

The Legal Strategist

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TEXAS ESOTERIC FACTS

In Texas, there are basically two types of Powers of Attorney. A Health Care Power of Attorney focuses on medical issues and a Durable Power of Attorney focuses on personal and financial issues. These must be separate documents, i.e., you can not have a single Power of Attorney that covers both medical and personal, or financial, issues. It is prudent to have these documents in case of incapacity so your wishes and affairs may be carried out.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of our web site, please contact our office to set up a consultation.

Scott Barrett

- ◆ The Weather Modification Act of 1967 prohibits the modification of the weather.
- ◆ Before 1973, it was illegal to plant Johnson grass on another person's property.

FEATURE TOPIC: **Medical and Durable Powers of Attorney**

What is Health Care (Medical) Power of Attorney? A Health Care Power of Attorney is a legal document that authorizes another person to make health care decisions for you if you cannot make them for yourself. A Health Care Power of Attorney:

- ◆ Names an individual whom you trust, and is legally capable, to make a wide variety of health care decisions for you at any time you cannot do so for yourself, whether or not your condition is terminal. These individuals cannot be not your doctor or the administrator of a health care facility in which you are being treated, or any person employed by either your doctor or a health care facility in which you are being treated;
- ◆ Becomes effective only when you cannot make your own decisions regarding treatment;
- ◆ Requires the person you appoint to make decisions that are consistent with your wishes;
- ◆ Will not overrule a living will if you have both documents.

If I have a Physician Directives (Living Will), do I need a Health Care Power of Attorney too? Yes. Many people will want to have both documents because Physician Directives applies in only limited end-of-life circumstances, whereas a Health Care Power of Attorney covers all other situations concerning your medical care whenever you cannot make health care decisions for yourself.

Can I use a Health Care Power of Attorney to take care of my financial matters? No. You must use a different Power of Attorney document that applies to your business affairs. In Texas, this is called a Durable Power of Attorney.

What is a Durable Power of Attorney? A Durable Power of Attorney gives another person the authority to make personal and financial decisions on your behalf. A Durable Power of Attorney can cover all aspects of your personal and financial affairs, or may be limited to specific situations and activities. A Durable Power of Attorney either can go into effect immediately, or go into effect upon future incapacity.

Who makes the decisions for me under a Durable Power of Attorney? The person you name to make decisions for you is called your Agent. Any competent adult can serve as your Agent. It should be someone who possesses common sense, dependability, and someone you trust to handle your affairs consistent with your beliefs and best interest.

When does my Durable Power Of Attorney end? A Durable Power of Attorney automatically ends at your death. It also ends if:

- ◆ You revoke it. As long as you are mentally competent, you can revoke your document at any time;
- ◆ You get a divorce. In Texas, your Durable Power of Attorney is automatically terminated if your spouse is your Agent and you get a divorce. As a practical matter, it is always wise to make a new Power of Attorney as soon as you file for divorce;
- ◆ A court invalidates your document. It's rare, but a court may declare your document invalid if it concludes that you were not mentally competent when you signed it, or that you were the victim of fraud or undue influence;
- ◆ No agent is available. To avoid this problem you can name an alternate agent(s) in your document.

If you would like more information on Medical and Durable Powers of Attorney, please contact [Scott Barrett](#) to set up a consultation.