

# WHAT IS A LIVING WILL?



Living Trust  
&  
Estate Planning

You Have the Right to Make Your Own Choice; the Way that You Assert this Choice Is Through the Execution of a Living Will



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A comprehensive estate plan should address the condition that you may be in before you pass away. If you cannot communicate, how will things proceed? Who will make decisions for you? How will anyone know your preferences?

There are documents called advance health care directives that are used to answer these questions. One of them is the living will.

## Life Support

Everyone has heard of a last will or last will and testament. This is an estate planning device that is commonly utilized to arrange for the transfer of financial assets.

A living will has nothing to do with financial matters. With a living will you state your preferences regarding the utilization of life support measures like ventilators, artificial hydration and nutrition, etc.

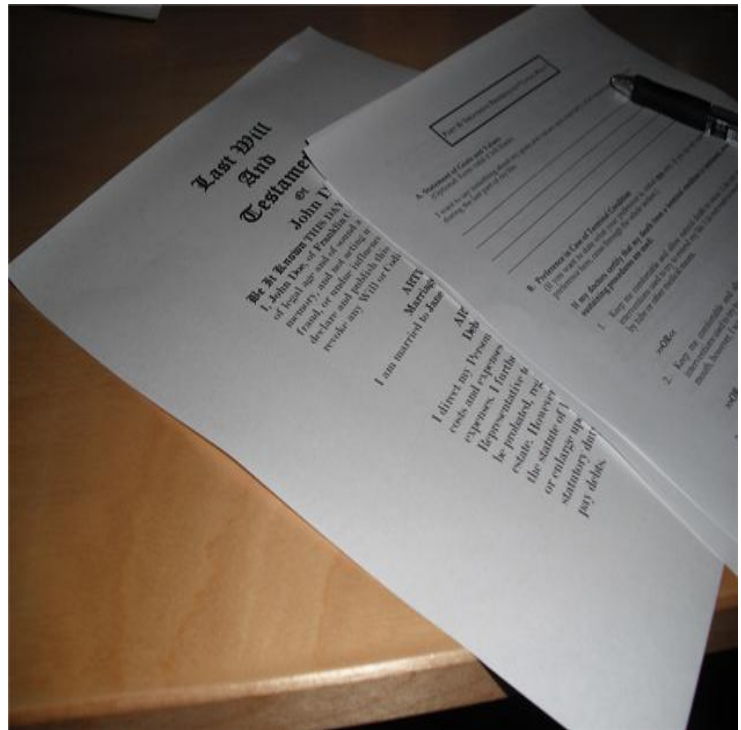
Under certain circumstances life-sustaining measures can be used to keep people alive indefinitely who would otherwise pass away naturally if these measures were not implemented.

We are talking about

circumstances when there is nothing doctors can do to reverse the condition. All they are capable of doing is prolonging the life of the individual in question.

Many people would not want to be kept alive through the utilization of artificial means.

You have the right to make your own choice. The way that you assert this choice is through the execution of a living will.



## Motivation

When you plan your estate, you are making these preparations for the well-being of your loved ones. A similar motivation exists when it comes to incapacity planning.

If you were unable to communicate while you were being kept alive via the use of life-sustaining measures, your next of kin would be forced to decide on the continued utilization of these measures.



Imagine being forced to make this decision on behalf of someone else. You may not know for sure how this person would want to proceed. And even if you were pretty certain that the person would want the measures removed, you are the one who has to actually approve of this course of action.

If you agree to the removal of the life-support, the person that you love will pass away. If you don't, the person will live. Even if the right decision seems obvious, it's not a decision that is necessarily easy to make.

In addition, even if you are comfortable making the decision, what about the rest of the family? Different people can have different ideas with regard to the correct course of action. Serious disagreements can ensue.

This is a very emotional time for everyone concerned. The family should be coming together in support of one another. Acrimony among family members is something that would make a very difficult situation that much worse.

If you have a living will in place, the entire family will know exactly how you want doctors to proceed. There will be no cause for disagreements, and your own



true wishes will be carried out should these unfortunate circumstances befall you.

