



KLF Legal Briefs

SPECIAL POINTS OF INTEREST:

- Carefully choose your Health Care Agent.
- Consider a combined Health Care Power of Attorney/Living Will.
- Waivers/Release of Liability forms have been upheld in many courts.
- Inexperienced HOA board members should consider joining the Community Association Institute.

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Health Care Power of Attorney and Living Will

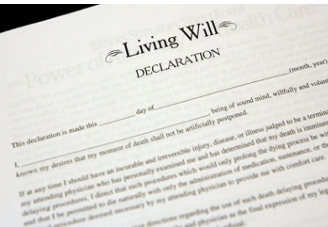
Many people are familiar with a Durable Financial Power of Attorney whereby a designated Attorney-In-Fact/Agent is empowered to make financial decisions on behalf of another. But did you know that you can also designate a "Health Care Agent" to make health care decisions on your behalf?

An Advance Health Care Directive that includes a Health Care Power of Attorney and a "Living Will" allows you to express your health care decisions in advance by (1) naming a health care agent to make health care decisions on your behalf; and (2) giving health care treatment instructions and guidance to your health care agent and physicians.

Under a Health Care Power of Attorney, you appoint a health care agent and one or two alter-

nates. Your health care agent is given certain powers whenever you can't speak for yourself, such as the power to authorize, withhold or withdraw medical care and surgical procedures; the power to authorize, withhold or withdraw food or water by tube feeding; and the power to authorize admissions to or dis-

charge from medical, nursing, residential or similar facilities.



charges from medical, nursing, residential or similar facilities.

The Health Care Power of Attorney can also provide guidance for the health care agent regarding your goals in making medical

decisions if you have an end-stage medical condition or other extreme irreversible medical condition.

A Living Will allows you to decide in advance what type of medical care, if any, you want in the event you have an end-stage medical condition or are permanently unconscious such as in an irreversible coma or an irreversible vegetative state. You can choose whether or not you want aggressive medical care such as CPR, mechanical ventilation, dialysis, surgery, chemotherapy, radiation, drugs to relieve pain, or antibiotics. You can also choose whether or not you want any type of tube feedings.

In my practice, I have been using a combined document that contains both a Health Care Power of Attorney and a Living Will.

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Using Waivers and Release of Liability Forms

Many sports events and fitness facilities routinely use Waivers and Release of Liability Forms in the normal course of their business. But do these forms really protect the promoter of a sports event or operator of a fitness facility?

Years ago courts frowned on the use of such forms, deeming them against public policy. Today, the

forms are widely accepted in most jurisdictions as valid, so long as they are drafted narrowly and don't purport to absolve the promoter or facility from all liability. Waivers and Release of Liability forms may very well protect against "ordinary negligence", but not be extended to protect against reckless, willful or wanton conduct. And it is equally important to have a

document drafted and customized to your particular circumstances and sports business. What's appropriate for a triathlon or major sporting event may not be for a fitness club.

Consult with an attorney that specializes in sports law to have the most appropriate Waiver and Release of Liability form drafted for your sports event or facility.



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- This newsletter is only intended to provide general information and is not intended to provide specific legal advice.

Fiduciary Duty of Homeowners Association Board Members

Many homeowners today are living in either planned communities or condominiums governed by homeowners associations (“HOA”). And some of these homeowners end up serving on the board of the HOA without any understanding of their fiduciary duty to the other homeowners.

In short, a board member has a fiduciary duty of undivided loyalty to the association and its membership, and must avoid any conflict of interest or self-dealing. When acting as a fiduciary, a homeowner serves in a representative capacity, and must put the interest of the community first.

Board members must also use sound business judgment and handle certain association matters and information with confidentiality. This includes a duty to also manage the financial and

business affairs of the HOA with ordinary prudence.

Concerning conflicts of interest, board members need to avoid even the appearance of impropriety. If a matter comes up before the board in which either the director or a family member has an interest, that director should immediately recuse himself or herself.



Board members can breach their fiduciary duty by failing to perform

the regular tasks involved in governing the association, such as holding regular meetings, keeping adequate financial and business records, properly collecting assessments, maintaining common areas, and adhering to the association bylaws.

A breach of your fiduciary duty as a board member of the HOA can have legal consequences. Even if you unknowingly or unintentionally breach that duty, you may open yourself and the association up to a lawsuit by an aggrieved homeowner. A breach of fiduciary duty can also negate any protection the HOA’s Officers and Directors liability policy may afford.

Board members of an HOA would be wise to consider consulting with the Community Associations Institute (www.caionline.org) on this issue.