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NATIONAL REYE'S SYNDROME FOUNDATION

# Your Legacy

All About Wills

## Planning is so important today.

- Carry out your wishes the way you intend.
- Fulfill your personal and philanthropic goals.
- Ensure that your loved ones are taken care of the way you want.
- Gift a Legacy to benefit those in need for generations to come.
- Leave a meaningful gift that lives on forever in your memory.





This brochure details the steps of preparing a will, including working with a lawyer or estate planner, deciding what to include in a will, choosing your beneficiaries and executor, and making the will legal.

#### **Do I have to have a lawyer to write my will?**

No. If your will meets the legal requirements established by the law of your state, it is valid, whether you wrote it with a lawyer's help or by yourself. However, a lawyer can help ensure that your will is more than just valid. Your lawyer can make sure that the will does what you really want it to do. It is for this reason that more than 85 percent of Americans who have wills worked with a lawyer.

#### **Do I have to write my will?**

The best rule to follow in creating a will is to put it in writing. By executing a written will, you are ensuring that your intentions are clear and that you have a degree of certainty about the exact distribution of your estate upon

your death.

As with all general rules, there are exceptions. Some states recognize oral wills or holographic wills—handwritten, un-witnessed wills—but only under extremely limited circumstances.

A few states have **statutory wills** that are created by state law and allow people to fill in the blanks on a standard form. However, these form wills are designed for simple estates and provide little flexibility. They will not be useful if you have a large estate or if your wishes are complicated.

Also keep this caveat in mind—make sure your state treats as valid these alternatives to the traditional, time-tested written will and then make certain that you follow all the steps the law requires.

#### **What happens if I die without a will?**

If you die without a will, you die **intestate**. Your property still must be distributed, and will be done so according to your state's laws of **intestacy**. The probate court in your area will appoint someone (who may or may not be the person you would have wanted to comb through all your affairs) as the administrator of your estate. He or she will be responsible for distributing your property in accordance with the law of your state.

The probate court will supervise the administrator's work closely and may require the administrator to post bond to ensure that your estate will not be charged with the costs of any errors made by the administrator. Of course, all this involvement may be much more expensive than administering an estate under a will—and these costs come out of your estate before it is distributed. Some of your property may have to be sold to pay these costs, instead of going to family or friends.

#### **Who gets my property if I die without a will?**

By not leaving a valid will or trust, or by not transferring your property in some other way before death, you've left it to the law of your state to write your "will" for you. In the absence of a will, the law of your state has made certain judgments about who should receive a decedent's property. Those judgments may or may not bear any relationship to the judgments you would have made if you had prepared a will or executed a trust.

As a general rule, state law gives your property to the people most closely related to you by blood, marriage, or adoption. As a result, your hard-earned money might end up with relatives who don't need it, while others, whether or not related to you, who might be in greater need or who are more deserving, are passed over. In the unlikely event that you have no relatives or in the event that your relatives cannot be located after diligent efforts, your property will go to the state—a big reason to have a will or a trust.

#### **Does a will cover all my property?**

Probably not. It is easy to think that a will covers all of your property. But because property can be passed to others by gift, contract, joint tenancy, life insurance, or other methods, a will might best be viewed as just one of many ways of determining how and to whom your estate will be distributed at your death.

Many of the various methods of distributing your estate are discussed in this chapter. Be sure to keep in mind the kinds of property that a will may not cover and include them in your estate planning.

#### **Are there any special legal formalities required to make my will legally valid?**

After you've drawn up your will, there remains one step: the formal legal procedure called **executing** the will. This requires witnesses to your signing of the will. In almost all states, the signature of at least two witnesses is required. In some states, a will is not deemed legally valid unless the witnesses appear in court and testify about witnessing the will. However, in a growing number of states, a will can be "self-proved"—that is, the will is accepted as valid and the witnesses will not be required to appear and testify if, at the time the will was executed, the witnesses' signatures were notarized and each witness submits an affidavit attesting to the fact that he or she witnessed the signing of the will.

### Does it matter who my witnesses are?

Yes. The witnesses should have no potential conflict of interest—that is, they should not be people who receive gifts under the will or who might benefit from your death. Thus, in some states, a will is invalid if witnessed by a beneficiary. In other states, a beneficiary can serve as a witness but, in doing so, might lose whatever property or interest is left to him or her in your will.

