

Living Will

(Advance Directive)

What is a living will?

A living will, also known as an advance directive, is a document that provides guidance to medical professionals in the event you are unconscious and suffering from a terminal condition. The living will provides that if two doctors agree that you will not recover from a terminal condition, your life will not be artificially prolonged and you will be allowed to die naturally. Medicine and procedures for comfort care will still be administered.

Why should I have a living will?

Whether to have a living will is a personal decision that only you can make. However, you may wish to have a living will if you wish to avoid existing in a comatose state with your basic life functions (e.g. breath, food, water, blood pressure, etc.) being met by machine or medicine, without any perceived hope of returning from that condition (your condition must be terminal for a living will to apply). Medical doctors have an ethical duty to try to keep their patients alive, and this can create a conflict regarding a patient in a comatose, terminal state. If you have a strong opinion about this subject, you can remove all doubt about how your situation will be treated by doctors. In recent years, there have been several cases that received nationwide attention and underscored the need for people to determine their wishes in advance.

Another reason to have a living will is to provide guidance to family members, friends, or a court-appointed guardian who will be making difficult decisions in your final hours.

How do I obtain a living will?

This pamphlet includes the statutory form of a living will. Because this form is expressly authorized by statute, there is little risk to using this form for your living will. Make sure you fill out the form completely in the presence of two witnesses, who also print and sign their names. If you wish for the terms of your living will to differ from the statutory form, perhaps due to specific concerns or circumstances, you should hire an attorney to make sure the proposed terms will be effective.

After you have executed the living will, make several copies of the document and provide them to your physicians, family, and friends who may need to make healthcare decisions during your final hours. Keep the original living will in a safe location (e.g. a fireproof and waterproof safe in a basement) that is accessible to someone you trust.

If I am conscious, can I override my living will?

Yes. Rest assured, the living will cannot supersede the will of the living. In addition, you can terminate your living will at any time. If terminating your living will, make sure to memorialize the termination in writing, communicate the termination to anyone who has or had the living will, and destroy copies of the living will to prevent confusion.

Is a living will the same as a power of attorney document?

No. A living will provides specific guidance regarding your final wishes, while a power of attorney document allows other people to make medical or financial decisions (as your agent). Power of attorney is not limited to terminal diagnoses and can cover many other types of medical and financial decisions, including those addressing a comatose state which is not terminal. It is generally advisable to have both a living will and a power of attorney document. Please see the KBA Pamphlet "Durable Power of Attorney."

Is a living will the same as a do not resuscitate (DNR) order?

No. A DNR goes further than a living will by stating your wish not to be resuscitated, for instance if your breath or heartbeat has stopped. In many circumstances, resuscitation may result in a long and healthy life once the problem has been solved. The terminal condition contemplated in the living will, in contrast, cannot be cured. For this reason, a DNR is only advisable in specific circumstances, whereas a living will is broadly and generally advisable.