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## **10 Things You Should Know About Living Wills**

When it comes to estate planning, you've most likely heard people mention a couple of different types of wills. The most common is a "last will and testament," which is also known simply as a "will." But you may have also heard people talk about what's called a "living will."

Both terms describe important legal documents used in estate planning, but their purpose and the way they work is very different. Today, we are going to discuss some of the most critical things you should know about *living* wills and explain why having one is an essential part of every adult's estate plan and how to get yours created or updated.

### **1. What Is A Living Will?**

A living will, often called an "advance healthcare directive," is a legal document that tells your loved ones and doctors how you would want decisions related to your medical care handled in the event you become incapacitated and are unable to make such decisions yourself, particularly at the end of your life. Specifically, a living will outlines the procedures, medications, and treatments you would want or would not want to prolong your life if you become unable to discuss such matters with doctors yourself.

Within the terms of your living will, you can spell out certain decisions such as if and when you would want life support removed should you ever require it, and whether you would want hydration and nutrition supplied to prolong your life.

Going beyond instructions about your medical care, a living will can even describe what kind of food you want and who can visit you in the hospital. We'll cover more of the specific decisions and scenarios addressed in a living will in more detail below.

### **2. Living Will vs Last Will & Testament**

A last will and testament is used to ensure your assets are divided upon your death in the way you choose. Note that your will only deals with your assets, and it only operates upon your death. By contrast, a *living* will is about you, not your assets, and operates in the event of your incapacity.

In other words, a last will and testament tells others what you want to happen to your wealth and property after you die. A living will tells others how you want your medical treatment managed while you are still alive.

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### **3. What Is An Advance Directive and How Is It the Same or Different Than a Living Will?**

“Advanced directive” and “advance healthcare directive” are both general terms that describe legal documents that are related to your healthcare needs. Typically, an advance healthcare directive will include a living will with instructions for how you want your medical care handled and a medical power of attorney. The medical power of attorney lets you name the people you want to have making decisions for you and gives them the authority to talk with your medical team.

### **4. Living Will vs Medical Power of Attorney**

A medical power of attorney is the part of an advance healthcare directive that allows you to name a person—known as your “agent”—to make healthcare decisions for you if you’re incapacitated and unable to make those decisions yourself. While medical power of attorney is an advance directive that names *who* can make healthcare decisions in the event of your incapacity, a living will explains *how* your medical care should be handled.

For example, if you become seriously ill and are unable to manage your own medical treatment, a living will can help guide your agent to make these decisions on your behalf by giving them guidelines for how you want decisions made. However, it’s the medical power of attorney part of the document that says who should be making the decisions. In this way, the medical power of attorney and a living will work closely together. For this reason, they are sometimes combined into a single document.

This next part is critically important to note: Not all living will form documents or templates include a medical power of attorney or the proper legal authorizations to give your named agent the legal authority to access your medical records. Therefore, if you are completing an online living will or advance healthcare directive, or helping a family member to do so, make sure that the document legally names a decision-maker with at least two backup decision-makers, gives that person legal authority under HIPAA to access your medical records, AND provides specific and detailed instructions regarding how your medical care should be provided in the event of incapacity.

### **5. Why Is A Living Will So Important?**

A living will is a vital part of every adult's estate plan, as it can ensure your medical treatment is handled the way you want in the event that you become unable to communicate your needs and wishes yourself. Additionally, a living will can prevent your family from undergoing needless stress and conflict during an already trying time.



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Without a living will, your family will have to guess what treatments you might want and are likely to experience stress and guilt over the decisions they make on your behalf. In the worst case, your family members could even end up battling one another in court over how your medical care should be managed.

### 6. Even Young People Need A Living Will

Although you may think that a living will is something that only the elderly or older people need, the fact is you can experience a serious accident or illness at any age which would leave you incapacitated and unable to communicate your wishes for medical care. For this reason, all adults over the age of 18 should have both a living will and a medical power of attorney in place.

One tragic example of just how horrific things can become when a young person becomes incapacitated without a living will in place is the case of Terry Shiavo, who spent 15 years in a vegetative state after suffering a heart attack at age 26. Because she had neither a living will nor a medical power of attorney, Schiavo's young husband fought her parents in court for years for permission to remove her from life support: specifically to remove the hydration and nutrition that was keeping her alive. The resulting litigation made news headlines around the world and exposed a deep divide among Americans over the right-to-die movement.

