

My Love List

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My Love List

As a minister, I am called to participate with families in major decisions of their lives. It shocks me how many are not prepared when faced with a major illness, disability, or death.

I have watched as families fought over what they thought were “mother’s wishes.” They did not know if mom had a will, where it was kept, if there was a safety deposit box, who had a key, if there was insurance, where money might be hidden away, if the funeral was prepaid, where mom wanted to be buried — and the list goes on.

Those crises of life will come to all of us. It is just as critical for the 30 year old to consider these matters as the 80 year old. I witness young families who feel that they are too young to make a love list, and elderly who don’t wish to talk about the inevitable.

I call this *My Love List*. If you have ever tried to settle the estate of someone who died with such a list, you will understand what I mean. One of the most loving things you can do is leave your heirs this list that will tell them everything they need to know to settle your estate. This list will save them hundreds of hours and potentially thousands of dollars.

If you are married with children, you need a will. Who will raise your children if you and your spouse are killed? Well meaning grandparents go to court over that one too.

Everyone needs a Power Of Attorney. If you are debilitated, who will handle your affairs?

The materials that follow need to be filled out now and reviewed periodically. Financial holdings and insurance probably change annually and need to be updated. I update mine every year when I prepare my taxes.

If you don’t trust your family with your financial information, don’t give them that information now. Do, however, fill out the forms, place them in a safe place, and tell your family where they can find them when you become incapacitated.

I encourage people to make their will, living will, Power of Attorney and Healthcare Power of Attorney information known to their family. In some cases, some of it may take some getting used to. Likewise, if you have special funeral plans, such as donating your body to science, that should be discussed with your family in advance or they may attempt to overrule your wishes.

Many individuals have special collections that other family members do not value. I suggest adding pages to your *Love List* that will give them some idea of value or how to achieve maximum value when disposing of them. The world is full of mercenary collectors who will take advantage of your heirs.

One last thing is not included in these pages. You may also wish to make a list of who among your family and friends you would like to see inherit specific items. Your heirs may not know that your friend always admired a painting on your wall and that you want your friend to have it. My mother kept a notebook of such things. My grandmother put a label on everything.

There is a lot of love in these pages.

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Settling a Parent's Estate

Almost everyone, sooner or later, must deal with the death of a parent, pragmatically as well as emotionally. In this article, William B. Lynch, J. D., a Fellow of the American College of Probate Counsel and a noted estate planning and tax attorney, follows the legal and financial route that one daughter traveled in settling her father's estate.

Howard Spindon was a widower. He also was an avid golfer. So when he retired 12 years ago, he moved from Carlstown to Lakeview Park, a resort community several states away. There he bought a condominium facing a 36-hole golf course. He kept his old home in Carlstown, though, and his oldest daughter, Janet, lives there with her husband, John, and their three teenagers.

Spindon unexpectedly died one evening at the Lakeview Park Memorial Hospital. He'd had some heart problems in the past, but he'd been feeling fine and had shot an 82 for 18 holes that very afternoon.

Janet and John immediately flew to Lakeview Park to bring her father home for burial in the family plot at the Carlstown cemetery.

In Lakeview Park Janet confronted a number of minor but practical difficulties. First there was the problem of getting her father's body released by the hospital. Fortunately, money was not an issue; Spindon's Medicare and personal insurance were enough to cover most of the medical bills. The problem: The hospital had to release the body to a local mortuary, and Janet had no idea where to turn. Finally she called the mortuary in Carlstown; its representative recommended Becker & Krause Funeral Directors in Lakeview Park.

By the time Janet and John arrived at Becker & Krause's, the mortuary already had secured release of the body from the hospital. The mortuary also took care of a multitude of other details. These included embalming, providing a casket and a container for air travel and making travel arrangements. It prepared the

burial permit to be filed in Carlstown County and gave Janet 12 certified copies of the death certificate. (The latter would be needed to start the probate of Spindon's estate; copies also would be used to accompany claims for benefits under his life insurance, pension and Social Security.) Although funeral home fees for these services vary widely, those for Spindon came to \$650 in addition to casket and travel costs.

Within two days, Janet and John were able to return to Carlstown with her father's body where the Adams Funeral Home took over.

While Janet and John were in Lakeview Park, they'd stayed at Spindon's condominium and used his car. This was possible because Spindon had had the foresight to give keys to each of his children and because Janet previously had met the manager and most of her father's neighbors. From her father's papers in his desk, Janet discovered that he had a checking account, two savings accounts and several certificates of deposit in Lakeview Park, and two other savings accounts in Carlstown. These totaled \$150,000. She also found a key to a safe deposit box at the Lakeview Park bank. There was no sign of a will nor any reference to one, but Janet thought it might be in the bank box.

The will was in the box, but Janet was lucky to find it. She needed the help of two of Spindon's friends who also were friends of the bank president. Under the watchful eye of a bank officer, Janet was allowed to remove the will. The bank officer explained that Spindon's executor would have free access to the box once the state taxing authorities had inventoried its contents. Not everyone has Janet's luck. Sometimes deposit-box access presents a "Catch 22." If the bank won't let anyone in the box except the decedent's executor and if the will appointing the executor is in the box, what then? It would have been better if Spindon had made Janet a co-owner of the box with access or if he'd kept his will in some other safe place.

(Note concerning Texas Law: Survivors can gain access to a safety deposit box by obtaining a court order. This is relatively easy to do.)

Although Spindon had lived in Lakeview Park for 12 years, he apparently still thought of Carlstown as home. At least his will, which was drawn by a Carlstown attorney and signed only two years before his death, gave his residence as Carlstown County. On the other hand, he'd registered to vote in Lakeview Park, had held his driver's license there and had given Lakeview Park as his residence on a passport application. So there was evidence of his residence in two different states. Since both states had inheritance taxes, each might be expected to claim a tax on all of his personal property, savings accounts, stocks, partnership interests, life insurance and the like — as well as on the real estate located there. Tax on personal property is levied by the state of the decedent's residence; tax on real property is levied by the state where it is located. Janet hoped to establish a single state of residency for her father-filing the will for primary probate in Carlstown would help.

On the Monday after the funeral, Janet made an appointment with Mack Anderson, the attorney who drew Spindon's will. It's common practice to use for probate the same attorney who drew the will, and that's what Janet did, even though she could have selected any other lawyer. The probate lawyer should be chosen with care because a great deal depends on his/her judgment and knowledge, although the responsibility for any mistakes belongs ultimately with the executor.

Janet brought the will with her to Mack's law office, even though he had a copy in his file, because the original would be delivered to the court. It was a straightforward document, naming Janet as (Independent) executor and making a few modest bequests to some old friends. The balance of the estate was divided outright among Janet and her two sisters. Because she'd had so little access to Spindon's safe deposit box, Janet wasn't at all sure how large his estate was or what

property it contained other than the homes and savings accounts.

Mack said they'd open the basic probate proceedings in Carlstown County, but because of the condominium in Lakeview Park, they'd have to open ancillary probate proceedings there. As with taxes, probate court jurisdiction over real property is in the state where it's located, and jurisdiction over personal property is in the state of the decedent's residence. At any rate, the ancillary probate meant hiring a Lakeview Park attorney. Mack then explained the principal tasks Janet would have as executor of her father's estate:

First a petition would be filed in both Carlstown and Lakeview Park, getting the will admitted to probate and Janet appointed executor. (The time from the filing of the petition to the executor's appointment varies from place to place; in Janet's case, it was one week. [In Texas, about 2 weeks]) Janet would then be issued letters testamentary, court orders placing her in her father's shoes for the purpose of handling his property.

Next they'd engage an accountant to maintain the estate's books and records. This would make it easy to prepare the final accounting to accompany the petition for distribution when the estate was closed, as well as any interim accountings that might be useful. Equally important, these books and records would support the estate's income tax returns, its federal estate tax return and the inheritance tax returns for both states. (Income tax returns are due annually and the federal estate tax return is due nine months after a death. Due dates for state inheritance taxes vary from state to state, but in this case they were 12 month in both places.)

These returns would be prepared by Mack and the accountant but would be signed by Janet as executor. Although she'd rely heavily on her advisers, the timing and accuracy of the returns would be Janet's responsibility, and she'd be personally liable for any interest or penalties due to late or inaccurate filings. Janet and the accountant would first commence a marshaling of the assets. This means

of the deceased's properties and obligations. Many things are easy to value: cash, life insurance proceeds, listed securities. Others are harder: real estate. Some are harder still: closely held business interests. The valuation of Spindon's real property would require the services of an appraiser. If he had had business interests, Janet would have needed an appraiser for these, too.

When the assets had been marshaled, the accountings prepared and the tax returns filed, everyone would wait for any tax audits to be completed or the returns approved. That wait might last six months to a year. Finally, the estate would be ready to close, and it would close with the courts of both states granting a petition final accounting and distribution, and an order discharging Janet as executor.

The process from start to finish would take 18 to 24 months.

