

# WHY DO I NEED A LIVING WILL AND POWERS OF ATTORNEY?

By Leslie Schneider Johnson

The Terri Schiavo case sparked nationwide awareness about a need to put end-of-life decisions on paper. The severely brain-damaged woman left no written instructions, creating a seven year legal battle between her husband and her parents over what each thought she wanted. In the wake of the Schiavo case, it is important for everyone to make sure their wishes are known. How do you do that? You put it in writing in the form of a living will. The vast majority of us do not have a living will and maybe never even knew what a living will was until the Schiavo case came into the headlines.

A living will is a simple legal document (also known as an Advance Directive) that states your wishes for the kind of life-sustaining medical intervention you want, or do not want, if either you were in a permanently unconscious state or were to become terminally ill and unable to communicate. You designate an agent in the living will (spouse, parent, friend, etc.) to make health care decisions for you if you are unable to do so. You should choose your agent carefully. That person should be able to do three things: 1) handle the stress of making tough decisions, 2) understand important medical information regarding your treatment and 3) keep your best interests and wishes in mind when making these decisions. It is important to remember that the living will does not take effect until you are unable to communicate your wishes.



By Leslie Schneider Johnson,  
Lane Alton & Horst

In addition to the living will, the Health Care Power of Attorney should also be a part of your estate plan. The Health Care Power of Attorney is a document which allows you to name an agent who has the right to make health care decisions on your behalf if you are unable to do so. The difference between a Living Will and the Health Care Power of Attorney is that you do not need to be terminally ill or in a permanently unconscious state for the Health Care Power of Attorney to take effect. The Health Care Power of Attorney takes effect anytime you are not able to make health care decisions for yourself. If you have both a Living Will and a Health Care Power of Attorney, the Living Will always prevails over any decisions that your agent makes on your behalf (in other words, the agent may not continue life support if you have stated in your Living Will that you do not want to remain on life support).

An advance medical directive is one of the best ways to have a say in your medical care when you are unable to communicate. It gives you control when you can no longer speak for yourself and avoids a lot of emotional pain for your family. These documents are essential due to modern medical technology that can keep us alive yet still mentally or physically incapable of acting for ourselves.

In addition to the Living Will and Healthcare Power of Attorney, the Durable Power of Attorney is also an important part of an estate plan. The Durable Power of Attorney appoints someone to act on your behalf in dealing with your personal affairs not related to medical decisions such as financial decisions, real estate matters, etc. A Durable Power of Attorney remains valid during the grantor's incapacity. Further, a "springing" power takes effect only if the incapacity occurs, which means the holder of that power may use it only when the grantor is incapacitated. Without these documents, your family could find it difficult to pay bills or to acquire or sell assets if needed. They would be forced to go to court to have someone appointed as a guardian to do those things. That is an expensive and time-consuming process which is completely avoidable with a power of attorney that a lawyer can prepare in advance.

Preparing for your own demise is not a pleasant thought, but it is necessary. Estate planning documents are essential to all families and make the situation easier and possibly cheaper in the event of death or incapacity. The one good thing to come out of the Schiavo case is that it got people talking about their wishes and a need to express them in writing.



If you think you can't spare the time to hire a new attorney, we've got you covered.

And as your legal recruiting business partner, that means, while satisfying any and all of your legal professional needs with our highly skilled candidates, we'll be helping you contain costs and generate revenue with our business-tested ideas. And with 30 offices in North America, that means help is always just a phone call away.

Columbus 614.221.1544  
columbus@roberthalflegal.com

 Robert Half Legal

Specialized Legal Staffing<sup>SM</sup>

A Robert Half International Company

attorneys      paralegals  
legal support    project teams  
roberthalflegal.com

© Robert Half Legal. EOE 1204-5301a



ljohnson@lah4law.com