



**DRAFTING POWERS OF ATTORNEY FOR
PROPERTY AND HEALTH CARE
AND
LIVING WILL
FOR THE
SENIOR CENTER INITIATIVE**

*Presentation by
The Center for Disability & Elder Law*

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CENTER FOR DISABILITY & ELDER LAW

INTRODUCTION

Founded in 1984 by the Young Lawyers Section of the Chicago Bar Association, the Center for Disability & Elder Law (CDEL), a 501c (3) not-for-profit organization, has dedicated itself to serving the needs of low-income elderly residents and persons with disabilities, some of Chicago and Cook County's most deserving and most underrepresented residents. For over a quarter of a century, CDEL has provided pro bono assistance to tens of thousands of individuals marginalized by poverty, disability and/or age. Each year, the dedicated staff and volunteers of CDEL serve the needs of these most deserving clients through direct representation, outreach presentations, trainings and other assistance.

Senior Centers Power of Attorney & Living Will Initiative (SCI)

The SCI brings CDEL staff and volunteer attorneys to senior citizens' residence and recreation facilities across Cook County to prepare Powers of Attorney for Health Care and Property, as well as Living Will Declarations. CDEL conducted three SCI workshops in 2007 and CDEL conducted 21 workshops in 2008. Since 2008, CDEL has conducted approximately 50 workshops per year. The reaction to the SCI workshops has been overwhelmingly positive, from both clients and attorneys.

To administer the SCI workshops, CDEL staff attorneys travel to low-income senior citizens' residence facilities to conduct educational outreaches, teaching the residents of the facilities about CDEL and its services, in particular Powers of Attorney. CDEL then coordinates with residence administrators and volunteer attorneys to schedule a return to the site to conduct the workshop. Prior to returning to the Senior Center, CDEL hosts periodic free, 1.5-2 hour long, accredited MCLE presentation to provide volunteer attorneys training on Powers of Attorney and Living Wills in advance of participation in the workshop. Often, CDEL partners with a law firm or corporation counsel in order to recruit volunteer attorneys and paralegals.

At the workshop, CDEL volunteer attorneys meet one on one with seniors, where the attorneys consult with seniors, explain the documents in detail to the seniors and draft the documents. The documents are then witnessed, notarized, copied and presented to the senior, with CDEL providing the notaries and paralegals to serve as witnesses.

The SCI workshop concept has been very successful and there is a demonstrated need for expansion of the program.

- 1) It is a positive experience for the residences, as they are able to schedule an activity that provides a much needed service.
- 2) It is a positive experience for the law firms and attorneys, as the SCI provides the opportunity for pro bono work in a discreet workshop, as well as the opportunity to receive MCLE credit.
- 3) It is a positive experience for CDEL, as it provides CDEL with the opportunity to provide service to a large number of seniors and is an incredibly efficient use of CDEL resources.
- 4) Most importantly, the workshop is a positive experience for the seniors as they receive these very important legal services and legal documents at no expense in an efficient manner.

The SCI has been a tremendous success. Since 2008, CDEL has conducted SCI presentations to over 600 Senior Centers. CDEL has conducted over 375 workshops. In total, CDEL has provided Powers of Attorney to over 5,000 individuals, providing these essential advance directives and estate planning documents to low-income senior residents of Cook County. We could not provide these important services without the help of our dedicated volunteers and we thank you for your participation!

ILLINOIS SHORT FORM POWERS OF ATTORNEY

Types of Advance Directives:

- Powers of Attorney
- Illinois Living Will Declarations

Illinois Power of Attorney Act; Illinois Living Will Act

- Allows Principal to prepare an advance directive, knowing that, due to future disability or incapacity, Principal may not be able to make personal health care or property/financial decisions.

Power of Attorney

ILCS 755 ILCS 45/

Purpose

- “The General Assembly recognizes that each individual has the right to appoint an agent to make property, financial, personal, and health care decisions for the individual but that this right cannot be fully effective unless the principal may empower the agent to act throughout the principal’s lifetime, including during periods of disability, and have confidence that third parties will honor the agent’s authority.” 755 ILCS 45/2-1
- Allows Principal to appoint an Agent to make health care and/or property and financial decisions on Principal’s behalf that the Principal would make if competent.
- This is in stark contrast to a Guardianship, where a third party petitions the court to declare a petitioner the legal guardian of an “alleged incapacitated person.”
- The Power of Attorney provides a greater level of choice about who the Principal wishes to designate as the Agent to make the decisions for the Principal and how those decisions are to be made.

Definitions

- Principal
 - Person who authorizes Power of Attorney in an Agent.
 - “ ‘Principal’ means an individual (including, without limitation, an individual acting as trustee, representative or other fiduciary) who signs a Power of Attorney or other instrument of agency granting powers to an Agent.” 755 ILCS 45/2-3
- Agent
 - Person in whom the Principal creates the Power of Attorney; acts as Principal’s fiduciary; also known as the “attorney-in-fact.”
 - “ ‘Agent’ means the attorney-in-fact or other person designated to act for the Principal in the agency.” 755 ILCS 45/2-3

Important Things for Principal to Consider

Principal can create the Power of Attorney only while he or she is still competent.
Principal should know Agent well and trust Agent implicitly.



- Power of Attorney does not create a legal obligation on the part of the Agent to act, so it is important that the Agent is willing to undertake the task of making decisions.
- Principal may name successor Agents, but cannot name co-Agents.
- Principal should thoroughly discuss the Agent's responsibilities and medical philosophy with the Agent prior to creating the Power of Attorney.
- Principal must carefully tailor the Power of Attorney form according to his or her needs, as the form will be the basis of the Agent's actions.
- Principal must carefully review final draft of Power of Attorney form.
- Principal may nominate the agent to serve as a guardian should a guardianship be required and a guardian to be appointed by a court.
- Agent should be younger and/or healthier than Principal.

Common Execution Errors to Be Avoided

- No Agent (or successor Agents, if applicable) named.
- Co-Agents named.
- Selection of conflicting medical/financial directives.
- Principal has not signed Power of Attorney form.
- No competent witnesses.
- Power of Attorney form not notarized (Power of Attorney for Property).

Duration and Termination

- The Power of Attorney takes effect on the date or during the time period (ex.: during the period of the Principal's disability) designated by the Principal.
 - Principal may still be competent at time that Power of Attorney takes effect.
 - "The Principal may specify in the agency the event or time when the agency will begin and terminate, the mode of revocation or amendment and the rights, powers, duties, limitations, immunities and other terms applicable to the Agent and to all persons dealing with the Agent, and the provisions of the agency will control notwithstanding this Act, except that every health care agency must comply with Section 4-5 of this Act." 755 ILCS 45/2-4 (a)
 - It is recommended that the POA become effective immediately upon execution. This is due to the uncertainty about when a Principal may wish to grant authority to the Agent.

For example: If the Principal wants to state in the POA that it becomes effect "Upon my 75th birthday," the Principal has the right to make such a designation. The problems arise if something happens (illness, degenerative disease, accident) prior to the 75th birthday. There is now a gap between the time that the POA becomes effective and the time that the Agent needs to exercise the powers granted in the POA. The POA is designed to prevent those gaps. It is, therefore, strongly suggested that the POA be drafted to become effective immediately upon execution and remain valid for life.
- The Power of Attorney lasts throughout the Principal's life, including periods of the Principal's disability (i.e., the document is "durable"). In fact, that is the purpose of the Power of Attorney, to allow the Agent to make decisions in the event that the Principal can not make decisions for himself/herself.



