Living Wills and Power of Attorney

by Sophia

WHAT'S COVERED

In this lesson, you will examine the purpose of living wills, advanced directives, and powers of attorney. You will consider the importance of technology and agility skills as you look to create and revise these documents as needed. Specifically, this lesson will cover:

1. Overview of Living Wills

1a. Definition of a Living Will

A **living will** (or advanced directive) is a legal document that is used to inform and direct a physician or hospital about the types of medical treatment someone wants or does not want in case the person becomes incapacitated. The gray box below shows an example of a living will from the state of Illinois.

- In simple terms, a living will states whether or not medical procedures should be used that will artificially prolong life.
- Without a living will, the decisions regarding life-sustaining treatment are made by the courts. This means that family members have little direct influence on what procedures are used to keep a loved one alive.
- Historically, the courts have tended to be cautious and require that life-sustaining treatment continue indefinitely.

TERM TO KNOW

Living Will

A legal document that is used to direct a physician or hospital about the types of medical treatment someone wants or does not want in the case the person becomes incapacitated. Also called an *advanced directive*.

1b. When Living Wills Are Used

Living wills come into effect:

- Whenever a person (age 18 and older) is diagnosed as being in a persistent comatose condition – a coma – or in a persistent vegetative state.
  - These are known as terminal conditions, which mean someone's medical disease, illness, or injury is incurable, and without artificial means (such as a feeding tube or respirator) death would result.
  - A physician must certify that the patient has no reasonable expectation for improvement and that

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death is a natural result.

- These conditions also make communication of medical wishes impossible.

Living Will

DECLARATION

This declaration is made this _____ day of _____ (month, year).

I, _____ , born on _____ , being of sound mind, willfully and voluntarily make known my desires that my moment of death shall not be artificially postponed.

If at any time I should have an incurable and irreversible injury, disease, or illness judged to be a terminal condition by my attending physician who has personally examined me and has determined that my death is imminent except for death delaying procedures, I direct that such procedures which would only prolong the dying process be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, sustenance, or the performance of any medical procedure deemed necessary by my attending physician to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such death delaying procedures, it is my intention that this declaration 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 from such refusal.

Signed _____

City, County and State of Residence _____

The declarant is personally known to me and I believe him or her to be of sound mind. I saw the declarant sign the declaration in my presence (or the declarant acknowledged in my presence that he or she had signed the declaration) and I signed the declaration as a witness in the presence of the declarant. I did not sign the declarant's signature above for or at the direction of the declarant. At the date of this instrument, I am not entitled to any portion of the estate of the declarant according to the laws of intestate succession or, to the best of my knowledge and belief, under any will of declarant or other instrument taking effect at declarant's death, or directly financially responsible for declarant's medical care.

Witness _____

Witness _____

Talking about death is not an easy task, but neither is dealing with the stress, expense, and legal hassle of trying to help a loved one who is unable to communicate how he or she wants to live. A living will, therefore, allows you to decide which medical treatments you would prefer if the unthinkable should happen to you. Examples of life-sustaining treatments, or lack thereof, include the following:

- Only water and pain medication.
- Only food.
- No artificial support at all.
- Everything necessary to be kept alive for as long as possible using every available means.

The U.S. Supreme Court has ruled that these decisions are yours to make as part of a valid living will.

1c. Writing a Valid Living Will

To draft and complete a living will:

- You generally must be at least 18 years of age.
- Your living will must be witnessed by persons who are not related to you or by anyone who stands to gain financially by your death. A witness cannot be someone who would need to pay your medical expenses,

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nor can a witness be your doctor.

- You do not need an attorney to write a living will. Nearly all attorney general state offices provide living will instructions and documents free of charge.

Check your state's attorney general's office to see if the office has a living will template you can complete. Strong technology skills can help you locate any templates or other information that could help you complete this important document.

When you enter a hospital for surgery, your physician or hospital administrator may require that you complete a living will form before surgery. Rather than make these life choices at a moment of great stress, it makes sense to draft a living will sooner rather than later. Remember, however, that no one can force you to sign a living will. The choice is yours and is totally voluntary.

2. Other Medical Documents

2a. Healthcare Proxy

There are times when you may be injured or ill but not suffer from a life-ending condition. Let's look at an example.

IN CONTEXT

- If Mary is in a car accident and is unconscious, she will be unable to select the kind of treatment she prefers for her recovery.
- If Mary had appointed an individual, such as a family member, close friend, or professional advisor, to be her healthcare proxy (sometimes known as a power of attorney for health care, also known as a surrogate or agent), that person can make sure Mary's wishes are known to the medical team.

Of course, this appointment must occur before an accident. Using a healthcare proxy form, you can be as specific as you wish in terms of the power someone else has when making medical decisions for you. The only exception is that someone who holds a healthcare proxy cannot, under any circumstances, dictate life-ending medical measures.

Healthcare Proxy

A legal document that ensures your wishes are known if you become injured or ill, but are not in a life-ending condition.

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2b. Do-Not-Resuscitate Declaration

Occasionally, people who are terminally ill but still able to competently make their own medical decisions draft a do-not-resuscitate (DNR) declaration. This document instructs doctors, hospitals, nursing care facilities, and other health professionals to withhold CPR and other measures that can facilitate breathing if a situation arises when these procedures are recommended. Again, the choice to draft a do-not-resuscitate document is voluntary and a decision you must make for yourself.

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3. Power of Attorney

Suppose you were about to leave for a 6-month adventure in Southeast Asia. Although it is unlikely that anything bad would ever happen when you are out of town, like becoming incapacitated, it makes sense to plan for these rare occasions by designating a power of attorney.

