

# **Power of Attorney and Living Will**

This packet contains Alaska forms for a Power of Attorney and a Living Will. Alaska Legal Services Corporation provides these as a service to you and does not take responsibility for how you fill them out.

The law allows you to fill out these forms on your own. This packet contains general information to assist you. However, if you have questions, please contact an attorney. The Alaska Bar Association (272-0352 or 1-800-770-9999 outside Anchorage) can provide you with a list of attorneys. If you cannot afford an attorney or if you are 60 years or older, Alaska Legal Services may be able to assist you. Please call: Anchorage, 272-9431 or (800) 478-9431; Barrow, 852-2311; Bethel, 543-2237 or (800) 478-2230; Dillingham, 842-1452 or (888) 391-1475; Fairbanks, 452-5181 or (800) 478-5401; Juneau, 586-6425 or (800) 789-6426; Ketchikan, 225-6420; Kotzebue, 442-3500 or (877) 622-9797; and Nome, 443-2230 or (888) 495-6663.

This form is provided by Alaska Legal Services Corporation, a statewide private nonprofit organization. Funding for this brochure came from the Alaska Commission on Aging and the Alaska Bar Association. Nothing contained in this publication is to be considered as the rendering of legal advice for specific cases and readers are responsible for obtaining such advice from an attorney.

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# DIRECTIONS

You have a right to make decisions about your future. If at some time you become unable to voice these desires and decisions, you can let them be known through a *Living Will Declaration* and a *Power of Attorney*. The *Living Will Declaration* describes your desires for life support treatment in the event you have a terminal condition and are unable to participate in making decisions about your medical care. The *Power of Attorney* gives decision-making authority over certain other issues to someone you choose. Without these forms, decisions often have to be made through court guardianship or conservatorship proceedings. These can be time consuming, costly, and ultimately may not result in your wishes being carried out.

## What is a Living Will?

A “living will” is a document in which you let the readers know what types of life support you want to be given. It does not authorize someone else to make decisions for you. It tells your doctor and family your medical treatment wishes. The form given here is taken directly from the Alaska Statutes. A.S. 18.12.010.

Your living will does not become effective until you have an incurable or irreversible condition that will cause death within a relatively short time. By signing the *Alaska Living Will Declaration*, you are telling the doctor that if you are terminally ill, near death, and unable to participate in medical treatment decisions, you want the attending doctor to withhold or withdraw procedures that merely prolong the dying process and are not necessary to your comfort or to alleviate pain.

The form requests that you check off whether you want to be given food and water by gastric tube or intravenously if necessary when you are in the above-described condition. Following this, there is a blank section in which you can write in other directions. If you choose to add your own wishes, you may want to consult with a doctor and/or attorney concerning what your options may be and how best to describe them. Often additions include:

- ◆ whether you want to be given cardiopulmonary resuscitation (CPR) in the event your heart stops beating;
- ◆ whether you want your doctor to put you on kidney dialysis;
- ◆ limiting the use of certain medications such as chemotherapy, antibiotics; and,
- ◆ whether you want the use of mechanical ventilators to aid or replace normal breathing.

If you have questions about what these mean medically, **you should discuss your concerns with your doctor.**

To accommodate the increasing number of individuals who choose to become organ donors, language has been added to specify this option. If this option is chosen, please note that life saving measures may be implemented on a temporary basis to evaluate whether the organs or tissues are suitable for donation.

Make sure you give a copy of your completed *Living Will Declaration* to your doctor and to your family members or friends. Although the original should be kept in a safe place, it should also be kept in a place where others have access to it. You can revoke a *Living Will Declaration* at any time and in any manner in which you are able to communicate your wish to revoke.

## What is a Power of Attorney?

You make a variety of decisions every day. In a *Power of Attorney* you give another person (your agent) the right to make decisions for you and you give them the authority to carry the decisions out. The form provided here is directly from the Alaska Statutes. AS 13.26.332-335. On this form you can pick and choose the powers you want to give an agent. You can also state whether you want to limit the time your agent will have power to act on your behalf. You can make the appointment “durable,” which means your agent will have powers even if you become disabled. Otherwise, you can state that the appointment will be revoked upon your incapacity.