- Duration of Agency - “Unless the agency states an earlier termination date, the agency continues until the death of the principal, notwithstanding any lapse of time, the principal’s disability or incapacity or appointment of a guardian for the principal after the agency is signed. Every agency may be amended or revoked by the principal, if the principal has the capacity to do so, at any time and in any manner communicated to the agent or to any other person related to the subject matter of the agency, except that revocation and amendment of health care agencies are governed by Section 4-6 of this Act except to the extent the terms of the agencies are inconsistent with that Section. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.” 755 ILCS 45/2-5
- The Power of Attorney terminates when one of the following occurs:
 - Principal dies
 - Exception: when Agent retains residual powers; ex.: disposing of Principal’s remains, making anatomical gifts, authorizing an autopsy;
 - Principal has designated a date or a time period for termination and the date or time period arrives;
 - Principal formally revokes Power of Attorney;
 - Agent dies or becomes incompetent;
 - Agent wishes to terminate the agency;
 - Court removes Agent for improperly fulfilling duties.
 - If a court enters a judgment of dissolution of marriage or legal separation between the principal and his or her spouse after the agency is signed, the spouse shall be deemed to have died at the time of the judgment for all purposes of the agency.
- Revocation of Power of Attorney for Health Care (755 ILCS 45/4-6)
 - Principal formally revokes Power of Attorney
 - Every health care agency may be revoked by the principal at any time, without regard to the principal’s mental or physical condition, by any of the following methods:
 - By being obliterated, burnt, torn or otherwise destroyed or defaced in a manner indicating intention to revoke; or
 - By a written revocation of the agency signed and dated by the principal or person acting at the direction of the principal; or
 - By an oral or any other expression of the intent to revoke the agency in the presence of a witness 18 years of age or older who signs and dates a writing confirming that such expression of intent was made.
 - Limits
 - Capacity is not specifically required for Principal to revoke agency.
 - If court finds that Principal lacks capacity, court may terminate the agency and appoint a guardian.

Modification (755 ILCS 45/2-5 and 755 ILCS 45/4-6)

- Principal has right to modify the Power of Attorney at any time by:
 - Changing its terms; or
 - Changing the Agent or adding successors.
- All changes must be witnessed, signed, and notarized (Power of Attorney for Property).

Requirements for Agent

- Must be at least 18 years old;
- Must be competent; and
- Cannot be the Principal's primary health care provider, i.e. physician or other licensed caregiver.

Duties of the Agent

- The Power of Attorney does not place any affirmative duty on the Agent to act.
- "The agent shall be under no duty to exercise the powers granted by the agency or to assume control of or responsibility for any of the principal's property, care or affairs, regardless of the principal's physical or mental condition." 755 ILCS 45/2-7
- If the Agent exercises the powers granted to it, the Agent has a fiduciary duty to act in the interest of the Principal.
- "Whenever a power is exercised, the agent shall use due care to act for the benefit of the principal in accordance with the terms of the agency and shall be liable for negligent exercise." 755 ILCS 45/2-7
- Agent is not liable for errors in judgment.
- "The agent shall not be liable for any loss due to error of judgment nor for the act or default of any other person." 755 ILCS 45/2-7
- "An agent who acts with due care for the benefit of the principal shall not be liable or limited merely because the agent also benefits from the act, has individual or conflicting interests in relation to the property, care or affairs of the principal or acts in a different manner with respect to the agency and the agent's individual interests." 755 ILCS 45/2-7
- Agent has a duty to provide copies of records to the principal, a guardian, another fiduciary or a representative of a provider agency, as defined in the Elder Abuse and Neglect Act, acting in the course of an assessment of a complaint of elder abuse or neglect, Ombudsman or court. 755 ILCS 45/2-7

Compensation for Agent

- Agent is entitled to reasonable compensation from Principal for his or her efforts.
- Agent may also pay for others to perform certain duties under the Power of Attorney (e.g., hiring a tax preparer to prepare taxes).

Executing the Power of Attorney Form

- Must be signed by the Principal.
- Must be signed by the Principal before one witness (although two witnesses are preferred).
- Form must be notarized (Power of Attorney for Property must be notarized to be effective, Power of Attorney for Healthcare should be notarized).

Agency and Court Relationship

- Court may order a guardian of the Principal's person or estate if:
 - Principal lacks capacity to modify/revoke the agency, and
 - Court finds Agent is not acting in the Principal's best interest and/or Agent's action or inaction has caused harm to Principal



- Court may construe the agency and instruct the Agent if the agency needs interpretation.
- Court may NOT amend the agency.
- Principal may name the Agent to serve as a Guardian in the event that a Guardian is deemed necessary by a court.

Power of Attorney for Property

755 ILCS 45/Art. III

Scope of Agent's Authority

- Although the Power of Attorney for Property does not place a legal obligation on the Agent to act, Agent acting under a Power of Attorney for Property does have a fiduciary duty to act in the interests of the Principal.
- The scope of the Agent's authority is determined entirely by the Principal; the Principal can make additions and/or restrictions to the form as he or she sees fit.
- Principal may authorize Agent to delegate powers under the Power of Attorney for Property.
- The Power of Attorney for property can grant the Agent authority to:
 - conduct real estate transactions;
 - control bank transactions or accounts;
 - buy/sell stocks and securities;
 - control safe deposit boxes;
 - deal with insurance policies;
 - handle tax matters;
 - bring, defend, or settle claims and lawsuits;
 - conduct business operations;
 - borrow money or mortgage property;
 - handle estate transactions.
- Limitations
 - Agent cannot make gifts of Principal's property, unless specifically authorized to do so by Principal.
 - Agent cannot change the beneficiaries designated by the Principal to take Principal's interests at his or her death under a will, trust, joint tenancy, etc.
- Witnesses
 - Although only one witness is required, the statute suggests that there be two witnesses to the Power of Attorney for Property.
 - Limitations on who may witness. The following people may not serve as a witness (or a notary) for a Power of Attorney for Property:
 - the attending physician or mental health service provider of the principal, or a relative of the physician or provider;
 - an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident;

- a parent, sibling, or descendant, or the spouse of a parent, sibling, or descendant, of either the principal or any agent, regardless of whether the relationship is by blood, marriage, or adoption;
- an agent or successor agent for health care.

Power of Attorney for Healthcare

755 ILCS 45/Art. IV

Scope of Agent's Authority

- The Power of Attorney for Healthcare does not place any legal obligation on the Agent to act, but Agent has a fiduciary duty to act in the interests of the Principal.
- The scope of the Agent's authority is determined entirely by the Principal; the Principal can make additions and/or restrictions as he or she sees fit.
- Agent may delegate powers to persons he or she chooses.
- The Power of Attorney for health care can give the Agent authority to:
 - consent to medical treatment;
 - refuse or withdraw treatment, even if doing so will result in Principal's death;
 - admit Principal to or discharge Principal from any hospital, institution, home, or nursing facility, treatment center or any other health care institution;
 - contract for any type of health care service or facility and bind Principal to pay for any such service or facility;
 - order, examine, and copy Principal's medical records and consent to their disclosure, act as "Personal Representative" under HIPAA;
 - make certain decisions after Principal's death: anatomical gifts, autopsies, disposition of the remains
- Withholding of medical procedures
 - Principal need not be terminally ill to have medical procedures withheld.
 - Choices:
 - Agent to discontinue life sustaining treatment if the burdens outweigh the expected benefits, taking into consideration the relief of; or
 - Prolong Principal's life to the greatest extent possible in accordance with reasonable medical standards without regard to condition.
- Limit on Agent
 - Neither the attending physician nor any other health care provider or health care professional may act as agent under a health care agency;
 - a person who is not administering health care to the patient may act as health care agent for the patient even though the person is a physician or otherwise licensed, certified, authorized, or permitted by law to administer health care in the ordinary course of business or the practice of a profession.
- Witnesses
 - Limitations on who may witness health care agencies. The following people may not serve as a witness for a Power of Attorney for Healthcare:
 - the attending physician or mental health service provider of the principal, or a relative of the physician or provider;

- an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident;
- a parent, sibling, or descendant, or the spouse of a parent, sibling, or descendant, of either the principal or any agent or successor agent, regardless of whether the relationship is by blood, marriage, or adoption;
- an agent or successor agent for health care.

