

Handout: Making provisions for future contingencies

Springing power of attorney/custodianship directive including a brief differentiation to an advance health care directive

Powers of attorney and directives



Springing power of attorney

With a **springing power of attorney** (*Vorsorgevollmacht*) under German law one person, if incapacitated, can authorize another to act on his or her behalf generally or only for specific matters. With a springing power of attorney, the attorney-in-fact becomes the agent acting and making decisions on behalf of the incapacitated principal. Therefore, it is imperative that the principal without reservation unconditionally and personally trust the attorney-in-fact and that any decision to nominate a person as your attorney-in-fact not be taken lightly.



Custodianship directive

The **custodianship directive** (*Betreuungsverfügung*) allows you to nominate a person you trust if the appointment of a legal guardian should become necessary. A custodianship directive can be created if you do not wish to execute a springing power of attorney. Its advantage is that it only becomes effective when it is actually necessary. A judge will review whether legal custodianship is actually necessary. The legal custodian is supervised.



Advance health care directive

An **advance health care directive** (*Patientenverfügung*) is a person's **written advance directive** specifying what actions should be taken if he or she is unable to make decisions because of illness or incapacity. The directive is limited to medical treatment such as physician intervention (especially related to terminal, incurable or irreversible injury, disease or illness) and associated with refusing life prolonging treatment. Advance health care directive coverage is contingent upon the respective (national) law.



Banking power of attorney

A **banking power of attorney** ("power of attorney for a bank account" or *Kontovollmacht*) is a power of attorney granted to a third party by an account holder and tendered to the credit institution that maintains the account holder's bank account, whereupon the attorney-in-fact shall have fiduciary powers and authority over the particular bank account in the scope specified in the power of attorney. Attorneys-in-fact for a bank account may be the account holder's relatives, a third party, or an employee from the institution maintaining the account.