

# Understand Your Legal Issue

Solve Your Legal Problem

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Plan Ahead With A

## Plan Ahead With Advance Directives

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### FAQ

#### **What is an advanced directive?**

As you age, there are many decisions which you must make about the future. Planning ahead can help you protect your rights and make informed decisions about your health care, your property and your family. Making clear decisions about your life now, before illness and infirmity diminish your ability, allows you to ensure that your plans and choices will be carried out and can make it easier for your friends and family to help you in medical emergencies. There are several legal instruments which will allow you to plan ahead in Florida. These instruments are collectively called Advance Directives and Florida law contains a comprehensive Advance Directives statute providing an adult with three options for Advance Directives:

- A Living Will
- A Designation of a Health Care Surrogate
- An Anatomical Donation

An individual can execute one, two, or all three forms of Advance Directives. Federal law requires hospitals, long term care institutions, and skilled nursing facilities to advise patients of the existence of Advance Directives but an individual does not have to execute any form of Advance Directives to receive health care treatment. Medical facilities are not required to supply or prepare these documents for you. It is therefore important to make your decision about Advance Directives before going to a hospital or other medical care facility.

When you have either a Living Will or a Designation of a Health Care Surrogate, the physician and hospital must abide by the wishes expressed in those documents. A health care provider who refuses to comply with your wishes is obligated to make reasonable efforts to transfer you within seven days to another provider who will comply with your wishes. The law does not require a provider to act in a way contrary to his/her moral or ethical beliefs concerning life-prolonging procedures if you are not in an emergency condition, and if you have received written information upon admission informing you of the provider's policy regarding such moral or ethical beliefs. If

there are problems with the provider's compliance to the Florida Advance Directive laws, your surrogate or someone on our behalf should seek the advice of an attorney.

## **What's a living will?**

A Living Will is a written statement of the kind of medical care you want or do not want if you become terminally ill and you are unable to make your own decisions. You can ask that the doctors do everything possible to keep your body functioning for as long as possible or you can request that life-prolonging medical procedures be stopped. There are two general concepts that apply to Living Wills -- terminal illness and life-prolonging procedures.

## **What is a terminal illness?**

A terminal illness is defined as:

1. A condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery, and which, without treatment, can be expected to cause death;
2. A persistent vegetative state characterized by a permanent and irreversible condition of unconsciousness in which there is:
  1. the absence of voluntary action or cognitive behavior of any kind; and
  2. an inability to communicate or to interact purposefully with the environment;
3. An end-stage condition caused by injury, disease or illness which has resulted in severe permanent deterioration indicated by incapacity and complete physical dependency, and for which to a reasonable degree of medical certainty, treatment of the irreversible condition would be medically ineffective.

In determining whether a terminal illness exists, the treating physician and at least one other consulting physician must separately examine the patient. The separate findings must be documented in the patient's medical record and signed by each examining physician before life-prolonging procedures may be withheld or withdrawn.

## **What are life prolonging measures?**

A life-prolonging procedure means any medical procedure, treatment, or intervention which:

1. 1. Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and
2. 2. When applied to a patient in a terminal condition, serves only to prolong the process of dying.

The term "life-prolonging procedure" does not include the administration of medication or the performance of a medical procedure which is necessary to alleviate pain or provide comfort.

## **What is a designation of a health care surrogate?**

A Designation of a Health Care Surrogate is a document naming another person as your representative to

make medical decisions for you if you are unable to make them yourself. You can also designate an alternate surrogate. The terms of the Designation of a Health Care Surrogate take effect whenever your treating physician and another physician conclude that you lack the capacity to make health care decisions for yourself.

### **What is an anatomical donation?**

An Anatomical Donation is a document that indicates your wish to donate, at death, all or part of your body. This can be an organ and tissue donation to persons in need, or donation of your body for training of health care workers. You can indicate your choice to be an organ donor by designating it on your driver's license or state identification card (at your nearest driver's license office), signing a uniform donor form, or expressing your wish in a Living Will.

### **What is a last will and testament?**

A Last Will and Testament or Will is a written document that disposes of your property after your death. No particular words or phrases are required to make a Will operative but it must be executed in conformity with the Florida probate law. If you have a Will that was executed in another state or a foreign country, the Will is valid under Florida law if it was valid in the state or foreign country where it was execution.

### **Who can make a will?**

Any person who is 18 or more years of age and who is of sound mind may make a Will. You are deemed to be of sound mind if you can understand the nature and extent of your property, your relationship to those who would naturally claim the benefits of the Will, and the effect of the terms of the Will regarding your property. The fact that a person is old, mentally weak, or has been adjudicated incompetent to handle his or her day-today affairs does not mean that person lacks the mental capacity to make a Will.

### **What is the execution of a will?**

The law requires that you, as the testator or testatrix, place your signature at the end of the Will. This must be done in the presence of two witnesses. If you cannot sign your name, it is enough that you make an "X" or other mark on the Will with the intent that it constitutes your signature. The witnesses must sign the Will in your presence and in the presence of each other. Any person who is competent to be a witness in any legal proceeding may witness the signing of the Will.

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**Links:**

[Plan Ahead With Advance Directives](http://www.floridalawhelp.org/node/303/plan-ahead-advance-directives)

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