

FRIEDMAN & FEIGER

ATTORNEYS AT LAW

Powers of Attorney



There are generally two types of Power of Attorney (“POA”) in Texas: those used for legal, business, and financial matters and those used for health care purposes – medical, mental, or physical incapacities.

General Power of Attorney

A General POA is designed to designate one person, an agent or an attorney-in-fact, to act on your behalf to deal with your financial affairs. At the other end of the spectrum is a Limited POA appointing an agent to take care of a single financial matter or transaction. The scope of the POA is defined in the instrument itself.

A General POA is either durable or non-durable. A Durable POA is called “durable” because it does not terminate if the principal becomes disabled or incapacitated.

To be effective, a Durable POA must be in writing, signed by an adult principal, name the agent or attorney-in-fact, expressly provide that the agent’s authority either continues after the principal becomes disabled, or begins when the principal becomes disabled or incapacitated and must be notarized. The Durable POA does not need to be signed by any witnesses. A Durable POA can take effect at the time it is executed, or can “spring” into effect when the principal becomes disabled or incapacitated, or when another specified event occurs.

The Durable POA does not lapse because of the passage of time unless the document creating the POA specifically states a time limit. Because your agent will have broad authority, it is important that you select someone you trust implicitly to act in your best interest.

You can terminate a General POA by including a termination date in the POA, by destroying the original POA, or sending a written revocation of the POA to the agent advising him of the termination.

Medical Power of Attorney

A Medical POA is one type of advance directive for medical treatment. It is a document, signed by a competent adult, i.e., “principal,” designating a person that the principal trusts to make health care decisions on the principal’s behalf should the principal be unable to make such decisions. The individual chosen to act on the principal’s behalf is referred to as an “agent.” It is effective immediately after it is executed and delivered to the agent. It is effective indefinitely unless it contains a specific termination date, it is revoked, or the principal becomes competent.

An agent may make health care decisions on the principal’s behalf only if the principal’s attending physician certifies in writing that the principal is incompetent. The physician must file the certification in the principal’s medical records. However, the agent cannot make a health care decision if the principal objects. Treatment may not be given to or withheld from the principal if the principal objects. This is true whether or not the principal is incompetent.

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In The Spotlight: **James Bell and Jason Friedman**



The Right Lawyers Can Get Your Day in Court Without A Trial

In Texas, the procedure known as “summary judgment” allows for the early determination of some or all of the claims and defenses in a case, without a full-scale trial. It provides a speedy means for the disposition of controversies that do not present fact issues and the efficient elimination of patently unmeritorious claims and untenable defenses. To accomplish these purposes, there must be no genuine issues of material fact. The resulting judgment may be rendered on the whole case for all the relief requested or it may resolve some issues, claims, or defenses and leave the disputed facts for determination by trial. Applied properly, the summary judgment rule does not violate a litigant’s constitutional rights to an open court, a trial by jury, or due process under *Tex. Const. Art. 1, §§ 13, 15, and 19*. In modern practice, the goal is to dispose of contentions that present no real fact questions. The use of summary judgment has many benefits: 1) it provides the litigant with an opportunity to present your case to the Court; 2) simplifies the issues by throwing out unmeritorious claims or defenses; and, 3) it puts pressure on the opposing parties to produce enough evidence to defeat the motion for summary judgment. This article will hopefully provide you with a better understanding of summary judgment procedure and why we use it.

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Don’t Leave Your Entities Behind! **By Richard Bobowski**

Moving offices is often a huge undertaking for businesses – from moving the desks and chairs, re-installing complicated computer systems, and updating business cards. Surprisingly, however, while many businesses manage to move all of their furniture, phones and people, they inadvertently leave their business entities behind at their old address. Consequently, when the principal place of business is also the registered office for the corporation, LLC or other operating entity, then important notices regarding the entities, including notices to make periodic filings, are often never received. This oversight can result in the unintended forfeiture of an entity’s existence. If the forfeiture goes unremedied for too long, there is also the risk that the entity loses its right to its legal name, copyright or trademark.

The short answer to the question on how this situation is avoided is to make sure that a Statement of Change of Registered Office is filed with the Secretary of State at the same time that the boxes and furniture are delivered to the new address and announcements are mailed. This saves the time and expense of having to prepare reinstatement filings later on for failing to file franchise tax returns or periodic reports. Unfortunately, owners

only learn that their entity’s existence has been forfeited afterwards and require reinstatement at a critical time when their entity is about to close on a loan or on the eve of some other significant transaction.

