DISABILITY RIGHTS
LOUISIANA
Protect. Advocate. Empower.

REPRESENTATION: Procuration and Mandate formally known as Power of Attorney

Disability Rights Louisiana (DRLA) is a statewide non-profit agency providing FREE legal services, advocacy, and other supports to children, adults, and seniors with disabilities.

A. WHAT IS REPRESENTATION?

Louisiana law allows you to give another person the legal authority to perform certain activities for you and/or make decisions for you as if you were acting for yourself. This is called "Representation," although legally it is known as a "mandate" or "procuration." When you give someone the authority to do things on your behalf, you are called the "principal," and the person you choose to help you is called your "representative." If the person you choose to be your representative agrees to accept this power, that person is called your "mandatory."

B. WHY IS THE TERM POWER OF ATTORNEY STILL USED?

The term "Power of Attorney," is still commonly used even though the wording in the law was changed : the person who receives your authority is not necessarily an attorney, and you cannot give a non-attorney legal authority to act as a lawyer.

C. WHAT IS THE DIFFERENCE BETWEEN A PROCURATION AND A MANDATE?

Often people use the term "procuration" and/or the term "mandate" in place of the term "power of attorney." Both terms mean the act of giving someone else authority to act for you. The difference is that a procuration is the "act," either orally or in writing, of you (the principal) giving someone else (the

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representative) the authority to act on your behalf. A mandate is your act of giving someone else your authority to act on your behalf, plus the 'act' of your representative accepting the authority you are giving him or her.

D. HOW CAN YOU MAKE SOMEONE YOUR REPRESENTATIVE?

In most cases, you may grant someone the authority to be your representative orally or in writing. So that there will be clear proof of the nature and extent of the authority you have given your representative, it is recommended that you sign a written "procuration" or "mandate" in front of a notary and two witnesses. You are encouraged to consult with a legal professional when doing so.

E. CAN YOU STILL ACT ON YOUR OWN BEHALF, EVEN IF YOU HAVE MADE SOMEONE YOUR REPRESENTATIVE?

Yes, you can still make your own decisions. Your right to make decisions may not be taken away with a procuration or mandate nor can it be used to force you to make decisions you do not wish to make. The power granted is to be used by your representative in the event that you become incapacitated or want your representative to make certain decisions or execute certain acts on your behalf.

F. CAN YOU MAKE SOMEONE YOUR REPRESENTATIVE IF YOU ARE MENTALLY INCAPACITATED?

No. You must have capacity. Under Louisiana law, you must be able to understand the effects of a procurement and mandate before you can make someone your representative.

G. WHO MAY BECOME YOUR REPRESENTATIVE?

A representative may be any competent adult capable of handling your affairs. It is very important that you choose someone who is responsible and trustworthy.

İH. CAN ANYONE BE FORCED TO BECOME YOUR REPRESENTATIVE?

No. The person you choose must agree to accept the authority you are granting.

I. WHAT ARE THE RESPONSIBILITIES OF SOMEONE WHO AGREES TO BE YOUR REPRESENTATIVE?

If a person agrees to be your representative, a legal relationship is formed between you the principal, and your representative, technically known as your mandatory. The mandatory is legally responsible to act with prudence and diligence and must inform you of the status of your affairs and how they are being handled. Your mandatory must not misuse your money or property, and he or she cannot act beyond the powers you have given him or her. Your mandatory must act in your best interest and respect your wishes.

J. IF YOU CHANGE YOUR MIND, CAN YOU TAKE BACK (REVOKE) YOUR REPRESENTATION?

Yes, you may revoke your representation in the same way that your representation was given (such as a written revocation of procuration, mandate, etc.). You should advise everyone who has relied on your original representation (such as a bank or health care provider) that it has been revoked. Keeping a list of every individual and institution given notice of your representation and those you believe may have been given notice, is a good idea and makes giving notice of your revocation easier. If a written procuration or mandate has been filed in a court, or office of conveyance or records of a parish, you should also file the revocation in the same manner.

K. ARE THERE DIFFERENT TYPES OF REPRESENTATIONS?

Yes. There are two basic kinds of representation. There is a general representation. This allows your representative to handle all of your business and personal affairs. There is also a limited/special representation. This gives your representative the authority to do only those things named in the representation. For example, you may sign a procuration giving your representative only the power to manage your business affairs, or to handle the sale of your property. NOTE: Certain powers such as the authority to handle decisions regarding your health care; successions; loans; settlements of lawsuits; and the buying, selling, giving away, leasing, or mortgaging of your property must be specifically stated in the representation instrument to be legal.

İL. CAN YOUR REPRESENTATIVE MAKE HEALTH CARE/MEDICAL DECISIONS FOR YOU?

Yes, but it must be specifically stated in your representation instrument. Your procuration or mandate must state that your representative has the authority to make decisions for you (such as surgery, medical treatment, nursing home residency, or medication). A health care mandate or procuration does allow your agent to decide whether to withhold or withdraw medical treatment if you are suffering from a terminal and irreversible condition, including a profound comatose state with no reasonable chance of recovery. Although your representative is supposed to make medical decisions based on your wishes and not in your best interest, a special kind of declaration under Louisiana's "Living Wills" laws makes your end of life wishes known to your representative and medical providers.

M. CAN YOUR REPRESENTATIVE BE GIVEN THE POWER, THROUGH A PROCURATION OR MANDATE, TO RECEIVE YOUR SOCIAL SECURITY AND/OR SUPPLEMENTAL SOCIAL SECURITY (SSI) CHECKS?

No. Your representative must be designated as your representative payee by the Social Security Administration (SSA). Contact the SSA for further information. Remember although generally accepted a procuration or mandate gives your representative the authority to act on your behalf, this authority is not absolute. There are entities that do not accept a procuration or mandate and require that their particular forms be used. Always make sure that you call to ensure that additional documents are not necessary. This is particularly true for banks and governmental agencies.

N. MAY YOUR REPRESENTATIVE CONTINUE TO ACT ON YOUR BEHALF IF YOU BECOME INCAPACITATED OR INCOMPETENT?

Yes. Your representative will continue to be able to act on your behalf. One of the best reasons to give someone the authority to represent you is that it allows you to plan ahead. You are choosing the individual you want to make decisions for your in the event that you are no longer able to make decisions for yourself.

O. CAN I CHOOSE SOMEONE TO ACT AS MY REPRESENTATIVE ONLY IF I BECOME INCAPACITED OR INCOMPETENT?

Yes. Under Louisiana law, it is called a conditional procuration. With a conditional procuration, a representative may make decisions for you when you can no longer make and/or communicate reasoned decisions for yourself due to disability or infirmity. State law must be followed in order for the procuration to become “conditional.”

P. HOW DO I MAKE A CONDITIONAL PROCUREMENT?

A conditional procurement is executed in the same manner as a standard procurement, as described above (signed in front of a notary and two witnesses). It allows a principal to nominate a “mandatory,” to make decisions regarding health care, managing property, etc. It is “conditional” in the sense that it does not become legally effective until the principal is declared unable, due to disability or infirmity, to make decisions regarding the care of his/her person or property. The incapacity must be confirmed in a notarized statement, signed by two physicians licensed to practice medicine by the Louisiana State Board of Medical Examiners.

Q. HOW DOES MY REPRESENTATION END?

Your representation may end in a number of ways. For example, the representation will end upon the death of you or your representative, when you revoke it (take it back), upon the resignation of your representative, or if a curator (guardian) assumes control of your affairs. A limited/special representation will end when the time period elapses, or a particular duty has been fulfilled.