



What Are Your Wishes? Living Wills and Advance Health Care Directives (Second Edition)

What is a Living Will or an Advance Health Care Directive?

A written document that sets out your wishes with respect to your health care in the event that you are unable to consent to treatment at some future time, due to illness or incapacity. Living wills do not deal with property or assets.

Can't I make my own decisions?

While mentally competent, it is your legal right to decide whether to accept or refuse a proposed medical treatment. If, for whatever reason, you are incompetent, you must rely on another to make these decisions on your behalf. A Living Will can help this decision maker understand your wishes.

Who should have a Living Will?

Many people choose to leave health care decisions to family and medical professionals, and therefore do not sign a living will. Unfortunately family members cannot always reach a consensus when under the emotional stress of a loved ones illness or disability. For this reason a living will is effective, as it formally sets out your wishes for your health care when you are unable to express them. Whether you choose to sign a Living Will or not, you should still discuss your wishes with your doctor and family.

Who should you talk to before making a Living Will?

Talk to your doctor so that you understand the various medical terms used when describing the different levels of care available.

Talk to a lawyer so that you understand all the legal implications of Living Wills.

Also talk to your family so they are aware of your wishes and know that you have a living will they can refer to.

What must be included in a Living Will?

The *Advance Health Care Directive Act* of Newfoundland and Labrador sets out the legislative requirements which must be met in order for a living will to be valid. For example, a living will must be in writing, witnessed by at least two independent people, and signed by the maker. Additional requirements are set out in the legislation.

A living will normally outlines what kinds of life sustaining measures you will want taken under certain circumstances, and it may also identify the person you wish to be your substitute decision maker. A living will is helpful in giving directions as to how you would like to be cared for in the event that you are incapacitated.



What will happen if I do not sign a Living Will?

- If you are physically and mentally able to consent, regardless of the existence of a Living Will, your consent must be obtained before you can be treated. There are exceptions in an emergency.
- Where a person requires health care, but lacks the competency to make a health care decision and had not appointed a substitute decision maker while he or she was competent (and a guardian has not been appointed by a court for that purpose), the *Advance Health Care Directives Act* sets out a list of who may act as a substitute decision maker according to a set order.
- In the case of mental incapacity to consent, concerned parties may apply to the Court to be appointed as your guardian.

Important to Remember:

- Keep your Living Will in a safe but accessible place, and let family know where it is kept.
- Review your Living Will every couple of years; medical treatment is constantly changing.
- It is a good idea to give a copy of your Living Will to your doctor to keep in your file.
- There are no guarantees that every term of your Living Will will be followed; there are exceptions in emergency circumstances.

How to Contact Us:

If you would like further information on this subject or any of PLIAN's services, including the Lawyer Referral Service, or to order copies of our publications, contact PLIAN at:

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This pamphlet provides general information about advance health care directives, or living wills as they are commonly called. It is not meant to replace advice from your doctor or lawyer. If you are thinking of making a living will, we strongly advise you to seek medical and legal advice first.

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