**SCOTT MURRAY & ASSOCIATES, P.C.**

1030 Powers Place

Alpharetta, Georgia 30009

Tel: (770) 754-1718

Fax: (770) 754-6060

*scott@SMAlegal.com*

 Below is information concerning financial powers of attorney, advance directives for health care, designations of standby guardians, medical authorizations and living trusts. This information may not address all of your concerns, so please feel free to call us with any additional questions you may have.

**IMPORTANT INFORMATION FOR PRINCIPALS**

**GEORGIA POWER OF ATTORNEY**

Georgia has a statutory power of attorney. This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in O.C.G.A. Chapter 6B of Title 10.

This power of attorney does not authorize the agent to make health care decisions for you. You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent’s authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you. If you revoke the power of attorney, you must communicate your revocation by notice to the agent in writing by certified mail and file such notice with the clerk of superior court in your county of domicile.

Your agent is not entitled to any compensation unless you state otherwise in the Special Instructions. Your agent shall be entitled to reimbursement of reasonable expenses incurred in performing the acts required by you in your power of attorney. This form provides for designation of one agent. If you wish to name more than one agent, you may name a successor agent or name a co-agent in the Special Instructions. Co-agents will not be required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney shall be durable unless you state otherwise in the Special Instructions. This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

**GRANT OF GENERAL AUTHORITY**

The meaning of each of the powers granted for the specific subjects described in the Grant of General Authority section are particularly described in the Uniform Power of Attorney Act, O.C.G.A. 10-6B-1, *et seq*. Unless the authority is specifically limited in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in the Grant of General Authority section, an agent has authority to do all acts that a principal could do, with respect to that subject,

**GRANT OF SPECIFIC AUTHORITY**

Granting any of the specific authority will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. Initial only the specific authority you want to give your agent. You should give your agent specific instructions in the Special Instructions when you authorize your agent to make gifts.

**GENERAL INFORMATION – FINANCIAL POWER OF ATTORNEY**

***What is a Power of Attorney?***

 A Power of Attorney is a document that allows you to name one or more persons to help you handle your affairs, including your financial affairs. Depending on your individual circumstances, you can give this person or persons complete or limited power to act on your behalf. This document does not give someone the power to make medical decisions or personal decisions for you.

***What can my Agent do?***

 The “Agent” is the person you give power to handle your affairs. The “Principal” is you. Your decision to use this document is a very important one and you should think carefully about what decisions you want your Agent to make for you. With this document, you can give your Agent the right to make all decisions or only certain, limited decisions. For example, you can allow your Agent to handle all your affairs, including the power to sell, rent, or mortgage your home, pay your bills, cash or deposit checks, buy and sell your stock, investments, or personal items; or you can allow your Agent to handle only certain or specific affairs such as to pay your monthly bills.

***Do I give all my powers away?***

 No. Even with this document, you can still handle your own affairs as long as you choose to or are able to. You need to talk to your Agent often about what you want and what he or she is doing for you using the document. If your Agent is not following your instructions or doing what you want, you may cancel or revoke the document and end your Agent’s power to act for you. Do not let anyone pressure you into making a financial power of attorney, naming an Agent, or granting a power unless it is your choice. If you do not understand any portion of this document, you should ask a lawyer to explain it to you.

***How do I revoke my power of attorney?***

 You may revoke your power of attorney by writing a signed and dated revocation of power of attorney and giving it to your Agent. You should also give it to anyone who has been relying upon the power of attorney and dealing with your Agent, such as your bank and investment institutions. Unless you notify all parties dealing with your Agent of your revocation, they may continue to deal with your Agent. You should contact a lawyer if your Agent continues to act after you have revoked the power of attorney.

