

**Living Will Directive  
and  
Health Care Surrogate  
Designation  
in Kentucky**

**Questions and Answers**

**June 1, 2000  
(Revised March 2005)**

## Questions and Answers About the Living Will Directive and Health Care Surrogate Designation Documents

### Introduction

The 1990 session of the Kentucky General Assembly passed what has become known as "living will" legislation, which allows an adult Kentuckian to sign a document saying that he or she does not want artificial life support should he or she become terminally ill. The 1990 General Assembly also passed health care surrogate legislation, which allows an adult Kentuckian to sign a second document granting another person the authority to make health care decisions should the grantor lose the capacity to make those important decisions on his or her own behalf.

Senate Bill 311, passed during the 1994 session of the Kentucky General Assembly, combined into a single form the provisions of the living will directive and health care surrogate designation. The bill affected the previous living will law by providing adult Kentuckians with more decision-making capacity regarding their health care.

House Bill 60 and House Bill 529 passed during the 1998 legislative session. House Bill 60 required a court-appointed fiduciary to honor a previously executed advance directive. House Bill 529 permitted the individual to designate that all or any part of the person's body upon death may be donated in accordance with state law.

This pamphlet is designed to inform Kentuckians about the changes in the law and its current provisions. It is divided into two parts. The first answers frequently asked questions, and the second contains two forms related to the living will directive and health care surrogate designation. The first form must be signed in the presence of two witnesses, while the second form must be acknowledged before a notary public. *Both a living will and a health care surrogate may be designated on the same form.* The forms are specifically set forth in the Kentucky Revised Statutes (KRS 311.625).

This pamphlet is not intended to serve as or replace legal or medical advice or serve as an interpretation of law. Persons who want to execute a living will or to designate a health care surrogate are encouraged to consult a qualified attorney and physician about the ramifications of any health care decisions.

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### Questions and Answers

#### ***What is a living will?***

A living will is a document that enables a person to make his or her wishes known regarding life-prolonging treatment in advance of the time when the person is no longer able to participate actively in decisions concerning his or her medical care (KRS 311.621-KRS 311.643).

### ***What is a surrogate?***

A surrogate, as relates to health care, is an adult who has been properly designated (KRS 311.621(15)) according to Kentucky law to make health care decisions on behalf of another person.

### ***I currently have a living will. Am I required to execute another living will if new forms and provisions later become law?***

No. A new living will is not needed if the person wishing to make the directive has already completed, signed, and had witnessed a valid directive and does not want to make any changes after the new law (KRS 311.621(2)).

### ***How did 1994 Senate Bill 311 affect the existing living will law in Kentucky?***

There were several major ways the bill affected existing living will law. After the effective date of the bill, an adult Kentuckian could direct the withholding or withdrawal of artificially provided nutrition or hydration (KRS 311.625). The law did not previously allow this decision to be made in a living will.

The bill also allowed an adult Kentuckian to designate one or more adults as a "surrogate" in the same document that also contains the living will (KRS 311.625). The living will must be honored by the grantor's family, regular family physician or attending physician, and any health care facility in which the grantor is a patient (KRS 311.623(2)). An emergency medical responder or paramedic may be notified of a wish not to be resuscitated on a standard form or identification approved by the Kentucky Board of Medical Licensure, in consultation with the Cabinet for Health and Family Services (KRS 311.623(3)).

### ***What are the requirements of a living will or health care surrogate designation under the law?***

The living will or health care surrogate designation, also known as an advance directive, must be in writing; be dated; and be signed, either by the grantor, who must be at least 18 years of age, or by another adult person at the grantor's direction. The document must be 1) witnessed by two adults in the presence of each other and in the presence of the grantor; **or** 2) acknowledged before a notary public or some other person authorized to administer oaths (KRS 311.621(1) and KRS 311.625).

### ***Can any person be a witness to a living will or health care surrogate directive?***

No. The law states that the following persons may not be a witness to a living will or health care surrogate directive: 1) a blood relative of the grantor; 2) a beneficiary of the grantor under the Kentucky laws of descent and distribution; 3) an employee of a health care facility in which the grantor is a patient (unless the employee serves as a notary public); 4) an attending physician of the grantor; or 5) any person directly financially responsible for the

grantor's health care. In addition, any witness must be at least 18 years of age (KRS 311.621(1) and KRS 311.625(2)).

***Can any person act as a surrogate?***

No. The law states that an employee, owner, director, or officer of a health care facility where the grantor is a resident or patient may not be designated or act as a surrogate, unless the person is a member of the same religious order or is a blood relative within the fourth degree to the grantor (KRS 311.625(4)).

***Can a person refuse to act as a surrogate?***

Yes. A person designated as a surrogate may resign at any time by giving written notice to the grantor, to the immediate successor surrogate, to any attending physician, or to any health care facility that is then waiting for the surrogate to make a health care decision (KRS 311.625(3)).

***Under what circumstances may my organs be donated?***

Body parts or organs may be donated for 1) education, research, science, therapy, or transplantation purposes to any hospital, surgeon, or physician; 2) education, research, science, therapy, or transplantation purposes to an accredited medical or dental school, college, or university; 3) education, research, science, therapy, or transplantation purposes to a medical bank or storage facility; or 4) therapy or transplantation purposes to a specified individual (KRS 311.185).

