

What Is A Living Will And Do I Need One?

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Dear Ask the Attorney:

My wife recently went to the hospital for a simple procedure, and they asked her if she had a living will. Her procedure went well and she is recovering, but we were wondering what a living will is and if we should each have one?

C.H.

Our guest blogger is Christopher J. Roman, Esq. Mr. Roman is an associate in our Taxation/Trust and Estates Department where he handles a wide variety of tax related matters for his clients including estate planning, estate and trust administration, estate litigation, and tax controversies for businesses, families, executives, entrepreneurs and other high net worth individuals, using practical, yet creative, solutions to help preserve and enhance his clients' wealth .

Dear C.H.,

I'm happy to hear that your wife is doing well. When people refer to "living wills" they may actually be referring to a couple of different documents. A living will may consist of an advanced directive, a health care proxy or a combination of both. An advanced directive outlines a patient's wishes and objectives for end-of-life care, particularly the withholding or withdrawal of life sustaining treatment in certain circumstances. A health care proxy appoints an individual to make health care decisions for the patient if she cannot make them for herself.

Often a living will refers to a document that includes both an advanced directive and a health care proxy. In other words, the patient provides an instruction for his end-of-life care, but in the event he is temporarily unable to make a medical decision regarding a non-terminal illness or condition, the

patient appoints an individual to make that decision for him.

Most people sign a living will to outline their treatment philosophies and objectives so that their family can make an informed decision about their care. Often times a living will may alleviate conflict among family members and relieve feelings of guilt associated with end-of-life decisions. You may also remember the highly publicized legal cases of Karen Ann Quinlan and Terri Schiavo; these cases may have been avoided if either patient had signed a living will.

When preparing a living will, most people ask who they should appoint as their health care proxy and whether or not that person needs to have a medical background. The answer is that you can appoint any adult who has mental capacity, including a spouse, civil union partner, adult child, parent, or other family member, friend, religious or spiritual advisor, or any other person. You can appoint a doctor, but that doctor cannot be your attending physician. The person you appoint does not need to have a medical background. You should choose someone who you trust to evaluate your medical situation and make an informed decision about your care that would be consistent with your wishes. If that person happens to be a family member who is a doctor, that's great, but it is most important to choose someone you feel would make the best decision for you.

A lawyer should help you prepare a living will. Most lawyers do prepare one as part of their basic estate planning services along with a Last Will & Testament and a Power of Attorney. Though I advise you to speak with an attorney about a living will, the New Jersey Department of Health provides form documents here – http://nj.gov/health/advancedirective/forms_faqs.shtml – that may help give you an idea about the terms typically included in a living will.

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