

# THE SKETCHLEY LAW FIRM, P.A.

Providing Compassionate Support & Guidance Through Elder Law & Guardianship

## SURROGATE DECISION-MAKERS IN FLORIDA

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If an individual loses the ability to make medical, personal and financial decisions, it becomes necessary for someone to act on her behalf. The following are common surrogate decision-makers under Florida Law.

### **Health Care Surrogate**

A Health Care Surrogate is the individual chosen by a competent person to make medical decisions when she is unable to do so. A Health Care Surrogate can be any competent adult, with some exceptions.

The designation of a Health Care Surrogate must be in writing and witnessed by two witnesses, one of which must not be a blood relative, a spouse or the Surrogate.

The duties of the Health Care Surrogate may include consultation with physicians, providing informed consent for treatment, authorizing access to records, applying for public benefits, authorizing withdrawal of life-prolonging procedures, etc.

### **Health Care Proxy**

If a person fails or is unable to designate a Health Care Surrogate and is not capable of making medical decisions for herself, medical decisions can be made by a Health Care Proxy. The individuals who can serve as Proxy include a guardian, spouse, adult children, parents, siblings, etc.

The duties of the Health Care Proxy are similar to those of the Health Care Surrogate. However, if the Proxy is faced with the decision to withhold or withdraw life-prolonging procedures, the Proxy's decision must meet additional requirements.

### **Attorney In Fact**

An Attorney In Fact is the individual or entity a competent person (principal) chooses to make financial, property and in some cases medical decisions on her behalf. The Attorney In Fact is appointed in a Durable Power of Attorney, which grants specific authority to the Attorney In Fact.

To be valid following the incapacity of the principal, a Durable Power of Attorney must state it is durable and be signed and witnessed in accordance with Florida Law. In some cases, the principal may choose to place limitations when the Attorney In Fact can act.

### **Guardian**

If a person has not appointed a Health Care Surrogate or an Attorney In Fact or those appointed are unwilling or unable to act, it may become necessary for a Guardian to make decisions for the person.

A Guardian is an individual or qualified entity appointed by a court to act on behalf of an individual found to lack capacity. Once appointed, the Court will issue Letters of Guardianship that must be presented by the Guardian to prove authority to act on behalf of the incapacitated person.

In some cases, the appointment of a guardian advocate may alleviate the need for a Guardian.

*If you would like one of our attorneys speak to your group or organization about this topic, please contact Tracy Powell at (850) 894-0152.*