Taking Back Control: Living Wills and Beyond

by Robert Bloink, J.D., LL.M. and William H. Byrnes, J.D., LL.M.

On the surface, living wills might seem as if they allow your clients to control the course of their medical treatment if they become incapacitated and cannot make decisions for themselves. In reality, the living will might provide a false sense of security. Simple living wills are often rendered ineffective because they are unable to address every potential situation. It is critical that your clients know their options and understand the difference between opting for substituted judgment of a designated medical surrogate over the use of a living will. Discussing these alternatives will give your clients the knowledge they need to decide for themselves how their end-of-life treatment will be handled—and allow you to provide them with a type and level of control most will deem priceless.

# Living Wills: The Basics

Living wills, also known as advance directives, allow your clients to make decisions about medical care while they are healthy and competent. In a life or death situation, the living will theoretically governs decisions such as whether extraordinary measures will be taken to save a patient’s life or whether life support machines will be used to keep the patient alive.

Your clients will assume that their wishes will be followed, and that the instructions they provided in advance will dictate the end-of-life care they will receive. They may use living wills to eliminate the burden on children and relatives who may not fully understand the patient’s wishes or who may be emotionally unable to make a difficult decision.

# Complications

Despite the good intentions of the living will, complications frequently arise. Living wills are often simple documents that your client might find on the Internet or fill out in a hospital. No legal advice is required for a living will to be valid—and often no advice is sought.

Because of this, living wills are usually relatively vague. For example, your client may decide that he does not want to remain on life support if there is no possibility that a meaningful quality of life can be achieved. But what exactly constitutes a meaningful quality of life? And what if the doctor cannot provide concrete odds? Even if doctors have the advance directive

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in their hands, they may substitute their own judgment in uncertain situations based on fear of litigation.

In these scenarios, the decision falls to the patient’s family members, who may be poorly equipped to make the decision, or to doctors who have little knowledge of the patient—exactly the situation that the living will was meant to guard against.

# Alternatives

A better way might be to think of a living will as the starting point for end-of-life decision making. Your clients do not want to delegate these important decisions to family or leave them solely in the hands of doctors, but in reality that’s often what happens. Therefore, it is important to provide the clearest instructions possible.

An advisor’s guidance can prove invaluable. Asking the difficult questions, such as what might constitute a “meaningful life” for a particular client, or the odds of medical recovery that they would be willing to accept, could provide clarity to otherwise murky terms. It is also important to advise your clients to have frequent conversations with their loved ones, so they can be prepared to decide. Technology, such as videotaped discussions about end-of-life preferences, can also be used to provide guidance as to a patient’s wishes.

In practice, it is likely that a combination of these approaches will provide your clients with the greatest degree of control over their medical care.

# Conclusion

While a living will might be the best first step to give your clients control over end-of-life care should they become incapacitated, it’s by no means the only preparation needed. Advisors can help their clients provide more detailed instructions, while involving family members to make sure that everyone has a clear picture of the client’s wishes.