

# Special Needs Lawyers, PA

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Special Needs Trusts | Elder Law | Long Term Care Planning | Medicaid | Probate | Wills & Trusts  
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## ADVANCE DIRECTIVES and POWER OF ATTORNEY

Advance Directives are legal documents that include a Health Care Surrogate and a Living Will. These documents are generally coupled with a Durable Power of Attorney. These documents provide that your Agent can act on your behalf when making **medical** or **financial decisions**. Your documents should comply with federal HIPAA laws.

### HEALTH CARE SURROGATE

The Designation of Health Care Surrogate allows you to name a surrogate and substitute surrogate to make **medical decisions** for you if you become incapacitated or, now since October, 2015, you can allow your surrogate certain authority earlier. Of course while you are able, you will continue to make your own health care decisions. However, there may be times when you are not able to make those decisions. When the surrogate is called upon, he or she is empowered to consult with health care providers on your behalf. The surrogate can give consent for certain treatment, review your medical records, question your doctor or apply for benefits such as Medicare and Medicaid.

The document is important but even more important is the need to discuss your wishes about future medical decisions, life support systems, and artificial nutrition and hydration with your surrogate and alternate surrogate. If they are called upon to make decisions for you, they are obligated to follow *your* wishes and not their independent wishes. It is imperative that they know your values and communication is the best means. You should also speak with your doctor and other health care providers about your wishes. Upon entering the hospital or other health care facility, provide copies of your Health Care Surrogate to the admissions staff and do not sign new documents at the time of admission.

### LIVING WILL

The first thought to keep in mind about the living will is that it is effective only if you are in a **terminal, end-stage or persistent** condition. Your physician must verify that you are in a persistent state caused by an injury, disease or illness from which there is no reasonable probability that you will recover.

The Living Will gives your appointed surrogate or alternate the power to specifically limit the scope of treatment, including the withholding of tubes for food and water if your physician states that your recovery is very unlikely, and life would only be artificially prolonged with such tubes. Your surrogate

or alternate will be able to limit the scope of medical treatment if you become comatose or suffer from a chronic terminal illness, in the same manner that you could refuse such treatment if you were able to speak for yourself. It is very important for you to speak with your surrogate, alternate, and doctor concerning your wishes regarding life prolonging procedures.

If you are living in an assisted living facility or nursing home, you need to ask them their policy regarding Living Wills and Do Not Resuscitate Orders and plan accordingly. A living will is not a Do Not Resuscitate Order (DNR).

These are legal documents and should be kept in a safe place; however, make sure the original document is readily available. We recommend that copies be given to your physicians, family members and friends. In the event you are admitted to a health care facility, a copy should be given to the health care provider to become part of your medical chart.

Once you have completed your Advance Directives, you should not sign another form provided by the hospital or any other medical provider. By doing so you may negate what planning you have done. The Florida Legislature changed Florida's Living Will Statute in 1999 and you should be certain that your document is up to date.

### **DURABLE POWER OF ATTORNEY**

A durable power of attorney gives the person you choose (your agent) the legal authority to handle your **financial matters**. This authority may be limited by you to specific acts. The durable power of attorney must be effective when signed under the current law and remain in effect until you choose to revoke it, you are declared incompetent by a court, you die or another event occurs that suspends or revokes the document. This means that the agent may act for you **at any time**, even if you are competent. The agent is still bound by fiduciary requirements under Florida Law which includes taking only "prudent actions" and exercising caution with a duty of impartiality and good faith.

It will likely be necessary to record the durable power of attorney at the Clerk's office in your county courthouse if your agent has to act on your behalf. This would only need to be done at the time your agent needed to act. If you become ill, your agent will be able to manage your financial affairs. There should be no need for you to be declared incompetent or to have a Guardian appointed.

The power granted to your agent may be extremely broad. The person selected should be trustworthy. We recommend that you name an additional agent in case your first choice is unable or unwilling to act.

Additionally, major changes were made in the Power of Attorney Statute in Florida in October, 2011 which requires a review of all Powers of Attorney and may require updating. Now, certain powers must be specifically listed in the document and particularly authorized or your agent will not be able to take those acts on your behalf.

### **DECLARATION OF PRE-NEED GUARDIAN**

You may designate your preference for a personal guardian, should the need arise, rather than the court appointing a stranger from a list of qualified Guardians.