### In my will, can I leave my property to anyone I wish?

In general, you can pick the people you want your property to go to and leave it to them in whatever proportions you want, but there are a few exceptions. For example, a surviving husband or wife may have the right to take a fixed share of the estate regardless of the will. Some states limit how much you can leave to a charity if you have a surviving spouse or children, or if you die soon after making the provision.

Some people try to make their influence felt beyond the grave by attaching bizarre or excessive conditions to a gift made in the will. Most lawyers will advise you not to try this. Courts don't like such conditions, and you're inviting a will contest if you try to tie multiple, unreasonable conditions to a gift. For the most part, though, it's your call.

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### Can I disinherit my spouse and children?

You usually can't disinherit your spouse. State laws generally entitle a surviving spouse to take a portion of the deceased spouse's estate—regardless of the deceased spouse's will or estate plan.

The situation with children is dramatically the opposite. Except for Louisiana, every state permits you to disinherit your children. However, to be effective, it's better if your intent to disinherit is express, which usually means it has to be stated in writing.



### What share will my spouse receive under state law?

If a husband or wife dies with a will that makes no provision for the surviving spouse, or conveys to that person less than a certain percentage of the deceased spouse's assets, the surviving spouse can take a statutorily defined **elective share of the estate**. This means he or she can choose to accept the amount allowed by law, usually one-third or one-half of the estate.

The surviving spouse doesn't have to take an elective share of the estate—it's his or her choice. If he or she doesn't exercise the choice, the will stands and the property is distributed as stated in the will.

Elective share provisions are troubling to many people entering into second marriages, particularly late in life, because the surviving spouse of only a few years would be eligible to take up to one-half of the deceased spouse's property, even if the deceased spouse wanted it to go to his or her own children. Recent revisions to the Uniform Probate Code provide a sliding scale for surviving spouses who take against the will. Under this approach, which a few states have adopted, the longer the marriage, the higher the elective share. If the marriage lasted only a few years, the percentage could be quite low, minimizing one source of worry for older couples.

# The Executor

## Whom should I make the executor of my will?

There's no consensus about who makes the best executor. It all depends on your individual circumstances.

One approach is to appoint someone with no potential conflict of interest—that is, someone who doesn't stand to gain from the will. Under this approach, you can minimize the likelihood of a will contest from a disgruntled beneficiary who might be tempted to accuse the executor of taking undue advantage of his or her role to the detriment of others named in the will. On the other hand, if you believe that there is little possibility of a will contest, you could choose a beneficiary as executor. Since an executor who is a beneficiary usually waives the executor's fee to which he or she is entitled, your estate will save money.

For most people whose assets amount to less than a million dollars, a good choice is your spouse or the person who will be the main beneficiary of your will. This person naturally will be interested in making sure the probate process goes efficiently and with minimal expense. For larger estates and those that involve running a business, it may be advisable to use the estate-planning department of your bank, your accountant, or your lawyer.



## What if the executor I choose can't serve when the time comes, or doesn't want to?

Whomever you choose as executor, be sure to provide in your will for a successor executor in case the first named executor dies or is unable or unwilling to perform. Without a backup executor, the probate court will have to appoint someone, and that person may not be to your liking.

One final caution—don't name someone as your executor unless you have spoken to the person and he or she agrees. This will ensure that the person of your choice, not the court's, will administer your estate.

## Can I appoint more than one executor?

Yes, naming co-executors is popular with small business owners who name a spouse or relative to oversee the personal side of matters and a second person with business expertise to oversee the management of the business.

Naming co-executors may be a good idea if the main beneficiary lives in a different state and is unable to make the trips necessary to handle the many details involved in administering an estate. While this person could be a co-executor, another co-executor living in the state in which the estate is being administered could be named to handle the day-to-day administration. Finally, don't forget to name one or more successor executors so that if a co-executor dies or declines the position, someone else of your choice will be available.

## Is there anyone whom I shouldn't appoint as executor?

As a general rule, the executor can't be a minor, a convicted felon, or a non-U.S. citizen. In addition, while all states allow an out-of-state resident to act as executor, some require that the nonresident executor be a primary beneficiary or a close relative. Some states require that a nonresident executor obtain a bond or engage a resident to act as the nonresident executor's representative. For these reasons, and because handling an estate can take months and require several court appearances, it's a good idea to pick at least one executor who is a legal resident of the state in which your estate will be administered.

