**Legal Definitions**

​​​**A General Durable Power of Attorney** is a document in which a person (the principal) names someone else as his or her agent. The agent is sometimes called an “attorney in fact.”  General durable powers of attorney typically govern a person’s financial and business affairs, and the power of attorney document defines the scope of the agent’s authority.  Powers of attorney may be immediately effective when they are signed, or they can be designed as “springing” powers of attorney, which only become effective in the future, usually when the principal becomes incapacitated.  “Durable” means that the power of attorney remains effective even when the principal is incapacitated. Having a General Durable Power of Attorney in place usually eliminates the need for a court appointed conservator because it allows for management of the person’s financial affairs in the event of incapacity.

​**A Durable Power of Attorney for Health Care** sometimes called a Patient Advocate Designation or a Medical Power of Attorney, is used by someone (the principal) to nominate someone else (the patient advocate) to make medical decisions.  By law, the patient advocate may only act if the principal is unable to participate in his or her own medical decisions.  Appointing a patient advocate usually eliminates the need for a probate court guardianship process if the principal becomes incapacitated.  Some medical providers offer a form “5 Wishes” or similar document, which serves to designate a patient advocate.  Patient advocates are “substitute decision-makers” who must make medical decisions the way the principal would have made them if he or she was able to do so.  Good Durable Powers of Attorney for Health Care allow the principal to make his or her wishes known to the patient advocate so that the advocate can make appropriate decisions if needed.  Note:  Michigan does not recognize the validity of “living wills,” except as evidence for the patient advocate or guardian as to the principal’s wishes.  “Do not resuscitate” orders and “POLST” or “POST” documents can serve as additional avenues for implementing a person’s health care decisions in the event of incapacity.  Not one of these documents is a substitute for the others, and signing a DNR or POLST form is not a substitute for a Durable Power of Attorney for Health Care.

**Guardianship** is a court process for appointing a person (a guardian) to have the care and custody of another person and to make certain medical and personal decisions for that person, who is called either an “incapacitated individual,” a “developmentally disabled individual,” or “a minor.”  The scope of a guardian’s powers varies in each case, and the law favors allowing incapacitated individuals and developmentally disabled individuals to maintain authority over as many aspects of their lives as possible.  Guardianship is commonly used for adults who are not able to make their own medical decisions but who have not nominated a patient advocate.

**Conservatorship** is a court process for appointing a person (conservator) to protect and manage a person’s financial and business affairs.  The person subject to the conservatorship is called the “protected person.”  A probate court will appoint a conservator when a person has money or property that he or she cannot effectively manage AND there is no other way the property can be properly managed.  Having a durable power of attorney for financial matters in place eliminates the need for conservatorship in most cases.

Definitions courtesy of Gregory R. Kish, Attorney- CELA (Certified Elder Law Attorney by the National Elder Law Foundation) from the firm of Scott & Huff, PC.