(Note concerning Texas Law: The Independent Executor needs no court order and can distribute assets immediately so long as enough resources are maintained to pay applicable taxes. For a taxable estate, approximately 1 year is required. If no tax, this could be accomplished in 2-3 months.)

Spindon's will was silent about the fees Janet would get as executor. Although family members often waive their right to fees, Mack suggested that Janet not do so but instead petition the court at the end for a reasonable fee based on work actually done. After all, he said, she'd be doing a lot of work and would have heavy responsibilities. Her fee, as well as fees for the lawyer, the accountant, the appraisers and others, would be deductible by the estate for either income tax or estate tax purposes. Janet asked Mack what his own fee would be, and he said in their state the fees were set by statute as a percentage of the estate being probated. Since no one then knew the size of Spindon's estate, Mack couldn't specify the fee. But he gave Janet a copy of the statutory fee schedule:

PROBATE ESTATE	FEE	FEE ON EXCESS
\$ 0	\$ 0	4%
15,000	600	3%

100,000	3,150	2%
1,000,000	21,150	1%

(Note concerning Texas Law: There is no statutory fee schedule in Texas.)

There could be additional attorney's fees for extraordinary work such as complex negotiations on sales of property or on audits of tax returns. Mack pointed out, though, that the statutory fees applied only to property passing through probate and so normally would not apply to such assets as life insurance, pensions and joint tenancies, which pass by contract or title, not by probate.

Armed with her letters of testamentary, Janet flew back to Lakeview Park and checked the contents of her father's safe deposit box in the presence of a state tax official, who made an inventory. She was then free to take the contents back to Carlstown.

Before she left, though, her two sisters joined her and they went through Spindon's condominiums listing items to be kept, sold or given away. They then arranged to put the condominium up for sale. Because of condominium rules, the sale would be subject to the management's approval and would require an order from the Lakeview Park probate court judge. **(In Texas,** the Independent Executor does not need a court order.) Despite the roadblocks, Janet expected a reasonably fast sale at the \$180,000 asking price because fairway locations were at a premium.

Back home, Janet delivered the contents of the safe deposit box to the accountant. They made a detailed inventory and procured the necessary appraisals. When all was done, Spindon's estate looked like this:

CASH	
Checking, savings, CDs	150,000
SECURITIES	
Direct and broker	45,000
LIMITED PARTNERSHIPS	
Shopping center	340,000
Apartment building	130,000
RESIDENCES	
House	120,000
Condominium	180,000
PENSION	175,000
LIFE INSURANCE	<u>90,000</u>
	1,230,000

Janet was reasonably certain the list was complete, and there appeared to be no debts. She'd done her work diligently. Still, there remained a nagging doubt that the list was incomplete. Nowhere had they found a financial statement or list made by Spindon showing what he owned or where it was. So Janet could only hope nothing had been overlooked.

The accountant prepared preliminary estate and inheritance tax returns indicating total taxes of \$302,800. Of this amount, \$40,700 would go to the states and \$262,100 to the federal government. The calculation took into account the fact that \$100,000 of the \$175,00 pension death benefit would be excluded from federal estate taxation. Although the taxes were large, the accountant thought that they'd be relatively easy to pay. The estate's cash and liquid assets totaled \$285,000, and the sale of the condominium would bring in another \$180,000, adding up to \$465,000. Liquidation of appreciated securities and sale of the condominium would create little capital gains tax, since everything would have a new cost basis equal to

market value as a result of Spindon's death.

The tax returns were filed, the audits completed and the estate closed 19 months after Spindon died.

Janet did a good job, partly because she had the advice of a good attorney and a good accountant. She also had a direct interest in the work and the time to carry it out. Had she wished, she could have used a trust company and its professional staff — from merely letting them handle the records to taking over the entire job. The trust company's fee would have been negotiable and would have depended on the scope of its duties.

Spindon's estate was, as lawyers would say, "clean." It presented no difficult tax or valuation problems nor was it involved in litigation. Spindon himself had helped smooth the way by making sure that he had ample medical insurance and that his daughters had keys to his condominium and his car. Even so, he could have taken steps to make things easier:

He could have prepared a financial statement of his holdings and kept it up to date.

In his desk, he could have had a note that his will was at the bank.

He could have given Janet signature access to his bank box.

He shouldn't have made his state of residence so ambiguous. Luckily, his estate avoided double taxation of his personal property — but it was only luck.

He could have avoided the delays and expense of the ancillary probate of his condominium had he held title as trustee of a revocable living trust, rather than as an individual. Or he could have held title as joint tenant with his daughters, but that wouldn't have been nearly as flexible and might have incurred gift taxes.

But if the path could have been made easier, no one should complain. It was smooth enough, and perfection isn't to be found in this world.

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We Have a Terminal Disease

We try not to think about it, but we all have a terminal disease. It is called *life*. It begins when we draw our first breath, and unless Jesus comes first, we will all die from it.

Paul called our bodies *mortal*. It is only when the Lord returns that we can exchange this mortal body for a spiritual body, this perishable body for an imperishable body. However we have no idea when this will occur.

Many people seem to think that they can delay death by not thinking about it or planning for it. However it is therapeutic to plan one's future, and to communicate it to others. As a minister, I am thankful when a person has told me what they want their life celebration to look like, who will participate, what songs they desire, and what biblical text have formed their personality.

When my wife and I and two young sons returned to the United States after over five years in Britain, it stuck me that we had to do something to make a smooth transition for our boys if something were to happen to us.

Step one was to have a will which would establish who would raise them in our absence and to establish a trust so that our estate, such as it was, would be used for their benefit.

Then I realized that our next of kin – our parents – knew nothing about our affairs. Since it was tax time and all of the tax forms were coming in, it was an opportunity to make a list of our assets and liabilities. This included various accounts, the name and contact information for our insurance agent and investment counselor. Then I began to accumulate all of the documentation including mortgage papers, marriage license, birth certificates, social security cards, insurance policies, car titles, and other such documents and put them in a secure location. The list that I assembled at that time was the birth of this document. I made two

copies, one for each set of parents, and placed them in envelopes and sealed them. I gave them to our parents and told them to put them away and not open them unless they heard that something tragic had happened to us. Each year, when doing my taxes, I updated that document and mailed it again.

Though our parents are deceased now, the document now goes to our sons, as they will have the responsibility of caring for our mortal bodies at some future date.

Allow me to share some experiences with you.

I performed a wedding one evening for a young couple who had lived together for a while and already had two young children. After the reception they left the little ones with grandparents and went away for their honeymoon. Later that week while on their honeymoon they were in a traffic accident and both newlyweds were killed.

Like most young couples, they had not made a will. They made no provisions for their children. The grandparents not only were in shock over their loss, but they were faced with disagreements with the other set of grandparents over who would raise those children, how and where.

A dear lady died. She had cared for her disabled son all of her life, and he was now an adult requiring assisted living. Everyone thought she was well organized, but no one knew of her end-of-life wishes.

Her funeral took place and her two daughters took care of their brother while trying to discover their mother's affairs.

They found a safe deposit box key. However the bank was not identified, and it was not the bank she currently used.

They found a will, in fact three wills, all hand written, none witnesses, none filed with the county. Each will favored a different child.

Several months later they found papers for a paid funeral. The family had just paid for a funeral that she had funded years before but had not told them. I don't know how they were reimbursed, but based on my experience of pre-paid funerals, the family probably received what she paid originally, not the value when she died.

An elderly divorcee did not trust her children. She would never talk about end of life issues saying, "I'll tell you when the time comes." She never told them or anyone else anything. At age 95 she died.

Her son-in-law on a hunch discovered where she was to be buried. While on a trip he visited a cemetery in the town of her birth and discovered her gravesite. She had already purchased her headstone, a large one – probably because she did not trust her children to buy such a nice one on their own.

Her children started going through all of her affairs after her death. They found a Power-of-Attorney. However, she had not informed the individual named that she had Power-of-Attorney, and it was useless after the death. The children also found a will, naming one of her friends as executrix. This came as a total surprise to everyone, including the executrix who had not been consulted first. Her daughters were alternates #4 and #5. The children had to fund all final expenses since she did not give them access to any of her finances.

Planning is not just about death. A widow had Alzheimer's that was progressing. Her only son, who had her Power of Attorney, also had dementia and could not act on her behalf. The woman was fiercely independent and still drove her car. She got lost several times when driving, once stopped by police early in the morning 70 miles away. Because of the situation, it took intervention by the state and by

courts to provide care for this lovely Christian.

Now let me tell you about my dad. Mom's death was sudden and unexpected. She had a brain stem stroke at the lunch table and was dead that afternoon. While my sister and I were in town for the funeral, dad took us to his attorney, introduced us, and made arrangements to revise his will. He took us to his investment folks and introduced us. He took us to his bank and added us as signatories on his bank account and to his safety deposit box. Then he showed us the file where all of his records were neatly kept. He knew someday we (I) would need this information.

Four years later I received the call. I had talked to dad just an hour earlier reminding him of my arrival the next day to visit. The call came that he had been taken to the hospital unresponsive. Before I could drive to the hospital, he was gone. I called the funeral home knowing that dad's funeral was pre-paid.

