

Living Wills

What is a Living Will?

A living will is your written instructions on what medical treatment you want or do not want in the event that you are terminally ill or are suffering from a very serious illness. These instructions can include the management of your health care as well as the termination of life support. It can provide guidance to your health care agent(s) on what medical treatment you want and do not want.

Is a living will the same as a Last Will and Testament?

No. Although the term "living will" may indicate that it is a Will, it is not. Do not get confused by the title of the document. The purpose of a living will is to allow you to make decisions about life support and direct others to implement your desires in that regard.

Is a living will the same as a health care proxy?

No. A living will is a separate document from your health care proxy document. You can have a health care proxy document without a living will but you cannot have a living will without a health care proxy document. The reason is that you need to have someone appointed as your health care agent to carry out the terms of your living will.

How specific should your instructions be in your living will?

A living will should express your general wishes but it can also be as specific as you express. If you have definite desires or preferences as to what medical treatment you want or do not want under certain circumstances, you should clearly state your wishes in a living will AND discuss your wishes with your health care agent(s) and medical provider

If I don't have a living will, what legal test must be met to establish my medical wishes if I am not able to communicate those wishes?

In, NYS, your medical wishes must be established by "clear and convincing proof". Although you may state your wishes orally to someone, your wishes are best expressed in a written document such as a living will to meet the "clear and convincing proof" test.

Is there a living will form?

There is no standard form for a living will in NYS. In drafting a living will, it is impossible to provide specific instructions for all future events. A living will should be drafted in order for your health care agent to interpret general instructions in the realm of specific circumstances. If you decide to draft a living will, it is important to review it carefully, especially if you already have a health care proxy document in place. You should also review your living will with your health care agent(s).

Is a living will required to be witnessed?

Yes. In NYS, a living will must be signed in the presence of two (2) disinterested witnesses who are not the appointed health care agent(s). You can sign a living will at any time as long as you have capacity. After signing a living will, you should make sure that your health care agent(s) are given a copy as well as your medical providers.

When does a living will go into effect?

A living will generally goes into effect when it is provided to your health care provider AND you are incapable of making health care decisions for yourself, such as where you are permanently unconscious or terminally ill and unable to communicate your medical wishes.

I have a living will. Can I change it or revoke it?

Yes. You can change or revoke your living will document at any time. If you do, make sure to tell your agent(s) and your medical providers that you have revoked or changed your living will document.

How many copies of a living will document should I have prepared and signed?

You may sign more than one copy and provide either originals or photocopies of your living will to your agent(s) and medical providers. It is not necessary to give them originals.

Do I need an attorney to help me prepare a living will document?

No. You generally do not need an attorney to prepare a living will. You may want to have an attorney review the living will document, together with your health care proxy document, to make sure they are consistent with your wishes, however.