

WHERE SHOULD YOU KEEP YOUR LIVING WILL AND/OR HEALTH CARE PROXY?

If the proper people are not aware of the existence of your living will or health care proxy, neither document will be of use. Storing such instruments in your safe deposit box or among your personal papers may delay their discovery until it is too late to use them. Therefore, you should consider providing a copy of each document to your primary care physician, your residential care provider, your health care agent, your attorney and your next-of-kin.

Keep in mind that the information given here is very general. There are specific requirements and facts about living wills and health care proxies that should be considered before choosing either one. A lawyer can discuss these considerations with you and help you decide whether you need a living will, health care proxy or combination of both. A lawyer can then help you write your document to ensure that it meets your legal and medical needs.



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Legal assistance is available through the Massachusetts Bar Association services listed below.

■ Dial-A-Lawyer

Call and speak to an attorney, free of charge, on the first Wednesday of every month.

5:30–7:30 p.m. (617) 338-0610

■ Lawyer Referral Service

Open Monday through Friday, from 9 a.m. to 4:45 p.m., the Lawyer Referral Service helps solve legal problems by referring callers to lawyers or appropriate agencies. The LRS does not offer legal advice. There is no charge to use the service. To contact the LRS, call:

Boston area: (617) 654-0400

Toll-free: (866) MASS LRS (866) 627-7577

TTY: (617) 338-0585

E-mail: LRS@massbar.org

Web site: MassLawHelp.com

■ Legal Fee Arbitration Board

When your attorney's fee is in dispute, call:

Statewide: (617) 338-0552

E-mail: FAB@massbar.org

Web site: www.MassBar.org/LawHelp

■ MassLawHelp.com

Free legal information and online referrals to attorneys is available on the Massachusetts Bar Association's Web site at www.MassLawHelp.com.

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Whether you're looking to educate your group or class about a particular area of law or trying to add variety to your regular meetings, the Massachusetts Bar Association Speakers Bureau is your solution. Speakers Bureau attorneys are available for free presentations on a wide variety of legal topics.

