

# Living Wills in Kansas

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## Understanding Living Wills

A living will is a type of advance directive. It allows you to record in writing, what type of care you want at the end of your life, should you have a terminal illness. The living will is basically an instruction list to your family, friends, and health care providers. In a living will, you specifically outline what type of care you want in certain situations, and what type of care you don't want. With a living will, you are preparing in advance to have a voice in your medical care even if you can no longer talk or make decisions.

A living will comes into effect after you have been diagnosed and certified in writing to have a terminal condition by two physicians. These physicians must have personally examined you, and one must be your attending physician.

In regard to the diagnosis of persistent vegetative state: this is a complex issue under Kansas law, and it is recommended that individuals consult with an attorney.

## What a Living Will Outlines

The term "life-sustaining procedure" refers to any procedure which, according to your physician, prolongs the dying process and does not prevent death regardless of whether the procedure is used or not. The use of procedures or medication that provide comfort and ease pain are not included in this definition.

Examples of the type of care identified in a living will is whether to use a ventilator to

sustain life, to have nutrition and hydration withheld, or to have the heart restarted if no heartbeat is evident. There are other types of care that can be addressed. No one document can allow for every situation, so your living will should reflect your wishes as best as you know them at the time you complete the form. If you provide a direction that should become invalid, the other parts of your living will that are not related to that direction are not affected, and will be honored as written. If you should be pregnant, the living will is not in effect during the course of the pregnancy.

## Talking to Others about Living Wills

Completing a living will is a serious decision. You should talk with your physician about living wills to ensure that you completely understand the options and ramifications. Consulting an attorney whenever you are contemplating end-of-life decisions may be helpful as well. Your individual situation may make some decisions more complicated than it seems at first.

Some people find that talking to their family, a trusted friend, or spiritual advisor can be helpful in thinking through these types of decisions. Because a living will is linked to illness, injury, and death, discussing these choices can make some people uncomfortable. However, receiving the care that you want at the end of your life is too important to be

ignored just because the conversation may be a difficult one.

## How to Complete a Living Will

A living will is a legal document. In Kansas, you do not need a lawyer to complete the form, as Kansas statutes offer “fill-in-the-blank” forms that you may complete on your own. It is recommended that you use these forms if you are not using the services of an attorney. State laws vary, though, so you want to be sure that you know other states’ requirements if you plan on moving or if you are caring for someone out-of-state. A good place to find more information about a state’s policies on advance directives such as the living will is the health department or the state office on aging. You can also ask a physician, health care provider or legal advisor for more information.

Your living will must be in writing, dated, and signed by you, or signed by someone else for you in your presence and at your direction. Two or more witnesses are required, and they must be at least 18 years of age. A witness may not be: 1) the same individual who signed for you if you were unable to sign for yourself, 2) related to you by blood or marriage, 3) entitled to your estate, 4) or directly responsible financially for your medical care. Another option is to have the living will acknowledged before a notary public.

## After Completing a Living Will

Once you have completed a living will, you may want to talk to your family and friends about your wishes, the decisions that you have outlined, and the content and location of your living will document. This may help avoid any confusion during what is sure to be a stressful time for those who love you and care for you. By law, it is your responsibility to inform your attending physician of your living will. The attending physician will then make the living

will a part of your medical record.

Make sure that you have a copy on hand, and give copies to your loved ones, doctors, hospital, and lawyer, if you have one. You may want to consider carrying a copy with you or at least placing a note in your wallet or purse stating that you have a living will and where it can be found. You may want to consider placing copies of your advance directives in your automobile’s glove box.

There are some private companies that can electronically store your advance directives via the Internet. Others offer a wallet ID card that indicates what types of advance directives you have and whom to contact. They may be fees for these type of services.

