

Price & Farrington's Estate and Tax Planning FastFaxts

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Estate, Tax, Business and Wealth Planning for Advisors and Clients

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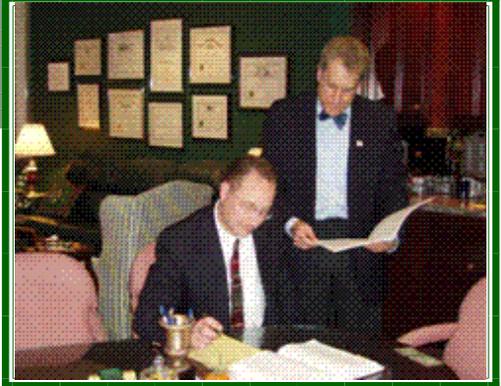
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Living Wills and Health Care Powers: Reflections and Suggestions

We are beginning the seventh year writing our monthly FastFaxts!



The case of Terri Schiavo, the severely brain-damaged Florida woman, dramatically worked its way through the courts (and Congress) recently, and the subject of *Living Wills* dominated the headlines in the popular media. What follows are thoughts on a topic whose importance preceded the recent press mania and that squarely address issues we should all consider, either personally as spouses, parents, siblings or children, or as professional advisors: *Advance Health Directives and Living Wills*.

In February, 1990, Ms. Schiavo, then in her mid-20s, collapsed from cardiac arrest and suffered severe oxygen loss to the brain. Some doctors say she never gained consciousness; others diagnosed her with severely limited consciousness. Regardless, for fifteen years she was unable to care for herself or express her wishes for her care, including whether she should be allowed to die by having her feeding tube removed. The brutally public, prolonged pitched battle between her husband and her parents was the result of her failure to plan. Thank goodness that you, your children, your loved ones (and your clients) will *never* be in that position because you've all done your planning, right? *Not!*

Pointers. The life-and-death

drama of Terri Schiavo focused attention on what should be the correct procedures – both medical and legal – when you cannot act for yourself. A few pointers:

☑ Get a doctor who shares your world view and values life as you do. This is a patient's best guarantee.

☑ Name an agent in your Durable Power of Attorney for Health Care (DPOAHC) who is authorized to make health care decisions for you when you cannot, who shares your world view and values life as you do. This is your second-best guarantee.

☑ Tell your agent, family and friends about your wishes and your moral, religious and practical views about medical treatment and the use of life-sustaining measures in various specific circumstances.

☑ Tell your agent, family and friends where you keep the planning documents that reflect your wishes.

☑ Regularly review and update all of your documents that authorize others to act for you [See box: *Tips on Updating*]

You can't cover all the bases.

Any attempt to make medical decisions far in advance will likely be futile because it is impossible to predict all of the circumstances you may face. Simple statements like "I never want to be placed on a ventilator" might not reflect your true wishes. A directive that is too *specific* and prohibits (or requires) particular types of treatment could result in a bad decision or make a good decision more difficult for the family. On the other hand, if the advance directive is

too *general* in its terms, e.g., forbidding "heroic measures", what have you really accomplished?

A-proxy-mate-ly effective.

While it might not be effective to mandate every medical decision in advance, an advance directive can play a crucial role in making decision-making easier by communicating to your family your feelings about what kind of life is worth living. A living will can convince families to stop futile treatment. Often it is out-of-town loved ones who initially are adamant about continuing therapies. Someone remembers that the last time they saw Mom she was getting around and making pies. If you have a person's advance directive, there's no doubt.

Remember, living wills are only a good start; they can't cover all of the potential what-ifs and medical gray areas that can arise. They should take into account medical advances that can turn what was once a terminal or irreversible condition into a treatable one.

In most states, including Washington, a Durable Power of Attorney for Health Care can be used to designate a person ("proxy" or "agent") to make a broad range of health care decisions for you, including choices

Tips on Updating...

At the very least, update important estate planning legal documents each time you hit one of the four "D"s.

1. A new **decade** of life.
2. The **death** of a loved one.
3. **Divorce**.
4. Bad **diagnosis** or **decline** in health.

Don't **delay** until **dementia** sets in.

