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Health Care Proxies and Powers of Attorney – Providing Your Voice When You Are Unable to Speak for Yourself

By Gina M. Barry, Esq.

If you were to become incapacitated and unable to make your medical and financial decisions, do you know who would speak for you? Ideally, you have executed formal legal documents, including a Durable Power of Attorney and a Health Care Proxy, in which you have named someone to make decisions on your behalf; however, many people are unaware of these very important documents. As such, they lose the opportunity to ensure that their voice will be heard should they become incapacitated.

A Durable Power of Attorney is a legal document in which you name someone to make decisions regarding your financial affairs in the event that you are unable to make them. Spouses, children, relatives and trusted friends are the most obvious choices, but care must be given to selecting the best person for the task, as this person will have complete financial control of your assets. Since the person selected in your Durable Power of Attorney will enjoy full access to your finances, there is potential for abuse. Thus, the individual selected must have a competent degree of financial savvy and must also have your best interests at heart. Another consideration to keep in mind is that as you age, those you name in your Durable Power of Attorney are also aging. As such, a succession of individuals should be

named within the legal document, thus ensuring that if the first person named becomes unable to serve, the successor can intervene without delay. When the proper person is chosen, your financial affairs can continue to be handled in the manner that you would have chosen if you were able to make the decisions yourself.

Similarly, a Health Care Proxy is a legal document in which you name someone to make decisions regarding your medical care in the event that you are unable to make them. As in the Durable Power of Attorney, it is best to name an alternate, who will serve in the event that the person initially named is unable to serve. More than one person can share the responsibility, but it is best that a single person has the authority to make decisions because a deadlock could result if two people are named with equal authority. The person named does not need to have a medical background, but they must be close enough to you to be familiar with your health care wishes, and they must be capable and willing to carry out these wishes, even if your wishes conflict with their personal feelings. Further, when selecting the best person for this appointment, it is important to consider their ability for rational thought in emotional times as the need for a named proxy to act

usually arises due to a traumatic experience or severe illness.

“Living will” language is normally included within the Health Care Proxy. Living will language addresses your end-of-life decisions and generally sets forth that you do not want extraordinary medical means used to keep you alive when there is no likelihood that you will recover. By including this language in the Health Care Proxy and naming someone you trust, if you do not want to be kept alive by life support systems, your wishes will be made known and be honored by the person you have named to make your health care decisions. Again, for this reason, it is especially important to choose someone who will be able to honor your decision.

Additionally, the Health Care Proxy may include a reaffirmation of organ donation wishes as well as instructions for final disposition, including burial or cremation. Normally, a Health Care Proxy is shared with many people, including the person you have named as your proxy, as well as with your physician and the local hospital. By placing your instructions in the Health Care Proxy, you again ensure that your wishes will be known and carried out.

If you become unable to make your own decisions and you have not signed a Durable Power of Attorney and Health Care Proxy, then there will be no one with the authority to make decisions for you. It would then be necessary to petition the Probate Court to have you declared legally incompetent and to have a Guardian appointed to make your decisions. If you have never set forth your wishes as to whom you would want to make decisions for you, the person seeking guardianship may be someone other

than the person you would have chosen. The guardianship process is public, lengthy and expensive, but it may be avoided by executing a Health Care Proxy and Durable Power of Attorney. If you do not have these documents in place, you will forfeit your ability to be heard should you become incapacitated.

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