### Section 1. Naming your agent.

**It is critically important that you thoroughly trust the person you name in your *Power of Attorney*.** The authority you give as the “principal” can have a major impact on you. For instance, your agent may sell your house, withdraw money from your accounts, or place you in a nursing home. Unlike a guardian or conservator, a person acting with a *Power of Attorney* does not have to answer to a court. Your agent will not have any formal oversight over the decisions he or she makes. In addition, it is very important to make sure the agent understands what your wishes are. Therefore, it is highly recommended that you discuss your wishes and desires with the person you name in your *Power of Attorney*. However, as long as you are competent, you do have the right to revoke a *Power of Attorney*.

**To revoke your *Power of Attorney*,** destroy the original and either (1) complete a new *Power of Attorney*, if you wish to name another person, OR (2) create a *Notice of Revocation* by writing a brief notarized statement revoking the old *Power of Attorney*. The new *Power of Attorney*, or the *Notice of Revocation*, needs to be distributed in the same manner as you distributed the old *Power of Attorney*. You may also wish to record the *Notice of Revocation* with a state Recorder’s office.

### Section 2. Choosing which powers to grant on *Power of Attorney* form.

You do not have to give your agent authority for all of the powers listed in Section 2 of the *Power of Attorney* form. You can limit which powers you give by **crossing out** any undesired provisions **AND** putting your initial on the line in front of it. Any power (A-O) that is not crossed out and initialed will be granted to your agent. You can find more detailed information about what powers each provision grants by asking an attorney or reading Alaska Statute Section 13.26.344.

Alaska does not have a separate Health Care Power of Attorney or Advance Directive. In other states, these documents allow a person to specifically describe the type of health care decisions an agent can make. Instead, Provision (L)(health care services) in Section 2 of the *Power of Attorney* simply gives the agent authority to make health care decisions. If you only want an agent to make health care decisions, cross out and initial each line except line (L).

In Alaska, the power to make “health care decisions” includes the following powers:

- (1) access medical records and related information, and disclose such information to others;
- (2) consent or refuse to consent to medical care or relief for the principal from pain, **BUT THE AGENT MAY NOT AUTHORIZE THE TERMINATION OF LIFE-SUSTAINING PROCEDURES;**
- (3) take all steps necessary to enforce a properly executed *Living Will Declaration*;

- (4) take all steps necessary to enforce a properly executed *Declaration For Mental Health Treatment*;
- (5) consent or refuse to consent to the principal's psychiatric care, but the consent does not authorize a voluntary commitment or placement in a mental health treatment facility, electroconvulsive or electric-shock therapy, psychosurgery, sterilization, or an abortion;
- (6) arrange for care or lodging of the principal in a hospital, nursing home, or hospice;
- (7) grant releases to health care professionals or health care institutions;
- (8) hire, discharge, or compensate an attorney, accountant, expert witness, or assistant, when the agent considers the action to be desirable for the proper execution of the powers described in this subsection; and,
- (9) do any other act or acts that the principal can do through an agent and that the agent considers desirable or necessary to provide for the principal's physical or mental well being.

### **Section 3.**

You can name more than one person to act on your behalf. If you name more than one agent in Section 1, you must initial the first or second statement in Section 3. Initial the first statement if you want to allow them to make decisions without getting approval from the other. If you want them to only have authority acting together, jointly, initial the second sentence.

### **Sections 4 and 5.**

These sections let you decide when and for how long you want the *Power of Attorney* to be effective. If you sign the first sentence in Section 4, the document will become effective when you sign it. Signing the second sentence makes it effective only when you become incapacitated. If you choose to make it effective when you sign, then in Section 5 you must decide whether it will remain effective in the event you become incapacitated. If you want your agent to continue to have authority, then initial the first sentence in Section 5. If not, initial the second sentence in Section 5.

### **Section 6.**

This section allows you to pick a date on which the *Power of Attorney* will no longer be valid. HOWEVER, if you want it to be effective if you become disabled, in other words, you want it to be "durable", do not put a date in this section. You can, after all, revoke the *Power of Attorney* at any time as long as you are competent to do so. If you give the agent authority for health care services, you need to fill out Section 8. This Section relates to mental health treatment declarations (not addressed here) and living wills.

Finally, the *Power of Attorney* must be signed in front of a notary and sealed by him or her. Once you have completed the *Power of Attorney*, you should give the original to whomever you named as the power of attorney, distribute copies to important people (doctor, banker, etc.), and keep a copy for yourself. If you later revoke the *Power of Attorney*, you should distribute the revocation in the same manner as you distributed the original.

# Living Will Declaration

I, \_\_\_\_\_, do **not** want a living will.

