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Living will vs. last will and testament: what are the key differences?

Story by Jazelle Handoush 7-9-2025

According to a survey by Caring.com, only 33% of Americans have either a will or a trust. Neglecting to create these estate planning documents could make life difficult for your loved ones after you're gone.

Unfortunately, few people know how to differentiate between a **living will vs. last will** and testament. Do you know the difference?

Differentiating these documents will help you determine whether you should contact an estate planning attorney. Read on to learn more about asset distribution today!**What Is a Last Will and Testament?**

A last will and testament is a legal document that outlines how you want your assets distributed after your death. If you don't have a last will and testament, the state will determine who will inherit your assets instead.

If you have minor children, you can name a guardian for them in your will. You can also determine who will manage and distribute your property. Your executor will carry out the instructions outlined in your will.

There are a few different types of wills. Consult an experienced estate planning lawyer in Florida to determine which best suits your needs.

For example, a simple will outlines estate distribution and care for minors. It's not ideal if you have a complex or large estate.

Married couples sometimes draft joint wills. This document combines estate planning for both parties in a mutually agreed-upon document.

If you decide on a joint will, your spouse will become your sole beneficiary. After they pass, the remaining assets will be passed down to your children.

Last wills can also differ based on how they're created. Oral wills are verbally dictated. They're often created when a party is too ill to write or type.

A holographic will is usually handwritten. It doesn't require signatures from anyone but the owner or testator (the person writing the will).

Last wills are only effective after the testator's death. The testator will name an executor of the estate. This person will carry out the will's provisions.

The executor will:

- Pay taxes or outstanding debts of the estate

- Keep accounting records
- Gather the estate's properties

Once these tasks are complete, the executor can distribute properties to beneficiaries, as outlined in the last will. ***The will can be revoked or changed at any time before the testator's passing.***

What Is a Living Will?

Living wills are legal documents that outline medical directions. This document will come into effect if you become incapacitated or seriously ill and cannot communicate medical decisions yourself.

According to Gallup News, about 45% of people have a living will, up from 40% in 2005. Unfortunately, 25% of American adults say they've had to decide whether or not to remove a family member from life support. ***Preparing this document can save a family member from making this decision.***

It may mention:

- Breathing or feeding tubs
- Life support
- Life-sustaining medical treatments
- A do-not-resuscitate directive
- Palliative care
- Organ donation

These documents are part of an advanced healthcare directive. It allows you to advocate for yourself, even when you're unable.

You can use this document to authorize an individual to communicate with medical personnel regarding what they can and cannot do when providing treatment. This is usually accomplished through a healthcare power of attorney.

A living will is put into effect when the writer loses the ability to communicate. This document can be revoked or changed at any time you're *capable*.

Living Will vs. Last Will and Testament

Understanding the differences between these documents can help you make informed estate planning decisions. ***They differ based on:***

- Function and scope
- Timing of effectiveness
- Types of decisions covered in each document

Both documents will outline your preferences when you're unable to communicate them yourself.

Function and Scope

The main difference between a **living will vs. last will** and testament is their function. A living will outlines medical care directives while you're still alive but unable to communicate. A last will outlines the distribution of assets after you die.

A last will focuses on property and estate distribution. A living will, however, is about healthcare.

Timing of Effectiveness

These documents will be put into effect at different times. ***A living will is only effective while you're still alive, while a last will only takes effect after your death.***

Living wills are put into effect during medical crises. They're used when an individual can't express their preferences regarding treatment. They help family members and healthcare providers understand an individual's medical preferences.

A last will is only put into effect after the writer's death. It will go through the probate process after their passing. A court will validate the document before overseeing its terms.

Types of Decisions

A living will outlines decisions regarding medical care and treatment. It may mention:

- Preferences for pain management
- DNR orders
- Artificial life support

This document ensures your healthcare wishes are put into effect when you can't voice them.

A last will covers your decisions regarding guardianship and property distribution. It may mention:

- Financial accounts
- Real estate
- Personal belonging

Which Do I Need?

You should consider preparing *both* documents while you're capable. This will ensure there are written legal documents outlining your wishes. ***Preparing these documents while you're healthy will allow you to make informed decisions without health concerns weighing on you.***

Together, these documents can give your loved ones a clear picture of your needs and preferences. ***Preparing these documents can take some stress and pressure off your loved ones.***

Here are the best practices for creating last and living wills:

- Hire a financial advisor
- Draft both documents with a certified lawyer
- Appoint an executor
- Appoint a healthcare agent to cosign the living will
- Appoint a guardian if you have a minor
- Establish a living trust if you have a minor
- Combine your living and last wills to avoid legal issues

Start Estate Planning Today

To recap, what's the key difference between a **living will vs. last will**? A living will specifies medical directives while you're still alive. A last will covers asset distribution after you've passed away.

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