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ADVANCE DIRECTIVES

Florida law allows individuals to execute certain legal documents that provide instructions to your family and health care providers. These legal documents are often called advance directives. The key word is "advance," that is the documents must be executed prior to incapacity. This article will discuss the following four common advance directives:

(1) Living Will Declaration;
(2) Designation of Health Care Surrogate;
(3) Durable Power of Attorney; and
(4) Declaration of Preneed Guardian.

1. Living Will Declaration

A "Living Will" is actually a written declaration by an individual that he or she does not want certain medical procedures utilized to prolong his or her life under certain specified conditions. Florida allows an individual to commit to writing his or her desire to have life-prolonging measures withheld or withdrawn when the application of such procedures would serve only to prolong artificially the process of dying, including the withdrawal of nutrition and hydration (food and water) if the Living Will specifically states.

Florida law also allows individuals to express their intention not to allow the utilization of life-prolonging procedures when such individuals are not in a terminal condition, such as when a person is in a persistent vegetative state (a coma) and has lost all of his or her cognitive functions.

Additionally, Florida law allows an individual to direct the withholding or withdrawal of life prolonging procedures if the individual is in an "end stage condition". An "end stage condition" is defined as an irreversible condition that is caused by injury, disease or illness, which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

Each person should consider the options available to them and execute a Living Will that implements the individual's desire concerning the utilization of life-prolonging procedures when he or she is unable to vocalize his or her intentions in this regard.

2. Designation of Health Care Surrogate

Florida law allows an individual to designate someone to provide informed consent for medical procedures and health care management in the event that the individual who has made the designation is later determined by his or her physician, and a second physician, to be incapable of making health care decisions.

The use of a Designation of Health Care Surrogate can reduce the need to proceed with a court supervised guardianship administration, thereby minimizing the expenses associated with formal guardianship.

Due to the comprehensive nature of this law, the health care surrogate is provided with powers that are enforceable by the court. The law also provides for limited liability for both the health care surrogate and the health provider when the health care surrogate provides informed consent to the health care provider and all parties are acting in good faith.

A designation of health care surrogate is a useful estate planning tool and it should be an essential part of every individual's estate plan.

3. Durable Power of Attorney

A Durable Power of Attorney is a legal instrument under which a person (the "donor") may designate another person (the "donee") to be legally empowered to act on behalf of the donor to the extent set forth in the Durable Power of Attorney instrument. The Durable Power of Attorney is "durable" because the powers granted under it remain in effect if the donor becomes physically or mentally disabled.

A Durable Power of Attorney can be granted to any person over the age of 18, and typically allows the donee to make financial decisions on behalf of the donor, and may also include medical decisions. Under Florida law, the Durable Power of Attorney can take effect immediately upon signing the document or the document can state that the powers are not to be effective until the donor has been determined to be incapacitated by a physician.

The Durable Power of Attorney can be a useful estate planning tool to allow the donee of the power to manage the affairs of a donor who subsequently becomes incapacitated. In the past, however, many financial institutions and title insurance companies would not accept them. In response to the problems associated with the attempted use of Durable Powers of Attorney, the Florida Legislature, in 1995, significantly revised the law pertaining to Durable Powers of Attorney. Effective with respect to Durable Powers of Attorney that are signed on or after October 1, 1995, financial institutions and title insurance companies may be required to accept the Durable Powers of Attorney. Unfortunately, Durable Powers of Attorney signed prior to October 1, 1995, are not afforded the benefits of the new law.

4. Declaration of Preneed Guardian

Florida law allows individuals to designate who they want to serve as the guardian of their person and property in the event that such individual is adjudicated incapacitated by the court. As long as the person designated in the Declaration of Preneed Guardian document is qualified to serve as a guardian under Florida law, the court will generally appoint that person. Therefore, an individual is

essentially able to choose the person who he or she wants to serve as his or her guardian, rather than leaving the decision in the hands of a judge who might not be aware of the person's desires and the dynamics of his or her family.

Generally, under Florida law, only Florida residents and certain classes of relatives who are not Florida residents can serve as the guardian of a Florida resident.

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