I, \_\_\_\_\_, do want a living will.

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain.

I ( ) do I ( ) do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.

Notwithstanding the other provisions of this declaration, if I have donated an organ under this declaration or by another method, and if I am in a hospital when a "do not resuscitate" order is to be implemented for me, I do not want the "do not resuscitate" order to take effect until the donated organ can be evaluated to determine if the organ is suitable for donation.

Other directions: \_\_\_\_\_

**OPTIONAL:** In the event of my death, I donate the following part(s) of my body for the purposes identified in AS 13.50.020:

\_\_\_\_ any needed tissue or organ.

\_\_\_\_ only the following tissues and/or organs:

Tissues: \_\_\_\_ eyes/corneas; \_\_\_\_ bone and connective tissue; \_\_\_\_ skin grafts; \_\_\_\_ heart for valves; \_\_\_\_ additional research tissue.

Organs: \_\_\_\_ kidneys; \_\_\_\_ heart; \_\_\_\_ lungs; \_\_\_\_ liver; \_\_\_\_ pancreas.

Limitations or special wishes: \_\_\_\_\_

**THIS DECLARATION MUST SIGNED BY THE DECLARANT. IF THE DECLARANT CANNOT SIGN AND DIRECTS THAT ANOTHER PERSON SIGN ON THE DECLARANT'S BEHALF, THE SIGNATURE MUST EITHER BE WITNESSED BY TWO PERSONS OR ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010.**

Date: \_\_\_\_\_ Declarant's Signature: \_\_\_\_\_

Place signed: \_\_\_\_\_, Alaska.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, by

\_\_\_\_\_  
*Signature of Person Taking Acknowledgment and Title or Rank*

OR

The declarant is known to me and voluntarily directed another to sign this document in my presence.

Signature and Address of Witness: \_\_\_\_\_

Signature and Address of Witness: \_\_\_\_\_

Use translation clause on back if necessary. A physician or health care provider may presume, in the absence of actual notice to the contrary, that this declaration complies with A.S. 18.12.010 and is valid.

**TRANSLATION CLAUSE (if needed)**

I certify that I have translated the provisions of the foregoing Living Will Declaration from the English language to the \_\_\_\_\_ language to the best of my ability.

\_\_\_\_\_  
Translator

# POWER OF ATTORNEY

A person who wishes to designate another as attorney-in-fact or agent by a power of attorney may execute a statutory power of attorney set out in substantially the following form:

I ( ) do **not** want to name a power of attorney.

I ( ) do want to name a power of attorney, and hereby revoke any prior powers of attorney.

The powers granted from the principal to the agent or agents in the following document are very broad. They may include the power to dispose, sell, convey, and encumber your real and personal property, and the power to make your health care decisions. Accordingly, the following document should only be used after careful consideration. If you have any questions about this document, you should seek competent advice.

Pursuant to A.S.13.26.338 - 13.26.353, you may revoke this power of attorney at any time.

**Section 1.** I, \_\_\_\_\_, of \_\_\_\_\_, do hereby appoint  
(Name of principal) (Address of principal)

\_\_\_\_\_ as  
(Name and address of agent or agents)

my attorney(s)-in-fact to act as I have checked below in my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters, as each of them is defined in AS 13.26.344, to the full extent that I am permitted by law to act through an agent:

**Section 2.** The agent or agents you have appointed will have all the powers listed below **UNLESS** you draw a line through a category; **AND** initial the space before that category.

- \_\_\_\_\_ (A) Real estate transactions
- \_\_\_\_\_ (B) Transactions involving tangible personal property, chattels, and goods
- \_\_\_\_\_ (C) Bonds, shares, and commodities transactions
- \_\_\_\_\_ (D) Banking transactions
- \_\_\_\_\_ (E) Business operating transactions
- \_\_\_\_\_ (F) Insurance transactions
- \_\_\_\_\_ (G) Estate transactions
- \_\_\_\_\_ (H) Gift transactions
- \_\_\_\_\_ (I) Claims and litigation
- \_\_\_\_\_ (J) Personal relationships and affairs
- \_\_\_\_\_ (K) Benefits from government programs and military service
- \_\_\_\_\_ (L) Health care services
- \_\_\_\_\_ (M) Records, reports, and statements
- \_\_\_\_\_ (N) Delegation
- \_\_\_\_\_ (O) All other matters, including those specified as follows:

\_\_\_\_\_  
\_\_\_\_\_

**Section 3. If you have appointed more than one agent, check one of the following:**

- Each agent may exercise the powers conferred separately, without the consent of any other agent.  
 All agents shall exercise the powers conferred jointly, with the consent of all other agents.

