

My Love List

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Additional copies may be downloaded free of charge from

http://www.swcentral.org/_pdf/MyLoveList.pdf

The website is currently under revision and My Love List will be found
in the resources area of the new site.

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My Love List

As a minister, I am called to participate with families in major decisions of their life. 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.

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 making a detailed list and a valuation 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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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: _____			
<input type="checkbox"/> Married	<input type="checkbox"/> Single	<input type="checkbox"/> Widowed	<input type="checkbox"/> 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: _____

Do you desire a flag at your funeral? Yes No

Wars/conflicts served: _____

Additional information: _____

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 No

Type: 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 opinion

Should the casket be open for viewing? Yes No No opinion

If 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 2010 the Houston Chronicle charges \$11.50 per line and approximately \$100 for a small photo.

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: _____

Legal Information:

Is there a will? Yes No Dated: _____
Will 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: _____

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: _____

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.

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.

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:

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.

OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDER. Another form not included in this packet, but available on line at <http://www.tdh.state.tx.us/hcqs/ems/dnr.pdf> 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.

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?

DURABLE POWER OF ATTORNEY. This document designates who make 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?

WRITTEN 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.

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.

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.

This page is left intentionally blank.

Directive to Physicians and Family or Surrogates

Advance Directives Act (see §166.033, Health and Safety Code)

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 the 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 judgement 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 judgement 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 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 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 judgement 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 and State of Residence _____

Two witnesses must sign in the spaces below.

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 declarant 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:

- a. that may be treated, but is never cured;
- b. that leaves a person unable to care for or make decisions for the person's own self; and
- c. 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 judgement, sustains the life of a patient and without which the patient will die. The term includes both lifesustaining 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 judgement 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.

Version 10/26/99, Texas State Legislature

http://www.dads.state.tx.us/news_info/publications/handbooks/LivingWill-English.pdf

DIRECTIVE TO PHYSICIANS REGARDING A MINOR PATIENT

I, _____, the (select one) mother, father, or legal guardian of _____ a minor patient, recognize that the best health care is based upon a partnership of trust and communication with the physician responsible for that care. The responsible physician and I will make health care decisions for the minor patient together, and I direct that the following treatment preferences be honored:

If, in the judgment of the responsible physician, the minor patient is suffering with a terminal condition from which the patient is 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 the patient comfortable be discontinued or withheld and the responsible physician allow the patient to die as gently as possible; OR

____ I request that the patient 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 the responsible physician, the minor patient is suffering with an irreversible condition so that the patient cannot care for him- or herself or make decisions for him- or herself and is 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 the patient comfortable be discontinued or withheld and the responsible physician allow the patient to die as gently as possible; OR

____ I request that the patient 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 the responsible 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 I elect hospice care for the minor patient, I understand and agree that only those treatments needed to keep the minor patient comfortable would be provided and the patient would not be given available life-sustaining treatments.

If, in the judgment of the responsible physician, the minor patient's 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 the patient's comfort. I understand that under Texas law this directive has no effect if the minor patient has been diagnosed as pregnant. This directive will remain in effect until the minor patient or 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 _____

This page is left intentionally blank.

OUT OF HOSPITAL DNR INSTRUCTIONS

PURPOSE: This form was designed to comply with the requirements as set forth in Chapter 166 of the Health and Safety Code (H&SC) relating to the issuance of Out-of-Hospital Do-Not-Resuscitate (DNR) orders for the purpose of instructing Emergency Medical Personnel and other health care professionals to forgo resuscitation attempts and to permit the patient 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 form applies to all health care professionals operating in any out-of-hospital setting to include hospital outpatient or emergency departments and physician's offices.

IMPLEMENTATION: Any competent individual may execute or issue an Out-of-Hospital DNR Order. The patient's attending physician will document the existence of the directive in the patient's permanent medical record.

