

AN INTRODUCTION TO ILLINOIS ADVANCE DIRECTIVES

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What is an advance directive?

An advance directive (sometimes known as a health care directive) is a document you sign, when you are competent, to express your wishes if you become incompetent.

What are the main types of advance directives?

There are three main types of advance directives in Illinois: (1) living wills, (2) powers of attorney for health care, and (3) powers of attorney for property.

What do these documents do?

(1) Living Wills. A living will is a document instructing your doctor to withhold death delaying procedures in the event you have a terminal condition.

The media often mentions living wills as an important document for expressing your wishes; during the Terri Schiavo case, a number of articles were written to this effect. However, it's important to realize that, because of its limitations, an Illinois living will would **not** have resolved the Schiavo case. The Illinois living will applies only to a very specific situation, involving a terminal condition -- Ms. Schiavo did not have such a condition. (Depending on whom you believe, she was either in a persistent vegetative state or just very physically disabled.) An Illinois living will also doesn't allow you to appoint an agent to make decisions on your behalf.

(2) Powers of Attorney for Health Care. A health care power of attorney is a document by which you appoint an agent to make health care decisions for you if you are unable to do so. You can also donate your organs via a health care power of attorney.

The keys to this document are the fact that you can appoint an agent, and the fact that you can express your wishes regarding life-sustaining treatment. Appointing an agent means that your agent can assist with **all** of your health care decisions, not just those involving a terminal condition. And expressing your wishes regarding life-sustaining treatment gives your agent some guidelines for acting.

Illinois health care power of attorney forms typically contain three statements regarding life-sustaining treatment, and allow you to initial the statement with which you most strongly agree. To paraphrase, these three statements essentially say the following:

- The decision regarding life-sustaining treatment is in my agent's discretion, and my agent is instructed to consider whether the burdens of such treatment outweigh the benefits, taking into account the relief of suffering, the expense involved, and quality of life.

- Keep me alive no matter what, except that if I'm in an irreversible coma, I no longer want to receive life-sustaining treatment.

- Keep me alive no matter what.

You may also want to look into more in-depth alternatives to the Illinois form (the Illinois Power of Attorney Act specifically authorizes the use of alternative forms as long as they meet certain requirements). One popular form that some of my clients have used is the “Five Wishes” document (available for a fee at agingwithdignity.org).

(3) Powers of Attorney for Property. A property power of attorney is similar to a health care power of attorney. In this document, you appoint an agent to make financial decisions for you if you are unable to do so. This can involve actions such as managing your investments, selling your property, and paying bills.

Because of the broad powers granted under this document, you will want to be very careful about choosing an agent.

Do I need an attorney to assist me with advance directives?

I would recommend it in most cases. As long as you read and understand each document you are signing, you may not need to retain an attorney. On the other hand, these documents can sometimes be confusing, and there is great risk in having an invalid advance directive (or an advance directive that doesn’t express your wishes). One upside to using a professional: most estate planning attorneys I know (myself included) will prepare these documents for free if you retain them to draft other estate planning documents (like a will and/or trust).

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