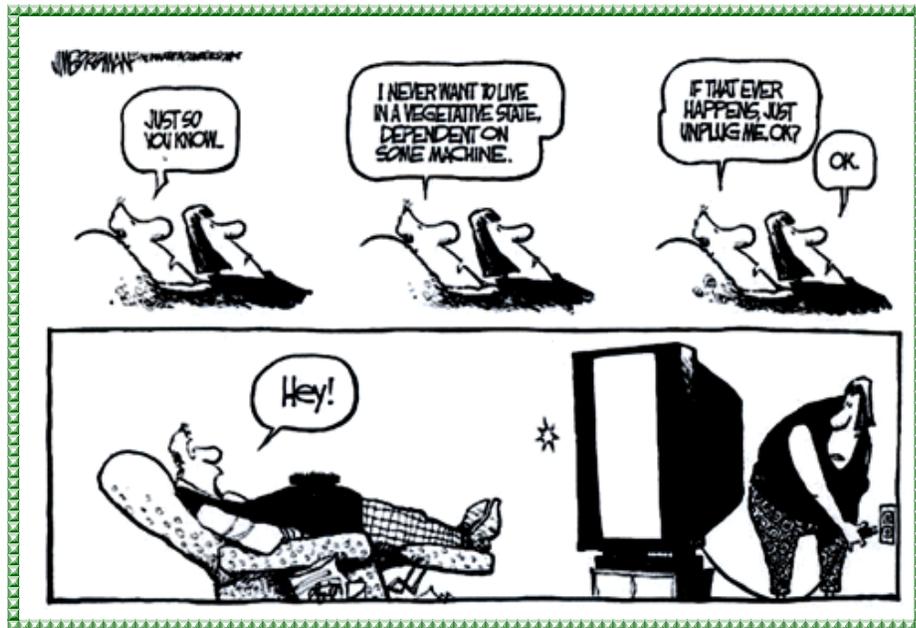


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concerning life-sustaining treatment. Your agent can exercise authority in the event of a disagreement between the family and health care professionals. The DPOAHC can inform and guide the decision-making process. It can be as detailed or as general as you wish. For most people, it should take the form of a grant of authority to a trusted decision-maker (and, perhaps, limits on that authority) rather than an attempt to mandate specific decisions in advance which could turn out to be inappropriate.

Example. At Montefiore Medical Center in New York a patient had a living will that stated she didn't want to be put on a ventilator to help her breathe. But the woman's daughter wanted her to continue with the treatment. While the patient did have serious dementia, she was expected to recover. The hospital gave greater weight to the woman's prognosis and her daughter's wishes and decided to give the woman a ventilator. She recovered and lived another two years.

Non-traditional. Doctors will only consult family members on health care decisions. If a person prefers that a friend, unmarried partner or "significant other" participate in his or her health care decisions, it is important that the DPOAHC clearly designates that person to act. This is especially important for people in non-traditional relationships or if a person fundamentally disagrees with a spouse or other family members about



the appropriateness of particular kinds of medical treatment.

Bottom line. In a 2003 survey conducted by AARP, only two in five adults aged 45 and older had a DPOAHC in place. Bottom line: Rather than trying to make all of the decisions in advance, *our clients are encouraged to put in place a process by which choices can be made by the people they trust, guided by the client's convictions, and informed by the advice of experts and a reasoned analysis of the medical information.*

Advance Directives 101.

⇒ Before signing these important documents, have a qualified attorney check to make sure they clearly express your wishes and that they have the proper witnessing requirements.

⇒ If you have homes in multiple states, make sure your documents comply with laws in those states.

⇒ Make sure your agent has authorization to access your medical records under the federal Health Insurance Portability and Accountability Act (HIPAA).

⇒ A directive can contain *nonmedical* instructions such as grooming, fresh flowers in the room, placement of family photos, and certain kinds of music being played.

⇒ Specific religious considerations about end-of-life

decisions or organ donation can be included. (Contact us to see an example of a Catholic Living Will.)

⇒ Give signed copies to your agent and backup agent, your doctors, the hospital and other close family members or confidantes.

⇒ Sit down and talk about your wishes with the person(s) you've named as agent.

⇒ Periodically review and refresh your health-care directives. If your agent dies, gets sick or moves away, you will need to designate someone else. ■

Contact our office for help creating or updating your health care planning documents, including Durable Powers of Attorney for Health Care, Advance Directives (Living Wills) and HIPAA disclosure affidavits. These are critically important components of everyone's estate planning.

MY LIVING WILL

1. If I should lie in a persistent vegetative state for fifteen years, I would like someone to turn off the TV.
2. If I am unable to interact with friends and family, I still expect gifts.
3. Don't resuscitate me before noon.
4. I do not wish to be kept alive by any machine that has a "Popcorn" setting.
5. Assume that, even in a coma, I can still hear discussions about my apartment.
6. If my doctor pronounces me brain-dead, I would like to see the new Ashton Kutcher movie.
7. I would like to die at home, surrounded by my attorneys.



Glen D. Pina