If the patient is capable of providing informed consent for the order, he/she will sign and date the out-of-hospital DNR order on the front of this sheet in Box A. In the event that an adult patient is unable to provide informed consent, his/her Legal Guardian, agent under Medical Power of Attorney, or Qualified Relative may execute the order by signing and dating the form in Box B. If an adult patient is unable to provide informed consent and none of the persons listed in Box B are available, the treating physician may execute the order using Box D with the consent of a second physician who is not treating the patient and/or is a member of the health care facility ethics committee or other medical committee.

The following persons may execute an out-of-hospital DNR order on behalf of a minor: the minor's parents, the minor's legal guardian or the minor's managing conservator. A person executing a DNR order on behalf of a minor may execute the order by signing and dating the form in Box C. **An out-of-hospital DNR order may not be executed unless the minor has been diagnosed by a physician as suffering from a terminal or irreversible condition.**

The form must be signed and dated by two witnesses except when executed by two physicians only (Box D).

The original standard Texas Out-of-Hospital DNR form must be completed and properly executed. Duplicates may be made by the patient, health care provider organization, or attending physician as necessary. **Copies of this completed document may be used for any purpose that the original may be used and shall be honored by responding health care professionals.**

The presence of a Texas DNR identification device on a person is sufficient evidence that the individual has a valid Out-of-Hospital DNR Order. Therefore, either the original standard form, a copy of the completed standard form, or the device is sufficient evidence of the existence of the order.

For information on ordering identification devices or additional forms, contact the Texas Department of Health at (512) 834-6700.

REVOCATION: The Out-of-Hospital Do-Not-Resuscitate Order may be revoked at ANY time by the patient **OR** the patient's Legal Guardian/Agent/Managing Conservator/Qualified Relative, Parent (if a minor), or physician who executed the order. The revocation may involve the communication of wishes to responding health care professionals, destruction of the form, or removal of all or any Do-Not-Resuscitate identification devices the patient may possess.

AUTOMATIC REVOCATION: This Out-of-Hospital DNR order is automatically revoked if the patient is known to be pregnant or in the case of unnatural or suspicious circumstances.

DEFINITIONS:

Attending Physician: The physician who is selected by or assigned to a patient who has primary responsibility for a person's treatment and care and is licensed by the Texas State Board of Medical Examiners or who is properly credentialed and holds a commission in the uniformed services of the United States and who is serving on active duty in this state. **(H&SC 166.002 (3) & (12)).**

Qualified Relatives: Those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person who is comatose, incompetent, or otherwise mentally or physically incapable of communication under Section 166.088 H&SC. Section 166.088 refers to 166.039: "One person, if available, from one of the following categories in the following priority... (1) The patient's spouse; (2) the patient's reasonably available adult children; (3) the patient's parents; or (4) the patient's nearest living relative."

Health Care Professional: Means physicians, nurses, physician assistants and emergency medical services personnel; and, unless the context requires otherwise, includes hospital emergency department personnel. **(H&SC) 166.081 (5)).**

Witnesses: Two competent adult witnesses must sign the form acknowledging the signature of the patient or the person(s) acting on the patient's behalf (except when signed by two physicians in Section D). Witness One must meet the qualifications listed below. Witness Two may be any competent adult. Witness One (the "qualified" witness) may not be: (1) person designated to make a treatment decision for the patient; (2) related to the patient by blood or marriage; (3) entitled to any part of the estate; (4) be a person who has a claim against the estate of the patient; (5) the attending physician or an employee of the attending physician; (6) an employee of a health care facility in which the patient is being cared for, if he or she is involved in providing direct patient care to the patient; or (7) an officer, director, partner, or business employee of a health care facility in which the patient is being cared for or any parent organization of the health care facility.

Please report any problems with this form to the Texas Department of Health (512) 834-6700

Revised May 17, 2000
Texas Department of Health

<http://www.dshs.state.tx.us/emtraumasystems/dnr.pdf>

TEXAS DEPARTMENT OF HEALTH STANDARD OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDER

This document becomes effective immediately on the date of execution. It remains in effect until the patient is pronounced dead by authorized medical or legal authority or the document is revoked. Comfort measures will be given as needed.

