

Keeping the court out of your personal decisions

Gina M. Barry, Esq.



Each year, numerous petitions are filed with the court seeking the appointment of a guardian and/or conservator 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. The person named will have complete control of your assets and will be able to manage them as you would if you were able. Spouses, children, relatives and trusted friends are most often chosen for this role. Since the person named in your Durable Power of Attorney will enjoy full access to your finances, there is great potential for abuse. Thus, the individual selected should have some financial savvy, be completely trustworthy and 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. It is also important to consider their ability for rational thought during 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 usually sets forth that you do not want extraordinary medical procedures 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, 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. If circumstances change, your Durable Power of Attorney and Health Care Proxy can be updated so long as you remain competent to sign the updated document. Further, should you choose to do so, you can easily revoke either of these documents.

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 and/or conservator appointed to make your decisions. Again, this process is undesirable because it is expensive, lengthy and public. In addition, the court may appoint someone other than the person you would have chosen. Keep the court out of your personal decisions by establishing your Durable Power of

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Attorney and Health Care Proxy today.

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