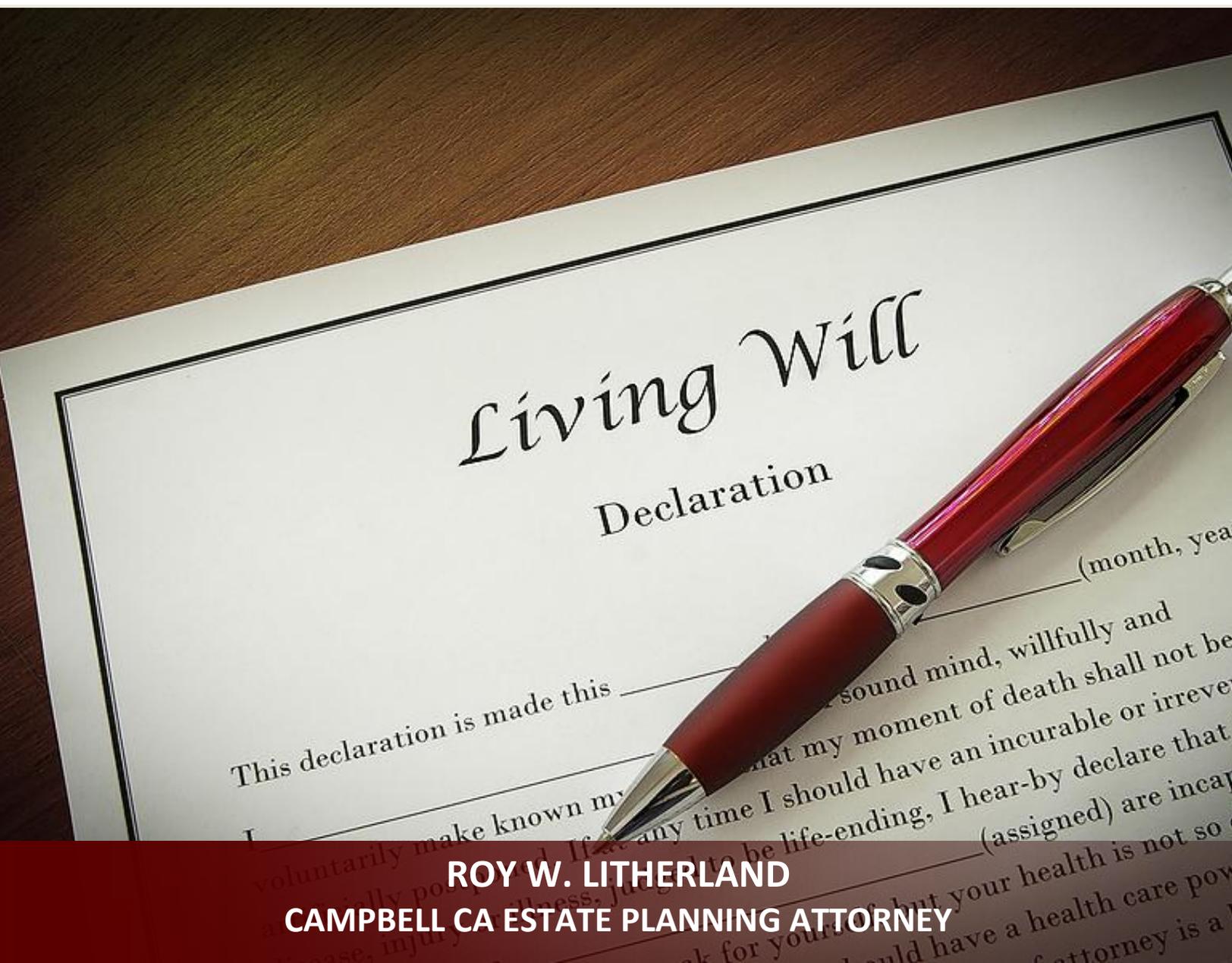


WHAT IS A LIVING WILL IN CALIFORNIA?

*A Closer Look at the Estate Planning
Device Called a Living Will*



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A living will is an advance directive for health care.

With this document you state your wishes regarding the utilization of life sustaining measures.