Living Wills

755 ILCS 35/

Purpose

- Records Declarant's directions about end-of-life medical care.
 - States the Declarant's preference for the withholding of medical procedures that delay the moment of death.
- Illinois Living Will Act has been in effect since 1984.
- "The legislature finds that persons have the fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have death delaying procedures withheld or withdrawn in instances of a terminal condition. In order that the rights of patients may be respected even after they are no longer able to participate actively in decisions about themselves, the legislature hereby declares that the laws of this State shall recognize the right of a person to make a written declaration instructing his or her physician to withhold or withdraw death delaying procedures in the event of a terminal condition." 755 ILCS 35/1

Execution

- Declarant must be at least 18 years old or an exempted minor.
- Declarant must be competent and of "sound mind".
- Two witnesses are required.
- Declarant may follow the statutory form or may alter the Living Will Declaration to include any directions the Declarant wishes.

Limitations

- A Power of Attorney for Health Care supersedes an Illinois Living Will Declaration.
- If there is a conflict between a Power of Attorney for Health Care and Living Will, the Power of Attorney Controls.
- Under Section 4-11 of the Power of Attorney Act, if a principal has a living will under the "Illinois Living Will Act", the living will shall not be operative so long as an agent is available who is authorized to deal with the subject of life-sustaining or death-delaying procedures for and on behalf of the principal. 755 ILCS 45/4-11

Revocation

- A declarant may revoke a Living Will at any time by:
 - Physically destroying the document;
 - Writing a revocation; or
 - Making an oral revocation.



**INSTRUCTIONS
REGARDING DRAFTING AND EXECUTION OF
POWERS OF ATTORNEY FOR PROPERTY,
POWER OF ATTORNEY FOR HEALTH CARE AND
ILLINOIS LIVING WILL DECLARATION**

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SCREENING FORM

(Generally Filled Out by Paralegals/Law Students)

The screening form is utilized by CDEL for record keeping purposes only. It provides the attorney with the information necessary to complete the documents. The screening form also allows CDEL staff to quickly retrieve and review a client's basic information and assists CDEL in setting up electronic files for SCI Participants. Typically, the screening form is filled out by non-attorney volunteers in advance of the attorney volunteer meeting with the senior, although attorneys may fill out the screening form, as time permits.

For the purposes of the SCI, not every portion of the screening form needs to be completed. For the purpose of setting up electronic files and for reporting requirements, CDEL requires the following information:

Client's Name

Client's Gender

Client's Address

Client's Monthly Income

Client's Phone Number

Client's Date of Birth

Please note:

If the client does not want to provide their income or you do not feel comfortable asking it, you can just skip that questions. It is only necessary for eligibility for additional services.

If the client does not require all three documents (i.e., Power of Attorney for Property, Power of Attorney for Healthcare, and Living Will), the attorney should note what documents the client does and does not require in the "Secondary Screening" Section) of the screening form.

Oftentimes, a client will wish to discuss another legal matter (such as simple will, a collection matter, etc.) during or after the drafting of the Power of Attorney(s). The attorney is under no obligation to discuss the matter. If the client inquires about any additional legal matter, please note what legal matter of concern to the client on the screening form. The attorney may wish to call a CDEL staff person over to discuss the matter with the client and to perform a second screening, if necessary. If no CDEL staff person is available, please explain that we are only here to work on the Powers of Attorney, but CDEL will be happy to discuss other legal matters with the client at another time. Explain that the "Instruction Sheet" has CDEL's name, address and telephone number and the client is free to call CDEL at any time. This will allow CDEL to track these residual legal matters and open files accordingly.

The third section of the Screening form is to for CDEL's internal purposes and is used when reviewing the documents prior to processing. It allows for a final check by CDEL staff to make sure that the documents were properly completed and executed.



LIMITED ATTORNEY-CLIENT AGREEMENT (to be signed by client and volunteer attorney)

The Limited Attorney-Client Agreement (“Agreement”) memorializes the scope of CDEL’s representation at the SCI and also helps to manage the expectations of the client. The volunteer attorney should read the document to the client and explain any sections of the Agreement to the client if the client has questions.

Please keep in mind that we are assisting low income seniors, many of whom have little or no higher education. Your patience is appreciated.

The Agreement is signed by both the volunteer attorney and the client. If the volunteer is not licensed in Illinois (for instance, a retired attorney, an out-of-state attorney, or a law student), the agreement should be signed by a CDEL staff attorney. For 711 licensees, the Agreement should be signed by both the 711 and countersigned by a CDEL staff attorney.

The volunteer attorneys should PRINT their names in the space provided, even if the volunteer is not licensed in Illinois. This is important as we cannot always read the signatures and wish to credit all volunteers for the time they spent with the clients. We can not credit the volunteer if we cannot read the name.

POWER OF ATTORNEY FOR PROPERTY

(to be explained to the Principal)

1. On page 1, have Principal initial the Notice.
2. On page 2, insert the Principal's name and complete address.
3. On page 2, write the name of the Principals' Agent, **relationship to the Principal**, and Agent's address and phone, if available. If the Agent's exact address is unknown, write the city and state, if available, e.g., "John Q. Agent, of Chicago, Illinois." The idea is to include as much information as possible.
4. On page 2, strike any categories of powers that the Agent should not have. The Principal has the right to adapt the POA in any way he/she chooses. However, do not encourage the Principal to cross out a power just because it is not immediately applicable (for instance, the Principal may not own real property, but may inherit property, or need to enter into a lease in the future and the POA would allow the Agent to make decisions for such future matters). **Principal should initial next to the cross out(s).**
5. On page 2, consider Paragraphs 2 and 3. No changes are necessary unless the Principal wished to make changes. It is suggested that you to write "N/A" (not applicable) in these sections if the Principal does not have changes as opposed to leaving the sections blank.

For Paragraph 2, the Principal may wish to specifically limit the Agent's ability to possess a specific asset or have access to a specific account. If this is the case, you should write, "Principal does not consent to or authorize Agent to _____" (filling in whatever the Principal desires).

For Paragraph 3, the Principal may wish to authorize the Agent to make gifts to the Principal's family, church, school, etc., or to change beneficiaries to insurance or other documents. If the Principal wishes to include anything in section 2 or 3, the language should be something to the effect of "Principal consents to and authorizes Agent to _____" (filling in whatever the Principal desires).

6. On page 3, explain Paragraph 4 to the Principal regarding the rights of the agent to delegate decision-making authority. Basically, if this section is retained, the **Agent** may delegate some or all decision-making authority to a third party, of the **Agent's** choosing. It is recommended that this Paragraph be crossed out, so as to avoid the agent delegating the authority to another. However, that is a decision for the client. If it is crossed out, **Principal should initial next to the cross out.**
7. On page 3, explain Paragraph 5 to the Principal regarding the rights of the agent to receive compensation for services rendered as agent. If the Principal wishes for the Agent



to be able to be compensated (from the Principal's money), this section should be retained. If Principal does not want agent to be compensated (as is generally the case), this Paragraph should be crossed out. **Principal should initial next to the cross out.**

Often, the Principal will ask, "What does reasonable compensation mean?" This is a difficult question, because the answer is that the Agent determines reasonable compensation, considering that the Agent has a fiduciary duty to the Principal. For instance, if the Agent is spending an hour a month assisting the Principal (writing checks, paying bills, etc.), \$25.00 per month may be reasonable. \$1,000.00 per month probably would not be reasonable. Of course, this may vary based on the relationship between the Principal and Agent and also on what the Agent is being asked to do. The Principal can authorize compensation, but limit the compensation, by leaving Paragraph 5 in place, but only authorizing a certain amount in Paragraph 2. For example: the Principal can state "I only want my agent to be allowed to receive up to \$100.00 per year in compensation." You would leave Paragraph 5 intact, but would write, "Principal authorizes Agent to receive a maximum compensation of \$100.00 per year" in Paragraph 2.

