

What Are Living Wills, Health Care Powers and Financial Powers?

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My name is Kendall Brown. As an attorney I have practiced in the estate planning area for over 40 years. In connection with my clients' estate planning process of preparing Wills and Revocable Trusts, I also recommend the preparation of some additional documents. These include Living Wills, Health Care Powers and Financial Powers. The purpose of this tutorial is to discuss these three documents.

What Is A Living Will?

- No extraordinary efforts to keep you alive
 - Whether to hook you up to a machine
 - Not cover whether to "unhook" the machine
- Only if you can't make decision yourself
 - You are unconscious
 - You are mentally incapable

The first document to discuss is a Living Will. A Living Will is a document which states that no extraordinary efforts are to be used to keep you alive. This includes things such as a breathing machine, surgery and other types of medical procedures. In essence, the document says you do not wish to be kept alive by mechanical or artificial means if you are terminally ill or injured. It does not cover removing you from any life support function. The Living Will is effective only if you are unable to make decisions for yourself, such as being unconscious or mentally incapable of making medical decisions. If such an event should occur, the Living Will comes into effect at that time.

What Is A Living Will?

- Each state has different form
 - Some states don't have Living Will
- Decision is made by you
 - Some clients use and some do not

Each state has a different Living Will form. Some states don't have Living Wills or they are coupled with their Health Care Powers. Because you are making a decision not to prolong your life using extraordinary efforts, it is a decision to be carefully considered.

What Are Living Wills, Health Care Powers and Financial Powers?

What Is A Health Care Power?

- Who makes medical decisions for you
 - Person is called agent or power holder
 - Can be spouse, child, partner, family member or friend
 - Can designate successor if original agent can't act
- Only if you can't make decisions yourself
 - You are unconscious
 - You are mentally incapable

The next document I prepare for my clients is a Health Care Power Of Attorney. A Health Care Power Of Attorney designates a person who is to make medical decisions for you if you are unable to do so. This person is either called either an agent or power holder. The person you designate to make these medical decisions can be your spouse, child, partner, family member or friend. Often you will designate a successor agent to act if your original agent is unable to act for some reason. Like the Living Will, the Health Care Power is effective only if you cannot make medical decisions for yourself, such as being unconscious or mentally incapable of making decisions.

What Is A Health Care Power?

- Each state has different form
 - Most states will recognize another state's form
- No medical decisions are made
 - All clients use
 - Can provide suggested or mandatory decisions

Each state has a different form for a Health Care Power Of Attorney. Most states will recognize Health Care Powers that were generated under other state laws. However, if you move to a different state you should have your estate planning reviewed and, if necessary, redone. Because no medical decisions are made, all you are doing is determining who will make medical decisions on your behalf if you are unable to make them yourself, all of my estate planning clients use this document. The Health Care Power can also provide either suggested or mandatory decisions regarding different health care treatments. As an example, every client I've ever prepared a Health Care Power for has decided to use pain medication.

What Are Living Wills, Health Care Powers and Financial Powers?

What Is A Financial Power?

- Who makes financial decisions for you
 - Person is called agent or power holder
 - Can be spouse, child, partner, family member or friend
 - Can designate successor if original agent can't act
- Each state has different form
 - Most states will recognize another state's form

A Financial Power Of Attorney is comparable to a Health Care Power except it determines who is to make financial decisions for you. Like the Health Care Power, the person you designate is called either an agent or power holder. It can be your spouse, child, partner, family member or friend. Again, you can designate a successor agent to act if your original agent is unable to do so. Like the other documents we have discussed in this tutorial, each state has a slightly different form for a Financial Power Of Attorney. As with the other documents, most states will recognize a Financial Power that was created under another state law.

What Is A Financial Power?

- Agent can
 - Buy, sell or hold your assets
 - Make gifts
 - Transfer assets to your revocable trust
- Can be effective immediately or only if you can't make decisions yourself
 - May require doctor's decision that you are not mentally capable

Under the Financial Power your agent can buy, sell, or hold your assets. Your agent can make gifts on your behalf. A common use for a Financial Power is to permit the agent to transfer assets to your Revocable Trust. If an asset was missed or forgotten and did not get transferred to your Revocable Trust, your financial agent can do so and avoid a probate of your estate upon your death. The Financial Power can be effective immediately or only if you cannot make financial decisions yourself. If you choose to make the Financial Power effective upon your incapacity, this may require a doctor's decision that you are not mentally capable of making financial decisions.

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Hopefully this tutorial has given you more information regarding the three additional documents we use in estate planning: the Living Will which states that you do not want to prolong your life by artificial means; the Health Care Power which designates a person to make health care decisions for you if you are physically or mentally unable to make them yourself; and the Financial Power which designates a person to make financial decisions on your behalf either immediately or upon your incapacity.