

LIVING WILLS IN VIRGINIA

Complied from *The Code of Virginia* and www.FindLaw.com
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Norfolk Circuit Court Clerk

Living wills are not really wills at all. Instead, a living will, which in Virginia is called an Advance Medical Directive, is a document that expresses a person's desires and preferences about medical treatment in case he or she becomes unable to communicate these instructions when in a *terminal condition* or *permanent vegetative state*.

In Virginia:

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

Living wills are allowed in Virginia, (Code of Virginia 54.1-2983) but must be signed by the declarant in the presence of two witnesses who are not blood relatives or the spouse. If valid, a living will binds health care providers to its instructions. *A suggested Advance Medical Directive is attached below.*

Must a Living Will be in writing?

No, in Virginia a competent adult who has been diagnosed by his attending physician as being in a terminal condition may make an oral living will (Advance Medical Directive) to authorize the providing, withholding or withdrawing of life-prolonging procedures or to appoint an agent to make health care decisions for him/her if made in the presence of the attending physician and two witnesses.

Can I appoint an Agent to make these decisions for me?

Yes, in Virginia you can appoint an Agent to Make Health Care Decisions for you. This document gives your agent legal power to make health care decisions for you if you cannot make those decisions yourself. Most estate planning attorneys recommend both documents to cover all situations. *A suggested form for Appointment of Agent to Make Health Care Decisions is attached below.*

Without a living will family members may end up arguing over what treatments should or should not be provided. Doctors will only consult family members on health care decisions; if a person prefers that a friend or unmarried partner participate in his or her health care decisions appointing them as your agent for health care decisions enables that person to have a say.

Choosing an Agent to Make Health Care Decisions

The person appointed as your agent for health care decisions should be a trusted individual who is comfortable discussing health care issues. Because this person may need to argue the patient's case with doctors or family members, or even go to court, an assertive and diplomatic individual may be preferred. The representative should be well aware of the choices made in the relevant documents, and should support those instructions. It is also useful to enlist the cooperation of friends, relatives, and health care providers by giving them executed copies of the document for their reference, should the need arise.

Living Wills: Some Things to Think About

1. A living will, or Advance Medical Directive, is a binding legal document that sets out your wishes regarding the use of life-sustaining medical treatment, should you have a terminal condition or be in a permanent vegetative state.
2. A living will cannot be revoked by anybody but you, and you may change it whenever you want to ensure that it reflects your current wishes. Note: Revocation becomes effective when communicated to the attending physician.
3. A living will's directives may not necessarily be followed if you are pregnant.
4. A living will authorizes doctors to follow the instructions you set forth in the document.
5. Any competent person eighteen years of age or older can make a living will by signing it in front of two or more witnesses who in turn also sign the document, attesting that the document was signed in their presence. These witnesses must be at least eighteen years old and cannot be a spouse or a blood relative.
6. A living will only avoids medical treatment when you have a terminal condition or are in a permanent vegetative state. Your attending physician must first determine if your prognosis fits those criteria before your living will has any effect on medical decisions.
7. A living will can be used to authorize that specific treatment, such as artificially administered nutrition and hydration be provided or withheld.

8. AND MOST IMPORTANT, please consult an attorney before preparing any legal document.

For names of a qualified attorney to assist you contact:

The Lawyer Referral Service of the Norfolk & Portsmouth Bar Association

At 623-0132

For more information about Laws affecting Senior Citizens in Virginia contact:

Virginia State Bar
707 E. Main Street, Suite 1500 • Richmond, Virginia 23219-2800
Telephone: (804) 775-0500
TDD/Voice Line (Hearing-Impaired): (804) 775-0502

Or visit the Virginia State Bar Website at:
<http://www.vsb.org/publications/senior/>

**Suggested Advance Medical Directive and
Form to Appoint Agent to Make Health Care Decisions**
(Code of Virginia 54.1-2984)

I, _____ willfully and voluntarily make known my desire and do hereby declare:

If at any time my attending physician should determine that I have a terminal condition where the application of life-prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain

OPTION:

I specifically direct the following procedures or treatments be provided to me:

In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this advance directive shall be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of such refusal.

