
Alternatives to Guardianships and Conservatorships

Dolores M. Coulter

8341 Office Park Dr. Ste C, Grand Blanc, MI 48439

Phone: (810) 603-0801, Fax: (810) 603-0804

Email: coulterdm@sbcglobal.net

Financial Power of Attorney

A financial power of attorney is a document in which one person (called the principal) gives another person (called the agent or attorney in fact) the authority to manage some or all of his/her financial affairs or property. A durable power of attorney continues in effect after the person becomes incompetent. The agent has a legal obligation to manage the money or property for the benefit of the principal and not for the agent's personal benefit. While a person is still competent he/she can revoke or change a financial power of attorney at any time. The agent's authority terminates on the death of the principal.

Medical Power of Attorney (Patient Advocate Designation)

This document enables a person to name an agent (called a patient advocate) to make health care decisions when the person is not competent to do so. The Patient Advocate designation becomes effective when an attending physician and one other physician or psychologist certify that the person is no longer able to participate in medical treatment decisions. The document also gives the patient advocate the authority to obtain health information about the person, to choose health care providers, and the authority to admit or discharge the person from a health care facility. The document can also give the patient advocate the authority to refuse or withdraw life sustaining treatment, to execute a Do-Not-Resuscitate (DNR) Order, to make organ donations after the person's death, to authorize mental health treatment, and can include guidelines for the patient advocate to follow in making treatment decisions.

Do Not Resuscitate Order

A Do Not Resuscitate Order is a document expressing a person's request that he/she not be resuscitated in the event of cardiac or respiratory arrest. A DNR order can be signed that is effective in settings outside a hospital. The DNR order must be signed by the individual (or the individual's Patient Advocate) and his/her treating physician. It allows a person who has a terminal condition and who wishes to spend his/her remaining days at home to avoid the situation where EMS is called when the person suffers cardiac or respiratory arrest, and EMS personnel, acting according to their protocols, proceed to make every effort to resuscitate the person.

Trust

A trust is a separate legal entity in which property is held and managed by a trustee(s) for the benefit of certain persons (beneficiaries) according to a trust agreement. The person who establishes the trust is called the grantor or settlor. The trust agreement contains details on how the money/property in the trust is to be managed and how distributions of money/property from the trust are to be made. A trust can be revocable or irrevocable. It can be used as a means to avoid probate, to provide for ongoing financial support for minors or persons with special needs, and to direct how the trust property is to be managed after the grantor is no longer able to do so or after the grantor dies. The trustees have a legal obligation to manage the trust according to the terms of the trust agreement and to make prudent investment decisions. A trust can involve complex legal, tax, and financial issues.

Joint Ownership

Two or more persons may own property together, as joint owners. If the property is owned as joint tenants with rights of survivorship, this means that when one joint owner dies his/her share passes automatically to the remaining joint owner(s). If the property is owned as tenants in common then upon the death of a tenant in common, his/her interest passes to his/her heirs. In many cases an elderly parent will add an adult child's name to his/her bank account as a joint owner when the parent's intent is simply

to provide for convenience in managing money and paying bills. Upon the death of the parent the balance in the bank account passes to the adult child, as the joint owner. This may not be the result that the parent intended. Adding someone's name to a bank account can also result in the misappropriation of funds by a dishonest joint owner. Adding another person as a joint owner of real estate results in the loss of sole control over the management or sale of the property. Any disposition of the real estate would require the consent of all the owners.

Representative Payee

A representative payee is a person appointed to receive and manage a person's Social Security or Veteran's Administration benefits. The Social Security Administration or the VA will appoint a representative payee if it determines that the person is not able to manage his/her own benefits. The representative payee does not have the authority to manage any other property or money belonging to the person.

Special Services for Older Persons

Some communities have free services available to assist older persons who need help managing their financial affairs. These services can include preparing tax returns, applying for public benefits, and filing/understanding health insurance claim forms. For help in locating these services in Genesee County, contact a local senior center or the Valley Area Agency on Aging, at 810-239-7671.

