

**THIS is the LAW**



## Living Wills and Health Care Powers of Attorney

*To many people, the fear of a lingering death is worse than the fear of dying. Yet often, near the end of one's life, one is unable to make decisions or express desires concerning medical care to loved ones or medical personnel. A living will and a health care power of attorney are legal documents which will permit you to make certain choices regarding your future health care and will allow you to appoint another individual to make those decisions for you in the event that you are unable to make them for yourself.*

*NOTE: A living will, also known as an advance directive for a natural death, makes no provision for your personal belongings or property after your death. A living will should not be confused with a testamentary will. If you have additional questions about making a living will or health care power of attorney, discuss them with a physician or attorney.*

*This pamphlet was prepared as a public service by the Communications Committee and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and could affect the information in this pamphlet. If you have specific questions with regard to any matters contained in this pamphlet, you are encouraged to consult an attorney. If you need an attorney, please contact the North Carolina Lawyer Referral Service, a nonprofit public service project of the North Carolina Bar Association, via phone (1-800-662-7660; local 677-8574) or online ([www.ncfindalawyer.org](http://www.ncfindalawyer.org)).*

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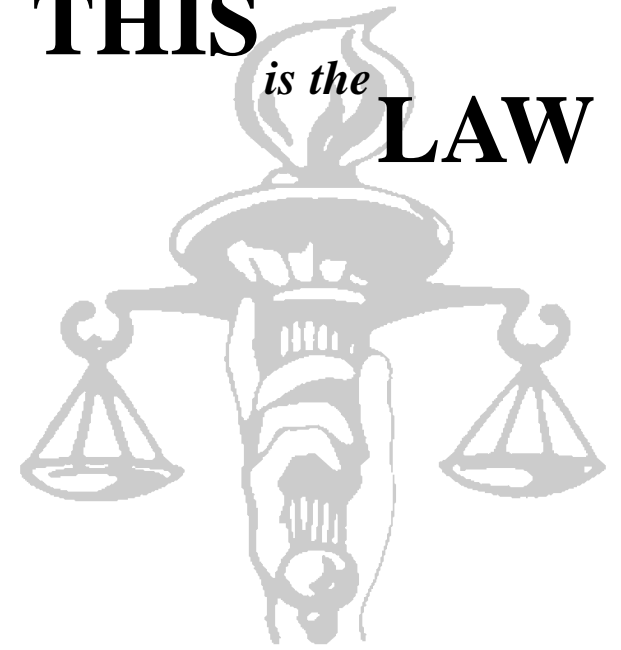
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**LIVING WILLS**

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## Living Wills and Health Care Powers of Attorney

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*Published as a Public Service by the Communications Committee of the North Carolina Bar Association*

## What is a Living Will?

A living will is a document which allows you to retain control over whether your life will be prolonged by certain medical procedures if: (1) you have an incurable or irreversible condition that will result in your death within a relatively short period of time; (2) you become unconscious and your health care providers determine that, to a high degree of medical certainty, you will never regain consciousness; and/or (3) you suffer from advanced dementia or any other condition which results in substantial loss of your cognitive ability, and your health care providers determine that, to a high degree of medical certainty, the loss is not reversible. In North Carolina, this is called an “Advance Directive for a Natural Death” or “Living Will.” A living will allows you to authorize or direct the withholding or withdrawal of certain life-prolonging treatments (for example, respirator care and artificial nutrition or hydration) that would only serve to delay your death. You may also authorize the provision of artificial nutrition and/or artificial hydration, even if you do not want your life prolonged by other treatment measures.

## What is a Health Care Power of Attorney?

A health care power of attorney is a document by which you may appoint another person who may consent to or refuse medical care, including mental health treatment, on your behalf if a physician or eligible psychologist determines that you are unable to make or communicate these decisions yourself. You may authorize the designated person (the “health care agent”) to consent to the withholding or withdrawal of life-prolonging measures, and direct your health care agent regarding what medical and/or mental health treatments you would want, and what you would not want. You also may limit the health care agent’s authority to consent to certain treatments, including life-prolonging measures.

Life-prolonging measures are those medical procedures or interventions which only serve to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and similar forms of treatment (other than to provide comfort or alleviate pain). In addition to making decisions in “life and death” situations, your health care agent also may be authorized to make more routine medical decisions for you (for example, to consent to X-rays or surgery). A health care power of attorney also may contain or incorporate by reference any lawful guidelines or directions relating to your health care as you deem appropriate, including instructions to your health care agent to refuse any specific types of treatment that are unacceptable to you for religious or other reasons. In the event of death, you may authorize your health care agent to donate your organs and/or authorize an autopsy.

