

# Kansas Legal Services

A non-profit law firm and community education organization helping low and moderate income people in Kansas



www.kansaslegalservices.org

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## Advance Directives, Living Wills & the Durable Power of Attorney

The main question these documents address is *“who controls your health care if you are not able to make decisions yourself?”*

### **The Documents:**

Kansas statutes make two legal documents available to you to make sure your wishes are followed:

1. **A “living will”:** A written statement of your wishes regarding your medical treatment if you are in a terminal condition. It must be witnessed by two individuals over eighteen, and it is only effective if two physicians have determined that you are terminally ill.
2. **Durable power of attorney for health care decisions:** A written document in which you authorize someone whom you name (your “agent” or “attorney-in-fact”) to make health care decisions for you in the event you are unable to speak for yourself.
  1. Health care decisions include the power to consent, refuse consent, or withdraw consent to any type of medical care, treatment, service, or procedure.
  2. In the document you can give specific instructions regarding your health care that will require the agent to make decisions in accordance with your direction.

You may also be able to complete documents which differ from these forms. These so-called “common-law” forms can be discussed with your lawyer. If you want to learn more about advance directives, click [here](#).

### **What is the difference between a health care power of attorney and a “living will”?**

- Power of attorney can cover all medical decisions. Living wills only apply to decisions regarding “life-sustaining treatment” in the event of a “terminal illness.”
  - A terminal illness does not include Alzheimer’s Disease, dementia, or coma.
- A durable health care power of attorney can be effective any time or, if you want, at any

time you are unable to make or communicate a decision. The agent you appoint can make any decision you direct, including decisions about health care beyond those covered by your living will.

- For example, the agent under a durable power of attorney can make decisions about care if you are in a persistent vegetative state, but are not terminally ill.
- Power of attorney appoints an agent to act on your behalf. That person can weigh the pros and cons of treatment decisions in accordance with your directions.
  - Unless you limit the powers, the agent can hire physicians and other health care providers, decide where you will receive treatment, and make decisions about the full range of medical decisions from routine care to decisions about life-sustaining treatment.

## **Do I lose control by appointing an agent?**

### Limiting power:

- You can write your living will and your durable power of attorney to include specific limits about anything you want to have done or want to avoid having done.
- You can express your wishes about whatever you care most about.

### Ending it:

- You can end your health care power of attorney at any time by telling your agent and health care provider.
- You can end the power of attorney verbally, but it is best to do so in writing and to destroy the original document.

## **Why do I need a living will or health care power of attorney?**

Simple Answer: Without these documents, your wishes may not be followed.

In some situations, a guardian may be limited in making some decisions, especially those regarding life-sustaining treatment when you are in a vegetative state but not terminally ill.

Also, a guardian chosen by the court may have no idea what your wishes are and may disagree with those that do know your wishes.

The existence of the document can relieve some of the stress or conflict that otherwise might arise if family or friends have to decide on their own what you would want done when you cannot speak for yourself.

## **Do I need both the living will and the durable power of attorney?**

It is recommended you have both documents.

The living will provides clear evidence of your wishes concerning medical care and treatment and will help ensure that the agent and physicians carry out your wishes.

The durable power of attorney for health care gives your agent the authority to take action on your behalf and to carry out your directions for health care, without the delays of court proceedings.

## **How do I make a living will or a durable power of attorney for health care?**

The legislature has adopted forms for both the living will and the durable power of attorney.

- Those forms are included below.

In addition, a lawyer can draft a document which specifically incorporates your wishes and may be more detailed.

Take time to consider all the possibilities and seek competent advice so the documents you develop meet your special needs.

## **Once I have the documents what do I do?**

Even as you draft the documents you should talk about your values and wishes with your physician(s), anyone you will appoint as an agent or alternate agent, and those who are close to you.

You should give a copy of the documents to all of your physicians, your agent under the durable power of attorney, and your family or friends.

If you retain the originals, tell someone where the papers can be found.

Place the original in a secure place which someone can access without court intervention.

**\*\*Remember, a Living Will and Durable Power of Attorney for Health Care Decisions provide you a way to maintain control of your health care.**

## **What is a Do Not Resuscitate form and do I need one?**

This form may be signed prior to a hospitalization to make clear your wishes in certain health care situations. A copy should be provided to the hospital, at admission. You may also wish to provide one to your primary doctor. Click [here](#).

## **Forms?**

For the Kansas Living Will form, with 2 witnesses (no notary) click [here](#).

For the Kansas Living Will form with a notary, click [here](#).

- You can complete and print these forms. They should be given to your primary health care provider. Share copies with your family.

The KBA has also provided 2 forms:

1. A Living Will Declaration ([LIVING WILL Declaration.pdf](#)), and,
2. Durable Power of Attorney for health care decisions general statement of authority granted ([DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS GENERAL STATEMENT OF AUTHORITY GRANTED.pdf](#))

## **Resources:**

Lawyer Referral Service: 1-800-928-3111

- Contact the KBA Lawyer Referral Service for the name and number of a lawyer with experience in a particular area.

Lawyer Advice Line: 1-800-928-3111

- The Lawyer Advice Line will connect you with an attorney who can offer you immediate legal advice about your legal problem, for a fee of \$3.00 per minute, billed to your phone bill or credit card.

## **Pamphlets:**

As a public service of the KBA and the lawyers in your community, the following pamphlets are available in limited quantities through the KBA office, 1200 SW Harrison, Topeka, KS 66612-1806; 785-234-5696.

[A Death in the Family...What should I do](#) ·

[Aging and the Law](#) ·

[Automobile Accident](#) ·

[Child Custody, Support & Visitation](#) ·

[Divorce: An IRS Perspective](#) ·

[Domestic Violence – A Practical Guide for Victims](#) ·

[You and Your Lawyer](#) ·

[Living Wills \(Advance Directive\)](#) ·

[Joint Tenancy](#) ·

[Juror:Your Rights and Responsibilities](#) ·

[Living Wills & the Durable Power of Attorney for Health Care](#) ·


[Marriage & Divorce](#) ·

[Small Claims Court](#) · ·


[Ways to Settle Your Dispute](#) · ·

[What's So Important About a Will?](#)


 [Durable POA](#)

 [Living Will](#)

 [JurorsRightsResponsibilities.pdf](#)

 [livingwilladvancedirective.pdf](#)

 [small\\_claims\\_court.pdf](#)

 [Do Not Resuscitate request \(DNR\).doc](#)

 [whats\\_so\\_important\\_about\\_a\\_will.pdf](#)

 [Living Will form w\\_notary fillable.pdf](#)

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<http://www.kansaslegalservices.org/node/1097/advance-directives-living-wills-durable-power-attorney>

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