## DURABLE POWER OF ATTORNEY OPTIONS

(Sections 4, 5 and 6 allow you to choose whether or not you want this to be a durable power of attorney and when you want it to go into effect.)

**Section 4. To indicate when this document shall become effective, check one of the following:**

- This document shall become effective upon the date of my signature.  
 This document shall become effective upon the date of my disability and shall not otherwise be affected by my disability.

**Section 5. If you have indicated that this document shall become effective on the date of your signature check one of the following:**

- This document shall not be affected by my subsequent disability.  
 This document shall be revoked by my subsequent disability.

*(If you want this to be a durable power of attorney do not limit the term of this document in Section 6.)*

**Section 6. If you have indicated that this document shall become effective upon the date of your signature and want to limit the term of this document, complete the following:**

This document shall only continue in effect for \_\_\_\_\_(\_\_\_\_) years from the date of my signature.

**Section 7. Notice of revocation of the powers granted in this document.**

You may revoke one or more of the powers granted in this document. Unless otherwise provided in this document, you may revoke a specific power granted in this power of attorney by completing a special power of attorney that includes the specific power in this document that you want to revoke. Unless otherwise provided in this document, you may revoke all the powers granted in this power of attorney by completing a subsequent power of attorney.

## Additional Provisions

Each of the following provisions may be included in a statutory form power of attorney:

**Section 8. If you have given the agent authority regarding health care services under Section 2 subdivision (L), complete the following:**

- I have executed a separate declaration under AS 18.12 known as a "Living Will."  
 I have not executed a separate "Living Will."  
 I have executed a separate declaration under AS 47.30.950 -- 47.30.980 regarding mental health treatment. If I have appointed an attorney-in-fact under AS 47.30.950 -- 47.30.980, I authorize that attorney-in-fact and the attorney-in-fact whom I have appointed in this document to serve  
 jointly with the consent of each other as to my mental health treatment  
 separately without each other's consent as to my mental health treatment.  
 I have not executed a separate declaration under AS 47.30.950 -- 47.30.980.

**Section 9. You may designate an alternate attorney-in-fact. Any alternate you designate will be able to exercise the same powers as the agent(s) you named at the beginning of this document. If you wish to designate an alternate or alternates, complete the following:**

If the agent(s) named at the beginning of this document is unable or unwilling to serve or continue to serve, then I appoint the following agent to serve with the same powers:

First alternate or successor attorney-in-fact \_\_\_\_\_  
(Name and address of alternate)

Second alternate or successor attorney-in-fact \_\_\_\_\_  
(Name and address of alternate)

**Section 10. You may nominate a guardian or conservator. If you wish to nominate a guardian or conservator, complete the following:**

In the event that a court decides that it is necessary to appoint a guardian or conservator for me, I hereby nominate \_\_\_\_\_ to be considered  
(Name and address of person nominated)

by the court for appointment to serve as my guardian or conservator, or in any similar representative capacity.

**Section 11. Notice to Third Parties**

A third party who relies on the reasonable representations of an attorney-in-fact as to a matter relating to a power granted by a properly executed statutory power of attorney does not incur any liability to the principal or to the principals heirs, assigns, or estate as a result of permitting the attorney-in-fact to exercise the authority granted by the power of attorney. A third party who fails to honor a properly executed statutory form power of attorney may be liable to the principal, the attorney-in-fact, the principal's heirs, assigns, or estate for civil penalty, plus damages, costs, and fees associated with the failure to comply with the statutory form power of attorney. If the power of attorney is one which becomes effective upon the disability of the principal, the disability of the principal is established by an affidavit, as required by law.

In Witness Whereof, I have hereunto signed my name this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Signature of principal)

STATE OF ALASKA )  
 ) ss.  
\_\_ JUDICIAL DISTRICT )

Acknowledged before me at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of officer or notary.

\_\_\_\_\_  
Serial number, if any; date commission expires.

**TRANSLATION CLAUSE (if needed)**

I certify that I have translated the provisions of the foregoing *Power of Attorney* from the English language to the \_\_\_\_\_ language to the best of my ability.

\_\_\_\_\_  
Translator