

Your Legal Corner: Living Wills **Posted by permission of Victoria M. Dalton, Esq.**

I don't know about you, but stories concerning unexpected events really grab my attention. Perhaps you may recall the horrid account of the patron in a restaurant suddenly hit by an automobile, or the lone golfer, who out of the blue, was struck by a bolt of lightning. When you hear of these occurrences, you realize that change can happen in an instant.

When it comes to change, Boy Scouts get it right. As you probably know, their motto is to "Be Prepared."

If you are over the age of 18, consider planning for the unexpected by preparing a living will as part of an overall estate plan.

Advance Directive Act: Under title 26:2H-54, competent adults, 18 and older, have the fundamental right to control decisions about their own health care. The "New Jersey Advanced Directives for Health Care Act" supports the right of an individual patient to make voluntary, informed choices, and to accept, reject or to choose among alternative courses of medical and surgical treatment. An example that comes to mind is that of a 40-year-old adult undergoing chemotherapy. While this is a viable treatment presently, this same method may not be so appealing to the same adult at age 80. Preferences as to patient care may be contained in a living will. As such, you should express your wishes to your doctor to make sure the doctor is in agreement and does not object to your wishes morally. In the event the doctor does, you may need to change doctors. Preferences as to the use of feeding tubes, respirators and CPR should be discussed with the doctor. It also depends on any existing health issues known at the time the document is made.

Living Will: The creator of a living will reserves the final decision as to his or her end-of-life treatments. For some, treatments can add years to their life, while for others it serves only to prolong the dying process. A living will documents end-of-life preferences in the event you are unable to state them yourself. Living wills can be crafted at hospitals, online and with lawyers. However, in order to be effective, a living will must be executed according to state law. State law requires this written document to be signed and dated in front of either an attorney at law, a notary, other person authorized to administer oaths or two adult witnesses who were not selected as a representative within the living will. Since I am a practicing attorney, you already know which process I would advocate.

Healthcare Representative: You would also appoint a healthcare representative in the living will. This is the person who is designated to make health care decisions on your behalf. The power of the healthcare representative to make decisions would not become effective until it is determined the patient lacks capacity to make a healthcare decision and it is given to the attending physician.

A properly prepared living will allows you to make your wishes known in writing and select a healthcare representative who will make sure your wishes are followed.

Until next week, expect the unexpected. Plan!

Next week, YLC will provide information on funerals and disposition of remains.

Victoria M. Dalton is a dedicated Family/Elder Attorney, with the Law Firm of Hoffman DiMuzio. To contact her, call 856-845-8243, or 856-863-8776 or email her at vdalton@hdhlaw.com. To view YLC on TV, MWF 9 a.m. and 4 p.m.!

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