Keeping The Court Out of Your Personal Decisions



Each year, numerous petitions are filed with the Probate 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 due to their physical or mental condition. This process is expensive, lengthy, and public. Fortunately, you can almost always keep the Probate Court out of your personal decisions by executing two fairly simple documents – a Durable Power of Attorney and a Health Care Proxy.

In a Durable Power of Attorney, 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 have 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.

In a Health Care Proxy, 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 during times of significant medical concerns.

“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. This language is normally included within a Health Care Proxy. By including this language 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 should be honored. Again, for this reason, it is especially important to choose someone who you are certain will be able to honor your decision.

If you are suffering from a terminal or chronic illness, or if you have reached an advanced age, instead of relying on Living Will language, you may wish to complete

a Medical Order for Life-Sustaining Treatment, commonly known as a "MOLST." A MOLST is a medical order form that would be completed with your physician. It sets forth instructions about your care and is based on your right to accept or refuse medical treatment, including treatments that might extend life. With a MOLST, there is no weighing of circumstances to determine the best course of action, but rather, you have already weighed the circumstances and determined the course of action you would want taken.

Additionally, a Health Care Proxy may include a reaffirmation of organ donation wishes, as well as instructions for final disposition, such as 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 if 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. 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 Attorney and Health Care Proxy today.

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