

WYOMING GUARDIANSHIP CORPORATION POWER OF ATTORNEY EVALUATION FORM

Proposed Client's Name: _____ Date of Review: _____

SUBMISSION:

1. Was the POA prepared and submitted by an attorney licensed in Wyoming? Yes No If "No" reject¹
2. Is a certification by the attorney that the client had the requisite legal capacity to execute a POA attached to the Application or contained in the POA? Yes No If "No" reject²

3. Is the required fee inclosed with the Application? Yes No If "No" reject³

WHEN EFFECTIVE:

4. Is the POA "durable?" Yes No If "No" reject⁴

5. Is the POA effective immediately or is it "springing?" Immediate Springing

- A. If "springing," does the POA clearly define event triggering its operation, e.g., written certification by physician(s) that client can not act due to lack of capacity rather than undeterminable condition that client is "incapacitated?" Yes No If "No" reject⁵

- B. If "springing," has client provided a separate HIPAA release so WGC can communicate with physicians and mental health providers to help determine if POA has been triggered? Yes No If "No" reject⁶

- C. If "springing," does the POA clearly define event that terminates attorney-in-fact's authority? Yes No If "No" reject⁷

6. Is WGC appointed as the Initial or Successor AIF? Initial Successor⁸

- A. If WGC is named as Successor AIF, to facilitate contact does the POA clearly identify Initial AIF by name, address and telephone number? Yes No If "No" reject⁹

- B. If WGC is named as Successor AIF, does the POA clearly describe under what conditions

WGC's authority is to commence? Yes No If "No" reject¹⁰

- C. If WGC is named as Successor AIF, does the POA contain language holding WGC harmless or otherwise releasing WGC from liability for any act or mistake by a prior AIF? Yes No If "No" reject¹¹

POWERS:

7. Does the POA grant general or only limited powers? General Limited
- A. If general, does POA document specifically identify, list, delineate, or describe powers being granted as opposed to indefinite authorization such as "anything I can do?" Yes No If "No" reject¹²
- B. If general, does POA document identify or describe only those specific powers being granted as opposed showing which powers are selected from among a wider range of possibilities by checking or initialing only those which are selected? Yes No If "No" reject¹³
8. Does the POA document authorize WGC to engage in "self-dealing" if it is fair to the client? Yes No If "No" reject¹⁴
9. Does the POA document authorize WGC to be compensated/reimbursed for services/expenses? Yes No If "No" reject¹⁵
10. Does the POA document authorize WGC to hire agents, attorneys, health care providers, etc.? Yes No If "No" reject¹⁶
11. Does the POA document authorize WGC to waive attorney/client or physician/patient privileges? Yes No If "No" reject¹⁷
12. If the POA document contains a provision nominating a guardian, is WGC the sole entity/person nominated? Yes No If "No" reject¹⁸
13. To comply with legal doctrine of "equal dignity" was the POA executed before a notary public? Yes No If "No" reject¹⁹

ADVANCE DIRECTIVE/HEALTH CARE POA:

14. Does the name of the client appear prominently on the first page? Yes No If "No" reject²⁰

15. Does HCPOA document clearly identify or describe the client's wishes and instructions regarding life sustaining and end-of-life care? Yes No If "No" reject²¹
16. Do only the client's specific health care wishes and instructions appear in the HCPOA document as opposed to being selected from a list of wider possibilities by checking or initialing choices? Yes No If "No" reject²²

SUPPORTING INFORMATION:

17. For a DGPOA has the client provided or agreed to provide WGC with an inventory of property, assets, accounts, investments, etc., over which the client wishes WGC to exercise authority? Yes No If "No" reject²³
18. For a HCPOA has the client provided WGC with the name and address of the client's healthcare providers as well as disclosed the diagnosis of any known physical or mental health conditions that may become an issue and a list of the client's medications? Yes No If "No" reject²⁴
19. Has client provided WGC with a copy of the client's Will (if any) to allow WGC to identify heirs/remainder beneficiaries, or in the alternative, certified that no valid Will has been executed? Yes No If "No" reject²⁵
20. Has the client identified next of kin or other interested persons who may have a claim against the estate? Yes No If "No" reject²⁶
21. Has the client signed an agreement to promptly update WGC anytime there has been a significant or substantial change in information regarding their finances, property or health which is relevant to the power of attorney? Yes No If "No" reject²⁷

GLOSSARY

- AIF - Attorney-in-Fact.
 DGPOA - A durable general power of attorney.
 Durable - A power of attorney that does not terminate or that is effective upon the principal becoming incapacitated. Under Wyoming law specific language is required for a power of attorney to be "durable".
 HCPOA - A healthcare power of attorney.
 HIPAA - The federal Health Insurance Portability and Accountability Act.
 POA - Power of attorney.
 Springing- A power of attorney that becomes effective upon the occurrence of an event.
 WGC - Wyoming Guardianship Corporation.

