

# Kidding Around

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the South Shore

## Estate planning – step by step

By Leanna Hamill

"I'll get around to it soon..."

"I know I need a Will, I just don't know who I want to take care of the kids if something happens to us..."

"I can't decide who should get what..."

"I just can't spend that much money right now..."

There are many obstacles for people when they are considering drawing up an estate plan to protect themselves and their children. Some – like procrastination – are self imposed and only you can change that. Others – like difficulty making the decisions, or finding room in your budget – can be worked through with your attorney to help guide your decision making and make the planning work with your budget.

It sometimes work with families to spread out the work – and the cost – over time, while making sure that they are working towards having the necessary plan in place to protect their children and themselves. This way, the documents can be drawn up at different times, and at the end of a few months or a year, a complete plan is in place.

Each of the documents described below is a necessary part of a comprehensive estate plan, and it is best to execute them all at once. However, you and your attorney can work together to figure out the most appropriate way to space them out, if necessary. And, once your estate plan is drafted, except in the case of major changes to your circumstances, it will be good for years to come.

### Emergency Guardianship Proxy

The first concern for most parents is making sure that a guardian is nominated to care for their children in the event of the parents' death or incapacity. The Emergency Guardianship Proxy is a document which provides for the appointment of a guardian in the event of the parent's death, incapacity or

unavailability. The document is valid for 60 days from the day it is activated, meaning 60 days from the day of the death or incapacity. It would also be valid if the parents were going on a trip without the children and wanted the guardian to have the authority to make decisions for the child in the parent's absence. If it is necessary to make the guardianship permanent, this can be done during the 60 days of the Emergency Guardianship.

This document can even be executed at the initial meeting, provided you've decided on a guardian.

### Durable Power of Attorney

This document that will ensure that your affairs continue to be managed, by someone you trust, even if you become incapacitated. This document allows someone you name, called your attorney-in-fact, to manage your bank accounts, your real estate, sign things on your behalf and in general perform any act with relation to your property (as opposed to your person) that you could have performed if you were able.

A durable power of attorney will often make a guardianship or conservatorship unnecessary, but there can be a provision in the durable power of attorney to nominate the attorney-in-fact to act as your guardian should the need arise. The attorney-in-fact's power to act on your behalf ends at your death, or when you regain capacity.

### Health Care Proxy

A health care proxy is an essential document for every person to sign. It appoints another person to make health care decisions for you in the event you are unable to make decisions or communicate your wishes. It is very important that you talk to the person you have appointed so they know what your wishes are. In addition to executing a health care proxy, you should also have a living will.

### Living Will

A living will, also known as a life support statement, is the written form of your wishes that your health care proxy will use when making health care decisions for you. There are many different forms of living wills, just as different people have different wishes. Five Wishes (which can be obtained at [www.agingwithdignity.com](http://www.agingwithdignity.com)) is a company that publishes a booklet to help you convey your wishes, and contains a health care proxy which is valid in Massachusetts. There are also living wills for different religions, or you can write your own based on your particular wishes and beliefs.

### HIPPA Authorization

The HIPPA (Health Insurance Portability and Accountability Act) Authorization is a release which allows your health care proxy or other person you appoint to have access to your medical records. This one page form is separate from your health care proxy because your health care proxy only becomes effective when you are incapacitated, and you may want someone to have access to your medical records prior to that time. This release will allow someone to contact your insurance company or doctor's office on your behalf if you have a question about a bill or a statement, or allow them to discuss your care with your doctor if you are hospitalized.

The Health Care Proxy, Living Will and HIPAA are generally executed at the same time.

### Will

A Will appoints an executor to manage your estate after your death, and distributes your property according to your wishes. A Will also appoints a guardian for your minor children. This will work in conjunction with the Emergency Guardianship Proxy by nominating the permanent guardian for your children, who can be appointed while the Emergency Guardianship is in place.

If your children are minors, your property will not pass to

them directly. Rather, it will be held by their guardian until they are 18 years old. If you want more control over how the funds are used, and when they are distributed to your children, you will want to explore a Revocable Trust.

### Revocable Trust

A Revocable Trust is a good tool to use while your children are still minors. The Trust can be set up to be activated upon your death and will hold all of your assets which you passed to your minor children. A trustee is appointed to manage the assets the way you have specified in the Trust. If you wish, the trustee can be a different person than the guardian. The Trust can be used to stagger the distributions to your children after they reach the age of majority, since few children would be able to handle a large sum of money at age 18. A Trust can also give the trustee discretion to withhold a distribution if the child is suffering from an addiction or other situation which would make it inappropriate to distribute funds to them at that time.

A Trust is a very flexible document, and your attorney can help you tailor one that fits your family's needs. It can be executed at the same time as your Will, or, at a later time if you are working with a limited budget, with some minor changes to your Will as well, to incorporate the two documents.

You already know it is essential to have an estate plan in place, now you know that fitting it into your budget it is easier than you think.

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