8. On page 3, Paragraphs 6 & 7, the Principal may add an effective date and termination date. The default rule (per the instructions) is that the POA becomes effective upon execution and terminates upon the death of the Principal. If the Principal wishes to include an effective date and/or termination date, said dates may be written into the POA.

However, it is strongly recommended that the POA become effective immediately and terminate at death and the **dates should be left blank**. There is no need to put in the date of execution (as the instructions state that already) or death (since it automatically terminates on death). If, however, the Principal wishes to have an effective date later than the date based upon some event in the future (such as Doctor's written statement of incapacity), that event should be written into the Power of Attorney. **If an effective date or event and/or termination date or event is inserted, the Principal must initial in the parentheses in 6 and 7.**

9. On page 3, write the names, relationship and addresses of any successor Agent(s) in Paragraph 8 with the same formality as the Agent.
10. On page 3, have the Principal consider Paragraph 9. Strike if appropriate. Generally, the Principal would nominate the Agent to serve as a Guardian of the Estate if a Guardian would be necessary. The appointment of a Guardian of the Estate for someone who has a valid Power of Attorney for Property is pretty rare. There are a few instances when this could occur, however. There could be a power that was removed (the power to control real estate, for instance) and the Agent has to act. Also, certain financial institutions and related entities insist on a Guardian of the Estate. The Agent (or some other third party) could petition the court to be appointed a Guardian of the Estate.
11. Have the Principal **initial on each page**.



12. On page 4, have the Principal sign the Power of Attorney on the line underneath Paragraph 11 where indicated in the presence of one (preferably, two) disinterested witness. *The attorney explaining the documents should not be the witness*. The attorney may be the notary, however.
13. On page 4, have the witnesses write Principal's name in the witness certification Paragraph. The witnesses should date and sign where indicated on page 4.
14. Please note, the **Power of Attorney for Property must be notarized** on page 5.
15. On page 5, the Agent and successor Agents may, but are not required to, provide their specimen signatures. If the Agent or successor Agents are available to sign and do provide a specimen signature, the Principal must sign in the space to the right of the Agent's or successor Agent's signature.
16. The Certification and Acceptance of Authority are NOT filled out at the SCI Workshop. They are to be completed *by the Agent* when the Agent begins to act under the Power of Attorney. Strictly speaking, they are only needed if the Agent is utilizing a copy of the Power of the Attorney, but it is a good idea for the Agent to complete it when the Agent begins to act. Please note, there is also a Certification and Acceptance of Authority for Successor Agents as well, but that is not included with the SCI packets.

POWER OF ATTORNEY FOR HEALTH CARE

(to be explained to the Principal)

1. On pages 1-2, briefly explain the Instructions. The Principal may wish to read it in detail.
2. On page 3, insert the Principal's name and address.
3. On page 3, write the name of the Principal's Agent, **relationship to the Principal**, Agent's address and phone, if available. If the Agent's exact address is unknown, write the city and state, if available, e.g., "John Q. Agent, of Chicago, Illinois." The idea is to include as much information as possible.
4. On page 3, write the names of successor Agent, relationship to Principal, address and phone number. Note: a minor may be named but cannot act until reaching age 18.
5. On page 3, have Principal **initial** one of the lines about when the Agent can act. These options should be explained to Principal.
6. On page 3, the Principal may initial one of the two options on page 3 concerning choices as to the continuation of life-sustaining treatment. Explain both options and let the Principal pick one, if desired. The Principal may elect not to choose any (which leaves the decision entirely up to the agent), but do not have Principal initial more than one statement. **This is probably the most difficult and time consuming part of the entire procedure.** In many instances, the Principal will know which one they wish to choose. If they have concerns, allow the Principal sufficient time to consider the options.
7. On page 4, Principal may consider specifying certain limitations or instructions on the Agent's powers (i.e., to prohibit Agent from consenting to a particular procedure). For instance, specific limitations on certain invasive procedures, restrictions on end of life care, or burial/cremation instructions.
8. On page 4, have the Principal sign where indicated, in the presence of one (preferably, two) disinterested witness. ***The attorney explaining the documents should not be the witness.*** The attorney may be the notary. Have Principal initial on each page.
9. On page 4, the witness(es) should sign on the line provided and write their addresses.
10. The Power of Attorney for Health Care *should* be notarized on pages 4. Please note, execution of the Power of Attorney for Health Care is effective without notarization. However, notarization is strongly recommended.
11. The Certification and Acceptance of Authority are NOT filled out at the SCI Workshop. They are to be completed *by the Agent* when the Agent begins to act under the Power of



Attorney. Strictly speaking, they are only needed if the Agent is utilizing a copy of the Power of the Attorney, but it is a good idea for the Agent to complete it when the Agent begins to act. Please note, there is also a Certification and Acceptance of Authority for Successor Agents as well, but that is not included with the SCI packets.

ILLINOIS LIVING WILL DECLARATION

1. If the client chose the option in the Power of Attorney for Healthcare that states: “Staying alive is more important to me, no matter how sick I am, how much I am suffering, the cost of the procedures, or how unlikely my chances for recovery are. I want my life to be prolonged to the greatest extent possible in accordance with reasonable medical standards” we generally skip the Illinois Living Will Declaration, as they are in conflict with one another.
2. Read the entire document to the declarant.
3. Have the Declarant sign and date the Living Will Declaration where indicated in the presence of two disinterested witnesses who are not related to the Declarant and are not mentioned in any will or trust of the Declarant. ***The attorney explaining the documents should not be one of the witnesses.***
4. The witnesses should sign and print their names in the lines provided for them.



Center for Disability & Elder Law

SCREENING FORM

Name		Date	File #
Street Address			
City/State/Zip			
Phone Number(s)			
Gender			
Date of Birth (Disability, if any)			
Monthly Income			
Race/Ethnicity			
Agent Name / Relationship		Phone	
Agent Address			
Successor Agent (if any)/Relation		Phone	
Successor Agent Address (if any)			
Person completing Screening			

SECONDARY SCREENING (TO OCCUR AFTER COMPLETING FORMS)

Did Client Sign:	(Please place a check in each box)
Client Agreement	<input type="checkbox"/>
POA-Property	<input type="checkbox"/>
POA-Health Care	<input type="checkbox"/>
Living Will	<input type="checkbox"/>
Did Client Have Any	Yes <input type="checkbox"/> No <input type="checkbox"/>
Other Legal Matter?	If "Yes" please describe:
(i.e., Client Wants Simple Will,	
Collection Matter,	
Real Estate, etc.)	
	If "Yes" has Second Screening Been Completed (CDEL use only)? Yes <input type="checkbox"/> No <input type="checkbox"/>

REVIEW INFORMATION

Name of Reviewer:	
Photo ID (for notarization)	Yes <input type="checkbox"/> No <input type="checkbox"/>
Client Agreement?	Yes <input type="checkbox"/> No <input type="checkbox"/>
POA-Property?	Yes <input type="checkbox"/> No <input type="checkbox"/>
POA-Health Care?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Living Will?	Yes <input type="checkbox"/> No <input type="checkbox"/>



Center for Disability & Elder Law

LIMITED CLIENT AGREEMENT

This Agreement confirms the scope and terms of representation provided by the Center for Disability & Elder Law (CDEL) regarding the Senior Center Power of Attorney Initiative (SCI).

