

ESTATE PLANNING



Hynds, Yohnka, Bzdill & McInerney, LLC 105 W. Main St., Morris, Illinois 60450
www.hyndslawyers.com (815) 942-0049

DNRs, POLSTs, POAs, and Living Wills: What's the Difference?

A Healthcare Power of Attorney ("POA"), a Living Will, and a Practitioner Order for Life-Sustaining Treatment ("POLST") or Do Not Resuscitate ("DNR") instruction each perform different, but interrelated roles in the care planning process.

We describe Powers of Attorney in more detail below. They allow you to appoint a person of your choice to assist with medical or healthcare decisions. Your agent will be able to get your medical information and make decisions about your treatment and care if you are incapacitated.

A "Living Will" (not to be confused with a Last Will and Testament) is a document which gives direction about your wishes to die at a natural pace, i.e., without medical intervention, if you have a terminal condition. This has a much more limited scope and applicability than the Healthcare Power of Attorney and can be overridden by your agent under a Healthcare Power of Attorney.

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In Illinois, a "DNR" is typically used to refer to a simple direction prohibiting resuscitation if there is no pulse. A POLST form includes a DNR direction, but also describes what medical procedures you do or do not permit under other circumstances including resuscitation, nutrition, and intervention. In either case, the DNR/POLST document must be co-signed by your medical practitioner.

Each of these performs an important role in your medical care, and you should know not only which documents you have executed, but what each document does or doesn't do. ■

The Tax Cuts and Jobs Act: How Does It Affect Your Planning?
See *Planning Considerations*, page 3

Using Powers of Attorney to Plan for Old(er) Age

As people are living longer, it has become more and more important to plan for ages 65 to 95, when you may go from not needing

any assistance, to wanting help with paying bills, driving, running errands, or making

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doctor visits. A Power of Attorney allows you to appoint an agent of your choice to assist you with financial or medical issues during your lifetime.

What Are Powers of Attorney?

There are two standard forms in Illinois: one for property and financial transactions, and one for healthcare and medical transactions. You may appoint anyone as your agent, even if they are not an Illinois resident. Your agent is not required to accept the responsibility. Your agent will have a fiduciary obligation to you as principal, even if you are not incapacitated. A Power of Attorney from another state, if effective in that state, will be honored in other states, although practically speaking, it may be easier to use the forms of the state where you spend most of your time because they will be more familiar to bank or hospital staff. The Powers of Attorney can be modified or revoked at any time.

How Should I Use Them?

We recommend that everyone, regardless of their age or health, execute Powers of Attorney. Without them, if you are incapacitated, it may be necessary for your relatives or friends to open a guardianship for you, to allow them to assist you. This could be an expensive and time-consuming process. However, guardianship may be preferred if you want

court oversight of the process.

Powers of Attorney can also be useful to older people who are looking for a safety net. Many of our clients are concerned about their children moving them to a nursing home before the client is ready to go. A Power of Attorney can be used to describe your wishes to remain at home and set out guidelines that will help you to remain at home as long as possible.

Concerns about driving, paying bills, and managing investments can be coordinated through your Powers of Attorney to ensure that you are cared for in that way that you wish to be, rather than in the way that may be most convenient or least expensive.

The time to take action is now. As you age, family and friends may see changes but not recognize its pervasiveness or may be uncomfortable addressing the issue. Setting out your wishes now can avoid future uncertainties. ■

Religious Powers of Attorney

Although Illinois uses standard statutory forms for ease of use, specific religious instructions or guidelines are often available and can be incorporated into or used in conjunction with the standard POA to address end-of-life care, burial requirements or even financial lending restrictions.

Tax Cuts and Jobs Act: Planning Considerations

The Tax Cuts and Jobs Act took effect January 1, 2018. There are significant changes for estate and business planning:

1. The Federal estate tax exemption is increased to \$11,180,000.00 per person (and will rise with inflation), effective January 1, 2018, and expiring December 31, 2025. However, the Illinois estate tax exemption of \$4,000,000.00 per person is unchanged. Additionally, Illinois does not allow a surviving spouse to use a deceased spouse's unused exemption, so that couples with more than \$4,000,000.00 of property collectively should take steps to evenly allocate property and avoid Illinois estate tax at the survivor's death. If you faced potential Illinois estate tax before, you still do.
2. Other gift and estate tax rules are unchanged, meaning that you can still make annual gifts, tax-free (up to \$15,000.00 per person in 2018) and property will continue to receive a step-up in basis to its fair market value at the date of the owner's death (decreasing capital gains taxes for beneficiaries).
3. There are new pass-through deductions available for sole proprietorships and partnerships, and LLCs and S-corporations that are taxed as partnerships. With some restrictions, 20% of qualified business income can be deducted for an individual

or trust/estate owner of the business. This corresponds with other corporate tax decreases.

4. The C-corporation tax rate decrease from 35% to 21% is effective January 1, 2018, and does not have an expiration date.

Because of the change in the tax laws, it may be beneficial to review your estate plans.■

Illinois LLC Fee Update

Illinois recently updated its own rules regarding LLC fees, dramatically lowering costs and making LLCs a more affordable option:

| | <u>Old Fee</u> | <u>New Fee</u> |
|-------------------------------|----------------|----------------|
| Articles of Organization | \$500 | \$150 |
| Annual Report | \$250 | \$75 |
| Name Registration Application | \$300 | \$50 |
| Statement of Termination | \$25 | \$5 |

Effective as of December 20, 2017

Hynds, Yohnka, Bzdill & McInerney, LLC

105 W. Main Street
Morris, IL 60450

Phone:

815-942-0049

Fax:

815-942-0497

Coming Up:

1. Medicaid Issues
2. Trust Administration: Trustee selection, liability concerns, and moving assets
3. The Small Things: Finding Assets, Dealing with Tangible Personal Property
4. The New Digital Asset Law

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