



North Shore Elder Law & Estate Planning Addresses Confusion Between Guardianship and Power of Attorney Documents

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North Shore Elder Law & Estate Planning reports an increasing pattern of Massachusetts families discovering too late that their power of attorney documents cannot help once a loved one has lost legal capacity, forcing them into court-supervised guardianship proceedings instead. The Melrose-based law firm notes that many families misunderstand the critical timing differences between guardianship vs power of attorney Massachusetts legal protections, often waiting until a health crisis occurs before seeking guidance.

The distinction between these two legal instruments centers on timing and capacity. A power of attorney is a legal document that allows one person to grant decision-making authority to another while they still possess the mental capacity to understand and sign the document. This preventive measure enables the designated agent to handle financial, medical, or personal matters on behalf of the principal. In contrast, guardianship becomes necessary only after an individual has already lost the capacity to make their own decisions and cannot execute legal documents.

Attorney Michael Stankavish of North Shore Elder Law & Estate Planning observes that families frequently approach the firm during medical emergencies, expecting to obtain power of attorney for an incapacitated parent or spouse. These situations often require pursuing guardianship through the probate court instead, a process that involves court hearings, legal fees, and ongoing supervision that could have been avoided with earlier planning.

"We regularly meet with families who believed they could simply obtain a power of attorney after their loved one suffered a stroke or received a dementia diagnosis," said Stankavish, Counsel at the firm. "Unfortunately, once someone lacks the legal capacity to understand what they are signing, the window for executing a power of attorney has closed, and guardianship becomes the only option for legal decision-making authority."

The guardianship process in Massachusetts requires filing a petition with the probate court, providing medical documentation of incapacity, and attending court hearings. The court appoints a guardian to make personal and medical decisions, and sometimes a conservator for financial matters. This court-supervised relationship continues indefinitely, requiring regular reporting and court oversight.

A power of attorney, by comparison, takes effect immediately upon signing or upon the occurrence of a specified event, such as incapacity, depending on how the document is structured. The person granting the power retains the ability to revoke or modify it as long as they maintain legal capacity. This flexibility and privacy make powers of attorney preferable for many families seeking to plan for potential incapacity.

The firm notes that Massachusetts residents often delay incapacity planning, viewing it as something needed only in advanced age or poor health. This misconception leaves many families unprepared when unexpected accidents or sudden medical conditions arise. The legal complexities surrounding capacity determination and the irreversible nature of lost capacity make advance planning particularly important.

Guardianship Attorney services become essential when families must navigate the probate court system to protect an incapacitated loved one. The process, while necessary in certain circumstances, requires significantly more time, expense, and court involvement than executing advance directives while capacity remains intact.

North Shore Elder Law & Estate Planning provides elder law and estate planning services throughout the North Shore region, including guidance on powers of attorney, guardianships, conservatorships, MassHealth planning, and probate matters. The firm assists families with both advance planning and crisis intervention when incapacity issues arise unexpectedly.

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North Shore Elder Law & Estate Planning

North Shore Elder Law & Estate Planning helps Massachusetts families with estate planning, elder law, MassHealth planning, probate, guardianships, and asset protection, offering clear guidance and personalized legal support.

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