

The difference between a Living Will and a Health & Welfare Lasting Power Of Attorney

Overview

The use of a “Living Will” or to give its correct name, an Advance Decision, is sometimes viewed as an alternative to a Health & Welfare Lasting Power of Attorney (LPA), so in this factsheet we will attempt to explain the key differences and how they interact with one another.

The first point to make is that an Advance Decision is a record decisions that **you** have made for use if you lose mental capacity at some time in the future. An LPA is an appointment of others to make those decisions if you lose mental capacity.

What is an Advance Decision?

An Advance Decision (Living Will) is a declaration of your refusal of specific medical treatment if you have lost mental capacity at the time when treatment is considered. It cannot be used to request certain types of treatment, it is only for the refusal of treatment.

An Advance Decision is legally binding as long as it complies with certain requirements.

The document must detail exactly what treatment/s the patient wants to refuse and give an explanation as to when and in what circumstances it should apply. Ideally this should be done in consultation with your GP who can help with the correct terminology.

If life sustaining treatment is to be refused, the Advance Decision must be in writing and signed by you in front of a witness.

We recommend that you involve a solicitor in the creation of an Advance Decision.

What is an Advance Statement?

An Advance Statement, which is not legally binding, is often added when making an Advance Decision. This will typically give notice of personal feelings about future treatment and care.

The Advance Statement will normally be taken into account by medical professionals and family and is an extra layer of guidance to assist people to make decisions in your best interests. An Advance Statement can be included in a Health & welfare LPA or done as a separate document.

What is a Lasting Power of Attorney (LPA) for Health and Welfare?

A Health and Welfare LPA enables someone to appoint attorneys who are tasked with making decisions regarding their health and welfare when if they no longer have the mental capacity to do so themselves.

Typically these decisions regard the type and level of healthcare you desire, the thoughts on moving to a residential care home and basic everyday decisions on diet and dress.

There is also an option in a Health & Welfare LPA for giving your attorney(s) the authority to consent or to refuse life sustaining treatments.

So, do you need both an Advance Decision and an LPA?

There are a couple of important points to be made here.

If you if you make an LPA which gives your attorney the right to consent or refuse life sustaining treatment (see note above) this will override any previous Advance Decision that you have made. However If you create an Advance Decision after the LPA then the Advance Decision will override the LPA.

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In conclusion

It is important that if you decide to have both a Health & Welfare LPA and an Advance Decision then it is vital that there is no conflict between the stated wishes of the two documents.

Consider carefully what you want to achieve within any of the above documents and what discretion you want to bestow upon your family, attorneys and medical team.

If you are certain about what medical treatments you want to refuse and in what circumstances these treatments, which can include life sustaining procedures, are to be refused then an Advance Decision is probably the best way to document your wishes.

If you want to appoint a particular person to make day to day decisions regarding your welfare and care then a Health & Welfare LPA is the best way to achieve this.

So, if you already have an Advance Decision then you should not give the attorney special powers under the LPA to consent to life sustaining treatment on your behalf.

In essence both documents allow you to have a say over how you should be treated in the event that you lose the mental capacity to make those decisions yourself.

By using an Advance Decision and an LPA you are giving guidance to your relatives which should be clear and unequivocal and can help to prevent family disputes over treatment or care.

Our advice is always to consult a legal professional to ensure that there is no confusion and we will be happy to introduce you to a local expert.

AV Trinity have much experience in Estate Planning and an initial meeting with one of our experts will be at our cost, so why not make an appointment and come in for a coffee and a chat.



Please contact us

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