

Louisiana Living Wills

The Terri Schiavo case focused the nation on the importance of not only discussing end of life wishes with family members, but also the importance of having such wishes in writing, in proper legal form, in order that the “Living Will” will stand up in court if challenged. Adults of all ages will be wise to address end of life issues since no one knows their future.

The important decision you have to make is whether or not you want to be kept alive artificially if you have a terminal and irreversible condition. This is a very personal decision, which only you can make for yourself. Most of my clients want living wills, but some do not. It’s their choice.

The law creating the Louisiana Living Will was passed in 1984 under the title of “the Natural Death Act.” This law was passed to give competent adults the right to make decisions concerning the withholding or withdrawal of life sustaining procedures in the event they have a terminal and irreversible condition and are unable to make the decision for themselves. This act provides a procedure whereby an individual can make known his desire that the dying process not be artificially prolonged under certain circumstances. The procedure is specific and must be strictly followed.

In order to sign a “Living Declaration” (as it is called in Louisiana), you must be at least 18 years old and capable of making end of life decisions. The declaration must be in writing, must be signed by yourself in front of two (2) witnesses who must also be at least 18 years old. The declaration should be read and discussed prior to you and the witnesses signing it. The witnesses should understand what you are signing and should be paying attention to the process. The witnesses cannot be related to you by blood, marriage or be your heir or legatee (someone who has a right to a portion of your estate). A Living Declaration does not have to be notarized.

The law provides that *if* an individual is diagnosed as having an incurable injury, disease, or illness, and *if* this is certified by two (2) physicians, one (1) of whom is the attending physician, and *if* these doctors have determined that the individual’s death will occur whether or not life sustaining procedures are withheld or withdrawn and that the procedures will only serve to prolong the dying process, *then* such procedures can be withheld or withdrawn. The law further provides that

the individual be allowed to die naturally with the person being given medication and the performance of any medical procedure deemed necessary to provide the individual with comfort care.

What has created such an interest in “Living Wills” is the Terri Schaivo Case. Terri did not execute a living will and a contest developed between her husband and her parents. Certainly most of us do not want our families to go through such public torment when the signing of a relatively simple one page document can prevent it. Anyone 18 or older should consider signing a Living Will.

As concerns the “Living Will,” the first case to reach the Louisiana Supreme Court relative to the Living Will occurred in 2004, in *Pettis v. Smith* (La. App. 2 Cir. 8/13/03, 880 So. 2d 445). This case involved a contest between one daughter on one side and another daughter and a son on the other side, concerning their mother Mrs. Doris Smith (“Ms. Doris”) who had executed a Living Will in 2001. In March, 2004 Ms. Doris suffered a debilitating stroke and was given a gastric feeding tube. Although she survived, she no longer had any significant brain function. This diagnosis was confirmed by her treating physician who testified in the case that she had suffered from global aphasia, meaning she can neither understand nor speak; that she is in a “semi-coma” state, having reached a “flat line” of brain function and that any further improvement in her condition would require a “miracle.”

The other physician assessed her condition as a “vegetative state” with no chance of improvement. Both doctors testified that she could be kept alive for a year or so by utilizing this procedure.

On May 26, 2004 after consideration of their mother’s condition, her son and one daughter indicated to the hospital by completing a form that the hospital should stop providing Ms. Doris nutrition through the gastric feeding tube and that the feeding tube be removed in view of the execution of the living will. The other daughter objected to the removal of the feeding tube. The doctors signed the form attesting to the fact that Ms. Doris would die whether or not the life sustaining procedures were utilized and that the applicable procedure would serve only to prolong artificially the dying process. The declaration signed by Ms. Doris was signed in the presence of two of her children, her son-in-law and two witnesses.

The other daughter was not present. The witnesses who signed the declaration were competent adults, not related to Mrs. Doris by blood, marriage, nor were they heirs or legatees of Mrs. Doris.

The daughter who had not been at the signing of the Living Will filed her lawsuit in the Fourth District Court for the Parish of Ouachita to prevent her brother and sister from removing the gastric feeding tube. The district court ruled against her. She appealed the case to the Circuit Court of Appeals, Second Circuit, which also ruled against her, affirming the district court's decision to remove the gastric feeding tube. This case was appealed by her to the Louisiana Supreme Court (2004-CC2125 8/17/04, writs denied 8/18/04) who denied writs (refused to hear or revisit the case a third time) to have the case heard by the Supreme Court. After this denial by the Louisiana Supreme Court, the gastric tube was removed and Ms. Doris' death occurred shortly thereafter.

The Terri Schiavo's dispute occurred because no Living Will was executed by Terri and a contest developed between her husband and her parents. Ms. Doris' case involved a conflict between family members where an executed Living Will was in place. As a result of Ms. Doris signing the living will, the courts in Louisiana were able, rightly, to fulfill her wishes, and avoid the heartaches and headaches of the Terri Schiavo case.

A living will can address the issue of *who* will make healthcare decisions for you if you are incapable of doing so with specific instructions. However, this issue is more effectively handled through a Special Limited Medical Power of Attorney. There are four documents that I consider basic for everyone to protect themselves and their family. These are a Will, Special Limited Medical Power of Attorney, a General Procuration (General Power of Attorney), and a Living Declaration. For additional information, visit us at www.melcherslawfirm.com