

The Living Will

A Guide for North Carolinians -- Planning Your Estate

Introduction.

What is a living will? A living will is a declaration that you desire to die a natural death. You do not want extraordinary medical treatment or artificial nutrition or hydration used to keep you alive if there is no reasonable hope of recovery. A living will gives your doctor permission to withhold or withdraw life support systems under certain conditions.

The patient's rights. You have a basic right to control the decisions about your medical care, including the decision to have extraordinary means or artificial nutrition or hydration withheld or withdrawn if your condition is terminal and incurable or if you are in a persistent vegetative state.

If you are competent and able to communicate, you may tell your doctor that you do not want extraordinary means or artificial nutrition or hydration used to keep you alive if there is no reasonable hope of recovery.

What happens if you are not competent or able to communicate this decision? You may decide ahead of time with a living will. If you do not have a living will, someone else may have to decide for you.

A living will is a legal document.

Statutory requirements. You must follow certain requirements to make your living will legally effective.

- You must be at least 18 years old and of sound mind when you sign it.
- Your living will must contain specific statements.
- You must sign your living will in the presence of two qualified witnesses and either a notary public or the clerk of superior court.

Required statements. To be valid in North Carolina, your living will must contain two specific statements.

1. You must declare that you do not want your doctor to use extraordinary means or artificial nutrition or hydration to keep you alive if your condition is terminal and incurable or if you are in a persistent vegetative state (depending upon your instructions).
2. You must state that you know your living will allows your doctor to withhold or stop extraordinary medical treatment or artificial nutrition or hydration (depending upon your instructions).

Beware of using a living will form provided in a magazine article or distributed by national

organizations. These forms may not contain the statements required to make them valid in North Carolina.

Make clear, consistent choices. You must instruct the doctor what you want done if your condition is terminal and incurable or if you are in a persistent vegetative state. You may make these choices in your living will by initialing the appropriate lines. If you make no choices, your living will is meaningless. If you make inconsistent choices, your living will is confusing and may not accomplish what you want. Read the choices carefully before initialing to make sure that your intentions are clear. An attorney can help you fill out the form correctly.

If your condition is terminal and incurable, your living will may instruct your doctor to do the following:

- to withhold or stop extraordinary means only, or
- to withhold or stop both extraordinary means and artificial nutrition or hydration.

If you are in a persistent vegetative state, your living will may instruct your doctor to do the following:

- to withhold or stop extraordinary means only, or
- to withhold or stop both extraordinary means and artificial nutrition or hydration.

The living will must be signed, witnessed, and certified. You must sign your living will in the presence of two witnesses:

- who are not related to you or your spouse;
- who will not inherit property from you, either under your will or under the laws that determine who will get your property if you do not have a will;
- who are not your doctor, your doctor's employees, or the employees of your hospital, nursing home or group-care home; and
- who do not have a claim against you.

Also, a notary public or a clerk or assistant clerk of superior court must certify your living will.

Statutory form. A copy of a living will, which is provided by Section 90-321, North Carolina General Statutes, is duplicated at the end of this publication. The law authorizing this form became effective Oct. 1, 1991. You should ask your attorney's advice before modifying the statutory form.

Living wills signed under prior law. What is the legal effect of a living will signed under prior law? A living will signed before Oct. 1, 1991, or signed using the old form is legally valid. However, the old living will does not mention being in a persistent vegetative state or the withholding or withdrawal of feeding tubes. If you want these possibilities covered, you should sign a new living will.

How does a valid living will work?

The living will gives your doctor permission to withhold or discontinue life support systems under two conditions. Under the first condition, you must be both terminally and incurably ill. Under the second condition, you must be diagnosed as being in a persistent vegetative state. If two doctors diagnose one of these conditions, your doctor may withhold or discontinue extraordinary medical treatment or artificial nutrition or hydration as directed by your living will.

Definitions.

Artificial nutrition or hydration describes the use of feeding tubes or other invasive means to give someone food or water.

Extraordinary means or medical treatment includes any medical procedure which artificially postpones the moment of death by supporting or replacing a vital bodily function.

You are considered to be in a *persistent vegetative state* if you have had a complete loss of self-aware cognition (you are a vegetable), and you will die soon without the use of extraordinary medical treatment or artificial nutrition or hydration.

How do you revoke your living will?

You may revoke your living will by communicating this desire to your doctor. You may use any means available to communicate your intent to revoke. Your mental or physical condition is not considered, so you do not need to be of sound mind. Someone acting on your behalf may also tell your doctor that you want to revoke your living will. Revocation is effective only after your doctor has been notified.

Destroying the original and all copies of your living will may revoke your living will as a practical matter. However, if you have discussed this issue with your doctor, be sure to tell your doctor that you have revoked your living will.

If you sign a new living will, be sure to revoke all prior living wills that may be inconsistent with your new living will.

Where should you store your living will?

Keep the original in a place where you or your family members may find it easily. Some lawyers suggest that you sign several copies and have each one witnessed and certified. Then, you may give an original to each of the appropriate people. However, if you change your mind and revoke your living will, make sure that you destroy all the original copies. (Note: North Carolina law allows you to sign more than one original living will because signing a new living will does not revoke a previously signed living will.)

If you have named a health care agent, give him or her a copy of your living will. You may appoint a health care agent with a health care power of attorney or with a general durable power of attorney. Ask your lawyer for details. *For more information about health care agents, read the North Carolina Cooperative Extension publication, Health Care Power of Attorney, FCS-387.*

Give a copy of your living will to your doctor and any medical facility where you have regular appointments. Give a copy of your living will to your family so they understand your wishes. Also, carry a wallet card stating that you have a living will, where the original is located, and who to contact to get the original.

If you put the original of your living will in a lock box or safe deposit box, make sure someone knows where it is and has access to it. Otherwise, your living will may be found too late.

What happens if you do not have a living will?

If you do not have a living will and you are unable to make your medical decisions, someone else must decide for you. If two doctors diagnose that you are terminally and incurably ill or in a persistent vegetative state, extraordinary means or artificial nutrition or hydration may be withheld or stopped with the permission of:

- your guardian,
- your health care agent,
- your spouse, or
- the majority of your parents and children.

If you do not have a living will, your family is burdened with the decision. Your family may not be able to agree on what action to take. The lack of decision by your family may lengthen your suffering and increase your medical bills. A living will removes the decision from your family's shoulders and makes the decision yours.

What is the effect of your living will if you move out of North Carolina?

Different states have different laws on living wills, so your North Carolina living will may not be valid in another state. If you move to another state, check with an attorney there to see if you need to sign a new living will.

If you spend a lot of time in other states, you may want to sign a living will for each state. Before signing a living will from another state, ask an attorney if there is any reason why you should not sign a living will from that state. For example, you may not want to sign another state's living will if it revokes all previously signed living wills.