## What is an "independent executor"?

About a dozen states permit the appointment of an **independent executor**, who, after appraising the estate's assets and filing an inventory of assets with the probate court, is free to administer the estate without intervention from the court. This saves time and money. However, a court could become involved in the event someone challenges the independent executor's administration of the estate.

The independent executor has the power to do just about anything necessary to administer the estate. He or she can sue and be sued; settle claims made by others against your estate; deny or pay claims made by others against your estate; pay debts, taxes, and administration expenses; run a business if it is part of the estate; and distribute the assets of your estate to your beneficiaries as spelled out in your will. In some states, the independent executor can sell your property without first securing a court order to do so.

## How much does an executor charge for his or her services?

If the executor is a beneficiary—for example, a family member—he or she may choose to forgo the statutory executor's fee, but you can expect any executor who is not a beneficiary, such as a bank or a lawyer, to charge a fee. Fees vary by state and usually are set as a percentage of the estate's value. For small and mid-sized estates—estates under \$200,000, for example—expect a fee of 1 to 4 percent of the total estate. Probate courts and state laws usually regulate fees.

## Setting Up A Will

All of us have unique circumstances in our lives that resist easy, one-size-fits-all definitions. However, there are some clauses that are found in most wills. Here's a very quick rundown.

**Funeral expenses and payment of debts.** Your debts don't die with you; your estate is still liable for them, and your executor has the authority to pay them off if they are valid and binding. You can also forgive any debts someone owes you by saying so in this clause. As for funeral directions and anatomical donations, while you can put them in your will, be aware that the will might not be found or admitted to probate until after you're buried. It's best to put these in a separate document.

**Gifts of personal property.** It's important to identify carefully all recipients of your largesse, including their addresses and relationships to you. There are too many cases of people leaving property to "my cousin John," not realizing that more than one person might fit that description. Remember also that personal property can include intangible assets like insurance policies (for instance, if you own a policy on your spouse's life, that policy and the cash value of the premiums paid into it can be passed on through your will), bank accounts, certain employee benefits, and stock options. Finally, if you have several people whom you want to share in a gift, be careful to specify what percentage of ownership each will have. If you don't, the court probably will presume that you intended the multiple beneficiaries to share equally. You can save on taxes by using gifts wisely. This section of your will can be used to give gifts to institutions and charities as well as to people.

**Executors.** By giving the executor authority to act efficiently, by saying that a surety bond will not be required and by directing that the involvement of the probate court be kept to a minimum, which is now possible in many states, you can save your family money. It helps to spell out certain powers the executor can have in dealing with your estate: to buy, lease, sell, and mortgage real estate; to borrow and lend money; and to exercise various tax options. If you run a business, be sure to give your executor specific power to continue the business—or enter into new business arrangements.

**Gifts of real estate.** Most people prefer that their spouses receive the family home. If the home isn't held in joint tenancy, you should have instructions about what will happen to it in your will. If you die before you've paid off the mortgage on your house, your estate normally will have to pay it off. If you're afraid this will drain the estate too much, or if you want the recipient of the house to keep paying on the mortgage, you must specify that in your will. If you haven't paid off the family house, and you're afraid your survivors can't afford to, you may be able to buy mortgage-canceling insurance to pay it off.



**Residuary clause.** This is one of the most crucial parts of a will, covering all assets not specifically disposed of by other parts of the will. You probably will accumulate assets after you write your will, and if you haven't specifically given an asset to someone, it won't pass through the will—unless you have a residuary clause that covers everything. (If your will omits a residuary clause, the assets not left specifically to anyone would pass on through the intestate succession laws; in technical terms, your estate would be partially intestate, with some portions passing as you specified in your will and some according to state law.) No matter how small your residuary estate seems at the time you write your will, you should almost always leave it to the person you most care about.

**Trusts.** In a trust clause, you can set up a testamentary trust in your will, or have your will direct funds from your estate into a trust you had previously established (your will would then be a pour over will).

### How do I make gifts of personal property in a will?

A **tangible personal property memorandum** or direction (abbreviated as **TPPM**) is a separate handwritten document that is incorporated into the will by reference, is dated, and contains lists of tangible personal property (e.g., jewelry, artwork, furniture) and the people you want the property to go to.