The next morning I called dad's investment people and asked them to transfer \$10,000 from his savings to his checking account. They knew me, and this was something dad did from time to time, so there were no questions. This would be the money to cover the expenses of the grandchildren and my sister to come to the funeral, as well as any other associated expenses. Dad told me he did not want any of the kids to have

expenses in coming. I went to his bank, cleaned out the safety deposit box, and closed the box. I opened up his file and found everything clearly labeled and in order.

There are always a few surprises, like life insurance companies that have been sold and renamed, but basically it was an ideal situation. Even his headstone was pre-contracted and pre-paid.

Another story involved a phone call I received one Saturday morning. The hospital chaplain on the other end said a man had died and his wife wanted me to come to the hospital. When I arrived I discovered that my friend had been working out at the health club when he had a massive heart attack. The wife asked me to take her home and help her find his *Love List*. After arranging for someone to get her car, I took her home in my car. We went in her house, went up the stairs to his closet, and there on top of a fireproof box was his *Love List* fully filled out. The new widow's stress was lessened when she saw that this retired military man had listed everyone to call including phone numbers for his military burial. Most of the decisions that normally would fall upon her had already been made.

Once in a great while you get to experience the faith of a saint in his/her dying. A wonderful widow had a chronic illness that she knew would take her life. Her concern was not for herself, but for her

children, one of whom had disabilities. With this in mind she lived her life simply and frugally trying to create a helpful estate for the son and a trust for the daughter.

Her illness progressed requiring her to be hospitalized. She was placed on a ventilator and then a trache to give her more freedom. Her heart started to fail and required constant medications and monitoring. Doctors informed her that she would not leave that room alive. Knowing that the end was not far away, she planned her death and selected the time and day.

She invited her closest friends and spiritual mentors to come celebrate her victory. She wanted singing and worship to be a part of her passing. As the people glumly gathered in her ICU room, she asked, "Isn't this the time that someone should crack a joke?" She started the worship. She told everyone how she loved them and what they had meant to her. The group prayed. Then she asked that the life support equipment be turned off, and she quickly passed.

Someday all of us will pass from this world to the next. As Christians, we should be confident of that passing and not afraid of it. The most loving thing we can do is make our passing easy for our heirs, and that is what this workbook is about.

Section 1

My Love List

The Basics:

Date: _____

Name: _____ SS#: _____

Address: _____ Telephone: _____

City, State: _____ Zip: _____

Date of Birth: _____

Place of Birth: (City, County, State, Country) _____

Location of Birth Certificate: _____

☐ Married

☐ Single

☐ Widowed

☐ Divorced

Spouse: _____ Wedding Date: _____

Location of Marriage License: _____

Father's Name: _____ Date of Birth: _____

Birthplace: _____

Mother's Maiden Name: _____ Date of Birth: _____

Birthplace: _____

Business:

Occupation: _____

Employer: _____

Address: _____ Phone: _____

Type of Business: _____ How Long Employed: _____

Date and place of retirement: _____

Remarks: _____

Security:

Date: _____

Location of Safety Deposit Box: _____ Number: _____

Who is on the signature card? _____

Where are the keys? _____

Do you have a safe? ☐ Yes ☐ No

Who knows the combination: _____

Education:

High School: _____ City/State: _____

Undergraduate: _____

Years: _____ Degree: _____

Graduate: _____

Years: _____ Degree: _____

Other: _____

Military:

Branch of service: _____ Serial Number: _____

Date entered: _____ Place: _____

Date of discharge: _____ Place: _____

Grade, rank, or rating: _____

Location of discharge papers (necessary for benefits): _____

Do you desire a flag at your funeral? ☐ Yes ☐ No

Wars/conflicts served: _____

Additional information: _____

Legal Information:

Is there a will/living trust? ☐ Yes ☐ No _____ Dated:

Will/living trust location: _____

Executor: _____ Telephone: _____

Address: _____

Attorney: _____ Telephone: _____

Address: _____

Is there a Living Will (Directive to Physicians)? (See Pages 15-18) ☐ Yes ☐ No

Living Will location: (Should be given to physician and EMTs before life support equipment is hooked up.)

Who holds your Durable Power of Attorney for Health Care? (See Pages 19-21)

_____ Phone: _____

Document location: _____

Who holds your Power of Attorney? (See Pages 22-23) _____

Phone: _____

Document location: _____

Your Finances

Have you seen those notices in the paper that the state may be holding lost money for you? Or possibly you have received a letter from an attorney somewhere who says he has found money that you are entitled to have and he will get it for you for a fee? Much of that money was from estates where the heirs did not know about the finances of the deceased.

From January – March various investment firms and insurance companies will send out tax information that can be of assistance to the executor in determining the size of an estate. However, if the individual dies in May and has not kept good records, by the next year the house may be sold, the forwarding of mail completed, and knowledge of investments lost.

Your best solution is to complete the pages following and to keep all of the supporting documents in one central location. Each year these things should be updated. Some people like to do private investing, or at least not put all of their investments with one money manager making this documentation more critical.

In many families, one person handles all of the financial and legal record keeping. When that person becomes incapacitated or dies, the survivor is totally lost concerning those matters. These pages will also help those individuals or their surrogates discover essential information.

Most items below are common sense items – bank accounts, investment accounts. Others may not be obvious. Certain credit cards have life insurance attached to them. They are for very specific and rare circumstances, but they should be considered.

If you have a safety deposit box and you are the only named person on the sign in card, upon your death a spouse, parent, descendent (at least 18 years old), or a person named as executor with a copy of

the will in hand can have access to the box to remove the original will, burial plot information, and insurance policies. If you will add the name(s) of trusted others to that box and tell them where you keep the key, they will be able to enter the box much easier upon your death (and anytime they can get the key). (This is Texas law, and may not apply to all states.)

Upon your disability, someone has to pay the bills. A person with Durable Power of Attorney can do that with your bank account. Upon your death, your bank account will be frozen and your heirs will not be able to access it to pay final expenses. However, if you add trusted individuals to your bank account, they will be able to write checks at any time including after your death. Trust is the key word.

Insurance companies tend to be consolidated or bought out by other companies. You may have a life insurance policy purchased 60 years ago by a company that has a new owner today. A note attached to the policy will help your heirs locate that company.

You may have invested in a company that issued stock to you and subsequently ceased operation. If you know the stock is worthless, discard it, or your heirs may spend countless hours trying to locate the now defunct company.

You need to check all of your accounts for beneficiaries, and if your spouse has died, update the stated beneficiaries on these accounts. If you have savings bonds or insurance with your first born named as beneficiary, upon your death that money goes to that child and is not a part of the estate, nor does it go through probate. If the rest of your estate is to be divided equally between your children, the one child receives more than the others because he was named sole beneficiary to part of your assets. If you make your estate the beneficiary, then the funds will be

divided as stated in your will, but those funds will also go through probate. If you make each of your children beneficiaries, the money will go directly to them in the proportions stated and will not be part of the estate or probate. The devil is in the details. Check all of your financial matters for the beneficiary.

Many Americans are collectors of something. Frequently those *some things* have value. When my heirs try to clear out my model railroad layout, they don't know the difference between a \$5 plastic car and a \$200 brass car. An unscrupulous dealer will low ball the value. Close friends or club members can be tremendously helpful in honestly valuing and disposing of such a collection. You know who those helpful people are – your children do not. If you have a collectible library, you may wish to donate it to another library with a similar collection, and you know who that is.

Do you have a pet? What will happen to that pet upon your death? If you desire that someone specific take your pet and that funds be provided for that pet's care, be sure to specify that in your will.

This last point I not restricted to finances, but we are an internet generation. Quicken, Ebay, PayPal, Amazon, Facebook, credit cards, investments, insurance, Facebook, and many other organizations and software have passwords and IDs assigned to them. I propose keeping a top secret list of all of these and letting your heirs know where they are. If you do the banking on Quicken and something happens to you, no one else may know how to enter the program. If your computer is password protected, they may not be able to get into it at all. Facebook now has a plan for succession upon your death.

Banking:

Date: _____

Below list the bank name, branch, phone, type of account, account number, and the name of a bank officer if one knows you by name. Do this for every bank savings, checking, or other account you have.

Location of supporting documents: _____

Accountant: _____ Telephone: _____

Address: _____

Location of tax records for past 3 years: _____

Insurance:

Below list the insurance company, agent, phone, type of account, account number, and value for all life, health, and disability policies. Include any policies related to on the job injuries or credit card purchases.

Location of supporting documents: _____

Stocks, bonds, mutual funds, and investments:

Date: _____

List below the fund name, account number, broker, address, and phone number for all investments.

Pensions:

Below list the description and documentation location for pensions that are in your name.

Property:

Date: _____

Below list the description and deed (title) location for all real estate, automobiles, boats, etc. that bear your name.

Debts:

Below list all credit cards and open accounts that need to be canceled or have your name removed upon disability or death. Also list any outstanding loans. Include account numbers and pertinent phone numbers as well as the location of documentation.