***If I execute a living will directive or health care surrogate designation, may I revoke the document if I later change my mind?***

Yes. A living will directive or health care surrogate designation may be revoked in writing and must be signed and dated by the grantor declaring an intention to revoke; by an oral statement to revoke made by the grantor who has decisional capacity in the presence of two adults, one of whom shall be a health care provider; or by destruction of the document by the grantor or another person in the grantor's presence and at the grantor's direction. The revocation is effective immediately (KRS 311.627).

***How does the attending physician or health care facility where the grantor is a patient learn about the existence of a living will directive or health care surrogate designation?***

It is the grantor's responsibility, or that of the grantor's responsible party, to provide notification to the attending physician or health care facility where the grantor is a patient. If the grantor is physically or mentally incapable of providing the notification, *any* person may notify the attending physician or health care facility. A health care provider may legally refuse to follow the directions of the living will or surrogate, but the health care provider may not

prevent or impede the transfer of the grantor to another health care provider who has expressed a willingness to follow the directions (KRS 311.633).

***What does a person do with the living will or designated health care surrogate documents upon completion?***

The documents should be kept in a safe, and known, place at home that has easy access for ready use. Copies should be given to one or more family members, a family physician, and local hospitals where the person might receive care in the future. If a health care surrogate is chosen, the surrogate should be given a copy of the document.

<b>LIVING WILL</b>	<b>HEALTH CARE SURROGATE</b>
<p>A document that enables an adult to make his or her wishes known regarding life-prolonging treatment when the person is terminally ill and no longer able to participate actively in decisions concerning medical care. The document is now part of the same form as the health care surrogate designation form.</p>	<p>A document that designates another adult to make health care decisions when a person no longer has the capacity to make such decisions. Subject to certain exceptions in the law, the health care surrogate would have the power to authorize the withholding or withdrawal of life-prolonging treatment or artificially provided nutrition or hydration. The document is now part of the same form as the living will form.</p>
<b>ORDINARY WILL</b>	<b>DURABLE POWER OF ATTORNEY</b>
<p>A document that allows a person to designate to whom and how ownership of one's personal property and real estate will be distributed after death.</p>	<p>A document that allows a person to designate someone to make decisions for that person regarding health, personal, and financial affairs even when the designator is disabled.</p>

## Instructions for Completion of Forms

1. The forms included within this booklet are as set forth in KRS 311.625 as of March 2005.
2. Only one of the forms should be completed. You may complete one form in the presence of two witnesses, or you may complete one form in the presence of a notary public or other officer authorized to administer oaths. The choice is for your convenience. The forms are identical in all other respects.
3. You must be 18 years of age or older.
4. If you choose to complete the form requiring the signature of two witnesses, then the form should be signed by you in their presence, and they should both sign in your presence. However, the following persons may not be a witness:
  - a. a blood relative of the grantor;
  - b. a beneficiary of the grantor under the Kentucky laws of descent and distribution;
  - c. an employee of a health care facility in which the grantor is a patient (unless the employee serves as a notary public);
  - d. an attending physician of the grantor; or
  - e. any person directly financially responsible for the grantor's health care.
5. Regardless of the form chosen, you must check and initial the lines that you would like to apply to you.
6. You should complete the date above your signature.

**LIVING WILL DIRECTIVE**

My wishes regarding life-prolonging treatment and artificially provided nutrition and hydration to be provided to me if I no longer have decisional capacity, have a terminal condition, or become permanently unconscious have been indicated by checking and initialing the appropriate lines below. By checking and initialing the appropriate lines, I specifically:

.... Designate ..... as my health care surrogate(s) to make health care decisions for me in accordance with this directive when I no longer have decisional capacity. If ..... refuses or is not able to act for me, I designate ..... as my health care surrogate(s).

Any prior designation is revoked.

If I do not designate a surrogate, the following are my directions to my attending physician. If I have designated a surrogate, my surrogate shall comply with my wishes as indicated below:

.... Direct that treatment be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical treatment deemed necessary to alleviate pain.

.... DO NOT authorize that life-prolonging treatment be withheld or withdrawn.

.... Authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

.... DO NOT authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

.... Authorize my surrogate, designated above, to withhold or withdraw artificially provided nourishment or fluids, or other treatment if the surrogate determines that withholding or withdrawing is in my best interest; but I do not mandate that withholding or withdrawing.

.... Authorize the giving of all or any part of my body upon death for any purpose specified in KRS 311.185.

.... DO NOT authorize the giving of all or any part of my body upon death.

In the absence of my ability to give directions regarding the use of life-prolonging treatment and artificially provided nutrition and hydration, it is my intention that this directive shall be honored by my attending physician, my family, and any surrogate designated pursuant to this directive as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of the refusal.

If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed this .... day of ....., 2005.

Grantor: \_\_\_\_\_

Address: \_\_\_\_\_

In our joint presence, the grantor, who is of sound mind and eighteen (18) years of age, or older, voluntarily dated and signed this writing or directed it to be dated and signed for the grantor.

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Execution of this document restricts withholding and withdrawing of some medical procedures. Consult Kentucky Revised Statutes or your attorney.



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I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed this .... day of ....., 2005.

Grantor: \_\_\_\_\_

Address: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY)

..... COUNTY)

Before me, the undersigned authority, came the grantor who is of sound mind and eighteen (18) years of age, or older, and acknowledged that he voluntarily dated and signed this writing or directed it to be signed and dated as above.

Done this .... day of ....., 2005.

Notary Public: \_\_\_\_\_

Date Commission Expires: \_\_\_\_\_

Execution of this document restricts withholding and withdrawing of some medical procedures. Consult Kentucky Revised Statutes or your attorney.