

# POWER OF ATTORNEY QUESTIONNAIRE

## I. REGARDING FINANCIAL MATTERS

### PERSON WHO WILL HANDLE YOUR FINANCIAL MATTERS (ASSETS AND LIABILITIES) SHOULD YOU BE UNABLE TO HANDLE THEM YOURSELF

1. Who do you want to handle your financial matters if you become unable to handle them yourself?
2. What characteristics does this person have, or what relationship does this person have with you that make them a good candidate to handle your financial matters if you become unable to handle them for yourself?
3. Who do you want to handle your financial matters if you become unable to handle them yourself and the first agent you designated is unable or unwilling to act as your agent (your successor agent)?
4. What characteristics does this person have, or what relationship does this person have with you that make them a good candidate to handle your financial matters if you become unable to handle them for yourself?
5. Do you want a second successor agent if the first successor agent you designated is unable or unwilling to act as your agent?
6. Do you want more than a second successor agent?
7. Do you want to have two people handle your financial matters together if you become unable to handle them for yourself (co-agents)?
8. Why do you want to have co-agents?
9. Who do you want as the second agent?
10. If one co-agent is unable or unwilling to act as co-agent, do you want the other co-agent to handle your financial matters alone, or do you

want to designate a successor co-agent to replace the co-agent who is unable or unwilling to act?

### SCOPE OF AUTHORITY OF YOUR AGENT REGARDING YOUR FINANCIAL MATTERS

11. Do you want to grant to your agent regarding your financial matters the authority to handle all or only some of your financial matters (understanding that if you do not grant your agent the authority to handle all of your financial affairs, and you become unable to handle them, a conservator proceeding regarding you will have to be commenced at the courthouse and a judge will appoint a conservator to handle those matters)?

Here are classifications of assets and obligations, which will be subject to a conservator proceeding if you do not grant the agent authority regarding them:

- Real Property (SDCL 59-12-26)
- Tangible Personal Property (SDCL 59-12-27)
- Stocks and Bonds (SDCL 59-12-28)
- Commodities and Options (SDCL 59-12-29)
- Banks and Other Financial Institutions (SDCL 59-12-30)
- Operation of Entity or Business (SDCL 59-12-31)
- Insurance and Annuities (SDCL 59-12-32)
- Estates, Trusts, and Other Beneficial Interests (SDCL 59-12-33)
- Claims and Litigation (SDCL 59-12-34)
- Personal and Family Maintenance (SDCL 59-12-35)
- Benefits from Governmental Programs or Civil or Military Service (SDCL 59-12-36)
- Retirement Plans (SDCL 59-12-37)
- Taxes (SDCL 59-12-38)

### GRANT OF SPECIFIC AUTHORITY NEEDED FOR SOME ACTS OF YOUR AGENT REGARDING YOUR FINANCIAL MATTERS

12. Do you want your agent regarding your financial matters to be able to do the following?

- Create, amend, revoke or terminate a revocable trust that owns property that belongs to you.
- Make a gift of your assets to someone or to an entity.
- Create or change rights of survivorship.
- Create or change beneficiary designation.
- Authorize another person to exercise the authority granted under the Power of Attorney.
- Waive your right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- Exercise fiduciary powers that you have authority to delegate.
- Access the content of your electronic communications.
- Disclaim or refuse any interest you may have in property.

Authorizing any of these acts will give your agent regarding your financial matters the authority to take actions that could significantly reduce your property during your life or change how your property is distributed upon your death.

## II. REGARDING HEALTH CARE AND PERSONAL MATTERS

### PERSON WHO WILL HANDLE YOUR HEALTH CARE AND PERSONAL MATTERS SHOULD YOU BE UNABLE TO HANDLE THEM YOURSELF

13. Who do you want to handle your health care and personal matters (housing, food, clothing, socialization and transportation) if you become unable to handle them yourself?

14. What characteristics does this person have or what relationship does this person have with you that make them a good candidate to handle your health care and personal matters if you become unable to handle them for yourself?

15. Who do you want to handle your health care and personal matters if you become unable to handle them yourself and the first agent you designated is unable or unwilling to act as your agent (your successor agent)?

16. What characteristics does this person have or what relationship does this person have with you that make them a good candidate to handle your health care and personal matters if you become unable to handle them for yourself?

17. Do you want a second successor agent if the first successor agent you designated is unable or unwilling to act as your agent?

18. Do you want more than a second successor agent?

19. Do you want to have two people handle your health care and personal matters together if you become unable to handle them for yourself (co-agents)?

20. Why do you want to have co-agents?

21. Who do you want as the second agent?

22. If one co-agent is unable or unwilling to act as co-agent, do you want the other co-agent to handle your health care and personal matters alone, or do you want to designate a successor co-agent to replace the co-agent who is unable or unwilling to act?

### III. EFFECTIVE DATE

23. Should your Power of Attorney regarding your financial matters be effective as soon as you sign it, or should it only be effective when you become unable to handle your financial matters yourself?

24. Should your Power of Attorney regarding your health care and personal matters be effective as soon as you sign it, or should it only be effective when you become unable to handle your financial matters yourself.

#### IV. ALTERNATIVE DISPUTE RESOLUTION PROCESSES

Alternative dispute resolution processes (ADR) are private dispute resolution processes that avoid use of the court system to resolve disputes.

Mediation and arbitration are ADR processes.

In mediation a neutral person (the mediator) assists the parties in dispute to identify the issues in dispute and work toward a mutually agreeable resolution of the dispute. The parties remain in control of the dispute.

Arbitration is private judging. The parties present their evidence to the arbitrator who decides the dispute, as he or she deems appropriate.

Often the parties engage in mediation first and then only engage in arbitration if the mediation does not resolve the dispute.

If you do not specify in your Power of Attorney that you want to use ADR processes to resolve any disputes between you and your agent regarding whether you are unable to handle your own matters, such disputes will be resolved in the court system as part of a lawsuit.

25. Do you want your Power of Attorney to say that you want to use ADR processes to resolve any disputes between you and your agent regarding whether you are unable to handle your own matters?

26. Do you want to use (a) mediation first and arbitration only if the dispute is not settled in mediation (b) mediation only or (c) arbitration only?

## REPORTING

Unless you specify in your Power of Attorney that you want your agent to provide a report named to anyone other than you regarding how they are handling your financial or health and personal matters, such reporting will only occur upon a court order.

Such reporting may prevent lawsuits by family members by providing transparency to them as to how your affairs are being handled by your agent.

27. Do you want your agent regarding your financial matters to give anyone other than you a report regarding how the agent is handling your financial matters?

28. If so, (a) who do you want to get it (b) what do you want it to contain and (c) how often do you want it given?

29. Do you want your agent regarding your health and personal matters to give anyone other than you a report regarding how the agent is handling your health and personal matters?

30. If so, (a) who do you want to get it (b) what do you want it to contain and (c) how often do you want it given?

## COUNSULTATION

Unless you specify in your Power of Attorney that you want your agent to consult with any of your family members regarding how to handle your financial or health and personal matters, such consulting will only occur upon a court order.

Such consulting may prevent lawsuits by family members by providing transparency to them as to how your affairs are being handled by your agent.

31. Do you want your agent regarding your financial matters to consult with any of your family members regarding how to handle your financial matters?

32. If so, who do you want the agent to consult with?

33. Do you want your agent regarding your health and personal matters to consult with any of your family members regarding how to handle your health and personal matters?

34. If so, who do you want the agent to consult with?