My Special Things:

Everyone has special things that they desire to go to special people. Unfortunately, it is common for children to fight over, and even for relationships to dissolve over special family possessions. Please look around the house and specify who (family, friend, or institution) should receive those special things. Use extra paper if necessary.

Some of the items you might want to consider include: the family china, the engraved silver, the mantle clock, the pocket watch, the collection of figurines, the piano, the photo album, jewelry, quilts, medals, etc. The dispersion of these things will be ultimately determined by your will, so be sure everyone in the will is okay with this.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Collections and Libraries:

Some people have collections that are of special interest to them, but not their heirs. The heirs may not know how to liquidate those collections for the maximum benefit. Please list what you want done with those collections. Do you want them given to a museum, university, or individual? If they are to be sold, who can help the family receive maximum benefit from them? Is there a person you trust who can handle the sale? Is there a periodical that can serve as a price guide? Are there flea markets or consignment shops that specialize in such materials?

Please list this information on every specialized collection you own.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Electronic IDs and Passwords

This document assumes that you have a variety of IDs and passwords for your electronic devices and for accounts. You want to protect that list to prevent identity theft, but where will your heirs find such a list? If on your computer, be sure to give its ID and password

Hospice

Hospice has become a very popular service to help terminally ill patients die with dignity. If a physician believes that the patient has six months or less to live, hospice is a wonderful option, and hospice is covered by medicare. The six month figure is somewhat arbitrary, as some patients dies within a matter of days while others may live in hospice for

over a year and other move out of hospice to live longer. Only God knows how long we will live.

The hospice patient may be at home, in a nursing facility, or in a special hospice facility. The hospice provides medical oversight as well as social work and pastoral care with the intention of keeping the patient comfortable and focusing on

the emotional and practical issues of dying without treating the terminal illness involved.

Recent research has shown that, all other things equal, a not-for-profit hospice often provides better care than a for-profit hospice. With the aging of America, hospice has become big business.

The 5 Things to Consider When Choosing a Hospice Provider

By Angela Morrow, RN

From dying.about.com

Location, Location, Location

Hospice care can take place in the home, in a nursing home or in a hospital. Very few hospices have inpatient facilities, meaning most people receive hospice care via an independent agency. So, probably the most important question you can ask a hospice is related to the location of their nurses. Just to clarify, it really makes no difference where the agency's *office* is located but it makes a huge difference where the *nurses* are located. I used to work on-call for a large hospice agency that covered three counties, over 200 square miles. On weekends, I covered the entire area with only the help of one LVN (licensed vocational nurse). Consequently, I would sometimes be with a patient in one county and get a call from another patient who had a crisis in another county who then had to wait two hours or more until I was able to get there.

Knowing how far away the on-call nurses live from you and how large of an area the nurses cover is essential to knowing how responsive they will be to your urgent needs. Keep in mind that some hospice agencies have multiple branch offices that could be 50 miles or more apart from each other. Make sure that if the agency you're looking at has multiple branch offices that they also have a separate on-call nurse covering each one, and that the on-call nurse covering your area also lives in your area. If you have a crisis in the middle of the night or on the weekend, the last thing you want to do is wait two or more hours for help.

What Types of Medical Professionals Are Employed by the Hospital?

Under the Medicare guidelines, all hospice agencies must provide physician participation, nursing services, home health aid services, social services and

spiritual care. The way this actually plays out at each hospice agency can be very different. You'll want to look for these specific things in regard to staff:

- **Medical Directors:** You will want to look for a hospice agency that has a full-time medical director. If the medical director's main job is to attend weekly care conferences for a couple of hours and be on-call for emergencies, you may miss out on all a palliative care physician has to offer. Ideally, a hospice medical director should be available full-time to make home visits, consult with other physicians, and act as a resource for nurses. There should always be a medical director on-call on nights and weekends.
- **Nurses:** Ideally, you want a case manager nurse

directing your care. This should be the same nurse who visits you every time (unless she is sick or on vacation). This provides continuity of care and builds trust between the patient, family and nurse. You will also want to know what role licensed nurses play versus registered nurses. The majority of your visits should be from a registered nurse. Also find out how many patients each nurse is assigned. If she has a heavy caseload (for example, more than 10 patients), your loved one may not get the best care possible. It's also worth asking how many of their nurses have been earned certification in their field. A Certified Palliative and Hospice Nurse (CHPN) has taken the time and effort to become specialized in their field and a hospice agency that has several of these is likely focused on quality.

- **Home Health Aides:** Ideally, a home health aid should be available two or three days a week to provide personal care to your loved one. Find out how often home health aides make visits and how long they typically stay. Like case managers, home health aides really shouldn't have a huge caseload.
- **Social Workers and Chaplains:** Ideally, the hospice agency should have full-time social workers and chaplains.

They are essential members of the team and you will want to have access to them when you need them.

- **Volunteers:** A really good hospice agency will likely have a lot of volunteers. Many hospice volunteers are family members and friends of former hospice patients and want to give back. That's a good sign the hospice agency took good care of their loved one and will probably do the same for yours. Volunteers are an important part of a hospice agency and provide a wonderful service to patients, families, and staff.

Who Owns the Hospice Is Important, Too

There are two basic kinds of hospice agencies: for-profit and non-profit. For-profit hospice agencies tend to be large and may be owned by larger corporations. For example, Vitas Hospice is the nation's largest hospice provider and is owned by Chemed who also owns Roto-Rooter. Another large for-profit agency, Heartland is owned by HCR Manor Care. The owners of these large, for-profit hospice agencies are the stockholders who invest in them and their aim is to remain financially solvent. In contrast, a non-profit hospice agency isn't out to make anyone a profit. Of course they are also concerned with the financial well-being of the agency but their focus is typically to serve the community that supports them.

I have to be careful to point out here that non-profit agencies aren't always better than for-profit. There are some really bad non-profit agencies and some really good for-profit. You shouldn't let ownership of an agency be your only deciding factor.

Another word of advice for patients in nursing homes: Be wary of hospice agencies that are owned by the nursing home or "comfort care" programs offered by the nursing home in place of hospice care. Hospice workers who come into the nursing home are an extra set of eyes and ears and are focused only the well-being of their patients. They will be more likely to report any deficiencies in care to you and to the nursing home staff if they aren't owned by the same company.

Also be wary if the nursing home tells you they only work with one hospice agency. Sometimes hospice agencies woo nursing homes with incentives and goodies to encourage them to refer business. Having worked for a for-profit agency in the past, I saw this type of schmoozing first hand. They may agree to admit patients to hospice on a higher level of care that pays the nursing home more money or provide the directors and staff meals, gifts, etc., to win them over. This can lead nursing homes to steer their residents and their families toward the hospice agency that *they* prefer, not necessarily the hospice agency that the family wants or the one that provides the best care.

This isn't to say you should never use a hospice agency your nursing home recommends. Because they see firsthand the kind of care hospice patients are getting, they are the best ones to recommend a good agency. If, however, your nursing home tells you they only work with one particular agency and that they won't allow another one in the facility, that's a red flag that there could be some shady practices happening. It may lead you to think twice about the nursing home your loved one resides in.

Bottom Line: While it's important to know who owns the hospice, don't assume for-profit is any better or worse than non-profit. You might feel like a "for-profit" hospice would be more concerned about the bottom line, but actually, at the end of the day, personal recommendations and your own feelings when visiting the hospice are the most important things to consider.

Which Pharmacies Work with the Hospice Agency?

While not the most important factor in choosing a hospice agency, it is worth knowing which pharmacy they use and how close it is to you. It's important to know how easy it will be to get medications when you need them.

I have two very different experiences with this. The large for-profit agency I used to work for used a large, nationwide pharmacy service that catered to hospice patients. The pharmacists were very knowledgeable about hospice

patient's unique needs and medications for symptom management which was a great resource for nurses. The medications had to be FedEx'd to patient's home, however, so having a relationship with a local pharmacy was essential. The agency I worked for had a difficult time finding and maintaining these relationships, which made getting emergency medications quickly a real challenge.

The agency I work for now has a wonderful relationship with a local pharmacy which is also very knowledgeable about hospice patients and compounds medications on site to make it very easy to treat various symptoms. They are able to make almost any medication into a liquid or suppository form. They aren't open nights or on Sundays, but a pharmacist will always meet a family member at the pharmacy 24 hours a day, 7 days a week to fill emergency medication.

The point being: Regardless of whether the hospice agency uses a local pharmacy or a large nationwide one, you want to know that you'll be able to get emergency medications quickly.

It's also worth asking the hospice agency if they provide you with an emergency kit of medications. Many agencies provide kits with medication for pain, shortness of breath, anxiety, and nausea to keep in the home in case of emergency. This is done to hopefully prevent a scenario where your loved one is suffering and has to wait hours to get medication.

