

LIVING WILL AND HEALTH CARE POWER OF ATTORNEY

What is a “Living Will”?

A Living Will, also known as an Advance Medical Directive (AMD), is a document that allows you to tell your doctors what you want done should you become terminally ill. It applies if and when your physician diagnoses you as having an incurable and irreversible condition making your death imminent (usually within 30 days or less). In your Living Will, you express your wishes as to how you want to be treated.

Every adult in the United States has the legal right to consent to or refuse medical treatment, under the Patient Self-Determination Act of 1990. Many such people recognize that they do not want their lives artificially prolonged, while others may want actions taken to preserve their lives, even if artificially. Any competent person 18 years of age or older may execute a Living Will. A Living Will informs your medical care providers and family members of your wishes regarding your medical care including the following: the type of life support measures you want them to remove, including feeding tubes; whether you want to die at home rather than in a hospital; and whether or not you want to donate your organs for transplant or medical research (many states also permit this choice on your driver's license). Signing a Living Will does not take away your right to decide on treatment, if you are still able to do so.

What Happens Without a Living Will?

A Living Will allows you to make the decisions now while you are healthy and mentally competent. If you do not create a Living Will, all life support measures will be provided to you and not removed. Health care providers will assume you want them to do everything in their power to prolong your life artificially, regardless of your prognosis. Your family may be practically powerless to take you off life support, even if you have no chance of recovery. Additionally, if no arrangements are made for medical directives and you become incapacitated, the court may appoint a guardian for you to make certain decisions in your “best interest.”

Although it is not the primary concern in these situations, the expense of using such artificial life support systems can drain an average estate in a matter of days, leaving nothing for your survivors. If you have other wishes, you should execute a Living Will.

Where Does My Living Will Work?

Living wills must meet strict formal requirements to be valid. They are not wills, and unlike a standard will, which is drafted to the specifications of your state of *domicile*, a Living Will is drafted in compliance with the state law where you currently *reside*. A congressional law, however, makes Living Wills prepared by military legal offices immune to state law requirements. 10 U.S. Code, section 1044c provides that a Living Will lawfully prepared by a legal assistance attorney has full effect in all 50 states, the District of Columbia, and Puerto Rico. Thus, even though certain states (e.g., Texas and Oregon) normally require specific wording in Living Wills/advance medical directives, they are required to recognize a Living Will we prepare in the legal assistance office (LOA). The document will remain applicable in all states even after you separate or retire from the military.

The “Health Care Power of Attorney (POA)” for the Constant Vegetative State

Your Living Will will not address your needs if you are in a constant vegetative state and your death is not imminent. Instead, another type of advance directive, a document called a Health Care Power of Attorney (POA) will allow you to appoint an agent to make health care decisions during such a time. Importantly, a Health Care POA is limited to healthcare decisions, while a more extensive durable POA may potentially allow your agent to make other important decisions for you, including making bank transactions, signing Social Security checks, applying for disability, or simply writing checks to pay your utility bill while you are medically incapacitated.

For a Health Care POA to activate, you have to be unable to make health care decisions for yourself. The document requires that you give the agent guidance in advance as to how to carry out your wishes. For example, if you are unconscious because you have been in a car accident or wounded while deployed and you need your health care decisions to be made for you, your Health Care POA will empower your agent to act and decide. Such decisions include whether to refuse or accept medical treatment or to employ or discharge medical personnel

Since it is impossible to predict every possible contingency in a Living Will, having both a Living Will and a Health Care POA care enables you to handle other kinds of gray-area cases where it's not certain whether you are terminally ill, or your doctor or state law fail to give your wishes due weight. You should review both documents to ensure that provisions in your advance medical directive and Health Care POA work together and do not contradict one another.

Obtaining your Living Will and Health Care POA

If you are ready to get a Living Will or Health Care POA, come to the Legal Assistance office any Wednesday afternoon from 1300 to 1600.

After Drafting your Living Will and Health Care POA

After you have your signed, notarized Living Will and/or Health Care POA, make copies for your doctor's files, agent, family, and, if applicable, your health care facility. Discuss the policies of your health care provider and be sure they are compatible with your own beliefs and that your wishes will be honored. If your doctor cannot, or will not, carry out your wishes, he or she must transfer you to a doctor who will do as you direct.

A Living Will or Health Care POA can be destroyed any time you change your mind. You can do this by telling someone, revoking it in writing, or by destroying the document, although doing all three would be the most prudent. Let your doctor, family and anyone who has a copy of it know that you've destroyed it.

For Further Help or Questions:

For appointments concerning this issue and other personal legal matters, please call the Fort Polk Legal Assistance Office at (337) 531-2580 for an appointment. Hours of operation are Monday through Friday, 0800 – 1130 and 1230 – 1630. We are located in Building 1454 on Alabama Avenue, next to the Showboat Theater.