**Legal Terms For Older Adults And Family Caregivers**

**POWER OF ATTORNEY**
A written document in which you give another person or persons the authority to act on your behalf in the areas of **finances** and/or **health care**. This document allows you to grant very specific or very broad powers to the person(s) and is signed by you voluntarily without the involvement of the court. A simple power of attorney document becomes invalid once it is revoked by you, or upon your death or incompetency.

**DURABLE POWER OF ATTORNEY**
A power of attorney document that includes language which activates the power of attorney (or permits it to continue in effect) upon your incapacity. It is best to have an lawyer draw up your durable power of attorney document so as to comply with state law, however no court hearing is required to activate it. The durable power of attorney may be activated when one or more physicians document your inability to make informed decisions for yourself.

**LIVING WILL**
A document which instructs your doctor, family and health care power of attorney of your wishes concerning the use of artificial means to save or prolong your life (ie. CPR or a respirator), or the withholding or withdrawal of nutrition and fluids administered through a vein or through a tube inserted into the stomach or through the nose.

This document would apply in the event that you become terminally ill or are in a persistent coma. A living will may be a part of, or separate from, a durable power of attorney document and is used when you become incapable of making your wishes known to others. Artificial nutrition and fluids cannot be withheld unless so directed by your living will or power of attorney documents.

**CONSERVATOR**
A person appointed by the court to manage your **financial affairs** if you are judged to be incapable of doing this for yourself. A court-appointed conservator may be necessary if you have not executed a durable power of attorney for finances prior to becoming incapacitated. An attorney must be consulted to prepare the legal paperwork and to file the petition requesting a court hearing.

A physician must certify that you are temporarily or permanently incapable of managing your financial affairs and evidence must be produced that you have property or assets that would be wasted unless properly managed by someone else.

A family member is usually appointed to be a conservator, but a friend, an attorney or another person may be appointed. If you disagree with the conservatorship petition, you have the legal right to retain an attorney to challenge the petition. A limited conservatorship may be granted, allowing you to retain control over specific financial matters.

A conservator must pay the initial court filing fee, plus a yearly bonding fee. These fees may be waived at the discretion of the judge. The conservator must also provide
an annual accounting to the court of how your assets are spent.

**GUARDIAN**
A person appointed by the court to make decisions about your **personal well-being** if you are judged to be incapable of doing this for yourself. A guardian may make decisions about your medical care or where you will live. A court-appointed guardian may be necessary if you have not designated financial or health care powers of attorney prior to becoming incapacitated. An attorney must be consulted to prepare the legal paperwork and to file a petition requesting a court hearing.

A physician must certify that you are either temporarily or permanently incapable of making decisions about your personal welfare and that you require physical care or supervision.

A family member is usually appointed to be the guardian, but a friend, an attorney or another person may be appointed. You have the legal right to retain an attorney to challenge a guardianship petition. A limited guardianship may be granted, allowing you to retain control over specific personal matters.

One person may serve as both the guardian and the conservator when both are needed, or these duties may be assigned to different persons. Like the conservator, the guardian may also have to pay the fee for filing the guardianship petition plus a yearly bonding fee, however these fees may be waived at the discretion of the judge.

**PAYEE**
A person appointed by the Social Security Administration to receive and manage the monthly Social Security pension of a dependent adult or child. A physicians statement of incapacity is required for a payee to be appointed for an adult.

* This sheet contains general information only. It is not meant to substitute for professional legal counsel. Please consult an attorney to discuss your specific legal situation.

Prepared by: Susan V. Murray, MSW
Section of Geriatrics & Gerontology
Department of Internal Medicine
University of Nebraska Medical Center
Omaha, Nebraska 68198-1320

created 5/2003