This means that the will says something like "This will incorporates the provisions of a separate Tangible Personal Property Memorandum . . ." Then the TPPM is regarded as part of the will. Many states recognize the validity of such a signed instrument. Some require it to be in existence at the time the will is signed and will not give effect to changes made after the will is signed. If you use a TPPM, it's important to remember to make provisions for what happens to any of the property listed if the person who is in line to receive it should die before you do—and you neglect to adjust the TPPM accordingly before your death. Often, the reference in the will specifies that the gifts are to go to the recipients still living.

In addition, the reference in the will often states that if no TPPM is found within sixty days of the will maker's death, that is conclusive evidence that it does not exist. This provision means that the estate can be settled in a timely manner, without waiting indefinitely for something that may never turn up.

### Where should I keep my will?

Keep it in a safe place, such as your lawyer's office, a fireproof safe at home, or a safe-deposit box. If you do keep your will in a safe-deposit box, make sure to provide that the executor can take possession of the will when you die. Also, keep in mind that some jurisdictions require a decedent's safe-deposit box to be sealed immediately after death until certain legal requirements have been satisfied.

### What other estate documents should I keep with the will?

You should also keep a record of other estate-planning documents with your will, such as trust documents, IRAs, insurance policies, income savings plans such as 401(k) plans, stocks and bonds, and retirement plans.

## Living Wills and Healthcare Power of Attorney

Living wills and healthcare power of attorney forms allow you to express your preferences regarding your medical treatment, should you become unable to communicate your wishes due to illness or permanent unconsciousness. They also allow you to designate a person who can make end-of-life care decisions on your behalf.

Living wills are not really wills at all. Instead, a living will (which also may be known as a *healthcare directive* or *directive to physicians*) is a document that expresses a person's desires and preferences about medical treatment in case he or she becomes unable to communicate these instructions during terminal illness or permanent unconsciousness.

The first living wills helped people who wanted a natural death unattended by artificial life support and other advanced medical techniques. As these documents became more popular and widely available under local laws, they came to include other health care concerns such as tube feeding, resuscitation, and organ donation.

While living wills are allowed in all states, they sometimes must follow certain formalities to be effective. If valid, a living will binds health care providers to its instructions.

### What Can a Living Will Cover?

Many people believe that living wills only direct health care providers to withhold treatment. While many choose to issue that type of instruction, a living will also allows a person to ask for all available treatment options and medical techniques, or to choose some medical options and reject others. Because a living will involves complicated medical issues, consultation with a doctor may help clarify different treatment types and assist the patient in making living will decisions. Some people do not complete living wills because they worry doctors could let them die when there is still a chance for recovery. However, a living will cannot take effect legally unless the patient is medically determined to be in a permanent vegetative state or terminally ill, and therefore unable to communicate medical preferences.



### Living Will vs. Durable Power of Attorney

A durable power of attorney can perform some of the functions of a living will. This document gives an attorney-in-fact legal power to make health care decisions for someone who cannot make those decisions him or herself. A durable power of attorney differs from a living will in that it may direct the attorney-in-fact to carry out the living will's instructions or it may allow the attorney-in-fact to use his or her own judgment. The living will itself also can specify a proxy to help enforce its terms. A durable power of attorney may be used whenever the individual granting the power cannot make his or her own health care decisions; it does not depend on terminal illness or permanent unconsciousness to become effective. Most estate planning attorneys recommend both documents to cover all situations.

Without a living will or durable power of attorney, family members may end up arguing over what treatments should or should not be provided. Doctors will only consult family members on health care decisions; if a person prefers that a friend or unmarried partner participate in his or her health care decisions, a living will and durable power of attorney enable that person to have a say.

# Sample Living Will Directive to Physicians

Directive made and executed by \_\_\_\_\_ [name], of \_\_\_\_\_  
 [address], \_\_\_\_\_ County, \_\_\_\_\_ [state], on \_\_\_\_\_ [date].

I, \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death, and where my attending physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

2.

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

4.

5. \_\_\_\_\_ [If applicable, add: If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.]

6.

7. I have been diagnosed and notified at least \_\_\_\_ days ago as having a terminal condition by \_\_\_\_\_, M.D., whose address is \_\_\_\_\_, and whose telephone number is \_\_\_\_\_.