<https://www.cbsnews.com/pictures/look-back-in-history-terri-schiavo-death/>

### 7. Decisions and Scenarios Addressed In A Living Will

A few of the most common types of decisions, treatments, and scenarios typically addressed in a living will include the following:

- **Tube feeding:** You can include instructions about if and for how long you would want tube feeding used to supply you with nutrients and fluids needed to prolong your life.
- **Resuscitation (CPR & DNR):** Depending on whether or not you would want to be resuscitated in the event your heart stops, you can include what's known as a Do-Not-Resuscitate (DNR) order in your living will. A DNR can also be a stand-alone document.
- **Intubation & mechanical ventilation:** You can state if and for how long you would want to be intubated and placed on a mechanical ventilator if you could not breathe on your own. This has become particularly important during the pandemic, since in severe COVID-19 cases, patients often require intubation, which involves putting you into a medically induced coma and inserting a tube into your windpipe that allows oxygen to be pumped directly to your lungs using a ventilator.

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- **Pain management & palliative care:** These are instructions about the types of pain management medications you would—or would not—want to be prescribed to you; if you want to die at home; as well as any other interventions you might want for comfort and pain management at the end of life.
- **Organ/Tissue Donation:** You can specify in your living will if you want to donate your organs and/or tissues for transplant following your death. Note that you will likely receive life-sustaining measures until any procedures are completed to remove your organs and tissues.

### **8. Should You Do It Yourself With an Online Living Will?**

While you'll find a wide selection of generic living wills, medical power of attorney, and other advance directive documents online, you may not want to trust these do-it-yourself solutions to adequately address such critical decisions. When it comes to your medical treatment and end-of-life care, you have unique needs and wishes that just can't be anticipated by fill-in-the-blank documents.

To ensure your directives are specifically tailored to suit your unique situation and that you actually get it done instead of just knowing you need to get it handled and never do it, work with experienced planning professionals like your estate planning lawyer to create—or at the very least, review—your living will, medical power of attorney, and other documents.

We don't just ensure your documents get created correctly; we have processes to keep you moving forward beyond procrastination and actually get them signed (which is one of the biggest risks to your family), as good intentions alone won't keep your family out of court and out of conflict should you become incapacitated without a signed (and updated) plan in place.

### **9. Communication is Vital**

Even if you have the most well-thought-out and professionally prepared living will around, it won't be worth the paper it's printed on if nobody knows about it. Both living wills and medical power of attorney go into effect the second you sign them, so you should immediately deliver copies to your agent, your alternate agents, your primary care physician, and any other medical specialists you're seeing.

Don't forget to give those folks new versions whenever you update the documents and have them tear up the old documents. This is a standard part of our practice when serving our clients, so when you work with us to create your legal documents, we'll ensure that everyone who needs to have your documents always has the latest version.



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### **10. Don't Wait Until It's Too Late**

Your living will and medical power of attorney must be created well before you become incapacitated and unable to make your own decisions. You must be able to clearly express your wishes and consent in order for these planning documents to be valid, as even slight levels of dementia or confusion could get them thrown out of court.

Remember: an unforeseen illness or injury could strike at any time, at any age, so don't wait—contact your estate planning lawyer right away to get these vital documents put in place.

### **A Comprehensive Plan For Incapacity**

A living will and medical power of attorney are just two of the legal documents you need as part of your overall plan for incapacity. You will also likely need other estate planning tools, such as a durable financial power of attorney and a revocable living trust, in order to have a truly comprehensive incapacity plan. We see estate planning as so much more than planning for death. That is why we call it life & legacy planning—because it's about your life and the legacy you are creating by the choices you make today.

If you've yet to create your incapacity plan, schedule a Family Wealth Planning Session™ right away, so as your estate planning lawyer, we can advise you about the proper planning vehicles to put in place. If you already have an incapacity plan—even one created by another lawyer—we can review it to make sure it's been properly set up, maintained, and updated. Contact us today to get started.

*This article is a service of Saeed & Little, LLP. We do not just draft documents; we ensure you make informed and empowered decisions about life and death, for yourself and the people you love. That's why we offer a Family Wealth Planning Session™, during which you will get more financially organized than you've ever been before and make all the best choices for the people you love. You can begin by calling our office today to schedule a Family Wealth Planning Session and mention this article to find out how to get this \$750 session at no charge.*

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