A living will can be changed at any time, and should be reviewed and updated periodically. You can revoke a living will in several ways: you can tear it up, burn it, or destroy it in some other fashion. You can revoke it in writing. You can verbally revoke it in the presence of a witness who is at least 18 years of age. This witness must sign and date a document that attests that you made a statement describing your intention to revoke the living will. This verbal instruction becomes effective when your attending physician receives this signed and dated document. Your physician will make a note in your medical record of the time, date and place of when he or she received this document. Anyone who does not know about the revocation is not liable criminally or civilly for actions they take regarding your living will instructions.

## Summary

Thinking about what you desire at the end of life is an important task. Communicate with your family and health care providers. Keep copies of your advance directives available in case of emergency. If you would like more information about this subject, please see additional K-State Research and Extension

publications on advance directives and durable power of attorney for health care. The list of Kansas Resources and the Legally Secure Your Financial Future program description, at right, provide more information.

## References

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“Advance directives and do not resuscitate order.” Retrieved May 31, 2011, from <http://www.familydoctor.org/online/famdocen/home/pat-advocacy/endoflife/003.html>

ABA Commission on Law and Aging. “Conversation scripts: Getting past the resistance.” Retrieved May 31, 2011, from <http://www.abanet.org/aging/toolkit/tool6.pdf>

Beers, M. H. (Ed.). 2006. *The Merck manual of health and aging*. New York: Ballantine.

*Durable power of attorney for health care decisions*, Kan. Stat. Ann. §§ 58-625-632.

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## Kansas Resources

Elder Law Hotline

(800) 353-5337

[www.kansaslegalservices.org/Home/PublicWeb/GetHelp](http://www.kansaslegalservices.org/Home/PublicWeb/GetHelp)

Kansas Bar Association

(785) 234-5696

[www.ksbar.org](http://www.ksbar.org)

Kansas Department on Aging

(800) 432-3535

[www.agingkansas.org](http://www.agingkansas.org)

Kansas Legal Services

(888) 353-5337

[www.kansaslegalservices.org](http://www.kansaslegalservices.org)

## Legally Secure Your Financial Future

LSYFF is a nationally supported Cooperative Extension template program aimed at generating public conversation and personal action. It was adapted for use in Kansas by Carol Young, Deb Sellers, and Shon Robben, Attorney, Arthur-Green, Manhattan, Kan. Please contact your local K-State Research and Extension agent to bring this program to your community, or find out more by visiting <http://www.aging.ksu.edu/p.aspx?tabid=78>. You may also visit <http://www.extension.org/pages/11477/legally-secure-your-financial-future> for additional information.

“Living wills and advance directives for medical decisions.” Retrieved May 31, 2011 from <http://www.mayoclinic.com/health/living-wills/HA00014>

*Withholding or withdrawal of life-sustaining procedures; legislative finding and declaration*, Kan. Stat. Ann. §§ 65-28,101-28,109.

**Note:** In Kansas, you may add specific instructions to the living will form. For example, if you specifically wish food and hydration to be withheld, you should make a note of this within the living will document.

# Living Will DECLARATION

K.S.A. 65-28,103

Declaration made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year). I, \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

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

Signed \_\_\_\_\_

City, County and State of Residence \_\_\_\_\_

The declarant has been personally known to me and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of declarant or codicil thereto, or directly financially responsible for declarant's medical care.

Witness \_\_\_\_\_ Witness \_\_\_\_\_

(OR)

STATE OF \_\_\_\_\_)

\_\_\_\_\_ ss.

COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_

(date) (name of person)

\_\_\_\_\_  
(Signature of notary public)

(Seal, if any)

My appointment expires: \_\_\_\_\_

Copies

# Notes

# Notes

## Legal Disclaimer

*Living Wills in Kansas* is designed to acquaint the reader with certain legal information about end-of-life issues. It is not designed as a substitute for legal advice, nor does it tell everything one needs to know about end-of-life issues. Future changes in the law cannot be predicted, and statements in this program are based solely on the laws in force on the date of publication. If readers have specific questions, they should seek professional advice. A resource listing of attorneys by state can be provided by the specific State Bar Association. You can locate your state bar association at <http://www.abanet.org/barserv/stlobar.html>.

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