- I. I, _____ (Client Name), give my permission for CDEL and its volunteer attorneys to assist me in at the SCI workshop under the terms of this Agreement.
- II. I understand and agree that CDEL's assistance is concerned solely with the SCI. CDEL and its volunteer attorneys will advise me and assist me in completing the forms I request. That is the extent of the representation and no further representation is expected or desired.
- III. I understand that all information I give to CDEL and its volunteer attorneys in relation to the SCI will be kept with CDEL and CDEL shall not disclose this information to third parties without my permission or unless a court orders CDEL to reveal such information.
- IV. I understand that my participation is entirely voluntary. I understand that I am free to discharge CDEL and the volunteer attorney at any time during the SCI Workshop and not continue.
- V. I understand that CDEL and its volunteer attorneys can stop handling my file if they believe that one or more of the following is/are true:
 - a. that, in the judgment of CDEL or its volunteer attorney, I lack the necessary capacity to execute a Power of Attorney or Living Will Declaration,
 - b. that executing such documents are not in my best interest, or
 - c. if I do not cooperate or there is any other good reason within the meaning of the Illinois Rules of Professional Conduct to stop handling my file.
- VI. I understand that after the Workshop, if I have any questions or concerns about the documents, I may contact CDEL to seek further review of my file.
- VII. **I understand that CDEL provides this service free of charge and that I do not have to pay CDEL or CDEL volunteer attorneys for their legal services.**
- VIII. I understand and agree to the terms set forth above.

Client
Signature _____

Printed Name _____

Date _____

Volunteer
Attorney Signature _____

Volunteer
Attorney
Printed Name _____

Non-Attorney Volunteer
Printed Name _____

Date _____



Center for Disability & Elder Law

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Client
Signature _____

Printed Name _____

Date _____

Volunteer
Attorney Signature _____

Volunteer
Attorney
Printed Name _____

Non-Attorney Volunteer
Printed Name _____

Date _____

***NOTICE TO THE INDIVIDUAL SIGNING THE ILLINOIS
STATUTORY SHORT FORM POWER OF ATTORNEY FOR PROPERTY***

PLEASE READ THIS NOTICE CAREFULLY. The form that you will be signing is a legal document. It is governed by the Illinois Power of Attorney Act. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

The purpose of this Power of Attorney is to give your designated “agent” broad powers to handle your financial affairs, which may include the power to pledge, sell, or dispose of any of your real or personal property, even without your consent or any advance notice to you. When using the Statutory Short Form, you may name successor agents, but you may not name co-agents.

This form does not impose a duty upon your agent to handle your financial affairs, so it is important that you select an agent who will agree to do this for you. It is also important to select an agent whom you trust, since you are giving that agent control over your financial assets and property. Any agent who does act for you has a duty to act in good faith for your benefit and to use due care, competence, and diligence. He or she must also act in accordance with the law and with the directions in this form. Your agent must keep a record of all receipts, disbursements, and significant actions taken as your agent.

Unless you specifically limit the period of time that this Power of Attorney will be in effect, your agent may exercise the powers given to him or her throughout your lifetime, both before and after you become incapacitated. A court, however, can take away the powers of your agent if it finds that the agent is not acting properly. You may also revoke this Power of Attorney if you wish.

This Power of Attorney does not authorize your agent to appear in court for you as an attorney-at-law or otherwise to engage in the practice of law unless he or she is a licensed attorney who is authorized to practice law in Illinois.

The powers you give your agent are explained more fully in Section 3-4 of the Illinois Power of Attorney Act. This form is a part of that law. The “NOTE” paragraphs throughout this form are instructions.

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 agent will be able to do if you do sign it.

Please place your initials on the following line indicating that you have read this Notice:

ILLINOIS STATUTORY SHORT FORM POWER OF ATTORNEY FOR PROPERTY

1. I, _____ (name),
_____ (address),

hereby revoke all prior powers of attorney for property executed by me and appoint:

(NOTE: You may not name co-agents using this form.)

_____ (agent's name), my _____ (relationship),
_____ (address),

as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) with respect to the following powers, as defined in Section 3-4 of the "Statutory Short Form Power of Attorney for Property Law" (including all amendments), but subject to any limitations on or additions to the specified powers inserted in paragraph 2 or 3 below:

(NOTE: You must strike out any one or more of the following categories of powers you do not want your agent to have. Failure to strike the title of any category will cause the powers described in that category to be granted to the agent. To strike out a category you must draw a line through the title of that category. You should initial next to the line drawn through the title of any category stricken out.)

- (a) Real estate transactions.
- (b) Financial institution transactions.
- (c) Stock and bond transactions.
- (d) Tangible personal property transactions.
- (e) Safe deposit box transactions.
- (f) Insurance and annuity transactions.
- (g) Retirement plan transactions.
- (h) Social Security, unemployment and military service benefits.
- (i) Tax matters.
- (j) Claims and litigation.
- (k) Commodity and option transactions.
- (l) Business operations.
- (m) Borrowing transactions.
- (n) Estate transactions.
- (o) All other property transactions.

(NOTE: Limitations on and additions to the agent's powers may be included in this power of attorney if they are specifically described below.)

2. The powers granted above shall not include the following powers or shall be modified or limited in the following particulars:

(NOTE: Here you may include any specific limitations you deem appropriate, such as a prohibition or conditions on the sale of particular stock or real estate or special rules on borrowing by the agent.)

3. In addition to the powers granted above, I grant my agent the following powers:

(NOTE: Here you may add any other delegable powers including, without limitation, power to make gifts, exercise powers of appointment, name or change beneficiaries or joint tenants or revoke or amend any trust specifically referred to below.)

(NOTE: Your agent will have authority to employ other persons as necessary to enable the agent to properly exercise the powers granted in this form, but your agent will have to make all discretionary decisions. If you want to give your agent the right to delegate discretionary decision-making powers to others, you should keep paragraph 4, otherwise it should be struck out.)

4. My agent shall have the right by written instrument to delegate any or all of the foregoing powers involving discretionary decision-making to any person or persons whom my agent may select, but such delegation may be amended or revoked by any agent (including any successor) named by me who is acting under this power of attorney at the time of reference.

(NOTE: Your agent will be entitled to reimbursement for all reasonable expenses incurred in acting under this power of attorney. Strike out paragraph 5 if you do not want your agent to also be entitled to reasonable compensation for services as agent.)

5. My agent shall be entitled to reasonable compensation for services rendered as agent under this power of attorney.

(NOTE: This power of attorney may be amended or revoked by you at any time and in any manner. Absent amendment or revocation, the authority granted in this power of attorney will become effective at the time this power is signed and will continue until your death, unless a limitation on the beginning date or duration is made by initialing and completing one or both of paragraphs 6 and 7:)

6. () This power of attorney shall become effective on _____

(NOTE: Insert a future date or event during your lifetime, such as a court determination of your disability or a written determination by your physician that you are incapacitated, when you want this power to first take effect.)

7. () This power of attorney shall terminate on _____

(NOTE: Insert a future date or event, such as a court determination that you are not under a legal disability or a written determination by your physician that you are not incapacitated, if you want this power to terminate prior to your death.)

(NOTE: If you wish to name one or more successor agents, insert the name, relationship and address of each successor agent in paragraph 8.)

8. If any agent named by me shall die, become incompetent, resign or refuse to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to such agent:

For purposes of this paragraph 8, a person shall be considered to be incompetent if and while the person is a minor or an adjudicated incompetent or disabled person or the person is unable to give prompt and intelligent consideration to business matters, as certified by a licensed physician.

(NOTE: If you wish to, you may name your agent as guardian of your estate if a court decides that one should be appointed. To do this, retain paragraph 9, and the court will appoint your agent if the court finds that this appointment will serve your best interests and welfare. Strike out paragraph 9 if you do not want your agent to act as guardian.)

9. If a guardian of my estate (my property) is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without bond or security.

_____ Initial

10. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

(NOTE: This form does not authorize your agent to appear in court for you as an attorney-at-law or otherwise to engage in the practice of law unless he or she is a licensed attorney who is authorized to practice law in Illinois.)

11. The Notice to Agent is incorporated by reference and included as part of this form.

Dated: _____

Signed _____
(principal)

(NOTE: This power of attorney will not be effective unless it is signed by at least one witness and your signature is notarized, using the form below. The notary may not also sign as a witness.)

