



# PLANNING FOR THE FUTURE



PRAIRIE STATE  
LEGAL SERVICES



# Advance Directives and Powers of Attorney

IDOA Resident and Family Support  
Council

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Presented By Anne Piron



## Our Mission

Prairie State Legal Services is a non-profit legal services organization whose mission is to ensure *access to justice and fair treatment under the law by providing legal advice, representation, advocacy, and outreach that serve to protect basic human needs.*

*For more information, visit our Web site at **[www.pslegal.org](http://www.pslegal.org)***





# Where We Serve

11 Offices  
Serving 36 Counties  
in Northern Illinois



# Preservation of Autonomy & Decision Making:

- Advance Directives and Powers of Attorney
- Contesting guardianships
- Transfer on Death Instruments

# Types of Advance Directives

- Powers of Attorney
- Living Will
- Do Not Resuscitate and POLST
- Declaration for Mental Health Treatment



# Benefits of Advance Directives

- Tailored to the person's wishes and beliefs.
- Often avoids the need for a guardian.
- Easy to terminate.



# Creating an Advance Directives

- Principal must be 18 or older and have appropriate mental capacity
- Must be signed and witnessed.
- Statutory forms are available.





# Mental Capacity

- **Contractual capacity means the mental ability to protect his or her own interests.**
- **A particular diagnosis does not determine mental capacity.**
- **The attorney decides if the client has the appropriate mental capacity.**
- **Witnesses certify that the principal has mental capacity.**

# Powers of Attorney

## Health Care:

- Personal and Health related Decisions:



## Property:

- Decisions related to finances and property.





# Powers of Attorney: Agency Relationship

- The principal names an “agent.”
- Principal sets rules for how agent will carry out wishes.
- Agent acts according to the principal’s wishes and interest.
- Third parties deal with agents as if they are dealing with principals.



# Who Can Be the Agent

- Must be 18 years old and be mentally competent.
- Cannot be the attending physician or any other health care provider.
- Successor Agents are a good idea, but not required



# When do they begin

As specified in the document

- When no longer able to make decisions as confirmed in writing by treating physician, or
- Begins immediately, or
- A combination

# Healthcare Power of Attorney

The health care powers that may be delegated to agent include:

- all powers an individual may have to be informed about and to consent to or refuse or withdraw any type of health care for the individual; and,
- all powers a parent may have to control or consent to health care for a minor child.
- A health care agency may extend beyond the principal's death if necessary to permit anatomical gift, autopsy, disposition of remains, or access to medical records.

# Duties of a Health Care Agent

- An agent must act in accordance with the principal's wishes.

An agent must act in accordance with the principal's expectations to the extent known to the agent and otherwise in the principal's best interests.

755 ILCS § 45/2-7

# Property Power of Attorney

Agent's powers:

All of principal's powers pertaining to money and property except as limited by the document.







# Authority of Property Agent

## Document lists what authority do have:

- Real estate transactions
- Financial institution transactions
- Tangible personal property transactions
- Social security, employment, other benefits
- Tax matters
- Litigation

# Property Agent's Duties

- Act in good faith for the best interest of principal
- Use due care, competence and diligence
- Record all receipts, disbursements, significant actions
- Provide accounting upon Request of
  - Principal, Guardian, Another fiduciary or Principal, Court,
  - Agency investigating elder abuse or neglect





# Property Agent's Duties cont.

- Keep records safe and confidential
- Be prepared to disclose records
- Be willing to seek assistance if necessary

# Agent Don'ts

- No joint ownership
- No borrowing money
- No conflicts of interest
- Be careful of joint bank accounts
- Gifts





# Revocation

- POA's can be terminated at any time
  - Draft a new Power of Attorney, state earlier one is revoked
  - Write a statement terminating Power of Attorney
  - Tear up old Power of Attorney
  - Property Power of Attorney specifies that



# Other Advance Directives

## Living Wills

- Instructs doctor about wishes for life-sustaining medical treatment when a person cannot communicate.
- Effective only if death is imminent.
- Use if no trustworthy healthcare agent available.

# Illinois Practitioner Orders for Life Sustaining Treatment Form (DNR)

Form instructs medical professionals regarding whether certain medical measures are desired or not

<https://idph.illinois.gov/public/books/dnrform.pdf>



# Declaration for Mental Health Treatment

- An adult of sound mind may make a declaration of preferences or instructions regarding mental health treatment.
- This may include consent to or refusal of mental health treatment.
- It may be used within 3 years of its execution unless it is revoked.
- If a declaration for mental health treatment has been invoked and is in effect at the expiration of 3 years, it remains effective until the principal is no longer incapable.



# Resources

- Illinois Department of Public Health  
<http://www.dph.illinois.gov/forms-publications>
- Illinois Guardianship and Advocacy Commission  
<https://www2.illinois.gov/sites/gac/AboutUs/Pages/GuardFAQ.aspx>
- Illinois Department on Aging
- <https://www.illinoislegalaid.org/>
- <https://pslegal.org/>

# How clients contact us

## Call us

Older Adults phone line: 888-965-7757

General phone line: 800-531-7057

Monday-Thursday 9am-1pm

Or a Local Office

**Apply online** at [www.illinoislegalaid.org](http://www.illinoislegalaid.org) or through our website at [www.pslegal.org](http://www.pslegal.org)

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