***When does my agent’s authority end?***

 As long as you are living, the power of attorney will remain in effect even if you become incapacitated or unable to communicate your wishes unless (i) a guardian is appointed by a court for your property; or (ii) you include a date or specific occurrence when you want your document to be canceled. However, upon your death or the death of your Agent or successor Agents, the document will be canceled and the Agent’s power to act for you will end. You can also include a date or a specific occurrence like your incapacity or illness as the time when you want your document to be canceled and your Agent’s power to act for you to end.

***When do the powers take effect?***

 Depending on your circumstances, you may wish to specify an occurrence or a future date for the document to become effective. Unless you do so, it becomes effective immediately, and unless you state otherwise in the power of attorney, it will continue even if you are incapacitated.

***Must my agent do those things I authorize?***

No, but if your Agent accepts this responsibility and agrees to act for you, he or she is required to do those things that you want them to do in such a manner that is in your best interest.

***Should I read this document?***

You should read the full document carefully before initialing or signing it. The Principal and the Agent should fully understand what powers are being granted to the Agent and what restrictions, if any, exist. Read each paragraph carefully. You are giving your Agent the powers described in the power of attorney. If you do not wish to give your Agent certain power, it should be stated in this document.

**GENERAL INFORMATION-ADVANCE DIRECTIVE FOR HEALTH CARE**

***What is a Health Care Agent?***

An Advance Directive allows you to choose someone to make health care decisions for you when you cannot (or do not want to) make health care decisions for yourself. The person you choose is called a health care agent. You can name alternate or successor health care agents in the event that your primary health care agent is unable or unwilling to serve as your health care agent. You may also have your health care agent make decisions for you after your death with respect to an autopsy, organ donation, body donation, and final disposition of your body. You should talk to your health care agent about this important role.

A physician or health care provider who is directly involved in your health care may not serve as your health care agent. If you are married, a future divorce or annulment of your marriage will revoke the selection of your current spouse as your health care agent. If you are not married, a future marriage will revoke the selection of your health care agent unless the person you selected as your health care agent is your new spouse.

***Can I describe my treatment preferences?***

You can state your treatment preferences if you have a terminal condition or if you are in a state of permanent unconsciousness. This section of the Advance Directive will become effective only if you are unable to communicate your treatment preferences. Reasonable and appropriate efforts will be made to communicate with you about your treatment preferences before this section becomes effective. You should talk to your family and others close to you about your treatment preferences.

***Will my treatment preferences be honored if I do not have a Health Care Agent?***

Your treatment preferences will be effective even if you do not have a health care agent. If you have not selected a health care agent, or if your health care agent is not available, then this section will provide your physician and other health care providers with your treatment preferences. If you have selected a health care agent, then your health care agent will have the authority to make all health care decisions for you regarding your treatment preferences. Your health care agent will be guided by your stated treatment preferences as well as by general authority that will be described in your Advance Directive.

You may provide additional instructions about your treatment preferences, including end-of-life situations. You will be provided with comfort care, including pain relief, but you may also want to state your specific preferences regarding pain relief. You may state additional treatment preferences, to provide additional guidance to your health care agent, or to provide information about your personal and religious values about your medical treatment. For example, you may want to state your treatment preferences regarding medications to fight infection, surgery, amputation, blood transfusion, or kidney dialysis. Understanding that you cannot foresee everything that could happen to you after you can no longer communicate your treatment preferences, you may want to provide guidance to your health care agent about following your treatment preferences.

***Can I name a guardian?***

You can nominate a person to be your guardian in the event a court decides that a guardian should be appointed. A court will appoint a guardian for you if the court finds that you are not able to make significant responsible decisions for yourself regarding your personal support, safety, or welfare. A court will appoint the person nominated by you if the court finds that the appointment will serve your best interest and welfare. This nomination is optional and your Advance Directive will be effective even if you do not choose a guardian. If you have selected a health care agent, you may (but are not required to) nominate the same person to be your guardian. If your health care agent and guardian are not the same person, your health care agent will have priority over your guardian in making your health care decisions, unless a court determines otherwise.

