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### **Q: What is a Living Will?**

**A:** As opposed to a Last Will and Testament, which dictates things to be done after death, a Living Will dictates things to be done during one's lifetime. To be specific, a Living Will sets forth your wishes and instructions regarding how you want to be treated, medically, when you lose your capacity to make those decisions yourself.

A Living Will only pertains to issues involving medical treatment and decisions when you succumb to a medical state which is deemed terminal (an incurable or irreversible medical condition which, without the administration of life support systems would result in death), or, if you are determined to be permanently unconscious (a permanent coma or persistent vegetative state).

In the ordinary course of events, the Living Will is provided to the treating physician who is to accept and follow the health care instructions contained therein. These include the withholding or withdrawal of life support systems, the appointment of a health care representative, the designation of a future conservator, and any decisions regarding anatomical gifts (donation of organs).

The Living Will sets forth a variety of instructions including the use or non-use of artificial respiration, CPR, and any other means of providing artificial nutrition and hydration. It sets forth the amount and extent of pain medication, as well as your desires regarding the shortening of an unreasonably, artificially, prolonged period of life.

In the Living Will instrument you appoint someone to make the decisions regarding the items set forth above. Usually it's a spouse or other relative. That person is charged with the responsibility of following the instructions set forth in the instrument. Alternate individuals are also appointed in case the first choice designee refuses to accept the appointment, is incapable of making such decisions due to their own medical incapacity (which may not have existed at the time you drafted your Living Will), or pre-deceases you.

A Living Will can also include an appointment of a Conservator. A Conservator is someone who is appointed by the Probate Court to handle all of the decisions you would normally make had you not fallen into a terminal state. I'll save the discussion of Conservators for a future column, but in its simplest definition, a



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Conservator is appointed to make either your medical decisions (Conservator of the person) or your financial decisions (Conservator of the estate), or both.

As you can imagine, the decisions surrounding the continuation or termination of medical care are extremely strenuous. More often than not, family members challenged with this situation have a very difficult time making these decisions. By having a Living Will, your family and friends can be relieved from making such decisions because you clearly and specifically set forth your desires in a legally binding written instrument.

A word of caution when creating a Living Will; each State has its own specific set of requirements which must be contained in a Living Will. Due to HIPPA privacy concerns and its resulting legal ramifications, along with the State specific requirements, attempting to create this document on your own with a generic form found on the internet or at your local office supply store can result in the entire instrument being determined invalid and void. A medical provider does not have the right to determine the validity of such an instrument. They are doctors, not Judges. And the last thing you want or need during such a crisis is litigation over the validity of a legal instrument.

Also, Connecticut, like many other states, has strict regulations regarding Living Wills and the appointment of Health Care Representatives. To that end, the requirements change from time to time depending on new legislation. In this case, as it relates to the release of medical information. Therefore, if you have already prepared a Living Will beyond three years ago, you should have it reviewed to confirm that it complies with the State's requirements.

A living Will is as important as a Last Will and Testament. It is a standard document that compliments any estate plan and is inexpensive to create. Unfortunately, most people never consider creating a Living Will. Instead, they are focused on instruments that are effective after death. Perhaps most people aren't aware or simply don't consider the fact that as medical science continues to advance, considerations of artificial support become far more complicated. A Living Will can and will address those issues.

**Anthony J. Medico, Esq.**, has practiced law for over 22 years. To ask a question for this column, or to receive Medico's free Estate Planning Survival Guide, visit his website at [www.medicoandassociates.com](http://www.medicoandassociates.com), send an e-mail to [Amedico@medicoandassociates.com](mailto:Amedico@medicoandassociates.com) or call (203) 661-8151. You can read



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*most of his previous columns on his Greenwich Time estate planning blog on the internet. Just go to <http://www.greenwichtime.com/blogs> and scroll down until you find him under the business section. Enjoy.*