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The Importance of Incapacity Planning in Massachusetts

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A Durable Power of Attorney (DPOA) and a Health Care Proxy are critical legal documents in Massachusetts that protect you and your family. Without them, a sudden medical emergency or period of incapacity can force your loved ones into a lengthy and expensive court process to gain the authority to make medical or financial decisions for you.

THE FINANCIAL SAFETY NET: DURABLE POWER OF ATTORNEY

If you are incapacitated, your bills do not stop arriving. Without a DPOA, your family may lack the legal authority to manage your bank accounts, pay your mortgage, file your taxes, or access government benefits.

The critical word here is “durable.” Under Massachusetts law, a standard Power of Attorney automatically terminates if you become incapacitated. A DPOA includes specific durability language—such as, “*This power of attorney shall not be affected by subsequent disability or incapacity of the principal*”—ensuring your designated agent can act on your behalf seamlessly.

THE MEDICAL ADVOCATE: HEALTH CARE PROXY

Imagine a sudden medical crisis in which you are unable to speak with doctors. Who has the legal right to decide your course of treatment or to manage your end-of-life care?

In Massachusetts, a Health Care Proxy authorizes your Agent to make all decisions regarding your physical and mental health care. Importantly, your Agent’s authority only takes effect *after* your attending physician determines that you lack the capacity to make your own decisions.

AVOIDING COSTLY COURT INTERVENTIONS

If you fail to execute these documents before an unexpected illness or accident occurs, your family has no automatic legal right to step in. They would have to petition a Massachusetts probate court to appoint a guardian (for medical decisions) and a conservator (for business, legal and financial matters).

Guardianship and conservatorship proceedings can be time consuming, expensive and emotionally draining for all involved.

KEY STEPS TO TAKE IN INCAPACITY PLANNING

1. **Choose your agents wisely:** Select someone who is reliable and understands your financial and personal values.
2. **Name successors:** Where possible, designate one or more backup Agents in your documents in case your first choice is unable or unwilling to serve.
3. **Language and Form matter:** Ensure your DPOA has the exact durability wording required under state law and have your Health Care Proxy signed by two adult witnesses who are not named as your Agent.
4. **Include HIPAA releases:** As a companion to your Health Care Proxy, be sure to have your HIPAA authorization on file so your medical team can freely share confidential medical information with your Agent.

Incapacity planning is not just for older adults. Medical emergencies can happen at any age. [Putting a durable power of attorney and a health care proxy in place](#) ensures your care and your finances remain in the hands of someone you trust.