

LIVING WILL DECLARATION

THIS DECLARATION is made this _____ day of _____ (month, year).

I, _____ being of sound mind, willfully and voluntarily make known my desires that my moment of death shall not be artificially postponed. If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

In the absence of my ability to give direction regarding the use of such death delaying procedures, it is my intention that this declaration shall be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

Signed: _____

City, County and State of Residence: _____

The declarant is personally known to me and I believe him or her to be of sound mind. I saw the declarant sign the declaration in my presence (or the declarant acknowledged in my presence that he or she had signed the declaration) and I signed the declaration as a witness in the presence of the declarant. I did not sign the declarant's signature above for or at the direction of the declarant. At the date of this instrument, I am not entitled to any portion of the estate of the declarant according to the laws of interstate succession or, to the best of my knowledge and belief, under any will of declarant or other instrument taking effect at declarant's death, or directly financially responsible for declarant's medical care.

Witness: _____

Witness: _____

What is a Living Will?

A Living Will is a document in which a person can express his or her desire to have death delaying procedures withheld or withdrawn in the event he or she is suffering from a medical condition which the attending physician has determined to be terminal (which is defined in the Illinois Living Will Act).

Must an Attorney Prepare the Living Will Form For You?

Although Illinois law does not require that an attorney prepare a Living Will, for proper guidance and to protect your own interests you may choose to involve your lawyer anyway.

What are the Advantages of a Living Will?

A Living Will assures that your right and desire not to receive death delaying medical procedures will be respected even in the event that you are no longer able, due to your physical or mental condition, to actively participate in making those decisions. Additionally, a Living Will saves your relatives from the burden of having to make those decisions without knowing your wishes.

When Does a Living Will Take Effect?

Under Illinois law, a properly signed and witnessed Living Will takes effect when the attending physician of a person who has signed the Living Will records in the the patient's medical record that the patient has been determined to have a terminal condition.

After determining that a patient has a terminal condition, if the attending physician is unwilling to comply with the patient's wishes as expressed in his or her Living Will, the attending physician must notify the patient of that fact. If the patient is unable to initiate a transfer of his or her care to another physician, the attending physician is required, by law to, notify: 1) any person authorized by the patient to make such arrangement; 2) the patient's guardian; or 3) any member of the patient's family.

HOWEVER, if you also have a Durable Power of Attorney for Health Care, and an agent under the Power of Attorney to act in your behalf, your Durable Power of Attorney will be given precedence over your Living Will.

What are the Legal Requirements or Provisions?

Any person age eighteen or older who is a resident of Illinois can create a Living Will at any time. The Living Will form must be signed by you and two (2) witnesses.

Can Your Living Will Be Revoked?

You may revoke your Living Will by burning it or tearing it, by written revocation, or by oral revocation in the presence of a witness 18 years of age who then puts the revocation in writing for you.

When Should You Prepare a Living Will?

The best time for you to create a Living Will is right now, long before you anticipate anything happening to you. This will ensure that if you are ever in a situation where death delaying medical procedures may be indicated and you, if you could express your desires, would choose not to receive them, your desires will be known to the attending physician and your family.

Will Your Living Will Be Recognized in Another State?

Most states have statutes that provide for Living Wills. Some states will accept a Living Will established according to Illinois State Law and some will not. A problem may arise concerning whether or not a document must be witnessed and/or notarized, as may be required in a particular state's law. Since there are variations among state laws, it is suggested that you should have your Living Will both witnessed and notarized.

However, Illinois law does allow for acceptance of a Living Will which has been executed in compliance with the law of another state.

Other Things to Consider

Before executing your Living Will, you should talk to your attending physician to assure that he or she will comply with your wishes as expressed in your Living Will. This will allow you to locate another physician, if necessary, to carry out your wishes.

After your Living Will is signed by you and witnessed, you should send the original form to your physician and provide copies to your lawyer and to family members or close friends who you can rely on to act according to your interests and values.

This information is provided by the ILLINOIS DEPARTMENT ON AGING, 421 East Capitol Avenue, Springfield, Illinois 62701, 1-800-252-8966 (Voice and TDD)