***Who can be a witness?***

You must sign and date or acknowledge signing and dating the Advance Directive for Health Care in the presence of two witnesses. Both witnesses must be of sound mind, must be at least 18 years of age, and cannot financially gain from your death, cannot be your health care agent, nor can they be directly involved in your health care. Only one of the witnesses may be an employee, agent, or medical staff member of the hospital, skilled nursing facility, hospice, or other health care facility in which you are receiving health care (but this witness cannot be directly involved in your health care).

***What should I do with my Advance Directive after it is signed?***

You should give a copy of the Advance Directive for Health Care to people who might need it, such as your health care agent, your family, and your physician. Keep a copy of the completed document at home in a place where it can easily be found if it is needed. Review the completed document periodically to make sure it still reflects your preferences. If your preferences change, complete a new advance directive for health care.

***Can I revoke my Advance Directive?***

You may revoke Advance Directive for Health Care at any time. This completed document will replace any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that you have completed before completing this Advance Directive for Health Care.

**GENERAL INFORMATION-DESIGNATION OF STANDBY GUARDIAN**

***What is a standby guardian?***

 A standby guardian is an adult person who is named by a parent (or a permanent guardian or legal custodian who has physical custody of a minor child or children) to serve as guardian of the person of the minor child or children.

***When does a standby guardianship occur?***

 A standby guardian has the rights, duties and responsibilities of a guardian upon the written determination (called a “health determination”) by a health care professional (either a licensed physician or a licensed registered professional nurse authorized to practice as a nurse practitioner) that the parent or legal guardian is unable to care for a minor due to a physical or mental condition, or health, including a condition created by medical treatment. Upon the health determination being made and without the necessity of any judicial intervention, the standby guardian shall assume all the rights, duties, and responsibilities of guardianship of the person of the minor. The standby guardian shall file with the probate court of the county of domicile of the minor a notice of the standby guardianship with a copy of the standby guardianship designation and the health determination.

***Can a standby guardianship occur when the parent is not incapacitated?***

 A standby guardianship commences upon making of the health determination, even if the parent is able to communicate. Depending upon the parent’s physical or mental condition or health, the parent may confer with the standby guardian in making decisions that affect the care and welfare of the minor child or children.

***How long does a standby guardianship last?***

 A standby guardianship will automatically terminate four months after the making of the health determination. If a longer time is needed, the standby guardian must file a petition seeking guardianship in the probate court. The appointment of the individual serving as standby guardian shall be preferred as the guardian. If the parent dies, the standby guardianship terminates. If a guardian is named in a parent’s Last Will and Testament, that person is preferred over a standby guardian.

***Does a standby guardian have priority over a natural parent?***

 A biological parent that does not have physical custody of a minor has the right to be named as the guardian of a minor upon a health determination being made. In certain instances, provisions relating to custody in prior court orders, such as a divorce decree or a prior guardianship, may affect the standby guardianship. If one parent designates a person other than the other parent, the written consent of the non-custodial parent to the standby guardian is required.

This consent is not required, however, if the non-custodial parent is deceased, had parental rights terminated or cannot be found after a diligent search. A standby guardianship does not relieve any custodial or non-custodial parent of the duty to support their children.

***Must a person consent to being named as standby guardian?***

 Yes, a person designated as a standby guardian must sign a written consent that accompanies the designation of the standby guardian.

***How is a standby guardianship revoked?***

 A standby guardianship can be revoked at any time by intentionally destroying the revocation, or by a written revocation signed either by the parent or by another person at the parent’s express direction and in their presence. The revocation must be attested to and subscribed by two or more competent witnesses.

**GENERAL INFORMATION-MEDICAL AUTHORIZATION**

***What is a medical authorization?***

 A medical authorization is a power of attorney that permits an adult person who is named by a parent (or a permanent guardian or legal custodian who has physical custody of a minor child or children) to make medical decisions in the absence of the parents or legal guardian.