All persons who sign the form must sign again under number 3.

1. _____ Date of Birth _____ Male/Female (circle one)
Patient's full legal name—printed or typed

2. COMPLETE **ONE** OF THE FOLLOWING FOUR BOXES: **A, B, C OR D**. If using Box A, B, or C, Witnesses and Physician's Statement must be completed.

A. Patient's statement: I, the undersigned, am capable of making an informed decision regarding the withholding or withdrawing of CPR, including the treatments listed below, and I direct that none of the following resuscitation measures be initiated or continued. **Cardiopulmonary resuscitation (CPR), Transcutaneous Cardiac Pacing, Defibrillation, Advanced Airway Management, Artificial Ventilation.**

Signature Date Printed or Typed Name

B. Only use this box if the order is being completed by a person acting on behalf of an adult patient who is incompetent or otherwise unable to make his or her wishes known.

I am the patient's: legal guardian; agent under Medical Power of Attorney; or Qualified relative (see back); **AND:**

I attest to issuance of an Out-of-Hospital DNR by the patient by nonwritten means of communication; **OR**
 I am acting under the guidance of a prior Directive to Physicians; **OR**
 I am acting upon the known values and desires of the patient; **OR**
 I am acting in the patient's best interest based upon the guidance given by the patient's physician.

I direct that none of the following resuscitation measures be initiated or continued on behalf of the patient: Cardiopulmonary Resuscitation (CPR), Transcutaneous Cardiac Pacing, Defibrillation, Advanced Airway Management, Artificial Ventilation.

Signature Date Printed or Typed Name

C. Only use this box if the order is being completed by a person acting on behalf of a minor patient who has been diagnosed with a terminal or irreversible condition.

I am the minor patient's: Parent; legal guardian; or managing conservator

I direct that none of the following resuscitation measures be initiated or continued on behalf of the patient: Cardiopulmonary Resuscitation (CPR), Transcutaneous Cardiac Pacing, Defibrillation, Advanced Airway Management, Artificial Ventilation.

Signature Date Printed or Typed Name

WITNESSES: (see qualifications on reverse) We have witnessed all of the above signatures

Witness 1 Signature Date Witness Printed or Typed Name

Witness 2 Signature Date Witness Printed or Typed Name

PHYSICIAN'S STATEMENT: I, the undersigned, am the attending physician of the patient named above. I have noted the existence of this order in the patient's medical records, and I direct out-of-hospital health care professionals to comply with this order as presented.

Date Physician's Signature Printed name License Number

D. Only use this box if the order is being completed by two physicians acting on behalf of an adult who is incompetent or otherwise unable to make his or her wishes known, and who is without a legal guardian, agent, or qualified relative.

I attest to issuance of an Out-of-Hospital DNR by the patient by nonwritten communication; **OR;**
 The patient's specific wishes are unknown, but resuscitation measures are, in reasonable medical judgment, considered ineffective in these circumstances or are otherwise not in the best interest of the patient.

I direct that none of the following resuscitation measures be initiated or continued on behalf of the patient: Cardiopulmonary Resuscitation (CPR), Transcutaneous Cardiac Pacing, Defibrillation, Advanced Airway Management, Artificial Ventilation.

Signature Treating Physician Date Printed or Typed Name

Signature Second Physician not involved in treating patient Date Printed or Typed Name

3. **ALL PERSONS WHO SIGNED MUST SIGN HERE: This document has been properly completed.**

Signature of Patient, Agent, or Relative (A or B) Signature of Second Physician (C) Signature of Attending Physician

Signature of Witness Signature of Witness Date

INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

The Texas Legislature authorizes the use of written advance directives, including a medical power of attorney in accordance with the following form.

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 IT IS SIGNED 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.)

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, CHAPTER XII, TEXAS PROBATE 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.

