

# Notes On Living Wills

Wills and Inheritance  
Factsheet



SMITH PARTNERSHIP

*Solicitors*

# What is a Living Will?

A Living Will only takes effect if you become unable to tell people your wishes about your medical treatment, so you can no longer take part in decisions about it. You can use the attached Living Will form to do one or both of the following:-

1. Say in advance what your wishes are about medical treatment. These statements are called 'advanced directives'
2. Appoint someone called a 'healthcare proxy' to take part in decisions about medical treatment on your behalf

The Living Will is only about medical treatment. You cannot use it to say what you want to happen to your property after you die or to make funeral requests. You will need an ordinary Will to deal with your property.

In England and Wales an advanced refusal of treatment is legally binding as long as the following conditions apply:-

1. You made your refusal when you were mentally capable of making that kind of decision
2. You meant your refusal to apply in the kind of situation which later arises and you understood the consequences of your decision in that kind of situation
3. It really was your decision and you did not decide under someone else's influence

You cannot insist on receiving any particular treatment.

The legal status of the healthcare proxy is uncertain but in practice doctors are likely to pay attention to what your proxy says.

## **Discussing your Living Will with other people**

A Living Will expresses important and very personal wishes. Please think about them carefully. You do not have to discuss what you plan to say in your Living Will with anybody but you are strongly advised to talk to a doctor (it could be any doctor. It does not have to be your own general practitioner). This is because a doctor will be able to explain what healthcare options are open to you. If you make any advanced directives, discussing them with a doctor will also show that you are fully aware of the consequences of the decision you are taking and that the doctor fully understands what you want in case there is a dispute about your true wishes later. You might also want to discuss your plans with other people, for example, your spouse or partner, family and friends, or a nurse, counsellor or religious advisor.

## What happens if you change your mind?

Your wishes stated in a Living Will are not final. You can change them at any time while you are still mentally capable of doing so. You do not have to do this in writing; it is enough just to tell your doctor. If you do change your wishes, it is wise to destroy your Living Will and all copies of it. You may choose to make a new Living Will on a new form. Make sure any doctor who is treating you, and the people close to you, know what you have done.

## How to fill in the living will form attached

The following notes are to help you fill in the form. The attached Living Will form has two main sections: -

1. One for advanced directives; and
2. One for appointing healthcare proxies

If you want to record your wishes about medical treatment, use the advance directives section. If you want to appoint someone else to make decisions about your medical treatment, use the healthcare proxy section. You can use either one or both sections.

### Advanced directives

Doctors must take patient's wishes into account. They must not give patient's treatments which they do not want to have.

You can use this part of the Living Will form to record your wishes about medical treatment, to make sure doctors know your wishes if you become unable to tell them yourself. If you do not want to use this part of the form, you do not have to fill in all of the sections. Fill in as much or as little of the form as you like. If you do not want to make any advanced directives at all, go straight to the part of the form headed 'healthcare proxy'.

1. Medical treatment in general. This essentially lists three possible health conditions, called case 1, case 2 and case 3. For each one you can say what you want to happen by ticking the box A or B. If you do not want to choose between A and B leave both boxes blank. If neither box A or B sets out your true wishes, you will need to discuss your actual wishes with your doctor. Treat each case separately. You may not want the same thing in all three cases.

Case 1, (life threatening condition) you can say what your wishes are if you develop an infection or other illness which cannot be cured and which has become so serious that your life is nearly at an end because of it

In case 2, (permanent mental impairment) and case 3, (permanent unconsciousness) cover two situations where your mental faculties are damaged. Permanent mental impairment means a severe mental condition (like dementia). Case 2 applies where you have a severe mental condition, and your physical state then becomes so bad that you could only be kept alive by medical treatment. This might happen because you develop an illness, even if the illness is a minor one which could be cured but which would threaten your life if were not treated. Case 3 is where you fall into a permanent coma, or persistent vegetative state.

It is important to realise that choosing box A does not make sure that you will receive any particular treatment. The treatment you receive will depend upon what your doctor thinks is reasonable in the circumstances. Choosing box B is legally binding as long as you meet the conditions (see under 'What is a Living Will?').

Artificial feeding and drinking (feeding and drinking through a tube) count as medical treatment so your wishes will cover these too unless you say otherwise. If you have views about feeding and drinking through a tube, tell your doctor about them and write them down in the section for particular treatments or tests.

2. Particular treatments or tests. If you have strong views about particular types of medical treatments or tests, you can write them here. For example, you may have views about ventilation (artificial breathing) or feeding through a tube. Please discuss this section with a doctor before you fill it in, as it is important that the doctor who is treating you can easily understand anything you write.

Say clearly if you want to want to refuse a particular treatment or test. This will help to avoid any dispute later. You cannot insist on receiving any particular treatment, although your wishes will be taken into account.

If the attached form does not give you the chance to give to your views about something, please make sure that you explain them to your doctor.

3. Having a friend or relative with you if your life is in danger. If there is someone you would like to be with before you die, you can write his or her name, address and telephone number in this section so that he or she can be contacted if your life is in danger. It may not be possible to contact the person you name, or for him or her to reach you in time.