Levels of Hospice Care

The Medicare Hospice Benefit covers four levels of care, but not all hospice agencies are equipped to provide them all. Let's briefly take a look at the levels and what they mean:

- **Routine home care** is the basic level of care under the hospice benefit. If a patient resides in a nursing home, it can also be called routine nursing home care. It includes:
 - Nursing services – A nurse usually visits 1-3 times per week based on patient's needs. Can be more often if needed.
 - Physician participation – attending physician, following physician, hospice physician, and specialists as necessary
 - Medical social services
 - Home health aide services – A home health aide usually visits 2-3 times per week based on patients needs
 - Counseling services (pastoral, spiritual, bereavement, dietary, and others as necessary)
 - Medications
 - Medical equipment
 - Medical supplies
 - Lab and diagnostic studies related to terminal diagnosis

- Therapy services (physical, occupation, speech) if needed
- **Comfort Care (Continuous Care)** is geared for patients having symptoms that cannot be controlled via routine care. Continuous care provides more intense care in the patient's home environment. A nurse and/or a home health aide will remain in the patient's home environment for a minimum of 8 up to 24 hours per day to administer medications, treatments, and support until the symptoms are under control. Some examples of symptoms requiring continuous care would be unrelieved pain, severe nausea and vomiting, severe shortness of breath, anxiety or panic attacks, or

a breakdown in the primary caregiver support system. Continuous care is considered a short term level of care and is reevaluated every 24 hours.

- **Respite care** is designed to give caregivers a break if they are burnt out or otherwise need a temporary break. A hospice agency should have a contract with a nursing facility to provide this service.
- **Inpatient care** patients are admitted to a nursing facility or hospital for a short time where they can receive around the clock care from registered nurses until symptoms are under control.

You should ask your hospice agency which of these levels they can perform, and where they take place. Ideally,

a hospice agency should have a contract with a nursing facility or hospital to provide inpatient care in the event a patient needs it.

It's important to know that once you choose a hospice agency and sign onto their service, you always reserve the right to change your mind. If you're not happy with the service you're getting, research other hospice agencies in your area and find one that works for you. You are always able to transfer care to another hospice agency without negatively affecting your Medicare benefit.

In the end, you need to feel confident in the care your loved one is receiving. If you're happy with their care, nothing else really matters.

Section 2

Legal Forms

On the following pages are several legal documents. **These forms are statutory:** i. e. the Legislature of the State of Texas has determined their exact wording so you can fill them out without the need to hire an attorney. If you are not a resident of Texas, consult your attorney or local government to see if equivalents are available in our state.

Everyone should employ an attorney to secure a will and have that will properly filed. Too often young people don't think they need a will, but anyone with a dependent child should have a will to designate guardianship of that child and specify who will hold your estate in trust for that child.

Documents which follow are:

Page 21: DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES, also known as a LIVING WILL. This document is used while you are alive but unable to communicate to specify whether or not you want to be kept alive by all means and at all costs. You should fill this out and give copies to your children, your primary physician, and the hospital you regularly use. It should be in their hands before you need it, as it is easier to withhold life support than to withdraw it.

Page 25: OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDER. Another form included in this packet is the Out-of-Hospital DNR form. If you have a terminal illness and choose to die at home, this is a very useful form. If you do die, and someone calls 911, the EMS providers will be required to try to resuscitate you and take you to the nearest medical center. This form tells them not to start such procedures. It should be posted in a highly visible location.

Page 27: MEDICAL POWER OF ATTORNEY. This document designates who will make health care decisions for you in case you are unable to make those decisions for yourself. This does not include business decisions. If you are comatose in a hospital or if dementia robs you of your mental capacities, who is going to determine your medical treatment?

Page 32: DURABLE POWER OF ATTORNEY. This document designates who makes business decisions for you in case you are unable to make those decisions for yourself. This does not include health care. If you are comatose in a hospital or if dementia robs you of your mental capacities, who will conduct your financial affairs for you and what powers will you grant to them?

Page 37: DECLARATIONS BY CERTAIN PARENTS TO APPOINT GUARDIANS FOR THEIR CHILDREN. For parents of young children, this document designates who will become guardian of your children upon your death. You may also designate who should not be given custody of those children.

Page 38: DESIGNATION OF GUARDIAN BEFORE NEED ARISES. This document states who you would like to have, or don't want to have, as your guardian should you become incapacitated. It does not eliminate the necessary court proceedings should guardianship be required.

Page 40: APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS. Sometimes disputes arise among family members over the disposition of the remains of a loved one. This document assigns to one person the control of that disposition.

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES (Living Will)

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, _____, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible;
OR

_____ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

- _____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible;
OR
- _____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:

1. _____
2. _____

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed _____ Date _____

City, County, State of Residence _____

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 _____ Witness 2 _____

Definitions:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

- (1) That may be treated, but is never cured or eliminated;
 - (2) That leaves a person unable to care for or make decisions for the person's own self;
- and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

For Persons Under 18 Years of Age

DIRECTIVE made this _____ day _____ (month year).

On behalf of _____ a qualified patient under the DIRECTIVE TO PHYSICIANS who is under 18 years of age I/we _____ being of sound mind, willfully and voluntarily make known my/our desire that his/her life not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time the patient whose name appears above has an incurable or irreversible condition caused by injury disease or illness certified to be a terminal condition by two physicians and if the application of life-sustaining procedures would serve only to artificially prolong the moment of his/her death and if his/her attending physician determines that his/her death is imminent or will result within a relatively short time without application of life-sustaining procedures I/we direct that such procedures be withheld or withdrawn and that he/she be permitted to die naturally.
2. On behalf of the said patient it is my/our intention that this DIRECTIVE shall be honored by his/her physicians as the final expression of my/our legal right to refuse medical or surgical treatment on behalf of the said patient and to accept the consequences from such refusal.
3. If the patient has been diagnosed as pregnant and that diagnosis is known to her physician this DIRECTIVE shall have no force or effect during the course of her pregnancy.
4. This DIRECTIVE shall be in effect until it is revoked. I/we understand that my/our authority to execute this DIRECTIVE on behalf of the above-named patient expires on his/her 18th birthday.
5. I/we understand the full import of this DIRECTIVE and I/we am/are emotionally and mentally competent to make this DIRECTIVE.
6. I/we understand that the desire of the above-named patient, if mentally competent, to receive life-sustaining treatment shall at all times supersede the effect of this DIRECTIVE.

Signed _____

City, County, and State of Residence _____

Indicate relationship to patient _____ Adult Spouse _____ Parents _____ Legal Guardian

Two competent witnesses must sign below, acknowledging the signature of the person executing the DIRECTIVE on the minor patient's behalf. The witness designated as "Witness 1" may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. The witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. The witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of the health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of the health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 _____

Witness 2 _____

TEXAS LAW DOES NOT REQUIRE THIS DIRECTIVE TO BE NOTARIZED.

OUT-OF-HOSPITAL DO-NOT-RESUSCITATE (OOH-DNR) ORDER**TEXAS DEPARTMENT OF STATE HEALTH SERVICES**

This document becomes effective immediately on the date of execution for health care professionals acting in out-of-hospital settings. It remains in effect until the person is pronounced dead by authorized medical or legal authority or the document is revoked. Comfort care will be given as needed.



Person's full legal name _____

Date of birth _____

☐ Male
☐ Female

A. Declaration of the adult person: I am competent and at least 18 years of age. I direct that none of the following resuscitation measures be initiated or continued for me: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.

Person's signature _____

Date _____

Printed name _____

B. Declaration by legal guardian, agent or proxy on behalf of the adult person who is incompetent or otherwise incapable of communication:

I am the: ☐ legal guardian; ☐ agent in a Medical Power of Attorney; OR ☐ proxy in a directive to physicians of the above-noted person who is incompetent or otherwise mentally or physically incapable of communication.

Based upon the known desires of the person, or a determination of the best interests of the person, I direct that none of the following resuscitation measures be initiated or continued for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.

Signature _____

Date _____

Printed name _____

C. Declaration by a qualified relative of the adult person who is incompetent or otherwise incapable of communication: I am the above-noted person's:

☐ spouse, ☐ adult child, ☐ parent, OR ☐ nearest living relative, and I am qualified to make this treatment decision under Health and Safety Code §166.088.

To my knowledge the adult person is incompetent or otherwise mentally or physically incapable of communication and is without a legal guardian, agent or proxy. Based upon the known desires of the person or a determination of the best interests of the person, I direct that none of the following resuscitation measures be initiated or continued for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.

Signature _____

Date _____

Printed name _____

D. Declaration by physician based on directive to physicians by a person now incompetent or nonwritten communication to the physician by a competent person: I am the above-noted person's attending physician and have:

☐ seen evidence of his/her previously issued directive to physicians by the adult, now incompetent; OR ☐ observed his/her issuance before two witnesses of an OOH-DNR in a nonwritten manner.

I direct that none of the following resuscitation measures be initiated or continued for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.

Attending physician's signature _____

Date _____

Printed name _____

Lic# _____

E. Declaration on behalf of the minor person: I am the minor's: ☐ parent; ☐ legal guardian; OR ☐ managing conservator.

A physician has diagnosed the minor as suffering from a terminal or irreversible condition. I direct that none of the following resuscitation measures be initiated or continued for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.