- A **power of attorney (POA)** is a legal document that allows a named person, called an**agent**, to act on your behalf.
- You will probably need to establish a POA, or be named as an agent in someone else's POA, at some point during your lifetime financial journey.
- As such, it is important to understand the different types of POAs that are commonly used.

TERMS TO KNOW

Power of Attorney (POA)

A legal document that allows a named person, often called an agent, to act on your behalf..

Agent

The person named in a legal document to act on the behalf of another person.

3a. Types of POAs

You have already learned about a power of attorney for health care (healthcare proxy). The table below shows some of the other common types of POAs you may encounter during your lifetime financial journey:

POA for health care	• Used for medical reasons • POA ends at death
Limited POA	• Agent has limited powers • Terminates with disability or incapacitation
General POA	• Agent has broad powers • Terminates at whichever event occurs first: when its purpose is fulfilled, with disability, or incapacitation
Durable POA	• Agent has specific powers

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	• POA in force regardless of disability or incapacitation
Springing POA	• POA in force only when a predetermined event occurs • Agent may be given limited or general powers

- A limited POA allows your agent to act only in specific ways for a limited amount of time. This type of POA would be perfect if you are going on an extended trip where you might need your agent to pay bills for you in your absence. Because the POA is limited, your agent cannot, for example, take action on medical treatment for you.
- A general POA provides broad powers, so your agent could theoretically make any nonmedical decision for you. In nearly all cases, limited and general POAs terminate automatically when the purpose of the POA has been fulfilled or if you become disabled or incapacitated.
- A durable POA remains in force throughout the duration spelled out in the document, regardless of any disability or incapacitation you might endure.
- A springing POA comes into effect ("springs" into force) when some event happens, such as becoming incapacitated. You can determine whether your agent has limited or general powers.

Establishing a POA is easy. The following illustration shows the Internal Revenue Service (IRS) POA that can be used to allow your agent to discuss tax matters on your behalf with the IRS.

HINT

Similar documents can be drafted by an attorney or in some cases downloaded from the Internet or from financial service firms.

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Form **2848**

Department of the Treasury
Internal Revenue Service

Power of Attorney and Declaration of Representative

▶ **Information about Form 2848 and its instructions is at *www.irs.gov/form2848*.**

OMB No. 1545-0150

For IRS Use Only
Received by:
Name
Telephone
Function
Date / /

Part I **Power of Attorney**

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address	Taxpayer identification number(s)	
Stan Doe 1040 Any Street Anytown, VA22000	000-00-0000	
	Daytime telephone number 703-555-1212	Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address	
Jim Smith 1065 Any Street Anytown, VA22000 **Check if to be sent copies of notices and communications** ☐	CAF No. 6800-06530R PTN Telephone No. 703-555-4321 Fax No. 703-555-5432 Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address **Check if to be sent copies of notices and communications** ☐	CAF No. PTN Telephone No. Fax No. Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address (**Note:** IRS sends notices and communications to only two representatives.)	CAF No. PTN Telephone No. Fax No. Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address (**Note:** IRS sends notices and communications to only two representatives.)	CAF No. PTN Telephone No. Fax No. Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing epresentative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income Tax	1040	2017, 2018, 2019

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for **Line 4. Specific Use Not Recorded on CAF** . . . . . ▶ ☐

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

☐ Authorize disclosure to third parties; ☐ Substitute or add representative(s); ☐ Sign a return;

☐ Other acts authorized:

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 11980J Form **2848** (Rev.12-2015)

3b. Common POA Usages

As previously noted, it is quite likely that in your lifetime you will sign one or more limited POAs. Typical reasons to sign a POA include:

- Allowing your attorney, accountant, enrolled agent, or someone else to talk to the IRS about your financial and tax situation.

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- When working with a financial advisor, as a way to allow the advisor to manage your portfolio and make investment decisions for you. The use of a limited investment POA makes this happen.
- Helping a relative who is temporarily incapacitated or injured.

As this discussion highlights, there are a lot of things to think about when it comes to planning for your future. Taking steps today to consider how you want to live and meet obligations in a worst-case scenario is one way to make things easier for you and your loved ones.

Agility: Skill Tip

Just like we discussed in the previous lesson on wills, it is important to use your agility skill to revise your living will and any power of attorney as needed. If updates are not made, your true wishes may not be known and carried out.

SUMMARY

In this lesson, you looked at an **overview of living wills**. So, **when are living wills used?** They're used when a person has an incurable condition and cannot communicate their medical needs to healthcare professionals. You can **write a valid living will** on your own for free with the help of your state's attorney general's office. They have templates and instructions. Strong technology skills can help you locate and use these tools.

Another **medical document** is a **healthcare proxy** form. A healthcare proxy is a person you appoint to communicate your medical needs for conditions that are not life-ending. Yet another document is the **do-not-resuscitate declaration**. This form is for terminally ill patients who choose to forego CPR and other measures in the event they stop breathing.

Finally, **power of attorney (POA)** is a legal form that allows an agent to act on your behalf for certain financial or health-related tasks. There are several **types of POAs**. For example, a limited POA might be a tax advisor you appoint to speak with the IRS on your behalf. That's one **common POA usage**.

It is important you have strong agility skills to make revisions to any of these documents as your life circumstances change.

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TERMS TO KNOW

Agent

The person named in a legal document to act on the behalf of another person.

Healthcare Proxy

A legal document that ensures your wishes are known if you become injured or ill, but are not in a life-ending condition.

Living Will

A legal document that is used to direct a physician or hospital about the types of medical treatment someone wants or does not want in the case the person becomes incapacitated. Also called an *advanced directive*.

Power of Attorney (POA)

A legal document that allows a named person, often called an agent, to act on your behalf.

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