

# ***GOLDEN BULLETS***

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## **THOUGHT YOU'D LIKE TO SEE THIS:**

You may be one of many worried about the financial issues of mental incompetence, obligations of caring for a disabled relative, or providing a residence and care for the physically incapacitated. If you are a principal income producer and you become incompetent or incapacitated for any reason, a drastic and involuntary financial adjustment in your family structure will occur. If long-term public or private institutionalization is required, your property may be depleted (or you may have to expend all or almost all of your own assets) before you will be eligible for governmental or public aid.

None of these are pleasant thoughts. But you must face these and other issues before it is too late and many important planning options are lost. To preserve and protect both your property and your dignity, you must act now! If you are interested in these problems and their solutions keep reading.

**THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE:** Prior to 1990, no statute existed in the state of Michigan concerning medical treatment decisions. If you were unconscious or incompetent or for any other reason were unable to make your own decisions regarding health care, a Living Will was often referred to for guidance (despite the fact that no statutory authority existed for it).. Generally speaking, a Living Will is a document that expresses the desire - that when death is imminent, loss of mental capacity is substantial, incurable, irreversible, inevitable, and with no hope of recovery - extraordinary, artificial, life-sustaining techniques should not be used to prolong life. In 1990, a statute was passed in Michigan that allows you (the "principal") to appoint or designate another individual (the "agent") to make care, custody and medical treatment decisions for you. Before your agent can act for you, a determination must be made by two medical doctors that you are unable to participate in medical treatment decisions. The statute also permits you to describe your wishes regarding medical treatment in a fashion similar to a Living Will. Hence, since 1990, Living Wills have generally not been done in Michigan.

**THE PATIENT ADVOCATE DESIGNATION.** A Durable Power of Attorney for Health Care may also be referred to as a “Designation of Patient Advocate”. The 1990 Michigan statute speaks in terms of “designating” a “patient advocate” to act for a “patient”. There is essentially no difference between a Durable Power of Attorney and a Patient Advocate Designation in Michigan. The terminology may vary but the purpose of the both documents is the same.

**THE HEALTH CARE PROXY:** A Health Care Proxy and an Advance Directive for Medical Care have been authorized in many states by specific law. These documents are very similar to Michigan’s Durable Power of Attorney for Health Care or Patient Advocate Designation. You name someone to act for you when you are unable to do so and state your desires regarding treatment decisions. So, don’t be confused by the various names. If you spend a lot of time in another state, you may want to consider executing the authorized health care form for that state.

**THE DURABLE POWER OF ATTORNEY:** A power of attorney is a relative simple and inexpensive legal document by which you give a spouse, child, or other relative or someone else (the attorney-in-fact) the right to act in your place on your behalf with respect to financial matters. You can make this power as broad or as narrow as you wish. A well drawn durable power of attorney is for many people as important as a Last Will and Testament. It may negate the need to petition a court to have a guardian or conservator appointed to handle your assets if you can’t. A durable power of attorney is a “must” if you are currently suffering from a physical disability or illness that could lead to permanent or long-term incapacity but should be considered even by healthy individuals who would like to provide for continuity of management of assets if - for any reason - they can’t manage those assets or handle their own affairs for a period of time.

**THE REVOCABLE LIVING TRUST:** Where the assets in your estate are complex, a revocable trust is often indicated in conjunction with the durable power of attorney. A revocable living trust can enable you to keep control as long as you are able. The trustee you select assumes the responsibility of investing, managing, and conserving the property on your behalf and for your other beneficiaries if you should become incompetent. A revocable trust allows you to change your mind and regain property that you have put into the trust or change the terms of the trust.

**THE CHOICE IS YOURS!** You can choose to take action now and keep control - or you can choose to hesitate - and let federal and state laws - and fate - control you.

**AS ALWAYS, PLEASE FEEL FREE TO CALL TO DISCUSS THESE OR OTHER ISSUES OF INTEREST TO YOU, YOUR FAMILY, OR YOUR BUSINESS!**

*IF YOU PREFER TO RECEIVE “GOLDEN BULLETS” BY EMAIL, PLEASE SEND A NOTE TO ME AT: [rwilson@fraserlawfirm.com](mailto:rwilson@fraserlawfirm.com). Thanks.*