Tick the small box if you would like the people caring for you to do their best to keep you alive for as long as is reasonable to give the person you name a chance to reach you, even if this means temporarily disregarding the choice of box B in any of cases 1, 2 or 3, and also any refusal of particular treatments or tests. If you tick this box, any refusal of treatment which you have recorded earlier in the form will not be put into effect until the medical staff have tried to contact the person you name and he or she has had a reasonable chance to reach you.

If you do not tick the small box, the wishes you have given earlier in this form will be put into effect even if the person you name has not yet had a chance to be with you.

### **Healthcare Proxy**

You can fill in this part of the form even if you have not made any advance directives earlier in the form.

There may be somebody (for example your spouse or partner, a relative or friend) you would like to take part in medical decisions on your behalf if you become unable to do so. If so, write his or her name, address and phone number in this section of the form. This person is known as a 'healthcare proxy'.

Your healthcare proxy will be taking on an important responsibility. Please discuss this with the person who you have in mind. You need to make sure that he or she: -

- (a) is prepared to be your healthcare proxy;
- (b) knows your wishes about medical treatment; and
- (c) is prepared to express your wishes about medical treatment on your behalf

If your proxy does not share your views on medical treatment, it may be difficult for him or her to represent you properly.

If medical staff cannot contact your proxy, they may have to make a decision without involving your proxy.

If you have to go into hospital, you may be asked to say who your next-of-kin is. The term 'next-of-kin' has no defined legal meaning in this context and you can name any person. If you appoint a healthcare proxy, it may avoid confusion if you name the same person as your next-of-kin.

### **Your signature and witness**

When you have filled in the form you must sign and date it in front of an independent witness. The witness does not need to read your Living Will. The witness should watch you sign the form and then he or she should also sign it and then clearly write his or her name and address in the spaces provided.

The witness should be aged 18 or over and should not be any of the following people:

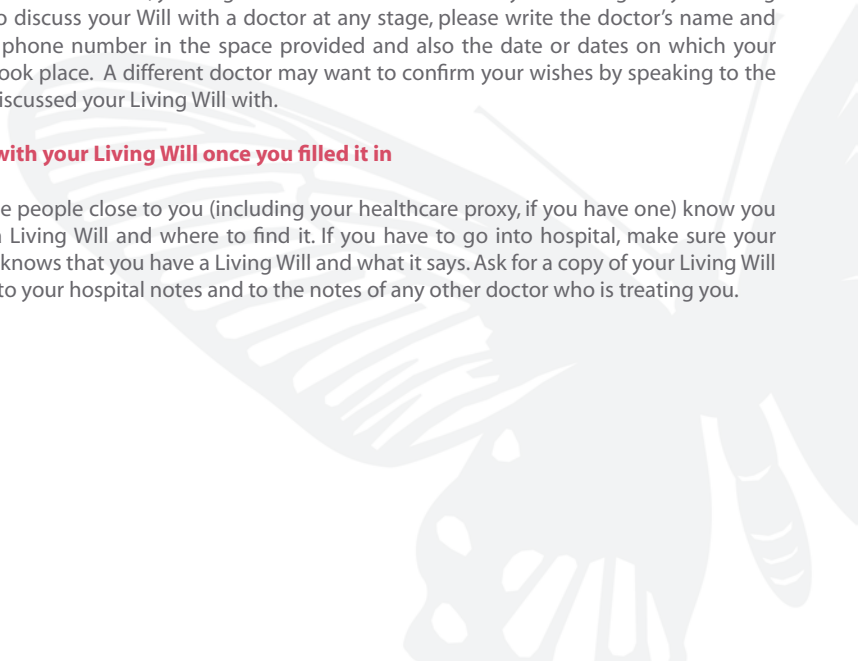
- (i) your husband/wife/partner
- (ii) a relative
- (iii) anyone who stands to gain anything by your death, for example by inheriting anything from you
- (iv) anyone you have appointed as a healthcare proxy, or his or her husband/wife/partner

### **Discussing your Living Will with a doctor**

You are recommended to discuss your wishes with a doctor before you make a Living Will, but you do not have to. However, you might decide to do so later after you have signed your Living Will. If you do discuss your Will with a doctor at any stage, please write the doctor's name and address and phone number in the space provided and also the date or dates on which your discussions took place. A different doctor may want to confirm your wishes by speaking to the doctor you discussed your Living Will with.

### **What to do with your Living Will once you filled it in**

Make sure the people close to you (including your healthcare proxy, if you have one) know you have made a Living Will and where to find it. If you have to go into hospital, make sure your doctor there knows that you have a Living Will and what it says. Ask for a copy of your Living Will to be added to your hospital notes and to the notes of any other doctor who is treating you.



The information in this briefing note is intended to provide an overview of current or upcoming legislation and is not intended as complete coverage. The application of the law in any specific case should always follow professional advice. If you wish to update the details which we hold on you or you do not wish to receive any further marketing materials from us, please contact us by email - [marketing@smithpartnership.co.uk](mailto:marketing@smithpartnership.co.uk).



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