

STRATEGY SPOTLIGHT*

Health Care Power of Attorney and Living Will

A health care power of attorney and a living will are legal documents that provide you with options for expressing medical care preferences and instruction, should you become mentally incapacitated or otherwise unable to make or communicate decisions. A health care power of attorney says, "I want this person to make healthcare decisions for me if I am unable to do so", while a living will generally covers life-sustaining treatments.

KEY POINTS



A health care power of attorney and living will are important documents for everyone to have because even the healthiest person could experience a sudden accident and not be able to speak for themselves.



These two types of documents can make health care decisions easier for you and your loved ones.



Executing these documents will give you the peace of mind that your medical wishes will be known if you are unable to express them.

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Power of Attorney for Health Care

A health care power of attorney allows you to grant a trusted person, known as an agent, the authority to make medical and end-of-life decisions on your behalf if you are unable to speak for yourself. A health care power of attorney can be very flexible. You can give the agent as little or as much power as you like. However, your health care agent cannot overrule any of the provisions of your living will. Additionally, you don't want to limit your agent's power too much, because the primary reason to have an agent is so that they can make medical decisions for you based on the situation and the information provided by your medical professionals. Some of the powers a health care power of attorney may have include:

- The power to offer or deny consent for medical treatments.
- The power to decide which medical facilities you should go to.
- The power to decide which doctors you should see.
- The power to decide how your body will be handled after death.
- Access to medical records.

Living Will

A living will is a document that sets forth what to do and what not to do in the event that you are unable to communicate your wishes because of a debilitating injury or illness. Your living will can be very specific or very general, but, usually only applies if you are terminally ill or permanently unconscious. You can spell out exactly what kind of procedures you want or don't want. Some basic considerations to account for in your living will include:

- Do you want to receive life-prolonging treatments at the end of your life such as surgeries, respirators, or dialysis?
- Do you want to be resuscitated at the end of life?
- Do you want to receive food and hydration if you are terminally ill?
- If you decide to die naturally, do you want the doctor to provide medication to keep you comfortable?

If you are only temporarily unconscious or otherwise unable to communicate, but are not terminally ill, in a permanent vegetative state, or other end-stage condition, a living will does not apply. You need a health care power of attorney to cover such a situation.

Choosing Your Agent

Choosing your agent is an important decision, and you should think carefully about who you want to assume this responsibility. This person may one day be deciding whether or not life support measures will be in your best interest. Other criteria you may want in an agent include the following:

- **Assertiveness** — This is critical to ensure your medical decisions will be made and enforced.
- **Family Dynamics** — Families may disagree with medical decisions. The agent must be able to deal with these dynamics.
- **Proximity** — Although it is not necessary for your health care agent to live nearby, it can make decision making easier.
- **Longevity** — It may make sense to consider the age of the agent relative to you.

As with other estate planning documents, it is always wise to name successor agents. Naming successor agents is better than naming joint agents. Joint agents can result in disagreements that can delay medical care.

When a Health Care Power of Attorney or Living Will Begins

Both of these documents become effective when your doctor declares that you lack “capacity” to make your own health care decisions. However, some states allow agents under a health care power of attorney to be able to act immediately upon signing the documents. This is popular among spouses so they don’t have to wait for a doctor to declare incapacity. The standard for capacity varies from state to state, but generally you do not have capacity if:

- You do not understand the nature and consequences of the health care decisions you are required to make.
- You cannot communicate your decisions.

When a Health Care Power of Attorney or Living Will Ends

Both documents generally stop working at your death. However, some states allow an agent to make decisions after death for the limited purpose of dealing with your remains. Additionally, it may be possible to revoke either document at any time by destroying it, depending on the applicable state law. Some states require written notice to the agent to revoke the health care power of attorney.

The Bottom Line

Commonly, people choose to have a separate living will to give their agent some guidance or incorporate living will provisions in their health care power of attorney. If you do not have a living will or do not make any type of statements in your health care power of attorney about your medical care desires, it will be up to the person you designate to determine what you would want in a certain situation. Executing these documents will give you the peace of mind that your medical wishes will be carried out if you are unable to express them. Your living will and health care power of attorney must comply with the applicable state law.

Additional Resources

[Estate Planning - Strategies for Getting Started](#)

[What Type of Planning Do We Really Need? Strategy Snapshot](#)

[Revocable Living Trusts Strategy Spotlight](#)

[Importance of a Will Strategy Spotlight](#)

[Financial Power of Attorney Strategy Spotlight](#)

[Probate Strategy Spotlight](#)

