

The Importance of Basic Estate Planning Documents

Everyone over the age of eighteen (18) should, at a minimum, have two basic estate planning documents: a Durable Power of Attorney for Health Care and a Durable Power of Attorney for Finances. While New Hampshire has default laws directing who will receive your property upon your death if you fail to direct otherwise, it does not have laws which automatically appoint someone to make medical or financial decisions for you if you become incapacitated.

- **What is a “durable” power of attorney document?**

A power of attorney (POA) document allows you – the “principal” – to name someone who can make decisions for you – your “agent” or “attorney-in-fact.” Making a POA “durable” means your agent has the authority to make decisions for you, i.e., act in your place, even if you later become incapacitated and are unable to communicate with your agent.

- **I have a close family -- do I really need these?**

If you are over 18, no one has the authority to make decisions for you without court approval – not even your spouse, parent or child! Durable power of attorney documents allow you to direct in advance who may make health care decisions for you, and who will have access to your financial information in order to pay your bills, if you are unable to do so yourself. Without these documents, your loved ones must go to probate court to obtain guardianship if you ever have a serious accident or illness and become temporarily or permanently incapacitated.

The law governing health care powers of attorney changed effective January 1, 2007 and now provides additional flexibility and clarity with respect to your agent’s authority. In addition to appointing an agent to make medical decisions, the Durable Power of Attorney for Health Care may outline your wishes with respect to end-of-life care, making these decisions easier on family members. For example, you can give direction in advance concerning your preferences with respect to giving or withholding pain medication and life sustaining treatments if you are near death or permanently unconscious. You also may specifically address personal issues of concern, such as whether you wish to be an organ donor, have your family present at end of life and/or wish to provide guidance with respect to having a religious leader present. Please remember, that as long as you have capacity, you make your own medical decisions. However, if you have signed a power of attorney, later lack capacity and voice an objection to your agent's decisions, your agent only can override your objections if you expressly grant that authority in the power of attorney for health care document.

In conclusion, powers of attorney documents grant respective agents the authority to make certain decisions and provide important and necessary guidance to the appointed agents by expressly articulating the principal's wishes. These two “advance directives” – Durable Power of Attorney for Health Care and Durable Power of Attorney for Finances – are therefore essential components of *any* estate plan. In addition, even after executing these documents, it is advisable to review them every five (5) years or so and to revise them to reflect any changes in your circumstances.

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At Butenhof & Bomster, PC, we focus our practice in the areas of elder law, estate planning, Medicaid planning, special needs trusts planning, guardianships, and probate and trust administration. Simply put, our philosophy is that each client's circumstances are unique and deserving of individualized attention and planning, regardless of whether such planning involves the creation of a complex trust structure or simply the execution of a health care power of attorney.