A proactive way of keeping an entity’s records up to date, avoiding missed filings and maintaining the existence and good standing of the entity is to establish a regular annual review of the entity’s minute book or similar records. We encourage our clients to allow us to calendar a regular review of their entity’s activities during the previous period, in case there are any significant transactions that warrant written evidence of their authorization, approval or ratification in their entity’s records. This is often done in connection with the annual meetings of the owners (*e.g.*, shareholders or members) and the governing authority (*e.g.*, board of directors or managers). This routine also includes verifying that everything is current with the Texas Comptroller and the Texas Secretary of State. Making this small investment can prevent a big headache from unexpectedly arising at the worst time.

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The Beginnings of a Successful Partnership **By Carter Boisvert**

Some very successful businesses began as partnerships – and all business partnerships begin with good intentions. However, it’s important to consider a number of things in the event a conflict does arise with a new partner. A good partner must have something to contribute to the business – money, skills, expertise, knowledge, or something else that will add to the business’ success.

Avoid going into a 50/50 partnership if you can. One partner has to have 51% managerial authority and have the ability to make the final decisions for the partnership. Otherwise, the partnership may find itself in a deadlock. A “buy-sell” agreement is a mandatory provision in any well-drafted partnership agreement. This clause describes how one partner may buy the other out in case one wants to leave for

any reason. Any partnership can develop into a successful business. A successful partnership begins with carefully chosen partners and a well-drafted partnership agreement.



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(Continued from page 1) Powers of Attorney, by Larry Friedman

Under a Medical POA, an agent is given wide latitude when consenting to treatment on the principal's behalf. However, an agent cannot consent to: commitment to a mental institution; convulsive treatment; psychosurgery; abortion; and neglect of comfort care. And, in the Medical POA document itself, the principal may limit the agent's decision-making authority.

A Medical POA may be revoked by notifying either the agent or the principal's health care provider orally or in writing, of the principal's intent to revoke. This revocation will occur regardless of the principal's capacity to make health care decisions. Further, if the principal executes a later Medical POA, then all prior ones are revoked. If the principal designates his/her spouse to be the agent, then a later divorce revokes the Medical POA.



Everyone should have a Medical POA. There is a chance in your lifetime that you may be seriously injured, ill, or otherwise unable to make decisions regarding health care. If this should happen, it would be helpful to have someone who knows you and your values and in whom you have trust to make such decisions for you.

You should take great care in selecting an agent who is knowledgeable about your wishes, values, and religious beliefs, and in whom you have trust and confidence. In the event your agent does not know of your wishes, that agent would nevertheless be able to make decisions affecting your health care.

Anyone may act as an agent other than the following: the principal's health care provider; an employee of the health care provider unless the person is a relative of the principal; the principal's residential care provider; or, an employee of the principal's residential care provider unless the person is the principal's relative.

You must have two witnesses sign the Medical POA. At least one of the witnesses must not be: designated by the principal to make a health care decision on the principal's behalf; related to the principal by blood or marriage; the principal's attending physician or an employee of the attending physician; entitled to a part of the principal's estate; a person having a claim against the principal's estate; an employee of a health care facility in which the principal is a patient if the employee is providing direct care to the principal; or, an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

The difference between a Medical POA and a Directive to Physicians is that a Directive to Physicians is a document that is limited in scope, addressing only the withholding or withdrawing of medical treatment for those persons having a terminal or irreversible condition. The Medical POA is broader in scope and includes all health care decisions with only a few exceptions. The Medical POA does not require that the principal be in a terminal or irreversible condition before the principal's agent can make health care decisions on the principal's behalf.

I highly recommend that you consult one of our attorneys about executing a POA and/or Medical POA in order to be sure that they are properly drafted to meet your needs.

Sincerely,

A handwritten signature in black ink that reads "Larry Friedman". The signature is written in a cursive, flowing style.

Lawrence J. Friedman



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PLEASE VOTE FOR JASON! **ONE MAN DALLAS**

Our very own *Jason Friedman* is a finalist for One Man Dallas!



One Man Dallas is a fun, social and professional event that identifies the one man in the Dallas/Fort Worth area who represents the best of Dallas in community involvement, personality, intelligence, and fitness.

VOTE

Everyday until May 19th at
www.onemandallas.com

Want to attend the big event?
Email Jason to purchase
tickets:
jfriedman@fflawoffice.com

30% of proceeds will go to the
Alzheimer's Association
through BvB Dallas



<http://bvbdallas.org/>



www.onemandallas.com

Upcoming Events

Friedman & Feiger Calendar

- May 19, 2011** One Man Dallas; Come show support for Jason Friedman at The Dallas Contemporary
- August 3, 2011** Dallas Uncorked Dinner, benefiting The June Jones Foundation; www.dallasuncorked.org
- August 6, 2011** Friedman & Feiger supports Blondes v. Brunettes at Ford Stadium; www.bvbdallas.org
- September 15, 2011** Founder Janelle Friedman presents the Fall 'Essential Energy' reception; www.essentialenergy.org
- December 7, 2011** Friedman & Feiger Holiday Charity Event; mark your calendars now! More information to follow