I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I executed this directive.

8.

9. This directive shall have no force or effect \_\_\_\_\_ years from the date filled in above.

10.

11. I understand the full import of this directive, and I am emotionally and mentally competent to make this directive.

12.

13. I understand that I may revoke this directive at any time.

\_\_\_\_\_  
 [Signature]

## ATTESTATION CLAUSE

On \_\_\_\_\_ [date], \_\_\_\_\_ [name], known to us to be the person whose signature appears at the end of the above directive, declared to us, the undersigned, that the above directive, consisting of \_\_\_\_ pages, including the page on which we have signed as witnesses, was \_\_\_\_\_ [his or her] directive. \_\_\_\_\_ [He or She] then signed the directive in our presence and, at \_\_\_\_\_ [his or her] request, in \_\_\_\_\_ [his or her] presence and in the presence of each other, we now sign our names as witnesses.

\_\_\_\_\_ [Name] declarant has been personally known to us and we believe \_\_\_\_\_ [him or her] to be of sound mind. We are not related to \_\_\_\_\_ [name] by blood or marriage, nor would we be entitled to any part of \_\_\_\_\_ [name's] estate on \_\_\_\_\_ [name's] death, nor are we the attending physicians of \_\_\_\_\_ [name] or an employee of the attending physician or a health facility in which \_\_\_\_\_ [name] is a patient, or a patient in the health care facility in which \_\_\_\_\_ [name] is a patient, or any person who has a claim against any part of the estate of the \_\_\_\_\_ [name] on \_\_\_\_\_ [name's] death.

\_\_\_\_\_, residing at \_\_\_\_\_  
 [Signature]

\_\_\_\_\_, residing at \_\_\_\_\_  
 [Signature]

\_\_\_\_\_, residing at \_\_\_\_\_  
 [Signature]

# Health Care Power of Attorney

I, \_\_\_\_\_, residing at \_\_\_\_\_ [address]; make, constitute and appoint \_\_\_\_\_, \_\_\_\_\_, residing at [address]

(hereinafter referred to as my "Health Care Representative"), my true and lawful attorney-in-fact to be my Health Care Representative with respect to all health care matters, upon the terms and conditions hereinafter set forth.

1. Although I wish to live and enjoy life as long as possible, I do not wish to receive futile medical treatment, which I define as treatment that will provide little or no benefit to me and will only prolong my inevitable death or irreversible coma.

2. I desire that my wishes with respect to all health care matters be carried out through the authority given to my Health Care Representative under this Health Care Power of Attorney despite any contrary feelings, beliefs or opinions of other members of my family, relatives or friends. I have thoroughly discussed my personal preferences and desires with my Health Care Representative, and his or her successor. I am fully satisfied that each will know best what I would wish and I have the utmost faith and confidence in their respective good judgments.

3. In exercising the authority herein given to my Health Care Representative, my Health Care Representative should try to discuss with me the specifics of any proposed health care decision if I am able to communicate in any manner whatsoever, even by blinking my eyes. I hereby further direct and instruct my Health Care Representative that if I am unable to give an informed consent to my medical treatment or if the physician(s) providing me with medical care determine that I lack capacity to make a particular health care decision, my Health Care Representative shall make such health care decision for me based upon any treatment choices or other desires that I have previously expressed while competent, whether under this Health Care Power of Attorney or otherwise.

4. In order to aid my Health Care Representative in making decisions under this Health Care Power of Attorney, but in no way to limit the absolute authority and discretion granted herein to my Health Care Representative, if:

(A) Two licensed physicians who are familiar with my condition have diagnosed and noted in my medical records that I am in the terminal stage of an irreversible fatal illness, disease or condition and/or my condition is expected to result in my death within six (6) months or less regardless of what medical treatment I may receive;

(B) Two licensed physicians who are familiar with my condition have diagnosed and noted in my medical records that I am permanently unconscious. "Permanently unconscious" shall mean a medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term "permanently unconscious" shall include without limitation a persistent vegetative state or irreversible coma;

(C) There have been two electroencephalograms (EEGs) which have been taken more than twenty-four (24) hours apart, and each scan indicates a flat brain wave pattern; or

(D) Two licensed physicians who are familiar with my condition have determined that my life may only be maintained by artificial means, including, but not limited to, respirators and feeding tubes, and that there is no reasonable possibility that I will ever be able to sustain my life without such artificial means; then, and in any of such events, my Health Care Representative is authorized to do any one or more of the following:

(i) To sign on my behalf any documents necessary to carry out the authorizations described below, including waivers or releases of liabilities required by any health care provider;

(ii) To give or withhold consent to any medical care or treatment, to revoke or change any consent previously given or implied by law for any medical care or treatment, and to arrange for my placement in or removal from any hospital, convalescent home or other health care institution;

(iii) To require that medical treatment that would only prolong my inevitable death or permanent unconsciousness (including by way of example, but not limited to, such treatment as cardiopulmonary resuscitation, surgery, dialysis, the use of a respirator, blood transfusion, antibiotics, antiarrhythmic and pressure drugs, or transplants) not be instituted, or if previously instituted, to require that it or they be discontinued;

(iv) To require, if I have been permanently unconscious, as defined above, for \_\_\_\_\_ ( ) days or more, that procedures used to provide me with fluids and nutrition (including, by way of example only, parenteral feeding, intravenous feedings, misting, endotracheal or nasogastric tube use) not be instituted or if previously instituted, to require that they be discontinued; and

(v) To authorize the administration of pain relieving drugs, even if they may shorten my remaining life.

5. The rights and authority conferred on my Health Care Representative herein appointed shall include, but is by no means limited to, the right to receive information and reports from all treating physicians, other health care professionals, health care institutions, etc., regarding proposed health care, surgery, or any other aspect of my medical treatment; the right to receive and review my medical records and information to the same extent that I am entitled to and to disclose or consent to the disclosure of my medical records to others; to contract on my behalf for any health care related service or facility (without my Health Care Representative incurring personal financial liability for such contracts); and to hire and fire medical, social service and other support personnel responsible for my care.

6. This instrument is to be construed and interpreted as an "advance directive for health care" as such term is defined in [state statute ] (hereinafter the "Act"). In determining the rights of my Health Care Representative herein appointed, the enumeration of the specific items, rights, acts or powers set forth herein is not intended to nor does it limit, and it is not to be construed or interpreted as limiting, the specific power of my Health Care Representative to do and perform any and all acts with respect to my health care which I would be able to perform if I were competent and able to do so and as are within the bounds of authority granted by the Act.

7. In the event \_\_\_\_\_, \_\_\_\_\_, shall become unable to act as my Health Care Representative hereunder for any reason whatsoever, including, but not limited to, death, incapacity, or resignation, then I do hereby make, constitute and

I, \_\_\_\_\_, residing at \_\_\_\_\_ [address]; make, constitute and  
 appoint \_\_\_\_\_, \_\_\_\_\_, residing at [address]

(hereinafter referred to as my "Health Care Representative"), my true and lawful attorney-in-fact to be my Health Care Representative with respect to all health care matters, upon the terms and conditions hereinafter set forth.