In this paper we will take a look at the estate planning device called a living will. First, we will briefly look at wills in general along with living trusts in order to clear up any confusion that may exist before we proceed.

Last Wills & Living Trusts

A last will is a legal instrument that is used to express your final wishes regarding the distribution of your property after you die. Of course you are going to execute the will while you are living, but the asset transfers will take place after you pass away.

There is also a type of trust called a living trust. Some people use a living trust to arrange for the future distribution of their financial assets instead of a last will.

They do this for the most part to facilitate asset transfers outside of probate. Probate is a legal process that can be time-consuming and costly. It can be avoided if you arrange for asset transfers through the creation of a living trust rather than a last will.

Living Wills

Because the term "living will" sounds like a hybrid of the devices that we looked at in the previous section, you could assume that it has something to do with transferring assets. In fact, a living will does not have anything to do with financial matters.

A living will is an advance directive for health care. With this document you state your wishes regarding the utilization of life sustaining measures.

If you are incapacitated and unable to communicate your own decisions in real-time, how would you want doctors to proceed? Would you want to be kept alive indefinitely through the utilization of artificial respiration and nutrition and/or other life-sustaining measures?

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If you do not have a living will and you ultimately rely on life-sustaining measures to survive, a disagreement among your loved ones could arise.

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Different people have different ideas about how they would want to proceed under these circumstances. You can make sure that your own choices are honored by stating them in your living will.

Consequences of a Lack of Action

If you do not execute a living will and you become incapacitated and unable to communicate while receiving life-support, your loved ones can be placed in a very difficult situation.

A real-life case that is often used to explain what could happen if you failed to execute a living will is the case of Terry Schiavo. We will provide an abridged version here.

This young woman suffered full cardiac arrest. She was in her 20s when this took place. Her age at the time demonstrates why a living will is important for people of all ages.

Because of the cardiac arrest, Terri fell into a vegetative state. After she was in this state for about eight years, her husband wanted the doctors to stop using the artificial nutrition and hydration technology that was keeping her alive. At that point, he was convinced that she was not going to recover.

Her parents did not want the doctors to remove these life-support measures. They utilized legal means to prevent the removal of the artificial nutrition and hydration devices.

This matter played itself out in court over an extended period of time. Ultimately, the life-support measures were removed and Terri passed away, but a great deal of acrimony was present during the legal battle.

If Terri Schiavo would have executed a living will, first and foremost her own wishes would have been carried out, whatever they may



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Medicaid (Medi-Cal in California) is a government funded program that provide financial assistance for seniors that need help paying for healthcare services such as a nursing home. People must meet certain criteria in order to receive Medicaid. In some cases, trying to meet eligibility for Medicaid can leave a person with nothing, often having to deplete their net worth, or give assets away in order to qualify for Medicaid. But with a little Medicaid Planning, you can use this government benefit and still retain your estate.

have been.

In addition, there would have been no cause for disagreements among her family members. Everyone who had an interest would know that doctors were proceeding in accordance with Terri's wishes.

If you do not have a living will and you ultimately rely on life-sustaining measures to survive, a similar disagreement among your loved ones could arise.

Disagreements are not the only concern. To make this example very simple, let's say that you only have one living relative, a sister. She is your next of kin, and from a legal standpoint it is up to her to make decisions regarding the continued use or removal of life-support devices. No one is going to debate her decision with her.

You never discussed this matter with your sister, and you don't have a living will. Imagine the enormity of this decision. Your sister would literally have to decide on your life or death. It could be argued that this is a decision that no one should be asked to make on behalf of another.

Conclusion

To summarize, unlike a last will a living will has nothing to do with the transfer of financial assets. A living will is used to state your wishes regarding the utilization of life-support measures in the event of your incapacitation.

If you do not have this important advance directive in place, your own true wishes may not be carried out. In addition, your next of kin would be forced to make an excruciating decision without the benefit of your input.

ABOUT THE AUTHOR

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Roy Litherland has been providing legal services in Santa Clara and Santa Cruz Counties continuously since 1975.

Roy has an undergraduate degree in accounting from Indiana State University, and a Juris Doctor degree from Indiana University. In law school he was a recipient of the Dean Faust Award and received awards and honors in income taxation and estate and gift taxation.

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