

THORNLEYS SOLICITORS

ADVANCE DIRECTIVES OR STATEMENTS 'LIVING WILLS'



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Nowadays, there are many treatments which offer patients with serious or terminal illnesses the chance to live longer. These treatments include chemotherapy, being fed through a tube or being kept alive on a life-support machine.

In some cases, however, these treatments may offer little or no chance of recovery and they may have side effects that could be considered worse than the illness or leave the person in a condition he or she would find unbearable.

You may feel strongly that you do not want to go through this treatment to make you live longer. In the future however, you may not be physically or mentally able to make the decision or talk to your doctors about what you want. For example, if you were in a deep coma or suffered from serious senile dementia.

ADVANCE DIRECTIVES

Advance Directives (often known as 'Living Wills', 'Advance Statements or Advance Refusals') allow you to state which treatments you would or would not want if you became seriously ill in the future and could not say what you wanted to happen.

Some people may confuse the issue of refusing treatment under an Advance Directive with voluntary euthanasia. The two issues, although related, are separate. If you make an Advance Directive you are asking the doctor not to give you any medical treatment. Voluntary euthanasia is when you ask the doctor to deliberately end your life.

A patient cannot require a doctor to take a positive step which would cause the patient's death and any document which directed this would be invalid. Under the Mental Capacity Act 2005 an Advance Directive must be made in writing by a person aged over 18, signed by the patient or another person in his presence and by his direction and witnessed.

An Advance Directive can be legally enforced if it meets the following requirements:-

- The person is mentally competent, is not suffering any mental distress and is over 18 when he or she makes the Advance Directive.
- The person was told all about the nature and effects of refusing treatment at the time he or she made the Advance Directive.
- The Advance Directive applies to the circumstances, which the patient is in.
- The person was not encouraged by someone else or wrongly influenced when he or she made the Advance Directive.
- The Advance Directive has not been cancelled either verbally or in writing since it was drawn up.
- The person is now not mentally able to change his or her decision because they are unconscious or unfit.

MAKING THE ADVANCE DIRECTIVE

It is important to make it clear under what circumstances or situations you want the Advance Directive to apply. This will help your doctor make sure of what you want at the time and avoid any confusion. Your doctor or relatives have to follow a valid Advance Directive, which applies to your medical circumstances.

You can also tell the doctor or nurse what you want rather than write them down, as long as you are mentally able and understand what the effects of this will be. You may have to repeat your decision over a period of time to make sure that the doctors and your relatives know exactly what you want.

If you have specific wishes with regards to your future medical treatments it is worthwhile making your wishes known by putting this in writing and make an Advance Directive.

At Thornleys we have a prescribed form of Advance Directive which can cater to all your requirements. Speak to a member of our Team – we will

be happy to help!

RESTRICTIONS

Advance Directives do have some restrictions. You **cannot**:

- Refuse basic nursing care which is given to all patients, for example, basic hygiene; or
- Ask that staff do not offer you food or drink by mouth.
- You cannot refuse treatment if this goes against a valid court order made due to your medical condition.

ADVANTAGES

- Knowing what you want will help doctors to make the right decision in difficult situations.
- The Advance Directive gives you the chance to discuss your views with both the medical team treating you and your close family and friends.
- The Advance Directive makes sure that you will not have any treatment that you do not want if you cannot tell the doctors your decision at the time.





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Our Private Client team at Thornleys have the specialist knowledge and expertise in these matters. They can advise and help you with your specific needs and requirements.

FOR FURTHER INFORMATION CONTACT:

On Wills generally please see our **Factsheet 1 – Wills**

On appointing Guardians please see our **Factsheet 2 – Appointing Guardians in your Will**

On Inheritance Tax Planning please see our **Factsheet 3 – Inheritance Tax**

On Trusts please see our **Factsheet 4 – Trusts including Discretionary Will Trusts.**

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