knowing what you are signing

## *Who Can Not create a legally binding will*

- Persons with mental deterioration
- Persons suffering from extreme mental strain
- Persons suffering from idleness, debauchery, excessive drug use
- Persons under the influence of intoxicants or diagnosed with Alcohol syndrome

# What makes these Powers Legal & Binding

While the Tenth Amendment of the Constitution reserves all powers not given to the Federal Government to the States or to the People, the disposition of property upon your death is reserved to the states. Therefore laws vary from state to state.

However, Illinois gives great power of distribution to the deceased however you must meet the very specific formalities of Illinois law





# Valid by Law requires

1. A Testators signature must be at the end of the document
2. The will must be witnessed by two attesting witnesses both who sign in front of each other and neither should be beneficiaries
3. Since Illinois requires witnesses beyond beneficiaries it is best to have the signatures notarized to avoid a challenge
4. The Will Should contain the date

Note: Illinois does not recognize "holographic" Wills One written without a witness  
Illinois does not recognize "Nuncupative" Wills One verbally given in the presence of a witness. Affidavits are nor required in Illinois, but can help in Probate

*Exception: if the will is made in a state where those aspects are legal – Illinois will recognize.*

# What Makes a POA Valid

1. In Illinois you must have at least one witness, two are better
2. You must have a notary if you only have one witness, but a notary is recommended in all instances
  - Almost all other states require two witnesses so to avoid problems get two

Make it easy on yourself and your Agent by: Not assuming, but by asking if someone is willing to be your agent.

By making your concerns known

Ask the Agent to sign and agree to represent you

Name at least one successor Agent or name two Co-Agents, especially if you have a large estate

# Duration of Agency

## Now That We have a Valid POA

### What Happens if You Change Your Mind or the Agent Quits

- Every Agency can be amended, revoked or modified by the principal as long as the principal has capacity
- Any time and in any manner communicated to the agent or to any other person related to the subject matter
- The best revocation is in writing and you have to give notice to all relevant parties, i.e., Banks, or other financial institutions
- Also the agent may quit! Its too much responsibility, not enough time for any reason
- There are revocation letters on line which you can access



# Effect of Divorce on a POA

Once a court enters a judgement of dissolution of marriage or a legal separation between the principal and his/her spouse after agency is signed, the spouse shall be deemed to have died at the time of the judgement for all practical purposes of agency

## You have Accepted the Power of Attorney – Now What



You have a Duty = Standard of Care

- Act in Good Faith
- Act with due care for the benefit of the principal – you can be liable
- Failure to act prudently can result in you being legally forced to reimburse the principal or the successor with interest and for attorney fees
- Reimbursement does not limit any other legal or equitable remedies



# What if No Advance Directives are in Place

- ❑ No POA - Courts will decide – this could mean the courts will appoint a Guardian-ad-litem (**GAL**) this could be a person the court chooses or a family member, but a judge will decide
- ❑ No will in place – this is dying intestate which means disposition will occur according to operation of law. What is the law? It is called Per Stirpes = by genealogy - spouse/children, parents, parents brothers/sisters – or decedents of brothers & sisters which a court will determine



- Included in this Packet is:**
- 1. A Basic Will**
  - 2. Power of Attorney**
  - 3. Health Care Power of Attorney**



It is recommended that you obtain the services of an attorney to create your documents so they are specific to your needs.

The forms provided can be used and are Legal in the state of Illinois but are very very general.

All the Agencies listed are also capable of personalizing your documents. If you can not afford an attorney at this time these agencies are highly recommended.





# GYST = Get your Stuff Together



For Additional Information Legal or  
Drafting Assistance Contact:

Center for disabilities & Elder Law  
[www.cdelaw.org](http://www.cdelaw.org) (312)376-1880

Health & Disabilities Advocates  
[www.hdadvocates.org](http://www.hdadvocates.org)  
(312)223-9600

CARPLS [www.carpls.org](http://www.carpls.org) (312)738-9200

Chicago Legal Clinic [www.clclaw.org](http://www.clclaw.org)  
(773)731-1762

Cook County Elder Justice Center – walk  
Ins or by Appointments  
(312) 603-9233