

living Wills



Many people are now living well into their senior years. Have you ever thought how you would feel if your life was being prolonged by medical intervention but as a result the quality of your life was poor? There may be no chance of recovery and yet you are being kept alive purely by medical science. What if you are badly injured in a car accident, suffer a stroke or dementia?

Living Will

A Living Will is a very personal and individual statement which needs careful thought and consideration.

There are two types of Living Will:

- An Advance Decision is a legally binding decision made by you to refuse treatment
- An Advance Statement is a general statement of your wishes and views.

Why prepare an Advance Decision?

An adult with mental capacity can refuse treatment for any reason, even if it might lead to their death. However, no one is able to insist on a particular medical treatment being given if it conflicts with what the doctors providing the treatment consider is in their best interest. This is why an Advance Decision can only be a refusal of treatment.

An Advance Decision enables you to indicate exactly what treatment you wish to refuse (including life sustaining treatment) and in what circumstances.

Why prepare an Advance Statement?

An Advance Decision or Advance Statement does not have to be in writing, unless it is a decision to refuse life sustaining treatment, but to avoid uncertainty it is advisable to do so. An Advance Decision to refuse life sustaining treatment must meet certain requirements set out in the Mental Capacity Act 2005 in order to be valid.

What happens if I do not make an Advance Decision or Advance Statement?

If you do not make an Advance Decision or Advance Statement it will be left to the healthcare professionals providing your care and treatment to decide what is in your best interests; this may not be the same as what you would have decided for yourself.

Advance Decisions made before 1st October 2007

Advance Decisions were only recognised by UK law from 1st October 2007. An Advance Decision made before that date can still be valid but must meet the requirements set out by the Act. There are transitional arrangements for people who made an Advance Decision before 1st October 2007 but who have since lost mental capacity to remake that decision.

Reviewing your Advance Decision

If you made an Advance Decision before 1st October 2007, you should review it to make sure it meets the requirements of the Act.

It is important that every Advance Decision is regularly reviewed to ensure it continues to reflect your wishes. If new or improved medical treatments become available or your personal circumstances change, its validity may be questioned if you signed it many years ago.

You can cancel an Advance Decision at any time, preferably in writing.

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Dealing with disagreements about an Advance Decision

Senior healthcare professionals treating you are responsible for deciding whether there is a valid applicable Advance Decision. If there is a dispute an application to the Court of Protection may be necessary to declare that the Advance Decision is valid and applicable to the particular treatment.

The Court of Protection cannot order that treatment should be provided if this has been refused in a valid Advance Decision.

Can I make both an Advance Decision and an LPA?

There are two types of Lasting Power of Attorney (LPA)

- Health and Welfare LPA
- Property and Affairs LPA.

If you set up a Health and Welfare LPA you can choose who should make decisions about your care or medical treatment if you lack the mental capacity to do so yourself. Within the Power of Attorney you can specify if you want your Attorneys to have the power to make decisions about life sustaining treatment.

If you have made an Advance Decision refusing treatment this will become invalid if you later create a Health and Welfare LPA giving someone else the power to refuse medical treatment on your behalf.

If you make an Advance Decision after creating a Health and Welfare LPA, this will overrule the LPA resulting in your Attorney being unable to make a decision about treatment that you have made an Advance Decision to refuse.

An Advance Decision is a statement made in advance by you (often some time before the onset of ill health) whereas a Health and Welfare LPA is a document by which you confer the decision making power to someone else.

How can Ashtons Legal help?

- Our experienced team can help you consider your personal circumstances and wishes and help you to prepare a valid Advance Decision and/or Advance Statement to meet your own individual and current needs.
- We can help you regularly review your Advance Decision and/or Advance Statement.
- Should there be a disagreement regarding your Advance Decision, we can help you or your family liaise with the healthcare professionals involved and assist with relevant applications to the Court of Protection.
- We are experienced in preparing Powers of Attorney and Advance Decisions / Statements and in advising and assisting with their use. We provide practical advice and assistance based on our legal knowledge and first hand experience.

To discuss how we can help you, please contact one of the people listed below.

www.ashtonslegal.co.uk