

# New Probate Guardianship Law

by Attorney Michael Hooker

The Massachusetts legislature enacted, as of July, a sweeping new law regarding guardianships in the probate court. The changes were made at least in part because of perceived abuses highlighted in a Boston Globe spotlight article a while back. The article detailed how elder's rights were being trampled in Probate court in Boston by perfunctory, swift court hearings. To address those perceived injustices, the new law is much more rigorous in what is required to determine that an elder is incompetent and unable to make decisions regarding care, treatment and living situation and that someone else should seize control of the decision making power.

Dealing with the delay, cost and bureaucracy of probate court has always been unduly painful. It will now be even more painful and expensive for those petitioning to have a guardianship imposed on a family member or other person. The new law gives great deference to a previously signed Power of Attorney or Health Care Proxy. The state is sending out a strong signal that you and/or your family will save yourself much grief by having a good Power of Attorney and Health Care Proxy in place should you ever become incapable of managing your finances or making health care decisions.

The Department of Public Health has a standard Health Care Proxy form. You can probably get one from your health care provider. I do believe, however, that the DPH form is deficient, because it does not address the issue of the Proxy's authority to consent to treatment with antipsychotic medications or to admit to a nursing home. If you want the Proxy to have those powers (and avoid having to later go to court to get them), then you should include this language in your Proxy.

Powers of Attorney should be drafted so that they satisfy the concerns of a bank, brokerage firm, pension company, or some other financial institution that the document is legitimate and provides the authority to withdraw funds, sign deeds, change beneficiaries etc. If the POA is deficient the financial institution won't recognize your power and you will be forced to go to court to obtain a Conservatorship. Which, as noted above, will be a nightmare. Do yourself and your family favor and get these documents. They are often more important than a Will.