The undersigned witnesses certifies that _____, known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the notary public and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth. I believe him or her to be of sound mind and memory. The undersigned witness also certifies that the witness is not: (a) the attending physician or mental health service provider or a relative of the physician or provider; (b) an owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident; (c) a parent, sibling, descendant, or any spouse of such parent, sibling, or descendant of either the principal or any agent or successor agent under the foregoing power of attorney, whether such relationship is by blood, marriage, or adoption; or (d) an agent or successor agent under the foregoing power of attorney.

Dated: _____

Printed Name: _____

Signed _____
(Witness)

Dated: _____

Printed Name: _____

Signed _____
(Second Witness)

(NOTE: Illinois requires only one witness, but other jurisdictions may require more than one witness.)

County of Cook)

The undersigned, a notary public in and for the above county and state, certifies that _____, known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the witness(es) _____ (and _____) in person and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth (and certified to the correctness of the signature(s) of the agent(s)).

Dated: _____

Notary Public

(NOTE: You may, but are not required to, request your agent and successor agents to provide specimen signatures below. If you include specimen signatures in this power of attorney, you must complete the certification opposite the signatures of the agents.)

Specimen signatures of agent (and successors).

I certify that the signatures of my agent (and successors) are correct.

(agent)

(principal)

(successor agent)

(principal)

(successor agent)

(principal)

(NOTE: The name, address, and phone number of the person preparing this form or who assisted the principal in completing this form should be inserted below.)

This document was prepared by:
Center for Disability & Elder Law
205 W. Randolph
Suite 1610
Chicago, IL 60606
(312) 376-1880

NOTICE TO AGENT

When you accept the authority granted under this power of attorney a special legal relationship, known as agency, is created between you and the principal. Agency imposes upon you duties that continue until you resign or the power of attorney is terminated or revoked.

As agent you must:

- (1) do what you know the principal reasonably expects you to do with the principal's property;
- (2) act in good faith for the best interest of the principal, using due care, competence, and diligence;
- (3) keep a complete and detailed record of all receipts, disbursements, and significant actions conducted for the principal;
- (4) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest; and
- (5) cooperate with a person who has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually in the principal's best interest.

As agent you must not do any of the following:

- (1) act so as to create a conflict of interest that is inconsistent with the other principles in this Notice to Agent;
- (2) do any act beyond the authority granted in this power of attorney;
- (3) commingle the principal's funds with your funds;
- (4) borrow funds or other property from the principal, unless otherwise authorized;
- (5) continue acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney, such as the death of the principal, your legal separation from the principal, or the dissolution of your marriage to the principal.

If you have special skills or expertise, you must use those special skills and expertise when acting for the principal. You must disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name "as Agent" in the following manner:

"(Principal's Name) by (Your Name) as Agent"

The meaning of the powers granted to you is contained in Section 3-4 of the Illinois Power of Attorney Act, which is incorporated by reference into the body of the power of attorney for property document.

If you violate your duties as agent or act outside the authority granted to you, you may be liable for any damages, including attorney's fees and costs, caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice from an attorney."

The requirement of the signature of a witness in addition to the principal and the notary, imposed by Public Act 91-790, applies only to instruments executed on or after June 9, 2000 (the effective date of that Public Act).

AGENT'S CERTIFICATION AND ACCEPTANCE OF AUTHORITY

I, _____ (insert name of agent), certify that the attached is a true copy of a power of attorney naming the undersigned as agent or successor agent for _____ (insert name of principal).

I certify that to the best of my knowledge the principal had the capacity to execute the power of attorney, is alive, and has not revoked the power of attorney; that my powers as agent have not been altered or terminated; and that the power of attorney remains in full force and effect.

I accept appointment as agent under this power of attorney.

This certification and acceptance is made under penalty of perjury.*

Dated: _____

(Agent's Signature)

(Print Agent's Name)

(Agent's Address)

*(NOTE: Perjury is defined in Section 32-2 of the Criminal Code of 2012, and is a Class 3 felony.)

THE POWER OF ATTORNEY FOR HEALTH CARE

No one can predict when a serious illness or accident might occur. When it does, you may need someone else to speak or make health care decisions for you. If you plan now, you can increase the chances that the medical treatment you get will be the treatment you want.

In Illinois, you can choose someone to be your “health care agent”. Your agent is the person you trust to make health care decisions for you if you are unable or do not want to make them yourself. These decisions should be based on your personal values and wishes.

It is important to put your choice of agent in writing. The written form is often called an “advance directive”. You may use this form or another form, as long as it meets the legal requirements of Illinois. There are many written and on-line resources to guide you and your loved ones in having a conversation about these issues. You may find it helpful to look at these resources while thinking about and discussing your advance directive.

WHAT ARE THE THINGS I WANT MY HEALTH CARE AGENT TO KNOW?

The selection of your agent should be considered carefully, as your agent will have the ultimate decision making authority once this document goes into effect, in most instances after you are no longer able to make your own decisions. While the goal is for your agent to make decisions in keeping with your preferences and in the majority of circumstances that is what happens, please know that the law does allow your agent to make decisions to direct or refuse health care interventions or withdraw treatment. Your agent will need to think about conversations you have had, your personality, and how you handled important health care issues in the past. Therefore, it is important to talk with your agent and your family about such things as:

- (i) What is most important to you in your life?
- (ii) How important is it to you to avoid pain and suffering?
- (iii) If you had to choose, is it more important to you to live as long as possible, or to avoid prolonged suffering or disability?
- (iv) Would you rather be at home or in a hospital for the last days or weeks of your life?
- (v) Do you have religious, spiritual, or cultural beliefs that you want your agent and others to consider?
- (vi) Do you wish to make a significant contribution to medical science after your death through organ or whole body donation?
- (vii) Do you have an existing advanced directive, such as a living will, that contains your specific wishes about health care that is only delaying your death? If you have another advance directive, make sure to discuss with your agent the directive and the treatment decisions contained within that outline your preferences. Make sure that your agent agrees to honor the wishes expressed in your advance directive.

WHAT KIND OF DECISIONS CAN MY AGENT MAKE?

If there is ever a period of time when your physician determines that you cannot make your own health care decisions, or if you do not want to make your own decisions, some of the decisions your agent could make are to:

- (i) talk with physicians and other health care providers about your condition.
- (ii) see medical records and approve who else can see them.
- (iii) give permission for medical tests, medicines, surgery, or other treatments.
- (iv) choose where you receive care and which physicians and others provide it.
- (v) decide to accept, withdraw, or decline treatments designed to keep you alive if you are near death or not likely to recover. You may choose to include guidelines and/or restrictions to your agent’s authority.
- (vi) agree or decline to donate your organs or your whole body if you have not already made this decision yourself. This could include donation for transplant, research, and/or education. You should let your agent know whether you are registered as a donor in the First Person Consent registry maintained by the Illinois Secretary of State or whether you have agreed to donate your whole body for medical research and/or education.
- (vii) decide what to do with your remains after you have died, if you have not already made plans.
- (viii) talk with your other loved ones to help come to a decision (but your designated agent will have the final say over your other loved ones).

Your agent is not automatically responsible for your health care expenses.

WHOM SHOULD I CHOOSE TO BE MY HEALTH CARE AGENT?

You can pick a family member, but you do not have to. Your agent will have the responsibility to make medical treatment decisions, even if other people close to you might urge a different decision. The selection of your agent should

be done carefully, as he or she will have ultimate decision-making authority for your treatment decisions once you are no longer able to voice your preferences. Choose a family member, friend, or other person who:

- (i) is at least 18 years old;
- (ii) knows you well;
- (iii) you trust to do what is best for you and is willing to carry out your wishes, even if he or she may not agree with your wishes;
- (iv) would be comfortable talking with and questioning your physicians and other health care providers;
- (v) would not be too upset to carry out your wishes if you became very sick; and
- (vi) can be there for you when you need it and is willing to accept this important role.

WHAT IF MY AGENT IS NOT AVAILABLE OR IS UNWILLING TO MAKE DECISIONS FOR ME?