1. Although I wish to live and enjoy life as long as possible, I do not wish to receive futile medical treatment, which I define as treatment that will provide little or no benefit to me and will only prolong my inevitable death or irreversible coma.
2. I desire that my wishes with respect to all health care matters be carried out through the authority given to my Health Care Representative under this Health Care Power of Attorney despite any contrary feelings, beliefs or opinions of other members of my family, relatives or friends. I have thoroughly discussed my personal preferences and desires with my Health Care Representative, and his or her successor. I am fully satisfied that each will know best what I would wish and I have the utmost faith and confidence in their respective good judgments.
3. In exercising the authority herein given to my Health Care Representative, my Health Care Representative should try to discuss with me the specifics of any proposed health care decision if I am able to communicate in any manner whatsoever, even by blinking my eyes. I hereby further direct and instruct my Health Care Representative that if I am unable to give an informed consent to my medical treatment or if the physician(s) providing me with medical care determine that I lack capacity to make a particular health care decision, my Health Care Representative shall make such health care decision for me based upon any treatment choices or other desires that I have previously expressed while competent, whether under this Health Care Power of Attorney or otherwise.
4. In order to aid my Health Care Representative in making decisions under this Health Care Power of Attorney, but in no way to limit the absolute authority and discretion granted herein to my Health Care Representative, if:
  - (A) Two licensed physicians who are familiar with my condition have diagnosed and noted in my medical records that I am in the terminal stage of an irreversible fatal illness, disease or condition and/or my condition is expected to result in my death within six (6) months or less regardless of what medical treatment I may receive;
  - (B) Two licensed physicians who are familiar with my condition have diagnosed and noted in my medical records that I am permanently unconscious. "Permanently unconscious" shall mean a medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term "permanently unconscious" shall include without limitation a persistent vegetative state or irreversible coma;
  - (C) There have been two electroencephalograms (EEGs) which have been taken more than twenty-four (24) hours apart, and each scan indicates a flat brain wave pattern; or
  - (D) Two licensed physicians who are familiar with my condition have determined that my life may only be maintained by artificial means, including, but not limited to, respirators and feeding tubes, and that there is no reasonable possibility that I will ever be able to sustain my life without such artificial means; then, and in any of such events, my Health Care Representative is authorized to do any one or more of the following:
    - (i) To sign on my behalf any documents necessary to carry out the authorizations described below, including waivers or releases of liabilities required by any health care provider;
    - (ii) To give or withhold consent to any medical care or treatment, to revoke or change any consent previously given or implied by law for any medical care or treatment, and to arrange for my placement in or removal from any hospital, convalescent home or other health care institution;
    - (iii) To require that medical treatment that would only prolong my inevitable death or permanent unconsciousness (including by way of example, but not limited to, such treatment as cardiopulmonary resuscitation, surgery, dialysis, the use of a respirator, blood transfusion, antibiotics, antiarrhythmic and pressure drugs, or transplants) not be instituted, or if previously instituted, to require that it or they be discontinued;
    - (iv) To require, if I have been permanently unconscious, as defined above, for \_\_\_\_\_ (\_\_\_) days or more, that procedures used to provide me with fluids and nutrition (including, by way of example only, parenteral feeding, intravenous feedings, misting, endotracheal or nasogastric tube use) not be instituted or if previously instituted, to require that they be discontinued; and
    - (v) To authorize the administration of pain relieving drugs, even if they may shorten my remaining life.

5. The rights and authority conferred on my Health Care Representative herein appointed shall include, but is by no means limited to, the right to receive information and reports from all treating physicians, other health care professionals, health care institutions, etc., regarding proposed health care, surgery, or any other aspect of my medical treatment; the right to receive and review my medical records and information to the same extent that I am entitled to and to disclose or consent to the disclosure of my medical records to others; to contract on my behalf for any health care related service or facility (without my Health Care Representative incurring personal financial liability for such contracts); and to hire and fire medical, social service and other support personnel responsible for my care.

6. This instrument is to be construed and interpreted as an "advance directive for health care" as such term is defined in [state statute] (hereinafter the "Act"). In determining the rights of my Health Care Representative herein appointed, the enumeration of the specific items, rights, acts or powers set forth herein is not intended to nor does it limit, and it is not to be construed or interpreted as limiting, the specific power of my Health Care Representative to do and perform any and all acts with respect to my health care which I would be able to perform if I were competent and able to do so and as are within the bounds of authority granted by the Act.

7. In the event \_\_\_\_\_, \_\_\_\_\_, shall become unable to act as my Health Care Representative hereunder for any reason whatsoever, including, but not limited to, death, incapacity, or resignation, then I do hereby make, constitute and appoint \_\_\_\_\_, of \_\_\_\_\_ as my successor Health Care

# Sample Living Will Form

Each of the fifty states have some law regarding the ability of patients to make decisions about their medical care before the need for treatment arises through the use of advance directives. The great majority of states allow for patients to draft living wills that set forth the type and duration of medical care that they wish to receive should they become unable to communicate those wishes on their own.

Although the law in each state will vary as to what can be included in a living will, the following sample can provide a general overview of what one may look like, and what information may be included. Of course, before assuming that this sample will be sufficient for your purposes, you should check the law in your jurisdiction or have an attorney review your advance directives. In some states, however, an unapproved document may have some persuasive effect.

LIVING WILL DECLARATION OF \_\_\_\_\_

To my family, doctors, hospitals, surgeons, medical care providers, and all others concerned with my care:

I, \_\_\_\_\_, being of sound mind and rational thought, willfully and voluntarily make this declaration to be followed if I become incompetent or incapacitated to the extent that I am unable to communicate my wishes, desires and preferences on my own.