1. Recent studies have shown that in a significant number of cases involving elder abuse, the perpetrator makes use of a POA. With the growing availability of generic POA forms on line, the incidence of abuse has increased. Often the document form is inappropriate for the individual. The individual may not understand the nature of the document and may even lack capacity. Requiring that an attorney draft and submit the POA brings a professional into the transaction and increases the likelihood that the document was appropriately prepared for the individual.
2. In order to execute a POA an individual must have the requisite mental capacity. Failing that, the POA is invalid and can become the subject of an expensive court challenge. Since WGC does not participate in the execution of the POA, it has no way of determining the individual's capacity at the time. The best person to do this is the attorney who prepared the document and had oversight to its execution.
3. WGC will not begin evaluating any POA unless the required fee is paid.
4. A durable POA continues to be effective even in the event the individual becomes incompetent and therefore durable is the only form of POA which can be used to avoid the necessity for a guardianship.
5. In order to easily determine when a springing POA is in effect, and not place the burden on WGC, it is imperative that the document contain a clear description of what constitutes the triggering event. For example, the POA might require the written certification of incapacity or incompetency by the individual's treating physician(s). Since WGC may have had only limited contact with the client, a mere statement that the POA is effective when the individual is "incapacitated" does not provide sufficient guidance or notice.
6. To facilitate WGC's communications with the individual's physicians or mental health providers in determining whether a springing POA is triggered, WGC requires an attached HIPAA compliant medical release.
7. Just as a springing POA can be triggered by an incapacitating event, so it can go dormant or into remission if the individual regains capacity. WGC needs to know when to consider the individual's capacity restored.
8. An individual may have only one person available to serve as their attorney-in-fact but still need a "backup" in case that chosen person is unable or unwilling to serve when the time comes. In such situations WGC can serve as the successor.
9. In some powers of attorney the initial and successor attorneys-in-fact are identified only by not with no further contact information. Unless the POA clearly identifies the attorneys-in-fact by name, address, and telephone number, WGC may unnecessarily need to conduct an extensive search to locate and communicate with those persons serving as its predecessor.
10. To avoid or reduce gaps in the continuum of having someone serve as attorney-in-fact, does the POA document clearly describe under what conditions the successor attorney-in-fact's authority is to commence.
11. To reduce or eliminate WGC's liability if it is named as successor attorney-in-fact, the POA document should contain language holding WGC harmless or otherwise releasing WGC from liability for any prior act or mistake by a preceding attorney-in-fact.
12. Occasionally a POA will purport to grant the attorney-in-fact to authority to "do anything the principal can do" with no other description of the specific powers being granted. While the intent may have been to make a broad grant of power, such language does not accomplish that goal. It does not grant any authority. It only describes the scope of the power being granted. To grant authority a POA must specify what power is being given to the attorney-in-fact. The proper way of granting a power is to state that the attorney-in-fact is granted authority to sell the principal's house and anything in regards thereto that the principal could do. Therefore, the powers being granted must be specifically identified, listed, delineated, or described.
13. POA forms are available that list possible powers from which the principal is supposed select by initialing. Since lines can be left blank and filled in later, this type of document can be subject to abuse and should be avoided. Even if no abuse is involved WGC could still become involved in defending allegations of abuse. Therefore, while lists of intended powers are fine, WGC will not accept any fill-in-the-blank, check-the-box forms.

14. Attorneys-in-fact are generally prohibited from engaging in “self-dealing” or hiring themselves to perform services for the principal or otherwise have any financial gain unless specifically authorized under the POA document. Without such authorization, WGC would be limited in the services it could provide a client. Therefore, WGC requires language authorizing self-dealing so long as it is fair to the client.

15. It must be clear to the person granting the POA that WGC will charge a fee for services and will be reimbursed for expenses incurred on the principal’s behalf. To insure that this is the case, WGC requires language authorizing compensation and reimbursement.

16. To clearly define its authority WGC requires that the person granting the POA authorize WGC to hire agents, attorneys, health care providers, and others to provide services on behalf of the principal.

17. In order to effectively work with legal and medical professionals, it is necessary that the POA document authorize WGC to waive any attorney/client or physician/patient privileges that the principal may have.

18. Since the purpose of WGC is to serve as guardian of last resort, if the POA document nominates anyone to serve as guardian or conservator then WGC requires that it be the only one nominated as guardian or conservator.

19. Since some documents WGC may be expected to execute as attorney-in-fact are required to be notarized, under the doctrine of “equal dignity” the POA authorizing WGC to sign must also be notarized.

20. Recently a fill-in-the-blank, check-the-box HCPOA form has been circulated which does not identify the individual making the POA by name anywhere in the document except the signature line and notary statement. During an emergency situation in which one can expect to rely upon a HCPOA this increases the risk of confusion, error, and liability. WGC declines to serve under such documents.

21. Since WGC is not a member of the client’s family and therefore may not know anything of the client’s values or wishes concerning end-of-life care, to avoid possible liability WGC requires that the client’s wishes and instructions regarding such matter be clearly described in the HCPOA.

22. HCPOA forms are available that list possible health care and end-of-life choices from which the individual is supposed select by initialing. Since lines can be left blank and filled in later, this type of document can be subject to abuse and should be avoided. Even if no abuse is involved WGC could still become involved in defending against allegations of abuse. Therefore, while lists of health care instructions are fine, WGC will not accept any fill-in-the-blank, check-the-box forms.

23. Since WGC is not in a position to intuitively know what property, assets, accounts, investments, etc., the client wishes WGC to control, WGC requires a reasonable inventory to accompany the application.

24. To facilitate WGC’s ability to serve the needs of the client, WGC requires the client to provide the name and address of the client’s healthcare providers as well the disclosure of any known physical or mental health conditions that may become an issue.

25. Because WGC may owe a duty to the client’s heirs, remainder beneficiaries, or personal representative, the client is required to provide a copy of their Will or in the alternative, certify that no valid Will has been executed.

26. To help protect the client’s estate, WGC requires the client to identify any next of kin or other interested persons who may have a claim against the estate.

27. To facilitate WGC’s ability to serve the needs of the client, WGC requires the client to agree to promptly update WGC anytime there has been a significant or substantial change in information regarding their finances, property or health which is relevant to the power of attorney.