

## The Importance of Advance Directives for Everyone, Especially Adult Children

By Susan J. Brotman, The Lawyer Who Listens™



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**E**veryone, whether 18 or 88, married or single, should have a Living Will, Health Care Surrogate, and a Durable Power of Attorney. Just because a child may not have assets, advance directives are just as important for them. While being a parent is important, such has no legal status when it pertains to accessing information that automatically becomes private after age 18.

For **college age children**, often away from home for the first time, it is imperative that parents are able to check on them, guide them, and make certain decisions for them. In Florida, if your child gets sick, you would hope that you could make medical decisions, speak with his doctors, hospital personnel, insurance companies, etc. Just because you are the next of kin, you are not otherwise entitled to intervene. It would depend on how nervous the information holder is about being held liable for the release of information and the invasion of your child's privacy.

Wanting to know how your child is doing in school doesn't make you a meddling parent, but if there is a lack of communication, odd behavior, wouldn't you want to know? Just because you may be paying the bills, you are not automatically entitled to any information about your child. The ability to head off a disaster before it happens may be a lifesaver, literally and figuratively.

**Married people, or even single people**, whether widowed, divorced, or just living together without being married, should also have advance directives because you get to choose who YOU want to make decisions, legally, financially, medically. Often, it is not the next of kin or the person that “appears” to be the most appropriate! Married couples should not assume that a spouse can act or get information for the other. Hospitals, banks, credit card companies, etc., are so afraid of releasing “private”

information that even for the right reasons, they are apprehensive of their possible liability. No one wants an estranged child, a brother or sister they haven't spoken to in years, the child of a deceased spouse, or a court appointed stranger, making their life decisions. After divorce or the death of a spouse in particular, all documents should be reviewed and updated or replaced. Florida does not recognize common law marriage, so without advance directives, even couples together 25 years still do not have any legal standing to make decisions for their partner.

### DEFINITIONS:

A **Living Will** says that if a person is incapacitated and has a terminal condition, an end stage condition, or is in a persistent vegetative state, and two doctors determine that there is no medical probability of recovery, it is that individual's right to refuse to be artificially prolonged and he can name someone who he knows will confirm his wishes.

A **Health Care Surrogate** allows an individual to pick a person to make medical decisions if he cannot give informed consent for treatment.

A **Durable Power of Attorney** gives someone the authority to make certain estate planning decisions, carry out banking and/or investment activities, access digital assets (including passwords), get information from entities who are afraid of liability for disclosing information, such as doctors, hospitals, schools, insurance companies, IRS, attorneys, etc. Most importantly, the DPOA is not affected by a later incapacity (i.e., dementia), and in most cases a person can avoid the need for a very costly, restrictive, and personally invasive guardianship.

In conclusion, advance directives enable people to be in control and make decisions even when they can't, through trusted individuals of their choosing. **stb**