

Estate Planning Essentials:

Power of Attorney and Health Care Proxy



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Power of Attorney

Many of us take for granted our ability to talk and express ourselves. But what happens if a person suffers an injury or an illness like Alzheimer's, and they become unable to communicate informed decisions?

Durable Power of Attorney ("DPOA") covers your material possessions: your real estate, bank accounts and other assets.

The DPOA can be limited to a specific purpose, or it can be written with broad powers given to the person who acts as your Agent. The DPOA can authorize an Agent to:

- ▶ buy or sell property
- ▶ transfer assets
- ▶ conduct any other business which you authorize in the document.

This authorization is crucial when assets have to be transferred in time deadline situations such as real estate market changes and Medicaid benefits eligibility.

Under Massachusetts laws, the Power of Attorney is made durable by the language stating that "I intend that this power of attorney shall be a durable power of attorney. It shall not be affected by my subsequent disability or incapacity."

Remember: Power of Attorney expires upon death! Wills, Trusts, Beneficiary Designations and Joint Ownership arrangements are used to transfer property after death of the owner.

Your Agent is the substitute person who acts for you. The powers in the Power of Attorney document can have income tax and estate tax consequences for you and the person you name as your attorney-in-fact. Make sure your Agents get advance counseling and information, so they understand how to properly use your DPOA to manage your property in a way that will respect your wishes and protect your interests.

Connecticut Case Example: daughter of a nursing home resident was held responsible for nursing home bills that were incurred after money and property was transferred using a Power of Attorney.

New Hampshire Case Example: Las Vegas woman indicted on charges she misused her mother's power of attorney over a nine-month period. The woman had control of her mother's money, knew her mother needed nursing home care and allegedly diverted \$93,000. Case prosecuted by NH Attorney General's Medicaid Fraud Unit.

New York Case Example: Brother and sister end up in an expensive lawsuit over their mother's Power of Attorney. In [Anderson v. Anderson](#), Jessie Anderson was suffering from mild dementia. She executed a power of attorney naming her son as her agent, but she did not include any language specifically authorizing gifts.

She moved in and lived with her son, and eight months later moved to a nursing home. The son, using the power of attorney, transferred all of his Mother's real property, stocks and other assets to himself. Jessie died

a year later, leaving a will and all her assets equally to her son and daughter.

After being appointed executrix of the estate, the daughter filed suit to recover the gifted assets, claiming that the purpose of the gifts to her brother was solely to protect the assets from nursing home expenses. Now that the mother had died, the daughter wanted the assets reconveyed to Jessie's estate.

Evidence that Jessie trusted her son, wanted him to manage her money, and may even have been fearful of her daughter, was not enough to allow son to keep the gifts he made to himself.

The Courts decided that without a specific gift-giving provision written in the Power of Attorney, a gift to the agent "carries with it a presumption of impropriety and self-dealing."

Health Care Proxy

The person you designate as your "Agent" in your Health Care Proxy has authority for your health care and treatment at times when you cannot speak for yourself. Massachusetts law says that your Agent "shall have the authority to make any and all health care decisions on [your] behalf that [you] could make, [including decisions about life-sustaining treatment.](#)"

The law says that your Agent will make these decisions either:

- ▶ in accordance with the agent's assessment of your wishes, including your religious and moral beliefs, or
- ▶ if your wishes are unknown, in accordance with the agent's assessment of your best interests."



Terri Schiavo died on Thursday March 31, 2005 in a Florida nursing home. She was 41.

Ms. Schiavo's death came 13 days after removal of the feeding tube that she needed for nutrition and

hydration, by order of a Florida Probate Court.

In more than 30 rulings, Florida Probate Courts and federal courts backed her husband's claim that Terri said she never wanted to be kept alive by artificial means.

Ms. Schiavo's parents said she never expressed her views on that issue, and that she could have recovered brain function with therapy.

Both sides accused each other of being motivated by greed over a \$1 million medical malpractice award.



Pope John Paul II, who was 84 years old, died Saturday April 2, 2005 in his Vatican City apartment.

During the weeks before his death, Pope John Paul was hospitalized twice, and he relied on a feeding tube

for nutrition and hydration.

With his organs failing following a heart attack, the Pope decided not to go back to the hospital for more aggressive treatment on the Thursday before his death. The Pope was able to express his wishes to the people close to him. He decided to remain in the bedroom of the Vatican apartment that had been his home for 26 years.

The Pope's apartment was furnished with medical equipment, and staffed by a doctor, nurses, and Polish nuns who cared for him.



**Power of Attorney
and
Health Care Proxy
can prevent the need for
Probate Court Guardianship**

**For Information, Call
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