



**David Miller, JD**

## **Never Run Out of Money! Ensuring that You Will Never Become a Burden to Your Family**

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### **Could you explain what an elder law attorney does?**

They deal with wills and trust and making estate plans. They specialize in elder law and deal with issues such as capacity, guardianship, and the financial issues that comes with aging.

### **What's the difference between a will and a living will?**

There are 2 parts of your estate that you have to consider. One is your property – money, house, and possessions. The other part of your estate is your body. A living will is for what happens to your person while you're still living. A will is for what happens to your stuff when you die.

We call a living will an advanced directive and general says what you want to happen when you're terminal and possibly on life support. Some people want all measures taken to keep them alive while others don't want to be kept alive on life support. You can be very specific on what types of support you'll except or those you don't want as well as how long you want to be on any type of support. These documents can be combined in a medical power of attorney. That makes clear who is allowed to make decisions on your behalf.

## **What if someone doesn't have a living will?**

It can cause problems within the family. If a husband wants to remove his wife from life support and her parents don't want that, that can cause a lot of problems. There can be lawsuits that can drag on and be very costly.

## **Do you always include a living will when you write up a will?**

The package that they draw up includes the will, an advanced medical directive, a medical power of attorney, and a durable power of attorney which names someone to look after your stuff, and declarations of guardianship if you have children who are minors.

## **What's the difference between a power of attorney and a living will?**

Power of attorney takes care of some things for a certain amount of time. A durable power of attorney can make investment and banking decisions. The medical power of attorney is the ability for someone to make decisions about your care if you're incapacitated. You need to have an advanced directive, or living will, so that decisions are being based on what you want.

## **Do I need a lawyer to make a living will?**

You can certainly write up all these documents and they'll work until they don't. Each state has its own requirements. In Texas, for example, they have forms to fill out but using these could give too much or too little authority to the wrong people.

It's best to work with an attorney to ensure they're filled out correctly, properly formatted, and properly notarized and witnessed. That will ensure that the banks and care facilities will accept it.

Whenever you move states, you should have your documents seen by an attorney to ensure they're clear on state laws.

## **Once you have these wills and directives, should you go over them with your family and where do you put it for safe keeping?**

You'll have a copy for yourself and you're going to name an executor and that's the person who is going to administer your will so they need a copy and they'll need to be able to have access to the original for the courts.

You want to keep the original somewhere safe and accessible. You could keep it in a fireproof lock box in your office or a safety deposit box, as long as the executor can access it.



## **Does the hospital have access to a living will?**

If you're in and out of hospital and needing a higher level of care, you're going to want the hospital to have all of the medical documents. Hospitals will most likely have their own forms that need to be filled out.

If you have the medical power attorney for a loved one, a good idea is to keep it in your glovebox in your car so that if an emergency arises, you can have access to a copy of it immediately.

## **At what age should people start thinking about having a will and a living will in place?**

Think about what happens if you don't have a will, regardless of your age. If you don't have a will, there are laws that have provisions for what happens with your stuff. It can be a long and difficult process. There's going to be a lot of litigation and that cost comes out of your estate. The first big instigator for creating a will is when you have children. Any time there's a serious life change is when you should create or review your wills.

## **You mentioned moving states. What happens if you pass away before making the state changes?**

Your executor will have to probate that will so they have the power to execute it. Every state recognises a will from any other state but the probative process still needs to take place. It can be a lengthy process depending on the size of the estate and it can be costly. It can be rejected based only on the fact that it doesn't match that state's forms. It's highly recommended to get the documents updated as soon as possible.

## **Do you have any procedures in place to ensure your client is of sound mind when they make or change their wills?**

We're talking about capacity. At his firm, if a client is going to make a big change, they'll talk with them and make sure they know what they're doing. They also look for forms of elder abuse and they're required by law to disclose any findings to the law.

## **How do you recognise elder abuse? Are there red flags?**

One red flag is large cheques written to random people. Even making the big changes to their wills can be a red flag and can border on capacity issues. They look for changes in behavior and their understanding of the implications of these changes. They spend a lot of time getting

to know their clients so that they can more easily recognise changes in behavior and capacity. It's about taking care of them as a whole person.

**Do you have any other advice that you didn't cover?**

There are many other documents you might consider, so sitting down with an attorney and going through these can be very helpful. The point is to help the people who are going to be looking after you while you're alive and alleviates the burden when you pass away. Also, laws change and can make your documents obsolete and the process much more expensive.

**Many people create a bucket list as they age. What's one thing you'd like to see on our bucket lists?**

To have the people that you care about protected and to spend quality time with your family and friends. It's so much easier to have these documents in place.