***When does a medical authorization occur?***

 A medical authorization agent has authority to make medical decisions for a child in their care or custody in the event that the parents (or legal guardians) are temporarily unavailable. For example, if the parents temporarily leave their child or children with the person named in the medical authorization, and a child becomes ill or is injured and medical attention is needed, if the parents are unavailable, the medical authorization agent has authority to make medical decisions for the care of that child.

**GENERAL INFORMATION-LIVING TRUSTS**

***What is a living trust?***

 A living trust is a document that is created during the lifetime of an individual or couple (called a settlor or grantor) that designates a person (called a trustee) to use trust assets for the benefit of certain persons (called beneficiaries) in accordance with terms established by the settlor.

***When does a living trust become effective?***

 A living trust becomes effective upon signing by the settlor and trustee.

***Who are the beneficiaries?***

 A living trust can be set up initially for the benefit of the settlor, but upon the death of the settlor, then the trust assets are used for the benefit of the beneficiaries named or described by the settlor.

***How is the living trust funded?***

 Property is transferred into a living trust (called funding) by various means, depending upon the type of property. For example, a transfer of real estate into a living trust is by a deed, a transfer of general assets is by a simple transfer document that identifies the property being transferred; and a transfer of life insurance proceeds is by naming the trust or the trustee as a beneficiary of a life insurance policy). A Last Will and Testament can also name a living trust or the trustee as a beneficiary.

***Do assets in a living trust avoid probate?***

 Property placed into a living trust changes the legal ownership of the property so the owner of the property is the trust or the trustee of the trust. Thus, property placed into a living trust during one’s lifetime will not become part of assets being transferred through the probate process. In some states, the costs to initiate a probate case are based upon the value of the assets that must be transferred through the probate process. Since assets placed into a living trust during the lifetime of the settlor are not transferred through probate, a living trust can reduce the filing fees.

***Who are the trustees?***

 Initially, a living trust can be created to benefit the settlor who is also the beneficiary. The initial trustee can also be the settlor. Thus, during the lifetime of the settlor, the trust property remains under the control of the settlor, as trustee. If a settlor dies or becomes unable to manage the trust, the settlor can name one or more alternate or successor trustees. Trustees have a fiduciary duty to manage the trust estate in the best interests of the beneficiaries.

***Who are the beneficiaries?***

 Initially, the settlor can be a beneficiary, and upon the death of the settlor, the settlor can state who will receive the trust property. The trust agreement can contain terms relating to how the property is to be used and when it can be distributed to the beneficiaries. For example, a trust can be established for the benefit of a couple and upon the death of both of them, the successor beneficiaries can be their children. The trust agreement can specify that the trustee can then use the trust property for such things as education, health care and on-going support and maintenance of the children. The trust agreement can also include lump-sum distributions at different ages and a final distribution to the children.

***If I have a trust should I also have a will?***

 If a person dies without a will, the state will, in essence, write a will for you. Any property not transferred into the living trust during the settlor’s lifetime will necessarily transfer through the probate process to that person’s heirs at law. A living trust will never be an heir at law. Consequently, the only way for property to be transferred into a living trust after one has passed away is through a will. In addition, a will can authorize certain things that benefit an executor.

***Can the terms of a living trust be changed?***

 A typical living trust is revocable and can be amended or updated at any time during the lifetime of the settlor. In Georgia, a person can give an agent under a power of attorney the authority to amend a living trust.

***What are some of the benefits of a living trust?***

 There are several benefits to using a living trust. For example, assets placed into a living trust avoid the probate process. If there is a dispute among heirs or if there is a will contest, distribution of assets can be delayed. Since trust assets are not part of the probate process, a successor trustee has immediate control over the trust assets and can distribute them or use them for the benefit of the beneficiaries. Trust assets are also not part of the year’s support provisions under Georgia law. When a will is filed with the probate court to intiate a probate case, the will becomes public record and is available for anyone to read and copy. If one desires to keep gifting private, a will can name the living trust or the trustee as the beneficiary of the probate estate, with all gifting provisions remaining private.