

# ELDER LAW *Update*

NEWS AND IMPORTANT INFORMATION FOR SENIORS AND THEIR FAMILIES



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## FOUR POWERFUL REASONS TO HAVE A DURABLE POWER OF ATTORNEY

Incapacity is defined as the inability to make sound decisions regarding one's personal or financial affairs—for example, if one falls into a coma or suffers from Alzheimer's disease or other mentally debilitating illnesses. Many of those declared incapacitated are seniors. Failing to plan for the possibility of incapacity in advance can create major problems for seniors and their loved ones, particularly with regard to paying for medical care and managing assets. This is why we recommend that all of our clients have us design a customized durable power of attorney. Here are the top four reasons to have your own power of attorney.



### ***1. If you become incapacitated, you choose the person who makes financial and healthcare decisions on your behalf, not the court.***

Without a power of attorney, the court will appoint a guardian or conservator to manage your affairs in the event of incapacity. The person named by the court could very well be someone you

would never have wanted to make important decisions on your behalf. In addition, the guardianship or conservatorship process is expensive, and the court will monitor your status for the rest of your life.

With a power of attorney, you are able to name an "agent" to make decisions on your behalf. You can decide what types of decisions your agent can make, that is, you determine how much authority your agent will have over your affairs. You can also choose to name multiple agents. For instance, you can name one person to make financial decisions and another person to make decisions about your medical care.

### ***2. A power of attorney helps prevent questions and disputes about your wishes.***

You've no doubt heard about costly court battles over what a person "would have wanted" before he or she became incapacitated. With a properly designed power of attorney, together with other advance directives, you can help ensure that your wishes regarding healthcare and financial management will be carried out.

(cont.)

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## FOUR POWERFUL REASONS TO HAVE A DURABLE POWER OF ATTORNEY (CONT.)

### ***3. A power of attorney gives your agent the legal authority necessary to obtain services on your behalf.***

Your agent must frequently make arrangements for your medical care, pay bills, manage bank accounts and other assets, and more. Without a properly drafted power of attorney, many companies will not provide the information or services that your agent needs to carry out your wishes. In addition, a power of attorney gives your agent the authority to make planning decisions and transactions that can help make you eligible for public assistance programs.

### ***4. A power of attorney provides you and your family with greater peace of mind.***

With a power of attorney and other advance directives in place, you will enjoy the peace of mind that comes from knowing your wishes regarding your care and the management of your assets will be honored. In addition, your family will be spared the stress of making important decisions on your behalf without knowing what you would have wanted.

We welcome the opportunity to help you choose the ideal agent or agents and design a customized power of attorney to ensure your wishes are carried out.

## CAREGIVERS MUST ALSO REMEMBER TO TAKE CARE OF THEMSELVES



Many caregivers work so hard caring for the people around them that they forget to take care of themselves. The result can be what is often referred to as “caregiver burnout.” If you are serving as the caregiver in your family, you need to understand the difficulty of what you are undertaking and recognize the signs that you may be trying to do too much. A good way to begin is to ask yourself the following questions:

- Am I always exhausted, even after sleeping all night?
- Do I catch an inordinate number of colds or flu?
- Does it seem like my whole life revolves around caregiving but I don’t get any satisfaction from it?
- Have I lost the ability to simply relax?
- Am I increasingly impatient with and irritated by the person in my care?
- Am I feeling overwhelmed and helpless, sometimes even hopeless?

If your answer to several of these questions is yes, and the symptoms seem to have appeared after you began to assume the duties of caregiver, it is quite possible that you have reached burnout. So what can you do about it? Some basic steps include:

- Learning as much as you can about your family member’s illness and how to care for that illness. The more you know, the more effective you’ll be and the better you’ll feel about your efforts

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## CAREGIVERS MUST ALSO REMEMBER TO TAKE CARE OF THEMSELVES (CONT.)

- Recognize your limits, and take a more realistic approach to how much time and effort you can give. Then, be sure to express those limits to doctors and family members
- Learn to accept the way you feel. Anger, fear, resentment, guilt, helplessness, grief... all of these emotions and more are commonly felt by caregivers
- Talk to people about what you feel. Keeping your emotions bottled up doesn't do you or the person you are caring for any good. Confiding in trusted friends and family members can prove invaluable

This last step is extremely important. Remember—you are not alone. Support is available from people who understand what you are going through and can help you cope with the stress involved. You must do whatever it takes to avoid a sense of isolation. You'll find support groups within the community online, in the phone book, through your physician, and organizations associated with the health problem of the loved one under your care.

## HOW TO GET THE MOST OUT OF RETIREMENT— AND, YOUR RETIREMENT PLAN



While there may have been a time when people looked to their employers and Social Security to finance their retirement, those days are long gone. The reality today is that to enjoy a comfortable retirement, not to mention the ability to provide for your loved ones and ensure your legacy, you should have an adequately funded, well-designed retirement plan.

We can help you develop such a plan, by “stretching and protecting” your wealth. What do we mean by this? “Stretching” refers to maximizing income tax deferral and wealth accumulation while minimizing tax liability. “Protecting” involves minimizing the threats posed by creditors or predators.

As an experienced estate planning law firm, we can evaluate all options for minimizing tax liability and the erosion of savings that results from paying too much in taxes. We can also utilize a range of tools for reducing taxes in your golden years, including taxes on Social Security benefits, and may even be able to show you how to enjoy a tax-free retirement.

As is the case with estate planning in general, the earlier you begin to plan for retirement, the more options you will have. Call us today to learn more about creating an effective retirement plan.

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## A PERSONAL NOTE FROM ROBERT

Dear Clients and Friends,

Over the years I have watched family members and others become suddenly incapacitated due to an accident or illness. The families of those who had planned ahead and had a Durable Power of Attorney and a Health Care Proxy in place had an easier time handling financial issues and medical choice issues than those who had not planned ahead. If you do not already have these vital tools in your estate plan, I urge you to set deadlines for making a choice of the agents who you will designate to act on your behalf and for formalizing these advance directives. Otherwise, procrastination is likely to win.

The summer is the season that reminds many of us that it is time to take a break from our work and “re-charge our batteries.” I have often done this by going off to Acadia National Park or Cape Cod. If you are the caretaker for a loved one, you also need to find a way to take a break from those responsibilities.

Many assisted living facilities offer Respite Care which allows you to temporarily place a loved one in their care while you rest and restore your strength to continue as caretaker. Respite Care may help you to stay positive and cheerful in providing care to your family member during the weeks ahead.

As I write the New York State legislature has passed legislation making New York a participant in the Uniform Guardianship Act. We are waiting to see if the governor will sign the bill into law. The Uniform Guardianship Act provides rules that help determine which state has jurisdiction over an elderly person who has been moved between states. Sometimes the elderly are moved in order for a child to try gain control of their assets. The act will assist in fighting this type of elder abuse. We will keep you posted.

*Robert*

Robert Boydston