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Power of Attorney

You have the ability to name someone as your spokesperson and to handle your affairs. You do this by giving them a Power of Attorney. A Power of Attorney is a written document that authorizes one person to act on behalf of another.

Why would I want a Power of Attorney?

There are two reasons to have a Power of Attorney. First, if you become incapacitated (for instance, you are in a coma), your agent (the person with the Power of Attorney) could handle your personal affairs and business without delay.

Second, a Power of Attorney may avoid the need for a guardianship. If you have not signed a Power of Attorney, you may have a guardian and/or conservator appointed for you. A guardianship and/or conservatorship proceeding can be an expensive, unpleasant and slow process for you, your family, and your friends. It is expensive because you will have to pay lawyers, court fees, and other fees. It can be unpleasant because a hearing must be held in open court. It can be slow because it takes time to get a date for the hearing. After the hearing, the Court will decide who should be your guardian or conservator and it may not be someone you would want handling your affairs.

Do I lose rights if I have a Power of Attorney?

No. You can and should make specific guidelines for when your agent should act for you in your Power of Attorney. Under Virginia law, the agent you name must act only in your best interests.

How do I make a Power of Attorney?

You must be able to understand the nature and consequences of the Power of Attorney at the time you sign it in order for the Power of Attorney to be legally valid. A lawyer should write a Power of Attorney for you because for it to work the language must be very specific. For instance, banks and other institutions may reject a Power of Attorney because it may not have the exact wording necessary.

Your local legal aid office may prepare one for you if you are eligible. Most private lawyers charge only a small fee for preparing a Power of Attorney, particularly if you also have a Will prepared.

If you had a Power of Attorney prepared while you were living in another state or country and you have now moved to Virginia, that document might be legal under Virginia law. You should have an attorney look at it for you or have a new one written.

Who should I appoint as my agent?

You may appoint any competent adult as your agent. **It is important that you appoint someone you completely trust.**

It is a good idea to name an alternate agent in case your agent is unable to assist you when the time comes. You can appoint an agent who lives outside Virginia; however, it may be more convenient if your agent lives near you.

Make sure your agent knows where your Power of Attorney is kept, so he or she will have access to it if you become incapacitated. If you keep it in a safe deposit box, make sure your agent will be able to get into the box if need be. You may want to let your agent keep it for you.

Your agent should keep records and papers showing what he or she has done for you. You have the right to ask the agent for these records.

Can I revoke the Power of Attorney?

You can revoke or change the Power of Attorney if you still are able to understand what you are doing. If you are no longer able to understand what you are doing, a court could appoint a guardian or conservator to revoke the Power of Attorney if it is necessary. A Power of Attorney ends at your death, once the agent knows of your death.

What are the different types of Power of Attorney?

- *Durable* – This means that the Power of Attorney will remain in effect if you later became mentally incapacitated. Virginia law requires language indicating that you intend for the Power of Attorney to remain in effect upon your disability or the Power of Attorney would automatically terminate.

- *Springing* – A Power of Attorney is effective as soon as you sign it unless it contains language stating that it will not go into effect until a specified time in the future (for example, if you become unable to handle your own affairs). A Power of Attorney with this language is called a springing Power of Attorney.

- *General* – The general Power of Attorney gives the agent broad power to do almost anything for you, except for medical decisions. This authority generally is granted separately in an advance medical directive for health care. An agent cannot make a Will for you. An agent also cannot sign a Deed for you unless the Power of Attorney is sealed.

- *Limited* – A limited Power of Attorney gives the agent authority to do only certain specific things spelled out in the document.