



ADVANCE DIRECTIVES

LIVING WILLS, HEALTH CARE PROXIES AND POWERS OF ATTORNEY

By Patricia C. Marcin, Esq. © 2017

We're coming to the end of the school year and into the days of summer and no one wants to think about anything too "heavy". It is, however, important to have advance directives in place. All adults (including kids over 18 years of age) should have all three types of advance directives.

A living will is a document in which you state your wishes regarding medical treatment if you are unable to give instructions at the time the decisions for medical treatment need to be made. The living will can include instructions about the termination of life support and artificial nutrition and hydration (i.e., food & water intravenously). In New York State, there is no law which governs living wills, so that your wishes expressed in the living will are open to interpretation by those providing your medical care. Because of this, it is important to have a health care proxy.

A health care proxy is a written instrument in which you appoint someone you trust (an "agent") to make decisions about your medical treatment in the event you are unable to give instructions at the time the decisions must be made (ex., you are in a coma). These decisions can include decisions that will help you stay alive, as well as decisions about the termination of life support and artificial nutrition and hydration. Since this power is SO broad, it is extremely important that you choose someone that you, literally, trust with your life. You can name a successor agent to act in the event the first named agent cannot, but you cannot name more than one agent to act at a time. If there is no one you trust to take on this responsibility, then you will need to rely on a living will alone.

While it can be a very difficult discussion to have, it is important to let the person you have appointed as your health care agent know your wishes. You should discuss your desires about how you wish to be treated if you are in a coma, or are severely mentally impaired and have a physical condition that can be treated to make you physically well or, if not treated, will result in your death. You should discuss your desire for pain killers, and whether you want pain killers if they hasten your death.

A durable power of attorney is a written document in which you (the "principal") give another person (the "agent") the power to act in your place in managing your assets. These powers can be extremely broad, allowing the agent to make gifts, create revocable trusts, invest assets and do anything you can do with your assets personally. The agent, however, cannot be given the power to make and revoke a Will for you. It's up to you to determine the scope of the powers you wish to grant to your agent.

You may name one or more agents under a power of attorney, and direct that one may act alone without the other, or that they must act jointly. You can also appoint a successor agent to act in the event the first person(s) you've named cannot act. Note that a "durable" power of attorney does not become inoperative upon your incapacity. Upon your death, however, your power of attorney becomes ineffective. That's when your other estate planning documents take over.

If there is a trusts and estates topic that you would like to know more about, please feel free to email me at pmarcin@farrellfritz.com and I will do my best to cover it in a future column. My previous columns are available on www.farrellfritz.com.

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"I'm so glad we updated our wills. Farrell Fritz helped us understand all the recent changes and the best part is, we minimized our estate taxes. I feel so much more secure about our family's future."

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