A health care power of attorney will remain effective if a court appoints a guardian to act on your behalf, unless the court issues an order suspending the authority of the health care agent. You may indicate in the document your choice of a guardian in the event guardianship proceedings are commenced.

## How Should a Living Will or Health Care Power of Attorney Be Made?

The forms used to make a living will or health care power of attorney may be obtained from an attorney or may be obtained online at the North Carolina Secretary of State Web site ([www.nc lifelinks.org/ahcdr/](http://www.nc lifelinks.org/ahcdr/)). A health care power of attorney may be a separate document or may be included in a broader general power of attorney document (sometimes called a “durable power of attorney”) addressing matters other than consent for and refusal of medical care. In the event you have both a health care power of attorney and a general power of attorney, the provisions of your health care power of attorney will control with regard to medical decisions.

A living will and a health care power of attorney must be witnessed and signed in accordance with North Carolina law and must be certified by a notary public. At least two witnesses are required for a living will and health care power of attorney. Witnesses cannot be related to the person signing the documents (the “declarant”) and cannot be potential heirs to the declarant’s estate or have any other claim against the declarant at the time they serve as a witness. No attending physician, attending mental health treatment provider, licensed health care provider who is a paid employee of the attending physician or mental health treatment provider, or paid employee of a health care institution may be a witness for these documents; however, such an employee may notarize the document. Volunteers are not employees of the physician or health care institution, so they may witness the execution of a living will or health care power of attorney.

You should carefully consider the implication of executing these documents, both as to the course of your future medical care and as to the effect of your decisions on your loved ones.

It is strongly suggested that you consult with family members prior to executing these documents.

## Can I Have Both a Living Will and a Health Care Power of Attorney?

Yes. You may have a living will indicating your health care choices in the event you are unable to make those decisions in the future, and you also may have a health care power of attorney designating an individual to act on your behalf, consistent with your wishes as set out in your living will, unless you specify otherwise. In fact, you even may have a living will, a health care power of attorney, and an advance instruction for mental health treatment in the same document, or created separately. You may specify whether your health care provider is to follow the instructions expressed in your living will or the decisions made by your health care agent in the event there is a conflict between the two. If you do not specify, your health care provider should follow the

instructions expressed in your living will.

## Can I Change My Mind Once I Sign a Living Will or Appoint a Health Care Agent?

Yes. You may revoke a living will at any time that you are able to communicate health care decisions. You may revoke a health care power of attorney if you are also capable of making health care decisions. You may do so by executing and acknowledging an instrument of revocation, executing a subsequent living will or health care power of attorney, or by any other manner by which you are able to communicate your intent to revoke. The revocation will become effective only upon communication to the attending physician, and, if a health care power of attorney is to be revoked, to each health care agent named. These documents should be reviewed periodically, especially in the event of divorce, or death or disability of a named agent, to ensure that they continue to reflect your desires about health care decisions.

## If I Do Not Have a Living Will or Health Care Power of Attorney, Who Will Make These Decisions for Me?

If you do not have a living will or health care power of attorney, your physician will ask your spouse or next of kin to consent to treatment, unless a court has appointed a guardian or you have a durable power of attorney which gives your attorney-in-fact powers to make health care decisions for you. If your physician has determined, and another physician has confirmed, that (1) you have an incurable or irreversible condition that will result in your death in a relatively short period of time, or (2) you are unconscious and, to a high degree of medical certainty, will never regain consciousness, North Carolina law provides that the decision to withdraw or withhold life-prolonging measures may be made by your physician, after consulting with your guardian or attorney-in-fact, if applicable, and if not, after consulting with your spouse or next of kin.

## Where Should I Keep My Living Will or Health Care Power of Attorney Document?

It is suggested that you give a copy of these documents to your family physician, attorney and family members. For a fee of \$10, you also may file a copy of these documents with the Advance Health Care Directive Registry maintained by the Secretary of State ([www.nc lifelinks.org/ahcdr/](http://www.nc lifelinks.org/ahcdr/)). Each registrant receives a password allowing remote on-line access to his or her documents. There is no fee for filing a revocation with the Registry.

A signed copy of a health care power of attorney document also can be given to your health care agent and any alternate named in your health care power of attorney. A safety deposit box or locked safe is not recommended for storage of these documents.