Signature _____

Date _____

Printed name _____

TWO WITNESSES: (See qualifications on backside.) We have witnessed the above-noted competent adult person or authorized declarant making his/her signature above and, if applicable, the above-noted adult person making an OOH-DNR by nonwritten communication to the attending physician.

Witness 1 signature _____

Date _____

Printed name _____

Witness 2 signature _____

Date _____

Printed name _____

Notary in the State of Texas and County of _____. The above noted person personally appeared before me and signed the above noted declaration on this date: _____.

Signature & seal: _____ Notary's printed name: _____ Notary Seal

[Note: Notary cannot acknowledge the witnessing of the person making an OOH-DNR order in a nonwritten manner]

PHYSICIAN'S STATEMENT: I am the attending physician of the above-noted person and have noted the existence of this order in the person's medical records. I direct health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.

Physician's signature _____

Date _____

Printed name _____

License # _____

F. Directive by two physicians on behalf of the adult, who is incompetent or unable to communicate and without guardian, agent, proxy or relative: The person's specific wishes are unknown, but resuscitation measures are, in reasonable medical judgment, considered ineffective or are otherwise not in the best interests of the person. I direct health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue for the person: cardiopulmonary resuscitation (CPR), transcutaneous cardiac pacing, defibrillation, advanced airway management, artificial ventilation.

Attending physician's signature _____

Date _____

Printed name _____

Lic# _____

Signature of second physician _____

Date _____

Printed name _____

Lic# _____

Physician's electronic or digital signature must meet criteria listed in Health and Safety Code §166.082(c).

All persons who have signed above must sign below, acknowledging that this document has been properly completed.

Person's signature _____

Guardian/Agent/Proxy/Relative signature _____

Attending physician's signature _____

Second physician's signature _____

Witness 1 signature _____

Witness 2 signature _____

Notary's signature _____

This document or a copy thereof must accompany the person during his/her medical transport.

INSTRUCTIONS FOR ISSUING AN OOH-DNR ORDER

PURPOSE: The Out-of-Hospital Do-Not-Resuscitate (OOH-DNR) Order on reverse side complies with Health and Safety Code (HSC), Chapter 166 for use by qualified persons or their authorized representatives to direct health care professionals to forgo resuscitation attempts and to permit the person to have a natural death with peace and dignity. This Order does NOT affect the provision of other emergency care, including comfort care.

APPLICABILITY: This OOH-DNR Order applies to health care professionals in out-of-hospital settings, including physicians' offices, hospital clinics and emergency departments.

IMPLEMENTATION: A competent adult person, at least 18 years of age, or the person's authorized representative or qualified relative may execute or issue an OOH-DNR Order. The person's attending physician will document existence of the Order in the person's permanent medical record. The OOH-DNR Order may be executed as follows:

Section A - If an adult person is competent and at least 18 years of age, he/she will sign and date the Order in Section A.

Section B - If an adult person is incompetent or otherwise mentally or physically incapable of communication and has either a legal guardian, agent in a medical power of attorney, or proxy in a directive to physicians, the guardian, agent, or proxy may execute the OOH-DNR Order by signing and dating it in Section B.

Section C - If the adult person is incompetent or otherwise mentally or physically incapable of communication and does not have a guardian, agent, or proxy, then a qualified relative may execute the OOH-DNR Order by signing and dating it in Section C.

Section D - If the person is incompetent and his/her attending physician has seen evidence of the person's previously issued proper directive to physicians or observed the person competently issue an OOH-DNR Order in a nonwritten manner, the physician may execute the Order on behalf of the person by signing and dating it in Section D.

Section E - If the person is a **minor** (less than 18 years of age), **who has been diagnosed by a physician as suffering from a terminal or irreversible condition**, then the minor's parents, legal guardian, or managing conservator may execute the OOH-DNR Order by signing and dating it in Section E.

Section F - If an adult person is incompetent or otherwise mentally or physically incapable of communication and does not have a guardian, agent, proxy, or available qualified relative to act on his/her behalf, then the attending physician may execute the OOH-DNR Order by signing and dating it in Section F with concurrence of a second physician (signing it in Section F) who is not involved in the treatment of the person or who is not a representative of the ethics or medical committee of the health care facility in which the person is a patient.

In addition, the OOH-DNR Order must be signed and dated by two competent adult witnesses, who have witnessed either the competent adult person making his/her signature in section A, or authorized declarant making his/her signature in either sections B, C, or E, and if applicable, have witnessed a competent adult person making an OOH-DNR Order by nonwritten communication to the attending physician, who must sign in Section D and also the physician's statement section.

Optionally, a competent adult person or authorized declarant may sign the OOH-DNR Order in the presence of a notary public. However, a notary cannot acknowledge witnessing the issuance of an OOH-DNR in a nonwritten manner, which must be observed and only can be acknowledged by two qualified witnesses. Witness or notary signatures are not required when two physicians execute the OOH-DNR Order in section F. The original or a copy of a fully and properly completed OOH-DNR Order or the presence of an OOH-DNR device on a person is sufficient evidence of the existence of the original OOH-DNR Order and either one shall be honored by responding health care professionals.

REVOCATION: An OOH-DNR Order may be revoked at ANY time by the person, person's authorized representative, or physician who executed the order. Revocation can be by verbal communication to responding health care professionals, destruction of the OOH-DNR Order, or removal of all OOH-DNR identification devices from the person.

AUTOMATIC REVOCATION: An OOH-DNR Order is automatically revoked for a person known to be pregnant or in the case of unnatural or suspicious circumstances.

DEFINITIONS

Attending Physician: A physician, selected by or assigned to a person, with primary responsibility for the person's treatment and care and is licensed by the Texas Medical Board, or is properly credentialed and holds a commission in the uniformed services of the United States and is serving on active duty in this state. [HSC §166.002(12)].

Health Care Professional: Means physicians, nurses, physician assistants and emergency medical services personnel, and, unless the context requires otherwise, includes hospital emergency department personnel. [HSC §166.081(5)]

Qualified Relative: A person meeting requirements of HSC §166.088. It states that an adult relative may execute an OOH-DNR Order on behalf of an adult person who has not executed or issued an OOH-DNR Order and is incompetent or otherwise mentally or physically incapable of communication and is without a legal guardian, agent in a medical power of attorney, or proxy in a directive to physicians, and the relative is available from one of the categories in the following priority: 1) person's spouse; 2) person's reasonably available adult children; 3) the person's parents; or, 4) the person's nearest living relative. Such qualified relative may execute an OOH-DNR Order on such described person's behalf.

Qualified Witnesses: Both witnesses must be competent adults, who have witnessed the competent adult person making his/her signature in section A, or person's authorized representatives making his/her signature in either Sections B, C, or E on the OOH-DNR Order, or if applicable, have witnessed the competent adult person making an OOH-DNR by nonwritten communication to the attending physician, who signs in Section D. Optionally, a competent adult person, guardian, agent, proxy, or qualified relative may sign the OOH-DNR Order in the presence of a notary instead of two qualified witnesses. Witness or notary signatures are not required when two physicians execute the order by signing Section F. One of the witnesses must meet the qualifications in HSC §166.003(2), which requires that at least one of the witnesses not: (1) be designated by the person to make a treatment decision; (2) be related to the person by blood or marriage; (3) be entitled to any part of the person's estate after the person's death either under a will or by law; (4) have a claim at the time of the issuance of the OOH-DNR against any part of the person's estate after the person's death; or, (5) be the attending physician; (6) be an employee of the attending physician or (7) an employee of a health care facility in which the person is a patient if the employee is providing direct patient care to the patient or is an officer, director, partner, or business office employee of the health care facility or any parent organization of the health care facility.

Report problems with this form to the Texas Department of State Health Services (DSHS) or order OOH-DNR Order/forms or identification devices at (512) 834-6700.

Declarant's, Witness', Notary's, or Physician's electronic or digital signature must meet criteria outlined in HSC §166.011

INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

(1) YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC; OR

(2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

(1) the person you have designated as your agent;

(2) a person related to you by blood or marriage;

(3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;

(4) your attending physician;

(5) an employee of your attending physician;

(6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

MEDICAL POWER OF ATTORNEY

DESIGNATION OF HEALTH CARE AGENT.

I, _____ (insert your name) appoint:

Name: _____

Address: _____

Phone _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: _____

Address: _____

Phone _____

B. Second Alternate Agent

Name: _____

Address: _____

Phone _____

The original of this document is kept at:

The following individuals or institutions have signed copies:

Name: _____
Address: _____

Name: _____
Address: _____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

SIGNATURE ACKNOWLEDGED BEFORE NOTARY

I sign my name to this medical power of attorney on _____ day of _____ (month, year)
at _____ (City and State).

(Signature)
(Print Name)

State of Texas
County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name of person acknowledging).