This declaration reflects my firm, informed, and settled commitment to refuse life-sustaining medical care and treatment under the circumstances that are indicated below.

This declaration and the following directions are an expression of my legal right to refuse medical care and treatment. I expect and trust the above-mentioned parties to regard themselves as legally and morally bound to act in accordance with my wishes, desires, and preferences. The above-mentioned parties should therefore be free from any legal liabilities for having followed this declaration and the directions that it contains.

## DIRECTIONS

1. I direct my attending physician or primary care physician to withhold or withdraw life-sustaining medical care and treatment that is serving only to prolong the process of my dying if I should be in an incurable or irreversible mental or physical condition with no reasonable medical expectation of recovery.

2. I direct that treatment be limited to measures which are designed to keep me comfortable and to relieve pain, including any pain which might occur from the withholding or withdrawing of life-sustaining medical care or treatment.

3. I direct that if I am in the condition described in item 1, above, it be remembered that I specifically do not want the following forms of medical care and treatment:

- |          |          |
|----------|----------|
| A. _____ | B. _____ |
| C. _____ | D. _____ |
| E. _____ | F. _____ |
| G. _____ | H. _____ |
| I. _____ | J. _____ |
| K. _____ |          |

4. I direct that if I am in the condition described in item 1, above, it be remembered that I specifically do want the following forms of medical care and treatment:

- |          |          |
|----------|----------|
| A. _____ | B. _____ |
| C. _____ | D. _____ |
| E. _____ | F. _____ |
| G. _____ | H. _____ |
| I. _____ | J. _____ |
| K. _____ |          |

5. I direct that if I am in the condition described in item 1, above, and if I also have the condition or conditions of \_\_\_\_\_, that I receive the following medical care and treatment:



Each of the fifty states have some law regarding the ability of patients to make decisions about their medical care before the need for treatment arises through the use of advance directives. The great majority of states allow for patients to draft living wills that set forth the type and duration of medical care that they wish to receive should they become unable to communicate those wishes on their own.

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2. I direct that treatment be limited to measures which are designed to keep me comfortable and to relieve pain, including any pain which might occur from the withholding or withdrawing of life-sustaining medical care or treatment.

3. I direct that if I am in the condition described in item 1, above, it be remembered that I specifically do not want the following forms of medical care and treatment:

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_
- F. \_\_\_\_\_
- G. \_\_\_\_\_
- H. \_\_\_\_\_
- I. \_\_\_\_\_
- J. \_\_\_\_\_
- K. \_\_\_\_\_

4. I direct that if I am in the condition described in item 1, above, it be remembered that I specifically do want the following forms of medical care and treatment:

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_
- F. \_\_\_\_\_
- G. \_\_\_\_\_
- H. \_\_\_\_\_
- I. \_\_\_\_\_
- J. \_\_\_\_\_
- K. \_\_\_\_\_

5. I direct that if I am in the condition described in item 1, above, and if I also have the condition or conditions of \_\_\_\_\_, that I receive the following medical care and treatment:

This Living Will Declaration expresses my firm wishes, desires, and preferences and the fact that I may have executed a form specified by the law of the



We hope this brochure has helped you make some good choices, and we hope you will think of us and all of the good work we continue to do protecting children.

Each year we start anew, spreading awareness about Reye's Syndrome. The disease is still out there, taking the lives of our children. We consider ourselves Guardians, and we invite you to be one of our Special Angels, providing a Legacy that will live on in the name of your child, spouse, and, or, your family.

We ask for your help to keep the Awareness Programs of the National Reye's Syndrome Foundation on going, until such a time when this horrible disease is eradicated, or a cure is found.

We invite you to Provide A Legacy of Life.

In any Will, Trust, or Insurance Policy, simply state the beneficiary as; National Reye's Syndrome Foundation, Inc, a nonprofit organization located in Bryan, Ohio 43506.



**FOR MORE INFORMATION  
CONTACT:**

**NATIONAL REYE'S  
SYNDROME FOUNDATION**

PO Box 829  
426 N. Lewis Street  
Bryan, OH 43506

800-233-7393  
[www.RSGifting.Org](http://www.RSGifting.Org)  
[www.ReyesSyndrome.Org](http://www.ReyesSyndrome.Org)  
[nrsf@reyessyndrome.org](mailto:nrsf@reyessyndrome.org)

