



Living Wills/Advanced Directives^{1 2}

Jeffrey E. Tranel³

An estate plan is an organized manner to distribute one's assets and liabilities after the person dies and to provide instructions for end-of-life decision making. It often consists of several documents indicating how a person wants to distribute his or her estate, future operations of a business, instructions for health care, and end-of-life decision making. Estate plan documents commonly include:

- Last Will and Testament,
- Living Will,
- Healthcare Power of Attorney,
- Financial Power of Attorney, and
- Trust.

A Living Will

Living Wills are documents that let people state their wishes for end-of-life medical care in case they become unable to communicate their decisions. A *Living will* is also called a directive to physicians or advance directive.

In Colorado, a *living will* covers the administration, withholding, or withdrawal of life-sustaining procedures when a person has a terminal condition and is unconscious or otherwise incompetent. In this very limited set of circumstances, declarations in a properly executed *living will* govern a physician's course of action. Regardless of the person's decision to accept or reject life-sustaining treatment, medical professionals will continue to provide treatment to alleviate pain and suffering.

Additionally, a person's *living will* and advance medical directive(s) should include statements about any religious beliefs that would either prohibit or require certain types of medical care.

Any authority granted by a *living will* ends when the person who made the document dies. An exception is that some *living wills* or powers of attorney give healthcare agents the power to make decisions about organ donation or autopsy.

The signature of a *living will* must be witnessed by two uninterested parties and/or notarized by a notary public (in Colorado). Signing an advanced medical directive allows the person's beliefs and decisions to be carried out when he or she cannot communicate them. It does not take away a person's right to make medical decisions if he or she is able to do so.

If a person becomes unable to make medical decisions and does not have a *living will*, family members may have to go to court and pursue a guardianship in order to gain the authority to make necessary medical decisions.

Amending or Revoking a Living Will

A *living will* may be revoked or amended at any time. A *living will* and other advanced directives should be reviewed and new ones created when there is a diagnosis of a disease that is terminal or significantly alters the person's life; change in family or marital

¹ The purpose of this fact sheet is for educational purposes only. Changes in the law may have occurred since publication. No statements should be considered as legal advice. People should consult with a licensed attorney about their individual cases.

² This and other fact sheets can be downloaded at <https://ABM.extension.colostate.edu>.

³ Tranel is an Agricultural and Business Management Economist and Master Instructor with Colorado State University Extension. He is also a faculty affiliate with CSU's Department of Agricultural and Resource Economics. He may be contacted via email at jtranel@colostate.edu. This document was reviewed by Jenna H. Keller, an attorney with Keller Law, LLC. September 2023.

status; and/or the person's thoughts about end-of-life issues change.

It is very important that the most current version be provided to the doctor, family, and others needing to be aware of that person's wishes.

Updates

As medical disease and risks change, so should your *living will*. If you have not reviewed or updated your living will since COVID, you should confirm that it still reflects your wishes. For example, most pre-COVID living wills might only provide care on a ventilator for 3-10 days, which may not be consistent with care practices under COVID. The same could be applicable to other conditions, especially to your personal or recently diagnosed medical conditions.

Other Advance Medical Directives

In addition to a *living will*, there are four additional primary types of advance medical directives. They may be separate documents or incorporated into a single document.

1. CPR Orders/Do not Resuscitate Orders,
2. Medical/Health Care Power of Attorney,
3. Disposition of Last Remains Declarations, and
4. Organ and Tissue Donation Declarations.

Proxy Decision Maker for Medical Treatment

If a patient does not have a valid *living will*, Colorado law allows health care providers to rely on a "proxy decision maker" to make decisions for an incapacitated patient. Medical professionals must make reasonable efforts to contact all people they think have an interest in the patient's care, including the patient's spouse, parents, adult children, siblings, adult grandchildren, and close friends.

In order for a proxy decision maker to have authority to make medical decisions, the patient's attending physician must determine that the patient lacks the ability to provide informed consent or refusal of medical treatment. Medical professionals must make an effort to tell the patient that he or she lacks the ability to provide informed consent and that a close relative or friend will be selected to make medical decisions.

A proxy decision maker may authorize all decisions

except the removal or withdrawal of artificial nourishment and hydration. In such cases, the patient's doctor and another appropriately trained physician must certify that such treatment is merely prolonging the act of dying.

Communication is Key

Many people prefer to keep their legal affairs private. However, when it comes to end-of-life and medical treatment issues, communication with family members, close friends, doctors, and other medical professionals is important to ensuring one's wishes are followed. People should take the time to discuss these issues with family members, close friends, and medical professionals.

Summary

A *living will* is a document critical to good estate planning. It lets people state their wishes for end-of-life medical care and in case they become unable to communicate their decisions. People should take the time to discuss their decisions and religious beliefs about medical care with their families, close friends, and medical professionals.

Original versions of all directives should be kept somewhere easily accessible. The documents should also be provided to the doctor, family members, health care agent, and any medical facility. It is not advisable to place the documents in a safe deposit box at a bank, as the documents would not be available to access outside of business hours or it may be difficult for a family member to gain access to the safe deposit box.

So long as the *living will* and other advance medical directives comply with state law where the directive is executed, they will likely be recognized and honored in other states. For those people who spend a significant amount of time in more than one state, it is best to raise this issue with legal counsel and ascertain whether documents should be executed in multiple states or have documents drafted in such a way in the primary state to apply to other states. It is very important to make sure all your declarations are consistent to avoid any confusion or disputes.

People should seek legal counsel in their home state and other states in which they spend significant time. It is critical to have all legal documents, including *living wills* and other health care advance directives appropriately executed.