NOTARY PUBLIC, State of Texas
Notary's printed name: _____
My commission expires: _____

OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

I sign my name to this medical power of attorney on _____ day of
 _____ (month, year)
 at _____ (City and State).
 _____ (Signature)
 _____ (Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature: _____
 Print Name: _____ Date: _____
 Address: _____

SIGNATURE OF SECOND WITNESS.

Signature: _____
 Print Name: _____ Date: _____
 Address: _____

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent (attorney in fact) resigns or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, _____ (insert your name and address), appoint _____ (insert the name and address of the person appointed) as my agent (attorney in fact) to act for me in any lawful way with respect to all of the following powers that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- ____ (A) Real property transactions;
- ____ (B) Tangible personal property transactions;
- ____ (C) Stock and bond transactions;
- ____ (D) Commodity and option transactions;
- ____ (E) Banking and other financial institution transactions;
- ____ (F) Business operating transactions;
- ____ (G) Insurance and annuity transactions;
- ____ (H) Estate, trust, and other beneficiary transactions;
- ____ (I) Claims and litigation;
- ____ (J) Personal and family maintenance;
- ____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- ____ (L) Retirement plan transactions;
- ____ (M) Tax matters;
- ____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

_____ I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

- (A) This power of attorney is not affected by my subsequent disability or incapacity.
- (B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

_____.

Signed this _____ day of _____, _____

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____ (date) by _____ (name of principal).

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed name) _____

My commission expires: _____

IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent or attorney in fact when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" or "attorney in fact" in the following manner:

(Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:
 - (A) the property belonging to the principal that has come to your knowledge or into your possession;
 - (B) each action taken or decision made by you as agent or attorney in fact;
 - (C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
 - (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;
 - (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
 - (F) each known liability;
 - (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and
 - (H) all documentation regarding the principal's property.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by court decree of divorce or annulment;
- (5) the appointment and qualification of a permanent guardian of the principal's estate; or
- (6) if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires.

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

**DECLARATION OF APPOINTMENT OF GUARDIAN FOR
MY CHILDREN IN THE EVENT OF MY DEATH OR INCAPACITY**

I, _____, make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death or incapacity:

(add blanks as appropriate)

I designate _____ to serve as guardian of the person of my (child or children), _____ as first alternate guardian of the person of my (child or children), _____ as second alternate guardian of the person of my (child or children), and _____ as third alternate guardian of the person of my (child or children).

(If applicable) I designate _____ to serve as guardian of the estate of my (child or children), _____ as first alternate guardian of the estate of my (child or children), _____ as second alternate guardian of the estate of my (child or children), and _____ as third alternate guardian of the estate of my (child or children).

If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my (child or children).

I, _____, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Appointment of Guardian for My Children in the Event of My Death or Incapacity, and that I have made and executed it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of _____, 20__.

Declarant

The undersigned, _____ and _____, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day of _____, 20__.

Witness

Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of _____, 20__.

Notary Public in and for the State of Texas
My commission expires: _____

Sec. 679. DESIGNATION OF GUARDIAN BEFORE NEED ARISES.

(a) A person other than an incapacitated person may designate by a written declaration persons to serve as guardian of the person of the declarant or the estate of the declarant if the declarant becomes incapacitated. The declaration must be signed by the declarant and be:

(1) written wholly in the handwriting of the declarant; or

(2) attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

(b) A declarant may, in the declaration, disqualify named persons from serving as guardian of the declarant's person or estate, and the persons named may not be appointed guardian under any circumstances.

(c) A declaration that is not written wholly in the handwriting of a declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(d) A declaration described by Subsection (a)(2) of this section may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration.

(e) The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

(f) Unless the court finds that the person designated in the declaration to serve as guardian is disqualified or would not serve the best interests of the ward, the court shall appoint the person as guardian in preference to those otherwise entitled to serve as guardian under this code. If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

(g) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent reexecution of the declaration in the manner required for the original declaration.

(h) If a declarant designates the declarant's spouse to serve as guardian under this section, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.

(i) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian. The following form may, but need not, be used:

**DECLARATION OF GUARDIAN IN THE EVENT OF
LATER INCAPACITY OR NEED OF GUARDIAN**

I, _____, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

1. I designate _____ to serve as guardian of my person, _____ as first alternate guardian of my person, _____ as second alternate guardian of my person, and _____ as third alternate guardian of my person.

2. I designate _____ to serve as guardian of my estate, _____ as first alternate guardian of my estate, _____ as second alternate guardian of my estate, and _____ as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person:
_____, _____, and _____.

5. I expressly disqualify the following persons from serving as guardian of my estate:
_____, _____, and _____.

I, _____, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Guardian in the Event of Later Incapacity or Need of Guardian, and that I have made and executed it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of _____, 20__.

Declarant

The undersigned, _____ and _____, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Guardian in the Event of Later Incapacity or Need of Guardian and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day of _____, 20__.

Witness

Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of _____, 20__.

Notary Public in and for the State of Texas
My commission expires: _____

APPOINTMENT OF AGENT TO CONTROL

DISPOSITION OF REMAINS

Sometimes disputes arise among family members over the disposition of the remains of a loved one. This is especially the case if the deceased preferred anything other than a traditional burial. Even though one may have prearranged for a cremation or had signed the papers to donate their body to science, these wishes can be overturned by the next of kin.

This is also significant if you are the last of your lineage. A person with no spouse, siblings, or children still needs someone to care for their remains at death (and should provide a means to pay for those services).

There are two methods suggested for guaranteeing that your wishes are followed. One is to have a statement in your Will to the effect that if your wishes are not followed, your heirs will not receive their full inheritance. You will need an attorney to prepare such a Will for you.

An easier way has been designed by the legislature of the State of Texas. The form on the next page, *Appointment Of Agent To Control Disposition Of Remains*, allows you to designate an individual who will act according to your wishes to control this matter. You need only complete this two-page form and have it notarized. Be sure to update it periodically to insure that the agents know your wishes and are still alive.

According to the State of Texas, (a) Unless a decedent has left directions in writing for the disposition of the decedent's remains, the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and are liable for the reasonable cost of interment:

- (1) the person designated in a written instrument (this document) signed by the decedent;
- (2) the decedent's surviving spouse;
- (3) any one of the decedent's surviving adult children;
- (4) either one of the decedent's surviving parents;
- (5) any one of the decedent's surviving adult siblings; or
- (6) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, _____,
(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by _____
(name of agent)

in accordance with Section 711.002 of the Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

AGENT:

Name: _____

Address: _____

Telephone Number: _____

Acceptance of Appointment: _____
(signature of agent)

Date of Signature: _____

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: _____

Address: _____

Telephone Number: _____

Acceptance of Appointment: _____
(signature of first successor)

Date of Signature: _____

2. Second Successor

Name: _____

Address: _____

Telephone Number: _____

Acceptance of Appointment: _____
(signature of second successor)

Date of Signature: _____

Continued on back.

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.

Signed this _____ day of _____, 19____.

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____
(date)

by _____
(name of principal)

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires: _____

Section 3

Your Funeral

I use the word *funeral* in a generic sense. In Houston, we are doing more and more memorial services. Let's consider some of your options.

The first consideration is what to do with your body upon your death. The traditional option is to release the body to a funeral home for burial. There are other options.

The first is the donation of organs or whole body to help someone else live or to train medical students. A body can't be used for both, so you select one of those options. Both need to be arranged in advance of your death if possible.

If organs are being donated, that will be done at the hospital immediately upon your death and the donation will not affect your appearance if you choose a traditional visitation. Organ donation can include internal organs, skin, bone, and corneas. Contact your local organ bank for more details.

If your wish is to donate your whole body to science, you will want to sign up with a local medical school or university and/or the Anatomical Board of the State of Texas. Another option is the Texas Forensic Anthropology Center at Texas State University. Be sure you have a plan B, as sometimes they don't need bodies or there may be anatomical reasons why your body is unsuitable for teaching. Most studies continue for three years at which time the remains are cremated and either buried at sea or returned to the family.

A third option is cremation. There has been a rise in the numbers of cremations in Houston driven by immigrant populations, funeral costs, and a general change in attitudes. Cremations generally cost a fraction of the cost of a burial and memorials or burial/scattering of the remains can be scheduled at the convenience of the family, often weeks or months after the death.

A major consideration for funerals and cremations is cost. It pays to shop around. Most people when confronted by the nurses station with the question, "who do you want us to call?" have little knowledge to determine an answer. They do not realize that the cost in Houston in 2015 for a basic funeral can range from \$4,000 to \$18,000 depending on the place you call. Cremations can range from \$500 - \$3,500. These are basic costs which are often raised with the selection of a better casket and outer burial vault.

Every funeral provider is required by federal law to provide you with a price list of their services on request. These will be three lists: Caskets, Outer burial vaults, and services.

The purpose of the casket is to hold the body for transport. Do not think it will stop decay – it will not. It may slow decay, but "to dust you will return." Do not pay extra for a "sealed" casket as it does nothing to preserve the body. The casket is a pretty box, and you will have to determine how pretty a box you require. You may also make your own casket if you wish, even from plywood, and the funeral home is required to accept it as long as it serves the purpose. The funeral home is also required to accept a casket from an outside vendor at no additional charge, and an internet search will bring up many discount casket companies with one day delivery.