OPTION:

APPOINTMENT OF AN AGENT TO MAKE AN ANATOMICAL GIFT OR ORGAN, TISSUE OR EYE DONATION (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE AN ANATOMICAL GIFT OR ANY ORGAN, TISSUE OR EYE DONATION FOR YOU.)

I hereby appoint _____ (primary agent), of

Street: _____

City: _____ State: _____

Phone: _____ as my agent to make health care decisions on my behalf as authorized in this document.

If _____(primary agent)

is not reasonably available or is unable or unwilling to act as my agent, then I

appoint : _____(successor agent), of

Street:_____

City:_____ State:_____

Phone:_____, to serve in that capacity.

I hereby grant to my agent, named above, full power and authority to make health care decisions on my behalf as described below whenever I have been determined to be incapable of making an informed decision about providing, withholding or withdrawing medical treatment. The phrase "incapable of making an informed decision" means unable to understand the nature, extent and probable consequences of a proposed medical decision or unable to make a rational evaluation of the risks and benefits of a proposed medical decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way. My agent's authority hereunder is effective as long as I am incapable of making an informed decision.

The determination that I am incapable of making an informed decision shall be made by my attending physician and a second physician or licensed clinical psychologist after a personal examination of me and shall be certified in writing. Such certification shall be required before treatment is withheld or withdrawn, and before, or as soon as reasonably practicable after, treatment is provided, and every 180 days thereafter while the treatment continues.

In exercising the power to make health care decisions on my behalf, my agent shall follow my desires and preferences as stated in this document or as otherwise known to my agent. My agent shall be guided by my medical diagnosis and prognosis and any information provided by my physicians as to the intrusiveness, pain, risks, and side effects associated with treatment or nontreatment. My agent shall not authorize a course of treatment which he knows, or upon reasonable inquiry ought to know, is contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If my agent cannot determine what treatment choice I would have made on my own behalf, then my agent shall make a choice for me based upon what he believes to be in my best interests.

OPTION:

POWERS OF MY AGENT (CROSS THROUGH ANY LANGUAGE YOU DO NOT WANT AND ADD ANY LANGUAGE YOU DO WANT.)

The powers of my agent shall include the following:

A. To consent to or refuse or withdraw consent to any type of medical care, treatment, surgical procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition and hydration, and cardiopulmonary resuscitation. This authorization specifically includes the power to consent to the administration of dosages of pain-relieving medication in excess of recommended dosages in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or inadvertently hastens my death;

B. To request, receive, and review any information, verbal or written, regarding my physical or mental health, including but not limited to, medical and hospital records, and to consent to the disclosure of this information;

C. To employ and discharge my health care providers;

D. To authorize my admission to or discharge (including transfer to another facility) from any hospital, hospice, nursing home, adult home or other medical care facility for services other than those for treatment of mental illness requiring admission procedures provided in Article 1 (§ 37.1-63 et seq.) of Chapter 2 of Title 37.1; and

E. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

Further, my agent shall not be liable for the costs of treatment pursuant to his authorization, based solely on that authorization.

OPTION:

APPOINTMENT OF AN AGENT TO MAKE AN ANATOMICAL GIFT OR ORGAN, TISSUE OR EYE DONATION (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE AN ANATOMICAL GIFT OR ANY ORGAN, TISSUE OR EYE DONATION FOR YOU.)

Upon my death, I direct that an anatomical gift of all of my body or certain organ, tissue or eye donations may be made pursuant to Article 2 (§ [32.1-289.2](#) et seq.) of Chapter 8 of Title 32.1 and in accordance with my directions, if any. I hereby appoint

_____ as my agent, of

Street: _____

City: _____ State: _____

Phone: _____ to make any such anatomical gift or organ, tissue or eye donation following my death. I further direct that:

(declarant's directions concerning anatomical gift or organ, tissue or eye donation).

This advance directive shall not terminate in the event of my disability.

By signing below, I indicate that I am emotionally and mentally competent to make this advance directive and that I understand the purpose and effect of this document.

(Date) (Signature of Declarant)

The declarant signed the foregoing advance directive in my presence.

(Witness) _____

(Witness) _____