

# Protecting Yourself: Planning for Incapacity:

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**It is critically important to take steps to ensure that if the time comes when you are not physically or mentally able to make your own decisions about your finances and health care, you have designated someone to speak for you.** By planning ahead, you will have the opportunity to control your own future, keep your personal affairs private, and save legal fees by avoiding court proceedings. Our office can help you create the documents that will protect you.

## **THE FOUR ESSENTIAL PLANNING DOCUMENTS NO ONE SHOULD BE WITHOUT**

- **Durable Power of Attorney**

A Durable Power of Attorney is a legal document in which you appoint another person (your “attorney in fact”) to act for you in financial matters when you are unable to act for yourself due to mental or physical incapacity. Your attorney-in-fact can manage your money and your real estate, pay your bills, hire and fire professionals for you, sue someone on your behalf, sign legal documents, apply for benefits for you, make gifts, and transfer your assets as part of a plan to become eligible for Medicaid benefits.

- **Health Care Proxy**

Similar to a Power of Attorney, a Health Care Proxy is a legal document in which you appoint another person (your “agent”) to make medical decisions for you in the event you are incapacitated (for example, unconscious or too ill to communicate). Your agent is required to consult with your doctor, and is entitled to access to your medical information necessary to make informed decisions, may seek a second opinion, may consent, refuse, or withdraw consent to treatment, can hire/fire providers, and can transfer you to another facility. Unlike a power of attorney, the Health Care Proxy does *not* take effect until your doctor determines that you are incapable of making or communicating health care decisions yourself. Before then, your agent may make no decisions on your behalf.

- **Living Will**

A Living Will is an expression to your health care agent and to your family and doctor of your “end-of-life” wishes. These may include directions to refuse or remove life support in the event you are in a coma, persistent vegetative state, or suffering from a terminal illness or injury which your doctors have determined will result in your death within a short period of time. On the other hand, your instructions may be to use all efforts to keep you alive, no matter the consequences. Although not legally binding in Massachusetts, it provides clear and convincing evidence of your wishes at a time you are unable to speak, and can help to relieve the heavy burden—and guilt -- making these choices can place on your family.

- **HIPAA Release**

By law, your Health Care Proxy will not come into effect until such time (if ever) that you are deemed to be incompetent and unable either to understand and/or communicate your own health care choices. But what if in the meantime you want someone to help you handle a health insurance claim, or speak to one of your doctors on your behalf? A HIPAA Release, which comes into effect as soon as you sign it, is designed to address this question of access.