

**Powers of Attorney  
and  
Living Wills**

William J. Franko  
Berger, Newmark & Fenchel P.C.  
303 West Madison Street, 23<sup>rd</sup> Floor  
Chicago, Illinois 60606  
(312) 782-5050  
wfranko@bnf-law.com

**What is a power of attorney?**

A power of attorney is a legal document whereby you appoint a person of your choice to make financial or health care decisions for you if you become unable to do so. There are two main types of powers of attorney which separately address financial and health care matters. A Power of Attorney for Health Care appoints someone to make health care decisions. A Power of Attorney for Property appoints someone to make financial decisions.

**Why have a power of attorney?**

As a result of an accident or sudden illness, you may be unable to make decisions regarding your health care and or to manage your finances. During a period of incapacity, an important question becomes who has the authority to make decisions for you. Without any advance direction, health care providers and financial institutions may refuse to honor the requests of friends or relatives who wish to help you. It may be necessary to have a court appoint someone to make health care and/or financial decisions for you, a process known as guardianship. Having a guardian appointed is time consuming and, because it usually requires the assistance of an attorney, expensive. Furthermore, guardianship proceedings allow personal medical matters to be made part of the public record. Powers of attorney can eliminate the need for the appointment of a guardian.

**How do powers of attorney work?**

Powers of attorney are relatively easy to create in Illinois. The Illinois Statutory Short Form Power of Attorney for Property and the Illinois Statutory Short Form Power of Attorney for Health Care are forms which the Illinois General Assembly has created to address the need for standard durable powers of attorney that will be generally honored.

Under a power of attorney, you name the person you wish to act in the event of your incapacity. This person is known as your agent. You may also name successor agents to act in the event the initial agent is unable to act as agent. Although the Illinois forms allow you to name only one agent to act at a time, you may appoint different individuals to act as agents under the power of attorney for health care and for property.

You may limit the scope of time that the agent may act. For example, the power may provide that the agent may begin to act immediately or at some future date. The power may also set a time or event when the power will end. Both Illinois forms allow you to determine when the power is effective and for how long. You may revoke a power of attorney at any time. It is important to note that while you are competent, you completely retain the ability to make decisions regarding your finances and health care matters.

Powers of attorney can be drafted to give the agent any number of powers. The Illinois Statutory Short Form for Property provides a list of powers that the agent may exercise and allows one to limit or add to those powers. The Illinois Short Form Power of Attorney for Health Care similarly allows one to tailor the powers of the agent.

### **Are there risks to naming a person as agent?**

It is very important that you only name someone you trust as an agent under a power of attorney. Although the agent is bound by law to act in the principal best interest, there is no official or government monitoring of agents acting pursuant to powers of attorney. It is possible for a dishonest agent acting under a power of attorney for property to transfer to himself or others. Generally speaking, you should choose a trusted family member, a proven friend, or a professional with an outstanding reputation for honesty to act as your agent.

### **What is a living will?**

A living will is a written declaration made by an individual pursuant with the Illinois Living Will Act. A living will is only effective if the patient is suffering from a condition which is incurable and irreversible and where death would be imminent but for the application of death-delaying procedures. A death-delaying procedure includes, but is not limited to, assisted ventilation, artificial kidney treatment, intravenous feeding or medication, blood transfusions, tube feeding, other procedures that serve to delay death.

A living will differs from a power of attorney for health care in that it does not name an agent and is limited to specific cases where death is imminent and the condition is irreversible. It does not address situations where death is not imminent. As a result of its limited scope, a living will does not adequately address many of the problems that a power of attorney does.

It is important to note that the Illinois Power of Attorney for Health Care does contain options which address the same issues as a living will. The Illinois Power of Attorney for Health Care allows the principal to make one of three declarations regarding life-sustaining treatment. By using an Illinois Power of Attorney for Health Care, one can give clear instruction as to one's intentions regarding end of life treatment.

### **What is a Do Not Resuscitate Order (DNR)?**

A Do Not Resuscitate Order, or DNR, is a written request not to have cardiopulmonary resuscitation (CPR) if your heart stops or if you stop breathing. Unless given other instructions, hospital staff will try to help all patients whose heart has stopped or who have stopped breathing. You can use a DNR form or tell your doctor that you don't want to be resuscitated. In this case, a DNR order is put in your medical chart by your doctor. The Illinois Department of Health provides a form DNR for free. The DNR can be signed by the patient, the patient's legal guardian, or an agent under a power of attorney for health care.

## **ABOUT THE SPEAKER**

William J. Franko is an associate at the Chicago law firm Berger, Newmark & Fenchel P.C., where he specializes in estate planning and trust and probate administration. Mr. Franko received his undergraduate degree from the University of Notre Dame. He received his law degree from Loyola University Chicago and his LL.M. in Taxation from the John Marshall Law School. Bill resides in La Grange, Illinois with his wife and son.