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Power of Attorney V. Conservatorship:

A Power of Attorney (POA) is an estate planning document which allows another person to make certain decisions for you. It can be an all encompassing document or limited. A POA differs from a Living Will in that it doesn't pertain to health care decisions. Some of the items covered in a POA include the power to collect and manage personal property, buy and sell real estate, borrow money, perform financial transactions, conduct and participate in business decisions, and the ability to prepare, file & sign tax returns.

The key elements in a POA are a) that the power is given by a person who is of sound mind, (as opposed to a Conservatorship discussed below) b) is revocable at any time, and c) the powers are in addition to your own powers, i.e., a POA doesn't remove your own capability to perform any of those functions. They are simply in addition to your own powers. For example, real estate attorneys often use POA's to close the purchase of a home when one of the spouses is out of town and cannot attend the closing. Instead, the missing spouse signs a limited POA granting the attending spouse the power to sign his or her name to the closing documents, because they couldn't be there. Once the closing is over, the power can be revoked.

A Conservatorship is an entirely different animal, but pertains to the same issues. In a Conservatorship, the Probate Court appoints someone to act on your behalf because you're no longer deemed to be of the sound mind for which to make such decisions yourself. With a Conservatorship, you completely give up your own powers, as opposed to a POA wherein the assigned powers are in addition to your own. That is an extremely important distinction. With a POA, you're still in the game alongside the person you appoint as your POA. With a Conservatorship, you're sitting on the bench, with absolutely no control over the game.

There are two types of Conservators: a) Conservator of the estate and b) Conservator of the person. The Conservator of the Estate is responsible for the financial decisions of the "Conserved Person" and the Conservator of the Person is responsible for making all health care decisions (usually in accordance with the directives of a Living Will, if available.)

One of the key elements of a Conservatorship is that the Court makes the appointment, not you. This is because one is deemed to not be capable of making even that decision. (The living wills that I prepare also have a selection of Conservator.)

Another aspect of Conservatorship, believe it or not, is that it can be voluntary or involuntary. That's right, you can voluntarily apply to the Probate Court to be "Conserved", and request that someone else make all of your typical every day decisions, as well as be in charge of your healthcare.

Most involuntary conservatorships are usually the result of medical facilities getting involved. Typically a person will end up at a medical facility for one reason or another and the medical personnel will deduce that the person cannot make their own decisions regarding their own welfare. At that point the State is advised and the process begins.

A POA is a very necessary tool in estate planning simply by virtue of its all encompassing power. Most people don't realize how difficult it can be to help manage the affairs of a loved one when they become ill. A POA is accepted by business and health care institutions as well as the State & Federal government. Therefore, it is the perfect instrument to assist one in managing the affairs of another. We use the POA as an efficient instrument in estate planning because it compliments many of the other estate planning instruments as well. If you are in a situation where a friend or loved one may need your assistance in their lives, I highly recommend inquiring into the need for a POA. It can make a difficult situation very simple.

Anthony J. Medico, Esq., has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.

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