

Elder Law FAQ

What is a Living Will?

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Is a Power of Attorney for Health Care the same as a Living Will?

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Do I really need a long-term care policy? What are the advantages of planning early?

What is a Living Will?

A Living Will

and a Last Will and Testament

are two completely different legal documents. A Living Will

is the legal document used by a person to memorialize in writing what medical procedures he or she wants or does not want to have performed in order to extend life in the event that the person is suffering from a medical condition for which there is little or no chance of recovery. It is used as a guide for the person that you name as your health care agent to make health care and medical decisions for you.

What is a Health Care Proxy?

A Health Care Proxy

is the legal document used by a person to appoint a health care agent to make health care decisions on their behalf when, but only when, they are unable to make health care decisions on their own.

Is a Power of Attorney for Health Care the same as a Living Will?

No. A living will is a legal document that a person uses to make known his or her wishes regarding life prolonging medical treatments. It can also be referred to as an advance directive, health care directive, or a physician's directive. It is important to have a living will as it informs your health care providers and your family about your desires for medical treatment in the event you are not able to speak for yourself. A Power of Attorney for Health Care ("Health Care Proxy

") appoints an agent to make most decisions related to your health care if and when you are unable to make those decisions yourself. If you specifically grant the power, your agent can decide to admit you to a nursing home or community-based residential facility, and make other health care decisions. If you have both a Living Will

and a Power of Attorney

for Health Care, the Power of Attorney

for Health Care controls if there is any conflict between the two documents. You should review your documents with an elder law

attorney periodically to make sure that they are up to date.

What is a General Durable Power of Attorney?

A General Durable Power of Attorney

is the legal document used by a person to designate another person as their agent to act on their behalf in just about any matter other than making health care decisions. The document can be drawn up so as to make it operative as of the time of its execution or to take effect upon the occurrence of a future event such as a signed statement by the person's doctor stating that he or she is not competent to manage his or her own business affairs. The fact that it is "durable" means that it will continue to be in full force and effect even after the person that executes it becomes incompetent.

How will the recent Family and Healthcare Decisions Act affect my family and me?

The Family Health Care Decisions Act allows family members or close friends to make medical care decisions for loved ones who are no longer able to make their own decisions due to lack of capacity. This replaces the old laws that used to force doctors to provide aggressive life-sustaining treatment to patients whose wishes were unknown because there wasn't a living will

or health care proxy

in place. Many times, doctors would make decisions, which resulted in an extraordinary burden of suffering for a patient even when the family objected to such treatment. This new law has been debated for 18 years and is intended to overcome the limitations of the court-developed "clear and convincing evidence" requirement. New York was one of the last two states in the country without a similar law. In order for this law to be triggered, health care practitioners first need to determine whether or not a patient has a decision-making capacity. If the patient lacks capacity, the legislation requires the selection of a surrogate from a list of individuals ranked in order of priority, including spouse, domestic partners, children or close friends. To prevent inappropriate decisions, the law has numerous safeguards. These

safeguards include procedures for a patient's family members, or a physician to assert objections to the selection of a surrogate or to a decision made by the surrogate. It is still important to have a living will and a health care proxy

in place to avoid any misunderstandings with your loved ones. It is important to work with an experienced elder law attorney to help create the proper documents, before it is too late.

Do I really need a long-term care policy? What are the advantages of planning early?

It is never too early to start planning because you never know when you may need a long-term care

policy in place. With a policy, you will be able to have a professional plan for your care at home and provide all types of custodial services related to your particular sickness, illness, injury, or condition. In addition to that, your family can be involved and part of the care plan, but they will not have to be the care managers. This takes some extra stress off of them. Secondly, with a long-term care

policy, you and your spouse will have the money to pay for care without having to go into debt. This is a plus because you will have the funds to be able to opt for a facility of your choice or stay at home—whichever is most appropriate in your situation. Without a policy, you and your spouse could be forced to take between \$110,000 and \$125,000 a year out of your savings and income to pay for long-term care. Also, someone in your family would have to make the decision about who will be caring for you, who will be paying, and where you will stay. This often causes friction between family members. It is very important to seek the counsel and guidance of an experienced elder law

attorney when devising your long-term care

plan. Without a long-term care

plan, you and your spouse could endure costly expenses and long-term consequences that would have a disastrous effect on the quality of life for a spouse who remains in the community. The most popular City / Village / Town Courts our lawyers serve:

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