If the person who is your first choice is unable to carry out this role, then the second agent you chose will make the decisions; if your second agent is not available, then the third agent you chose will make the decisions. The second and third agents are called your successor agents and they function as back-up agents to your first choice agent and may act only one at a time and in the order you list them.

WHAT WILL HAPPEN IF I DO NOT CHOOSE A HEALTH CARE AGENT?

If you become unable to make your own health care decisions and have not named an agent in writing, your physician and other health care providers will ask a family member, friend, or guardian to make decisions for you. In Illinois, a law directs which of these individuals will be consulted. In that law, each of these individuals is called a “surrogate”.

There are reasons why you may want to name an agent rather than rely on a surrogate:

- (i) The person or people listed by this law may not be who you would want to make decisions for you.
- (ii) Some family members or friends might not be able or willing to make decisions as you would want them to.
- (iii) Family members and friends may disagree with one another about the best decisions.
- (iv) A surrogate may not be able to make the same kinds of decisions that an agent can make.

WHAT IF THERE IS NO ONE AVAILABLE WHOM I TRUST TO BE MY AGENT?

In this situation, it is especially important to talk to your physician and other health care providers and create written guidance about what you want or do not want, in case you are ever critically ill and cannot express your own wishes. You can complete a living will. You can also write your wishes down and/or discuss them with your physician or other health care provider and ask him or her to write it down in your chart. You might also want to use written or on-line resources to guide you through this process.

WHAT DO I DO WITH THIS FORM ONCE I COMPLETE IT?

Follow these instructions after you have completed the form:

- (i) Sign the form in front of a witness. See the form for a list of who can and cannot witness it.
- (ii) Ask the witness to sign it, too.
- (iii) There is no need to have the form notarized, but you may wish to have it notarized.
- (iv) Give a copy to your agent and to each of your successor agents.
- (v) Give another copy to your physician.
- (vi) Take a copy with you when you go to the hospital.
- (vii) Show it to your family and friends and others who care for you

WHAT IF I CHANGE MY MIND?

You may change your mind at any time. If you do, tell someone who is at least 18 years old that you have changed your mind, and/or destroy your document and any copies. If you wish, fill out a new form and make sure everyone you gave the old form to has a copy of the new one, including, but not limited to, your agents and your physicians.

WHAT IF I DO NOT WANT TO USE THIS FORM?

In the event you do not want to use the Illinois statutory form provided here, any document you complete must be executed by you, designate an agent who is over 18 years of age and not prohibited from serving as your agent, and state the agent’s powers, but it need not be witnessed or conform in any other respect to the statutory health care power.

If you have questions about the use of any form, you may want to consult your physician, other health care provider, and/or an attorney.

MY POWER OF ATTORNEY FOR HEALTH CARE

This Power of Attorney revokes all previous Powers of Attorney for Health Care

My name: _____

My address: _____

I WANT THE FOLLOWING PERSON TO BE MY HEALTH CARE AGENT

(an agent is your personal representative under state and federal law)

Agent name: _____ (Relationship) _____

Agent address: _____

Agent phone number: _____

____ If a guardian of my person is to be appointed, I nominate the agent acting under this Power of Attorney to serve as guardian.

SUCCESSOR HEALTH CARE AGENT(S) (optional):

If the agent I selected is unable or does not want to make health care decisions for me, then I request the person(s) I name below to be my successor health care agent(s).

Only one person at a time can serve as my agent (add another page if you want to add more successor agent names):

(Successor agent #1 name, relationship, address and phone number)

(Successor agent #2 name, relationship, address and phone number)

MY AGENT CAN MAKE HEALTH CARE DECISIONS FOR ME, INCLUDING:

- (i) Deciding to accept, withdraw or decline treatment for any physical or mental condition of mine, including life-and-death decisions.
- (ii) Agreeing to admit me to or discharge me from any hospital, home, or other institution, including a mental health facility.
- (iii) Having complete access to my medical and mental health records, and sharing them with others as needed, including after I die. I intend for the person named as my agent to serve as my "personal representative" as that term is defined by HIPAA and regulations thereunder.
- (iv) Carrying out the plans I have already made, or, if I have not done so, making decisions about my body or remains, including organ, tissue or whole body donation, autopsy, cremation, and burial.

The above grant of power is intended to be as broad as possible so that my agent will have the authority to make any decision I could make to obtain or terminate any type of health care, including withdrawal of nutrition and hydration and other life-sustaining measures.

I AUTHORIZE MY AGENT TO (please initial any one box):

____ Make decisions for me only when I cannot make them for myself. The physician(s) taking care of me will determine when I lack this ability.

(If no box is checked, then the box above shall be implemented.) OR

____ Make decisions for me only when I cannot make them for myself. The physician(s) taking care of me will determine when I lack this ability. Starting now, for the purpose of assisting me with my health care plans and decisions, my agent shall have complete access to my medical and mental health records, the authority to share them with others as needed, and the complete ability to communicate with my personal physician(s) and other health care providers, including the ability to require an opinion of my physician as to whether I lack the ability to make decisions for myself. OR

____ Make decisions for me starting now and continuing after I am no longer able to make them for myself. While I am still able to make my own decisions, I can still do so if I want to do so.

The subject of life-sustaining treatment is of particular importance. Life-sustaining treatments may include tube feedings or fluids through a tube, breathing machines, and CPR. In general, in making decisions concerning life-sustaining treatment, your agent is instructed to consider the relief of suffering, the quality as well as the possible extension of your life, and your previously expressed wishes. Your agent will weigh the burdens versus benefits of proposed treatments in making decisions on your behalf.

Additional statements concerning the withholding or removal of life-sustaining treatment are described below. These can serve as a guide for your agent when making decisions for you. Ask your physician or health care provider if you have any questions about these statements.

SELECT ONLY ONE STATEMENT BELOW THAT BEST EXPRESSES YOUR WISHES (optional):

____ The quality of my life is more important than the length of my life. If I am unconscious and my attending physician believes, in accordance with reasonable medical standards, that I will not wake up or recover my ability to think, communicate with my family and friends, and experience my surroundings, I do not want treatments to prolong my life or delay my death, but I do want treatment or care to make me comfortable and to relieve me of pain.

____ Staying alive is more important to me, no matter how sick I am, how much I am suffering, the cost of the procedures, or how unlikely my chances for recovery are. I want my life to be prolonged to the greatest extent possible in accordance with reasonable medical standards.

SPECIFIC LIMITATIONS TO MY AGENT'S DECISION-MAKING AUTHORITY:

The above grant of power is intended to be as broad as possible so that your agent will have the authority to make any decision you could make to obtain or terminate any type of health care.

If you wish to limit the scope of your agent's powers or prescribe special rules or limit the power to authorize autopsy, make anatomical gifts or dispose of remains, you may do so specifically in this form.

My signature: _____

Today's date: _____

**HAVE YOUR WITNESSES AGREE TO WHAT IS WRITTEN BELOW,
AND THEN COMPLETE THE SIGNATURE PORTION:**

I am at least 18 years old and I saw the principal sign this document. I believe the principal to be of sound mind and memory. I am not the agent or successor agent(s) named in this document. I am not related to the principal, the agent, or the successor agent(s) by blood, marriage, or adoption. I am not the principal's physician, mental health service provider, or a relative of one of those individuals. I am not an owner or operator (or the relative of an owner or operator) of the health care facility where the principal is a patient or resident.

Witness printed name: _____

Witness address: 205 W. Randolph Suite 1610
City, State, Zip Chicago, IL 60606

Witness signature: _____

Today's date: _____

Witness printed name: _____

Witness address: 205 W. Randolph Suite 1610
City, State, Zip Chicago, IL 60606

Witness signature: _____

Today's date: _____

State of Illinois)
) SS.
County of Cook)

The undersigned, a notary public in and for the above county and state, certifies that _____,
known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared
before me and the witness(es) _____ and _____ in person
and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and
purposes therein set forth (and certified to the correctness of the signature(s) of the agent(s)).

