

PLAN AHEAD

A living will makes people feel better

Last April, the world learned of the horrible fate of Terri Schiavo of Florida. Schiavo, 41, had been severely brain damaged since experiencing heart failure in 1990. Her husband had been seeking to remove the feeding tube that kept her alive, and her parents fought him throughout in the courts. The tube eventually was removed and she died. The unfortunate part of her story was that she did not have a living will.

As a result of the Terri Schiavo case, people in the United States, Canada, and other countries have approached their lawyers to have living wills drafted for them. The question is: do they help or do they not help?

For many reasons, living wills do not have any legal force, especially in Canada. The primary reason is that there is no legislation and very little, if any, case law on the legality of living wills. This is an area of law in its infancy. Further, most living wills are too vague. End-of-life decisions are not that black and white. Most people cannot envision every medical scenario, let alone how they would feel in advance about any particular choice. In addition, many times living wills don't get used because family members do not know that they exist, or the attorney named in the living will does not advocate strongly enough for the individual. As the Schiavo case demonstrates, dissenting family members may be so strongly opposed that their challenges could override the wishes expressed in the living will. Unfortunately for Schiavo's parents, the U.S. courts did not side with them.

So does this mean that a living will is useless? Absolutely not. If you have a living will or are thinking about having one drafted, you should do so for the following reasons. First, it gives valuable information as to what your wishes are should you be in an end-of-life situation. But do not draft a living will by itself. A living will should be drafted with a power of attorney for personal care. This legal document designates who will make decisions for you regarding your health care if you cannot make them for yourself.



But be careful to select your decision-maker carefully and choose alternates, remembering that both must be strong advocates for you. Second, explore your feelings about end-of-life care with your loved ones and make sure they know what your attitudes, values and wishes are should you require such care. Finally, talk to your family about what you want and continue to talk because your family and your decision-makers need to know where you stand on these issues. You may not be able to settle it all with one conversation since your views on what is and is not appropriate care may change over time.

Ultimately, a living will should provide comfort to you and your family as to what you wish to do should catastrophe strike or illness creep up slowly over time. With the Terri Schiavo case, the world saw first hand how ill-prepared families can be when forced to struggle with end-of-life situations. It was not a comforting situation for all members concerned. Most people would not want to experience what the Schiavo family went through. A living will is clearly the solution to the problem.

If you have any questions regarding living wills or your estate and its management, Rutman and Rutman Professional Corporation will be happy to assist you. Or if you wish to have your will, power of attorney and living will documents prepared, contact Gary D. Indech of Rutman and Rutman at 905-456-9969 or send him an email at gary@rutmanlaw.com.