

Planning for Incapacity

Personal Directives (Living Wills)

What is a Personal Directive?

A personal directive is a document that appoints a person to make personal decisions for you in the event that you can no longer make your own decisions. You can specify the types of decisions and the way those decisions are to be made. A "living will" is the American term for a personal directive.

What if I don't sign a Personal Directive?

If you do not sign a personal directive and you become incapacitated, someone may have to apply to the court to be appointed as your guardian.

This court application is costly and is an intrusion on your family's privacy. The Order has to be reviewed by the Court every six years.

What kind of directions can I include in a personal directive?

1. Appoint an Agent

You can appoint an agent to make personal decisions on your behalf. This can be a single agent, such as your spouse or more than one agent, such as your children. Alternate agents could also be named.

2. Come into Effect

You can specify that the directive will come into effect only when you become incompetent to make a decision about any personal matter. You can name the person who is to decide if you become incompetent. Even though your personal directive comes into effect, you might still

have the power to make a health care decision. *The Personal Directives Act* provides that a medical service provider (doctor, nurse) must assess a person's capacity to consent to health care each time that a procedure is required.

For example, if you were in a coma as a result of an accident, your personal directive would come into effect and your agent could make health care decisions for you. If you recovered the next day, you could make those decisions on your own.

3. Personal Decisions

You can direct your agent to make personal decisions on your behalf that relate to any or all of the following personal matters:

- i) your health care;
- ii) where you live;
- iii) with whom you will live and associate;
- iv) participation in social, educational and employment activities; and
- v) legal matters that do not concern your property.

4. Health Care Decisions

Your agent must follow any clear instructions that you provide in your personal directive that are relevant to the personal decision to be made. For example, you might include the following guideline:

I do not wish my life to be prolonged by artificial means when I am in a coma or a persistent vegetative state and, in the opinion of my physician have no known hope of regaining awareness and higher mental function no matter what is done.

If your personal directive does not contain clear instructions that are relevant to the decision to be made, your agent must make the decision that your agent believes you would have made in the circumstances, based on your agents' knowledge of your wishes, beliefs, and values.

5. Discussion with Family and Doctors

It is important that you talk about your personal directive with your agents, your family and your family doctor. It is not possible to specify every type of medical decision in a personal directive and your agents will likely have to make the decision based upon their knowledge of your wishes, beliefs and values. That is why an open discussion is critical. Keep your personal directive up to date. Your views about medical decisions change over time. Your views might also change if you are faced with an emergency or serious illness.

What is the difference between a personal directive and an enduring power of attorney?

An enduring power of attorney appoints a person, called an attorney, to manage your property if you become incapacitated. A personal directive appoints an agent to make personal decisions for you if you are incapable of making those decisions on your own. You sign an enduring power of attorney and a personal directive.