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Keeping the Court Out of Your Personal Decisions

By Gina M. Barry, Esq.

Every year, numerous petitions are filed with the court seeking the appointment of a guardian to make decisions for a person who has lost their ability to make their own decisions whether due to physical or mental illness. This process is expensive, lengthy and public. Fortunately, you can almost always keep the court out of your personal decisions by executing two fairly simple documents – a Durable Power of Attorney and a Health Care Proxy.

A Durable Power of Attorney is a legal document in which you name someone to make your financial decisions if 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 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 should have some financial savvy and must have your best interests at heart.

Similarly, a Health Care Proxy is a legal document in which you name someone to make your medical decisions if you are unable to make them. The person you name does not need to have a medical background, but they must be close enough to you to be familiar with your health care

wishes. They also must be 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.

In both documents, it is important to name alternates. The alternate would step in to make decisions for you only in the event that the first person named is unable to serve. You can name as many alternates as you desire. Naming alternates ensures that you will always have a decision maker named by you as opposed to one appointed by the court.

Once signed, neither a Durable Power of Attorney nor a Health Care Proxy is written in stone. Either document can be changed at any time so long as you remain competent to sign the updated document. Further, should you choose to do so, you can revoke either of these documents rather easily.

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 immediately empowered 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. Keep the court out of your personal decisions by establishing your Durable Power of Attorney and Health Care Proxy today.

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