The purpose of the outer burial vault is primarily to prevent ground depressions as the casket decays therefore reducing maintenance that the cemetery has to provide. The state does not require an outer burial vault, most perpetual care cemeteries do. The least expensive one you can buy will serve just as well as a \$100,000 seamless copper vault. Again, planning ahead will remove some of the emotion from the selection.

The services of the funeral home make up the third price sheet. These are pretty standard, though the prices vary tremendously. Most providers also include packages that combine their services with a casket and burial vault.

In smaller communities many family owned funeral homes remain. However, you will find that major corporations own many funeral homes even though they retain the well-known family name that has existed for many years.

For example, Service Corporation International, SCI, can be recognized from its *Dignity* logo. SCI owns Dignity, Advantage, National Cremation, Del Angel, MEM, and Neptune Society. In Houston SCI owns Levy, Earthman, George Lewis, Crespo, Forest Park, Heights, Waltrip, Garden Oaks, Settegast-Kopf, Pat H. Foley, Brookside, and others. They also own many of the cemeteries in Houston. Their prices reflect the community where they are located. Therefore the same funeral with the same casket purchased at one location may be priced differently from that of another location even though the product is virtually the same.

If you plan to have your funeral and burial in another city, check prices there as well. It is often less expensive to use a small town funeral home near your burial spot than to use an urban funeral home near your place of death. In the case of a relative's funeral, a funeral home in Vernon, Texas, was much more economical than one in Fort Worth. We still held a memorial in Fort Worth after the burial.

If your funeral and viewing is to be held at the church building, it should not matter which funeral home handles the service. By planning ahead, you can save thousands of dollars.

It is possible to have a traditional funeral followed by a cremation, but the cost will be

greater than direct cremation. Some funeral homes have caskets which can be rented for the funeral and then the body placed in a cremation casket for the cremation. However most families opt for a direct cremation with a memorial service.

One potentially high cost connected with a cremation is the container for the cremains. The cremains are usually returned in a utilitarian box or in a plastic bag in a box. Urns can be purchased from the funeral home, or more economically on the internet. You can even make your own in advance if you wish.

None of the above includes the cemetery plot and burial. The plot itself is expensive real estate. Planning ahead, you can locate plots for sale from original purchasers at greatly discounted costs. Major cities have brokers who deal in cemetery plots. Purchasing from the cemetery is the most expensive way to purchase this land.

When purchasing, be sure to verify headstone privileges. Some cemeteries require a certain number of plots in order to have an upright stone, and there may be restrictions concerning the size. Other cemeteries only have flat stones of granite or bronze, which also makes maintenance easier for the company. It is usually more economical to purchase a marker from an independent contractor than from the cemetery.

The cemetery will have a charge for opening and closing the grave, and it may have extra charges for burials late in the day or on weekends.

Some cemeteries allow two people to be buried in the same plot, one on top of the other. However, they need to know that is the plan before the first person is buried so that the first burial can be deeper. They also may charge again for the land and even the perpetual care fee.

Cremains can be buried just like a casket. The cemetery may charge the same amount to open and close the grave and may require a small burial vault. If you choose to

spread the ashes on the ground over the family plot do not expect to be allowed to have a marker added. Consult the cemetery first, and preferably pre-need.

If you are a veteran, you can be buried in one of 131 national cemeteries at no charge. Your non-veteran spouse can also be buried with you. If you choose not to use a VA cemetery, the VA will provide an allowance of \$1,045 toward the burial to survivors. Consult the U. S. Department of Veterans Affairs for more information.

For many Anglos, when a person dies, they anticipate a funeral/memorial within 4-5 days. In the African American community it may be delayed for several weeks. Most African American funerals are traditionally held on Saturday and are lengthy.

The traditional Anglo funeral has a visitation the night before the funeral, followed by the funeral the next day and then a procession to the funeral home where the body is buried. The African American funeral may extend that visitation throughout the night before the funeral.

The police-led procession in urban areas has become a very dangerous trip in recent years. This has led to other arrangements. Some families will have a private burial in the morning with only family and invited guests. That is followed by a memorial service at the church. This allows for people to mingle following the service, often with refreshments, and to share memories instead of having to leave for the cemetery. Some individuals are more likely to attend if the body is not present and visible.

Yet another arrangement is to have a traditional funeral, have the body removed, but schedule the graveside for 2-3 hours later allowing for visitation and possibly a family meal before gathering at the grave.

Many funerals today have display tables where various symbols of the person's life can be shown. These may range from

bicycles to golf clubs to photos to military memorabilia. Most individuals know the deceased from a narrow point of exposure, and these give a fuller view. Projected video presentation either before or during the service are also common. Ones prepared by the family (a great ministry for the grandkids) are often more memorable than those prepared by the funeral home. Limit the video to 8 minutes maximum. The family may have memories to attach to the photos but the average person in the congregation does not. A gentleman I recently served had his video prepared over a year before he died because he wanted to see it!

Memorials in conjunction with a cremation can occur at any time convenient for the family. Cremains can also be carried on airplanes as part of your luggage or carry-on, greatly reducing transportation costs. In some cases there may be a memorial in the city of death, followed by a burial or scattering of the cremains months later when a family reunion can be planned. In my own case, my wife and I will be cremated. After we both die, our cremains will be taken to the family plot in another city and buried together in one service.

If you are confident you will die in the city where you currently live, pre-arrange your funeral and pay for it. If you think you may move to another city in retirement or to be near family, decide what you want and be specific about it. Set aside funds for the funeral and give your heirs access to those funds. A "payable upon death" bank account will work but will have a delay of several weeks until death certificates arrive. When a loved one dies, your survivors are so emotional that making the decision is extremely difficult. Planning ahead makes for wise decisions.

Be sure to keep your plans and any will, funeral contract and cemetery documents where people can find them.

Burial Instructions:

Date: _____

Pre-arranged funeral: ☐ Yes ☐ No

With whom: _____

Location of documents: _____

Preferred funeral home: _____

Disposition of the body:

☐ Burial ☐ Entomb ☐ Cremation ☐ Donation for study.If organs are to be donated, give details of your desires and whom you have contacted to receive them? _____
_____If body is to be donated, give details of your desires and whom you have contacted to receive it? (Be sure your family understands your desires) _____
_____Service location: ☐ Church ☐ Funeral Home ☐ Graveside
☐ Other: _____

Church preference: _____

Cemetery: _____ Telephone: _____

Do you own lots: ☐ Yes ☐ NoType: ☐ Mausoleum ☐ Burial plot ☐ Crypt ☐ Urn/niche

If a plot, Lot: _____ Sec.: _____ Block: _____ Space: _____

Location of deed: (Do not keep in safety deposit box) _____

Preferred type of grave marker: _____
_____Preferred inscription: _____

Funeral Procedure:

Date: _____

Do you desire a "Visitation" prior to the funeral? ☐ Yes ☐ No ☐ No opinionShould the casket be open for viewing? ☐ Yes ☐ No ☐ No opinionIf yes, for whom? ☐ Family ☐ Anyone ☐ No opinion

Clothing: _____

Jewelry: _____

Glasses: ☐ On ☐ Off

Special Hairdresser: _____

Other instructions: _____

Minister preference: _____

Lodge/veteran service by: _____

Published obituary: ☐ Yes ☐ No: Photograph: ☐ Yes ☐ No

Note: Large city papers often charge for obituaries. In 2015 the Houston Chronicle charged \$11.81 per line and approximately \$150 for a small photo. Photo charges are based on lineage.

Papers to notify: _____

Music: ☐ Chorus ☐ Organ ☐ Taped music

Organist/musicians preferred: _____

Favorite selections: _____

Favorite scriptures: _____

Pallbearers: Name

Address

Telephone

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

Honorary Pallbearers:

Survivors:

Date: _____

Parents: _____

Spouse: _____

Children: Name & spouse (city of residence) _____

Grandchildren: Name (city of residence) _____

Great-grandchildren Name (city of residence) : _____

Siblings Name (city of residence) : _____

Others: _____

Honors: _____

Membership in the following organizations: Name, person to notify, phone:

Memorials to: _____

Resources:

The Texas Funeral Service Commission has a free helpful booklet *Facts About Funerals*. Download it at <http://www.tfsc.state.tx.us/consumer.php>

The Houston Bar Association has a free helpful booklet entitled *Elder Law Handbook*. This 40 page booklet describes Social Security, Medicare, Medicaid, types of assisted living for the elderly, wills, financial considerations, and more. Download at: <http://texaslawhelp.org/resource/elder-law-handbook>

The Texas Attorney General's office has a helpful series of web pages for senior adults at: <https://texasattorneygeneral.gov/seniors/senior-texans-page> There you will find helpful information concerning fraud and scams, lotteries and sweepstakes, selecting a nursing home, long-term care, estate and advance care planning, etc.

Funeral Consumer's Alliance: <http://www.funerals.org/>