## **Another Advance Health Care Directive**

While we are on the subject of living wills, we should highlight another foundational advance health care directive that should be a part of your incapacity plan.



Situations can arise that are not specifically addressed in the living will. To account for this you can execute an advance health care directive called a health care proxy or durable power of attorney for health care.

With this legal device you name an agent or proxy who is empowered to make medical decisions on your behalf in the event of your incapacitation.

If you become unable to communicate, this hand-picked proxy will be ready to spring into action. The entire family will know that this is the person that you have selected to act in this capacity. He or she can go forward with this authority, which should be unquestioned.

When you are choosing an individual to handle your health care decisions in the event of your incapacitation, consider age and geographical location. You want to select someone who is likely to be alive and well in the event of your incapacitation.

The person should also live nearby if this is at all possible.

## **Conclusion**

A living will has nothing to do with the transfer of monetary assets. This type of will is used to state your choices regarding the use of artificial life-support measures.

When you have a living will in place, you take this very difficult decision out of the hands of your loved ones. In addition, you can be certain that your own choices would be honored if this scenario was to present itself.

To be sure that you are creating a truly sound, legally binding document, you would do well to develop your incapacity plan with the assistance of a licensed estate planning attorney.

## **References**

### **American Bar Association**

[http://www.americanbar.org/groups/law\\_aging/resources/consumer\\_s\\_tool\\_kit\\_for\\_health\\_care\\_advance\\_planning.html](http://www.americanbar.org/groups/law_aging/resources/consumer_s_tool_kit_for_health_care_advance_planning.html)

### **Mayo Clinic**

<http://www.mayoclinic.com/health/living-wills/HA00014>

# About the Author



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Barry H. Zimmer founded THE ZIMMER LAW FIRM in June 1993, to practice in the areas of estate planning, estate administration, and business succession planning. His goal was and continues to be helping clients understand and de-mystify the often confusing world of estate planning in an ever-changing society, and to implement effective estate planning with minimal effort and time investment. The firm works from the belief that planning should always be driven by purpose. As a result, there are no “canned” or pre-set planning solutions. Instead, Zimmer helps clients identify their goals first and then builds estate and business plans based on that understanding.

Barry has been in private practice since receiving his law degree from the University of Cincinnati College of Law in 1979. He earned his Bachelor of Arts Degree from U.C. with Honors, Magna Cum Laude and Phi Beta Kappa, in 1976. He was profiled in the 1990-1991 edition of Who’s Who in American Law for contribution to the betterment of contemporary society, and has lectured numerous times on legal topics, and authored several articles and

Special Reports on estate planning. He is a former guest columnist on Simply Money, on 91.7 FM, WVXU. He makes occasional guest appearances on radio about estate planning topics, and has been quoted in newspaper articles and columns on estate planning matters.

In Mr. Zimmer’s perspective, excellence in implementing trust-based estate plans is but one aspect of his responsibility to clients. Providing reliable guidance and service to families of clients who pass away is just as critical as sound planning at the front end. The firm is very active in settling trusts of all complexity and sizes, and handling probate cases and guardianship proceedings. Zimmer and his staff have successfully handled hundreds of trust estate cases, and are experienced in settling and distributing a wide variety of estate assets to heirs.

Mr. Zimmer also believes strongly in continuing education. He devotes substantial time and resources to staying up to date on the latest laws, trends and techniques.

Barry is also a founding member of the American Academy of Estate Planning Attorneys. The Academy is a limited membership organization that provides continuing legal education to members, and practice management support and training. The goal of the Academy is to help foster excellence in attorney member services to their clients. Zimmer has been actively involved in the Academy since its inception in 1993, including service on the Academy’s first Board of Governors and Education Advisory Board. He regularly attends specialized and advanced training by the experts in the Academy Education Department several times a year. This includes two national conferences sponsored by the Academy for its members, where Zimmer also networks with estate planning lawyers from across the country.