

Lasting Power of Attorney Series



**MAKING AN ADVANCED
DECISION OR LIVING
WILL**

What is an Advance Decision?

Advance Decisions, commonly known as 'living Wills', are legally binding decisions refusing the commencing or continuing of specific medical treatments. They will be made whilst you have capacity and can only be used if you lose capacity to refuse the treatments specified. Such treatments can include blood transfusions, organ transplants and artificial nutrition and hydration.

What types of decisions can I make?

When you have capacity, you can decide to refuse all or some medical treatments. At such time as you lose the requisite capacity to make the decision, if you have not made an Advance Decision (or Health & Welfare Lasting Power of Attorney), then healthcare professionals will act on what they consider to be in your best interest, regardless of whether or not you would have wanted the treatment.

You cannot use Advance Decisions to:-

- Require a healthcare professional to provide a particular medical treatment;
- Request or authorise illegal acts such as asking for your life to be ended; or
- Refuse essential care (for example, keeping you warm, sheltered and clean).

However you can direct the professionals by including a non-legally binding request for a particular treatment which they may consider when deciding what treatment is in your best interests.

"Clear and straightforward service. Maxine's fees were clearly stated and I felt able to raise all relevant issues"
P R, Corsham

How does an Advance Decision differ from a Health & Welfare Lasting Power of Attorney?

Under a LPA, the Attorney makes a decision in what they consider to be your best interests even if they contradict your personal, moral or religious views.

With an Advance Decision, you make the decision in advance but possibly without the benefit of all available information.

How do I make an Advance Decision?

An Advance Decision must be in writing in order to be binding. We recommend that you give copies to your family, friends and medical professionals.

The Advance Decision must:-

- Explicitly state the proposed treatment;
- Identify the circumstances under which you would not want to receive the proposed treatment; and
- Be in writing and signed by the decision-maker in the presence of a witness who must also sign and include a statement confirming that the decision is to apply even if the decision-maker's life is at risk (only if the treatment is life-sustaining).

An Advance Decision may not be valid if there are reasonable grounds for the professionals to believe that circumstances exist that you did not anticipate at the time you made the decision, for example being pregnant or the existence of more successful or life-sustaining treatments.

It can be difficult to think about drafting Advance Decisions covering all treatments, especially with rapidly evolving medical technology. Our Private Client team here at Goughs can advise you and help you prepare Advance Decisions taking into account all possibilities whilst ensuring they satisfy all the above statutory requirements.

Can I have an Advance Decision and a Health & Welfare Lasting Power of Attorney?

Yes, but you need to ensure that there is no conflict between the two. If there is, then the most recent document will take precedence.

What is an advance statement?

By contrast, an advance statement is an expression of wishes you can make whilst you have capacity that healthcare professionals will take into account, but do not have to follow. It is not limited to the refusal of treatment and can relate to all kinds of aspects of your care; it will let the professionals know, among other things, what food you like to eat, what kind of clothes you prefer to wear and who you would like to have contact with.

Such a statement could explain your likes, dislikes and what makes you comfortable, should you be in a position where you are unable to tell your family or healthcare professionals and can be made orally.



WHAT OUR CLIENTS HAD TO SAY

"Friendly exact explanations on all legal aspects, helpful throughout and always with a smile" Mr & Mrs C, Westbury

"Very understanding. I'd recommend Emma Taylor for all later life matters"
Mrs W, Chippenham

"We liked Phillip's quiet efficiency, his understanding and knowledge of the subject"
R & L Bunnett, Corsham



HAVE YOU BEEN PUTTING OFF UPDATING YOUR WILL?

Get in touch today.



CREATING A TRUST ISN'T AS COMPLICATED AS YOU MIGHT THINK.

Speak to your lawyer for more
information.

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