

LIVING WILLS (or 'ADVANCE DIRECTIVES')

What is a Living Will?

“Living Will” has been defined by Age Concern as “*a document in which a person, whilst still competent, requests and directs that certain measures should be adopted if and when he becomes incapable of taking responsibility for his own healthcare, i.e. by consenting to or refusing treatment*”.

A Living Will is about medical treatment only. It cannot be used to dispose of property or to make funeral requests. For this you need to make an ordinary Will.

You can use a Living Will to do the following:

- to state in advance what your wishes are about medical treatment. These are called “**advance directives**”
- to appoint someone called a “**health care proxy**” to take part on your behalf on medical decisions about medical treatment.

How legally binding is a Living Will?

It has taken some time for Living Wills to be accepted in England and Wales and for questions about their enforceability to be decided. However, it is now clear that any advance **refusal** of medical treatment is legally binding provided:

- it really was your own decision and not made under the influence of someone else
- your refusal was intended to apply in the situation which arose and you understood the implications of your decision
- your refusal was made when you were mentally capable of making the decision

It may be more appropriate for you to consider a Welfare Lasting Power of Attorney. Please ask for our special leaflet about this.

Discussion with others

You do not have to discuss a Living Will with anyone as it contains a very personal decision. However we strongly advise that you discuss contents with members of your family and with your doctor. This does not have to be your GP, but it allows all the health care options to be explained to you and allows you to make an informed decision. It also shows that you were fully aware of the implications of your decision in case a dispute arises later.

Advance Directives

Doctors must take their patient’s wishes into account and not give them treatment which they do not wish to have. You can specify what you wish to happen in a number of different circumstances, for example;

- if you have a life threatening condition where there is no likelihood of recovery

These notes relate only to the law in England and Wales. They are by no means exhaustive but we hope that they will help avoid some of the difficulties which may arise. Please raise above any queries as soon as possible.

- in the event of severe mental impairment where there is no likelihood of improvement
- if you become permanently unconscious with no chance of regaining consciousness
- in the event of particular treatments or investigation becoming necessary, e.g. invasive surgery or feeding by tube.

Bear in mind however that only a **refusal** is legally binding.

Health care proxy

This can be anyone who you would like to participate in medical decisions about your treatment. It can be your spouse, partner, friend or relative.

Because it is such an important appointment, it is vital that you discuss all aspects of your treatment and feelings with them, and in particular ascertain that they are happy to be your proxy.

Please ask if you would like more details on how to make a Living Will.

Contact Kathryn Tarry or Rowena Winfield on 0118 9842266

[rwp solicitors](#) Meadow House, 22 Reading Road, Pangbourne, Berkshire, RG8 7LY
Tel: 0118 9842266 **Fax:** 0118 9845133 **e-mail:** pangbourne@rwp-solicitors.co.uk

These notes relate only to the law in England and Wales. They are by no means exhaustive but we hope that they will help avoid some of the difficulties which may arise. Please raise above any queries as soon as possible.