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 except for
a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

Real property transactions;

Tangible personal property transactions;

Stock and bond transactions;

Commodity and option transactions;

Banking and other financial institution transactions;

Business operating transactions;

Insurance and annuity transactions;

Estate, trust, and other beneficiary transactions;

Claims and litigation;

Personal and family maintenance;

Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;

Retirement plan transactions;

Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

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, 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 _____, 20____.

(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: _____

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**

677A. WRITTEN DECLARATIONS BY CERTAIN PARENTS TO

APPOINT GUARDIANS FOR THEIR CHILDREN. (a) A written declaration appointing an eligible person to be guardian of the person of the parent's child under Section 676(d) or 677(b) of this code 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 declaration that is not written wholly in the handwriting of the declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

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

**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:

(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).

I direct that the guardian of the person of my (child or children) serve (with or without) bond.

(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).

Signed this _____ day of _____, 20____.

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by the above named declarant and affiants on 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 attested to 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) The declaration must 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. A properly executed and witnessed declaration and affidavit are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.
- (d) The declaration and 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. 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.
- (e) 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.
- (f) 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.
- (g) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian. The following forms 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 _____.

Signed this ____ day of _____, 20____.

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Guardian and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by the above named declarant and affiants on 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.

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.

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**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: _____

Resources:

The Texas Funeral Commission has a free helpful booklet *Facts About Funerals*. You can secure it from them at 8100 Cameron Rd., Suite 550, Austin, TX, 78754-3896, (512) 834-9992

The Houston Bar Association has a free helpful booklet entitled *Elder Law Handbook*. This 36 page booklet describes Social Security, Medicare, Medicaid, types of assisted living for the elderly, wills, financial considerations, and more. Call (713) 759-1133 for information.

The Texas Young Lawyers Association has produced *Rights and Needs of Senior Citizens in Texas*. Obtain your copy by calling Tammi Sweet in the State Bar of Texas Public Information Department at (512) 463-1453, extension 2610.

The American Association of Retired Persons, AARP, has several useful publications. *Final Details* (D14168) is a brief 3 page checklist of items to consider: Paperwork, Social Security, Veterans' Benefits, Insurance Policies, Probate, Taxes, Changing Ownership, etc. *Questions & Answers About Health Care Powers of Attorney and Living Wills* (D15525) does exactly what the title indicates and explores the implications of these documents. *Product Report: Pre-Paying Your Funeral?* (D13188) explores the various options for pre-paid funerals and demonstrates why you should plan yours now. *Life Transitions* (D15870) urges you to do what *My Love List* is helping you to do. It also explains briefly what your will does and how estate taxes work. *A Consumer's Guide to Probate* (D13822) will explain that frightening consideration in layman's terms. Contact AARP locally or at 601 E. Street, NW, Washington, DC, 20049.

Channel 2 Television has arranged for a survey of basic funeral costs to be made for the Houston area. For results, send a self addressed stamped envelope to Interfaith Funeral Information Committee, P.O. Box 9097, Chandler Heights, AZ 85227

On the Internet:

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

Funeral Help Program: <http://www.dragonet.com/funeral/main.htm>

Texas Probate Website: <http://www.texasprobate.com/97leg/disable.htm>

Texas Department of Health, <http://www.tdh.state.tx.us/>

Out of Hospital DNR Code:

[http://info.sos.state.tx.us/pub/plsql/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&p_tac=&ti=25&pt=1&ch=157&rl=25](http://info.sos.state.tx.us/pub/plsql/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&p_tac=&ti=25&pt=1&ch=157&rl=25)

Some **funeral homes** have web sites that allow you to explore some of the costs of funerals.

Aldine: <http://www.flash.net/~cdz/aldine/index.htm>

Earthman: <http://www.earthmanfunerals.com/>

Metropolitan: <http://www.metropolitanfuneral.com/>

Miller: <http://www.millerfuneral.com/>