

What is a living will?

A living will is a document in which you write down what type of medical care you would like to receive if you are unable to express or make your own decisions. Typically, these documents focus on situations involving whether or not to administer life sustaining treatment in the event of irrevocable coma, permanent and severe brain damage or situations where care would only serve to delay the moment of death. Life sustaining treatment includes anything from feeding tubes, breathing devices, blood transfusions and major surgery. Other types of care may also be specified such as your desire for treatment and relief of pain or other discomfort.

It is important to note that in Massachusetts living wills are not legally enforceable but, rather, provide guidance to the people who are authorized to make health care decisions on your behalf (usually designated in your health care proxy – see below).

Finally, some people confuse living wills with other estate planning documents. Note that a living will is different from a “will” or “living trust” which are documents that are typically used to specify to whom your assets will go upon death.

What is difference between a living will and health care proxy?

A health care proxy is a document authorized by law (Chapter 201D of the Massachusetts General Laws) by which you can designate someone to make medical and healthcare decisions on your behalf if you are unable. While the health care proxy grants the decision making authority, the living will provides guidance to the decisions maker on what type of care you would like to receive under certain circumstances. A good analogy is to think of the health care proxy as the keys to the car and the living will as the map of where you want to go. Everyone 18 years or older should have a health care proxy and send a copy of it to their primary care doctor.

What does a living will say?

The instructions and language in a living will is up to you. We recognize that, unless people have previous experience dealing with health care and/or end-of-life decision making, determining what to say in a living will can be difficult. As part of our services, we provide examples of language that you may consider in preparing a living will. For example, here is a paragraph someone might include if they do not want to receive life sustaining treatment:

If the situation should arise in which there is no reasonable expectation of my recovery to any medically significant degree from what may fairly be described, upon the basis of then current medical knowledge, as an extreme, incapacitating, and irreversible or terminal physical or mental disability, my health care proxy shall make whatever decisions and take whatever steps are necessary (including the termination

of life support systems) to carry out my express wish that I be allowed to die and not be kept alive by artificial means or heroic measures, subject, however, to the administration of medication or the performance of medical procedures that alleviate suffering and constitute comfort care even though that may shorten my remaining life. The authority under this paragraph extends specifically (without hereby limiting the generality of this paragraph) to the termination of any mechanical life support system or device and the providing or the withholding, as my health care proxy shall determine, of artificial hydration or nutrition or both.

A living will is not enough

A living will should always be accompanied by a health care proxy, durable power of attorney, and HIPAA consent. The function of each of these documents is summarized in the following table:

Document	Function	Legal Formalities
Living Will	<ul style="list-style-type: none"> Provides guidance on what type of medical care you would like to receive when you are unable to make your own decisions 	<ul style="list-style-type: none"> Not legally binding in Massachusetts In Massachusetts, no legal formalities as to how it should be prepared or signed
Health Care Proxy	<ul style="list-style-type: none"> Authorizes another person to make health care and medical decisions on your behalf if you are unable The health care proxy is limited to medical and health care decisions 	<ul style="list-style-type: none"> Must be signed in the presence of two witnesses Becomes effective only when a doctor determines that you are incapacitated
Durable Power of Attorney	<ul style="list-style-type: none"> Authorizes another person to act on your behalf for matters other than health care (e.g. financial affairs, property management) Intended to replace the need for a court appointed guardian 	<ul style="list-style-type: none"> Can be effective either when signed or upon incapacity Must state it is effective despite subsequent incapacity Although not required, generally signed in the presence of two witnesses and a notary public to permit use in real estate transactions
HIPAA Consent	<ul style="list-style-type: none"> Authorizes your doctors to share medical information with your Health Care Proxy or other family and friends 	<ul style="list-style-type: none"> Required consent under the federal Health Insurance Portability and Accountability Act (HIPAA) Must be in writing and signed

What services do you provide in this area?

Typically, for estate planning work we schedule an initial consultation which can last one to two hours. This first meeting allows us to get to know each other and to review your needs, concerns and objectives. There is no cost for this first meeting. We will then make our initial recommendation on what type of plan makes sense for you. We will also be able to give you a quote on what it will cost us to prepare and implement your particular plan.

Although most clients typically need new or updated wills and trusts, if you are only in need of the four documents listed in the table above we will draft those documents to your specifications for a flat fee of \$300 for an individual and \$400 for a couple.

Please contact us if you have any further questions at (617) 965-9100.

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