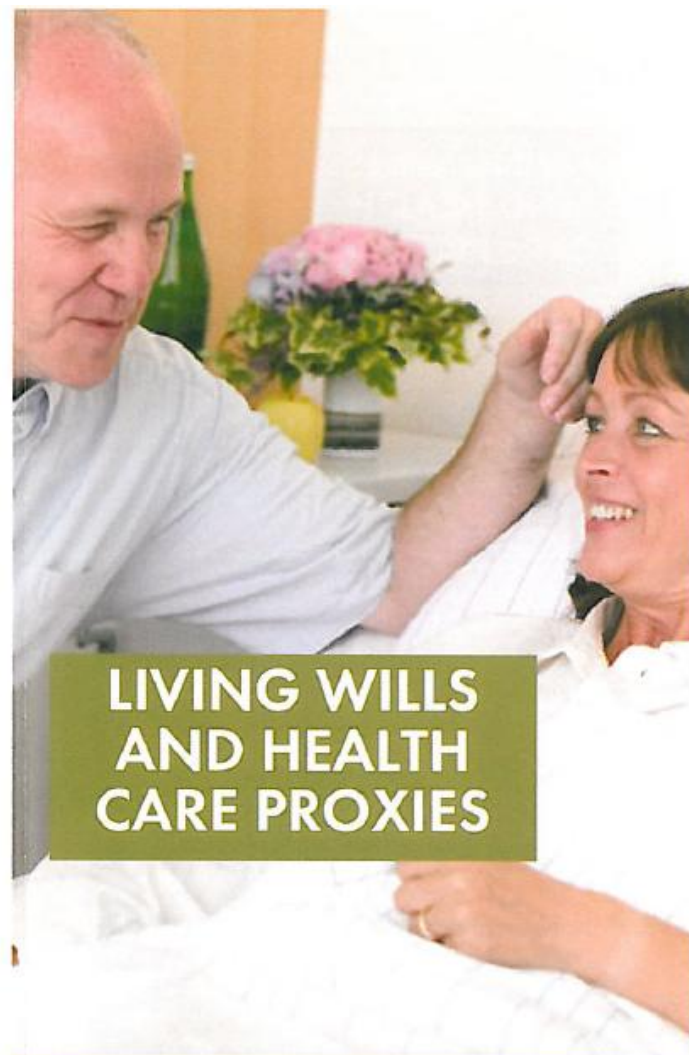
Statewide: (617) 338-0571

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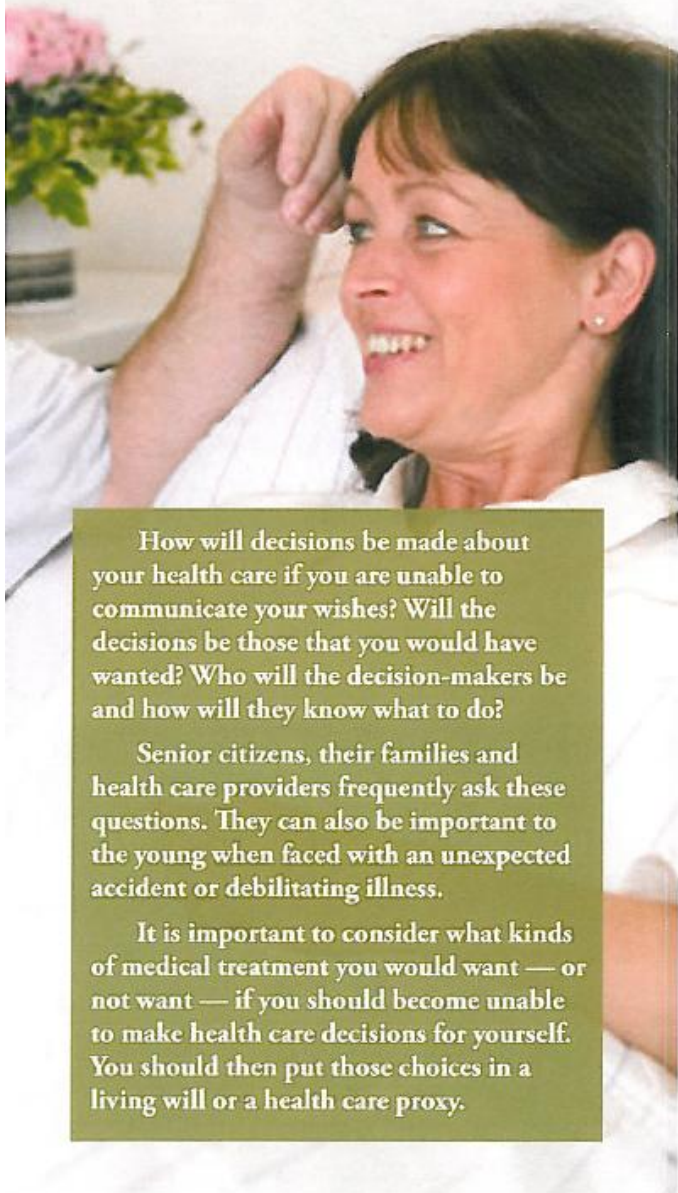


LIVING WILLS AND HEALTH CARE PROXIES

A Public Service of the
Massachusetts Bar Association



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How will decisions be made about your health care if you are unable to communicate your wishes? Will the decisions be those that you would have wanted? Who will the decision-makers be and how will they know what to do?

Senior citizens, their families and health care providers frequently ask these questions. They can also be important to the young when faced with an unexpected accident or debilitating illness.

It is important to consider what kinds of medical treatment you would want — or not want — if you should become unable to make health care decisions for yourself. You should then put those choices in a living will or a health care proxy.

THE LIVING WILL

A living will is the popular term for a document in which you describe the kinds of medical treatment you would agree to — or not agree to — if you were unable to make or communicate those choices yourself. A living will is not binding in Massachusetts — we do not have a law requiring hospitals or other health care providers to follow the instructions contained in a living will. But a living will can provide valuable guidance to a health care provider or court that is trying to make a health care choice on your behalf.

A living will can take many forms. Often a living will expresses general principles, such as the preference that no heroic measures be used or that treatment should be withheld if it would artificially prolong life. Other people list the specific kinds of treatment they would accept or reject, such as renal dialysis, chemotherapy, do not resuscitate orders or artificial nutrition and hydration (also known as tube feeding).

If you decide to write a living will, be as clear and specific as you can about your preferences for medical care, and be sure that it expresses your wishes accurately and completely.

THE HEALTH CARE PROXY

Under Massachusetts law, if you are competent and at least 18 years old you may appoint another person — called your agent — to make decisions about your health care if you should become unable to do so. The document in which you name this person is called a health care proxy.

The person you choose as your health care agent will be called upon to make decisions about your medical care only if your health care provider determines that you are unable to make or communicate such choices for yourself — for example, if you were unconscious, paralyzed or mentally incapacitated. Your agent is required to make decisions that are

consistent with your religious or moral beliefs, including any instructions you may have put in a living will. If your wishes are not clear or if they fail to address the particular circumstance, your agent may exercise independent judgment about your medical treatment, taking into account your best interests. If you wish, you may write your health care proxy to put limits on your agent's authority, or list your preferences about specific kinds of treatment.

WHICH SHOULD YOU CHOOSE?

One advantage of the health care proxy is that your agent can make a decision based on the specific situation at the moment, whether or not you anticipated that situation when you signed the health care proxy. Even in the most carefully drawn living will, it is not possible to anticipate all the conditions you might face and all the choices that might be available. Another advantage of the health care proxy is that your health care provider must honor the decisions of your agent, while the instructions contained in a living will are not legally binding.

However, the health care agent has a monumentally important responsibility: to make medical decisions for you if you are unable to do so. Such decisions could include whether to sustain your life support. For this reason, you should think very carefully about whom to choose as your health care agent and discuss your feelings about your medical preferences with this person before a problem arises. If you do not trust another person to make medical decisions on your behalf, a health care proxy may not be for you. However, as noted above, a living will is not legally binding in Massachusetts, and therefore it cannot provide the degree of certainty that your wishes will be respected that is obtainable through a health care proxy.

If you choose a health care proxy, instructions and forms are available at www.MassMed.org.