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New Guardianship Rules in Massachusetts

Making personal and financial decisions for incapacitated individuals has always been difficult. Now, in Massachusetts a new layer of complexity has been added. As of July 1, 2009, decision-making for incapacitated individuals must go through expanded court proceedings in order for a guardian, for personal decisions, or a conservator, for financial decisions, to be appointed. The purpose of the new rules is to safeguard the interests of incapacitated persons by hold the guardian or conservator to stricter standards.

Though laudable in intent, the collateral damage associated with the new rules is that guardianship and conservator proceedings are significantly more cumbersome and expensive. For many family members where one spouse is appointed guardian or conservator for the other or where a child is assisting a parent in the management of bank accounts and investments, these new requirements can feel like overkill.

WHAT SHOULD YOU DO?

If you anticipate or are concerned about the possibility of incapacity for yourself or a family member, you might want to consider creating a health care proxy for medical decision making and/or a durable power of attorney for financial decision making.

The medical health care proxy in Massachusetts is established by statute, and forms are customarily available in doctors' offices, hospitals and senior centers. They are free of charge and appoint an agent to act on your behalf should you be unable to communicate with your physician.

If you are considering a health care proxy, you may also want to consider a living will which is a document which describes your wishes in the event of a terminal illness, persistent vegetated state or the like. Be sure that all medical forms include authority for your agent to access medical records, otherwise, they will be unable to do so.

A financial durable power of attorney allows your agent to make financial decisions for you. This authority can be granted to take place immediately or it can take place upon your incapacity. In both situations, your agent is required to act in accordance with your wishes. Furthermore, you can revoke the document at any time.

It is, of course, always important to consider carefully the trustworthiness of the individual to whom you are giving medical or financial authority. However, if you have friends or family members in whom you repose complete trust and confidence, a health care proxy and a power of attorney have the potential for avoiding the costly, cumbersome and public proceedings now required for the appointment of a guardian or conservator.

Note: While the health care proxy is readily available as a standard form, the power of attorney should be carefully drafted by a knowledgeable attorney. Any power you want you agent to have must be specifically included, and a general durable power of attorney should consist of several specifically drafted pages which address your particular concerns.