Dated: _____

Notary Public

AGENT'S CERTIFICATION AND ACCEPTANCE OF AUTHORITY

I, _____ **(insert name of agent)**, certify that the attached is a true copy of a power of attorney naming the undersigned as agent or successor agent for _____ **(insert name of principal)**.

I certify that to the best of my knowledge the principal had the capacity to execute the power of attorney, is alive, and has not revoked the power of attorney; that my powers as agent have not been altered or terminated; and that the power of attorney remains in full force and effect.

I accept appointment as agent under this power of attorney.

This certification and acceptance is made under penalty of perjury.*

Dated: _____

(Agent's Signature)

(Print Agent's Name)

(Agent's Address)

*(NOTE: Perjury is defined in Section 32-2 of the Criminal Code of 2012, and is a Class 3 felony.)

ILLINOIS LIVING WILL DECLARATION

This declaration is made this _____ day of _____, _____.

I, _____, being of sound mind, willfully and voluntarily make known my desires that my moment of death shall not be artificially postponed.

If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me and has determined that my death is imminent except for death delaying procedures*, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such death delaying procedures, it is my intention that this declaration shall be honored by my family and physician and agent under any Power of Attorney for Healthcare I may have as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

Signed _____

Address _____

The declarant is personally known to me and I believe him or her to be of sound mind. I saw the declarant sign the declaration in my presence (or the declarant acknowledged in my presence that he or she had signed the declaration) and I signed the declaration as a witness in the presence of the declarant. I did not sign the declarant's signature above for or at the direction of the declarant. At the date of this instrument, I am not entitled to any portion of the estate of the declarant according to the laws of intestate succession or, to the best of my knowledge and belief, under any will of declarant or other instrument taking effect at declarant's death, or directly financially responsible for declarant's medical care.

(Witness Signature)

(Witness Signature)

(Print Witness Name)

(Print Witness Name)

*For purposes of this Declaration, "Death Delaying Procedure" means any medical procedure or intervention which, when applied to a qualified patient, in the judgment of the attending physician would serve only to postpone the moment of death.

In appropriate circumstances, such procedures include, but are not limited to, assisted ventilation, artificial kidney treatments, intravenous feeding or medication, blood transfusions, tube feeding and other procedures of greater or lesser magnitude *that serve only to delay death*. However, this does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort care or alleviation of pain.



Center for Disability & Elder Law

SENIOR CENTER INITIATIVE FREQUENTLY ASKED QUESTIONS

The Center for Disability & Elder Law is pleased to provide you with the attached Power(s) of Attorney and/or Living Will. Please read the following information carefully. It is recommended that you keep this information with the documents, and you are encouraged to share this information with your Agent.

You and Your Agent

Who are the Principal and Agent? You are the Principal – this is the person who authorizes the Power of Attorney. The Agent is the person you select to act as your “attorney-in-fact” to make decisions for you. You should know your Agent well and trust your Agent implicitly.

Who qualifies as an Agent? The person you select as your Agent must be at least 18 years old, must be competent, and cannot be your primary health care provider (i.e., physician or other licensed caregiver).

Can I name two Agents at the same time? No, you may not name co-Agents to share Power of Attorney. However, you may designate one person as Agent with Power of Attorney for Health Care and a different person as Agent with Power of Attorney for Property. You may also designate a “Successor Agent”, who can act in the event that your Agent is unable or unwilling to act on your behalf.

What are the duties of the Agent for the Power of Attorney for Health Care? The Power of Attorney for Health Care gives your Agent broad powers to make health care decisions for you, e.g. the power to authorize or withdraw medical treatment, speak to your physicians, admit you to or discharge you from a hospital, and make end of life decisions. You may limit or restrict the broad powers that are granted to your Agent. Your Agent must use due care to act for your benefit and to act in accordance with the Power of Attorney for Healthcare.

What are the duties of the Agent for the Power of Attorney for Property? The Power of Attorney for Property gives the Agent broad

powers to handle your property, e.g. the power access your bank accounts, to pay your bills using your funds, and pledge, sell or dispose of your real estate and personal property. You may expressly limit or restrict the broad powers that are granted to your Agent. The Agent must use due care to act for your benefit and to act in accordance with the Power of Attorney for Healthcare.

Is the Agent personally responsible for your bills? No, the Agent is not personally liable for your bills. The Agent is also not liable for losses due to errors of judgment or for the acts or defaults of any other person. However, the Agent shall be liable for any fraudulent or negligent exercise of his powers.

Will the Agent be compensated? Under the Power of Attorney for Property, the Agent may be entitled to reasonable compensation, if you so authorize. Under the Powers of Attorney for Property or Health Care, the Agent may hire other people to perform certain duties under the Power of Attorney (e.g., hiring a tax preparer to prepare taxes).

Enforcing the Power of Attorney

When does the Power of Attorney take effect? The Power of Attorney takes effect on the date signed, unless you choose a different date or future life event.

When does the Power of Attorney terminate? The Power of Attorney terminates when one of the following occurs:

- You pass away (NOTE: An exception exists if your Agent under a Power of Attorney for Healthcare retains residual powers, including, making anatomical gifts, authorizing



Center for Disability & Elder Law

an autopsy and/or disposing of your remains);
- You designate a date for termination and that date arrives

- You formally revoke the Power of Attorney
- Your Agent dies or becomes incompetent and there is no Successor Agent
- Your Agent terminates the agency or
- A court removes your Agent for not properly fulfilling the duties of an agent.

Changing or Revoking the Power of Attorney

How do I change the Power of Attorney? You have the right to modify the Power of Attorney at any time while you have capacity by changing its terms or changing your agent or adding successor agents. Please note: all changes **MUST** be witnessed, signed, and notarized. If you wish to modify the Power of Attorney, it is highly recommended that you revoke the old one and have a new one created.

How do I revoke the Power of Attorney? You may formally revoke a Power of Attorney by:

- Writing a revocation letter to your Agent and sending it to the Agent via certified mail;
- Destroying the original document (burning, tearing, etc.) and notifying your Agent of the document's destruction; and/or
- Making an oral revocation in the presence of a witness who then puts the revocation into writing (NOTE: this is not recommended).

Is capacity required to revoke the Power of Attorney? No, capacity is not required for you to revoke agency; however, a court may rule on whether you have capacity to enter into a new Power of Attorney. If a court finds that you lack capacity, the court may appoint a guardian who may revoke agency on your behalf.

Living Will Declaration

What is a Living Will Declaration? Unlike Powers of Attorney, a Living Will Declaration

does not vest power in an Agent to make decisions on your behalf.

A Living Will is a declaration made by you to your physician that you do not want your moment of death to be artificially postponed. If your attending physician determines that your death is imminent except for death delaying procedures, a Living Will Declaration directs your physician to withhold any procedures that would prolong the dying process, so that you are permitted to die naturally with only medication and sustenance to provide you with comfort care.

A Living Will Declaration will not be valid while there is also a valid Power of Attorney for Healthcare. Also, if there is a conflict between a Power of Attorney for Healthcare and Living Will Declaration, the Power of Attorney for Healthcare would control.

Keeping Records and Distributing Copies

Where do I keep the signed documents? You should keep the original signed documents in a safe place. If you expect that your Agent is not going to be exercising the powers granted in the Powers of Attorney immediately, you should keep the ORIGINALS and provide your Agent with the COPIES. However, if you do this, you **MUST** tell your Agent the exact location of the originals. In the alternative, you may provide the ORIGINALS to your Agent and keep the COPIES yourself.

Who else gets copies of the documents? You may wish to bring the original signed documents to your primary physician and to your bank to notify them that you have signed these documents and to allow them to make COPIES to be placed in your medical and financial records. However, make sure that you keep the ORIGINALS. Note that your Agent will have to provide the ORIGINALS to any service providers in order for the service providers to allow your Agent to act.