

## Healthcare Surrogates Podcast

Hi, this is Craig Hersch and welcome to the family estate and legacy program podcast. This podcast episode is going to focus on healthcare surrogates Living Wills and Pre-Need Guardians.

What's a health care surrogate? Basically, it's you naming someone else, and then perhaps somebody following the person that you're naming, if the first person can't act to make healthcare decisions for you, if you can't do so for yourself.

In this document, you can name one or multiple parties as your healthcare surrogate. You can require all of the parties to sign off, which I wouldn't do in case something happens that one person can't or they're just not available. You can put them in successive order if you want, that's all fine under the health care surrogate.

You'll see under Section 102, that there are three choices, when does this instrument become effective? Our strong recommendation to you is to make them effective immediately. That would be initially in the box A. Why don't we suggest B or C? Those are statutory elections as found under the Florida law. I think it only serves to confuse and perhaps make a subjective choice there. In other words, you don't want someone saying, well, the contingency hasn't arisen. Even if you initial box A, your doctors and the hospitals are going to ask for your opinion about your care as long as you're capable of providing them that opinion.

The health care surrogate also goes into your instructions concerning medical evaluation and treatment, pain relief, long term care hospice care. There's a section, section 203, that suggests that you want to be maintained in your residence as long as possible. So, there are various provisions of the healthcare surrogate, that have evolved over the years. The Florida statute has become a little bit more complicated on this. We'd encourage you to read through the document to see if it meets with your approval.

Now the Living Will document is a very important document. It's otherwise known as the Right-to-Die document. You may remember the Terri Schiavo case for many years ago, where she was on life support for 15 years, and was only on food and water tubes that kept her alive. There was a legal fight between Terry Chavez husband and her parents over whether she met the Florida precondition, and if she did, whether they could remove the food, water tubes. Whether those were actually something that's life sustaining, or whether that was something that was that could be terminated under a Living Will.

Well, the Florida Statutes have been updated over many times over the years, and you'll see that this Living Will, the draft that you have, only applies if the precondition, the Florida statutory precondition, has been met; and that the Living Will says, that if at any time that I'm either mentally or physically incapacitated, and incapacitated by reason of a terminal condition, or I have an end-stage condition as defined under Florida law, or I'm in a persistent vegetative state, as defined by Florida law, and if my attending or treating physician and other consulting physician have determined that there's no reasonable medical probability of my recovery from such condition, I direct the life prolonging procedures be withheld or withdrawn, and the application of such procedures would serve only to prolong artificially the process of dying, and that I'd be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide

me with comfort care, or to alleviate pain. If you've ever had a loved one go into hospice care, typically what that entails, is morphine.

Now, you have to meet that precondition, and of course, it is subjective, they're going to ask the person who's named as your healthcare surrogate, who's also listed here in the Living Will to sign off on this. So, if they don't believe that you've met this precondition, then there could be a problem with going forward on the living will, which is exactly what you might want; but you do want to talk to the folks who you're naming as your surrogates, to hear about your wishes, how you feel, how you want things to go if you are stuck in a hospital bed with no hope of recovery, and that whatever the artificial means are, are only prolonging the process of dying.

Now, your first choice is whether food or water should be withheld or withdrawn. So, by initialing the "Yes" line, you're saying "take out the food tubes, take out the water tubes," keeping in mind that they can do everything possible to provide comfort care or to alleviate pain. So, if you say, "No," that means that those tubes cannot be taken out. If you say no to both, you might find yourself in the Terry Schiavo situation.

Now on the second page, there are a list of procedures that you say yes or no to. This is not, for if you just are fine, like you are right now. This is only after you've met the precondition. You're in an N stage terminal state, let's say or a persistent vegetative state in the hospital. So, for example, do you want CPR? If you say no to CPR, that doesn't mean if you had a heart attack right now that you're they're not supposed to do CPR. They are supposed to do it, they are supposed to jumpstart you. If you have a heart attack, before two physicians have so determined, and your healthcare surrogate is willing to sign off.

So, you would say yes or no to these, keeping in mind that they are only during the time period after you've met the precondition. Most of these most of our clients say no too. Sometimes a client will say yes to CAT or PET scan so they could determine for example, what the degree of the illness is. A lot of my clients will say yes to simple diagnostic tests like heart rate, blood pressure. Typically, the Do-Not-Resuscitate order is also a 'yes, I want to do not resuscitate order, if I'm like this, because I'd like to pass away naturally than be kept alive artificially.' Then some of my clients were also organ donors, and on the last item, they'll say yes to. Of course, these are all very, personal decisions.

There's an additional instruction line there. You can put additional instructions or directions if you want on that line. So that's your Living Will. Of course, when you come in to sign this, we'll help you through it and we'll help you make decisions. None of your decisions are final in the sense that you can always amend your Living Will you can always sign a new one if you have a change of heart about any of these issues.

With your Pre-Need Guardian, those are rarely used, but it names a Guardian over your person if it's required, and who can act as that Guardian. It's also asking you to waive a conflict of interest so we can represent that person because typically they're there to help you, but Guardianship is an adversarial process. The reason you name somebody ahead of time, is because you don't want someone else to step in and say, "I should be the Guardian." I've had several instances with my clients who have Alzheimer's or dementia, where quite honestly, a gold digger got involved in wanting to become this person's Guardian. Luckily, the client signed a Pre-Need Guardian to one of his children, and in each of the cases and the children were qualified and they were named because of the Pre-Need Guardian document. So, Guardianships are not frequent, but sometimes family will have to resort to Guardianship

if the client has become incapacitated mentally, but doesn't believe that they are, and they start giving things away to others that they shouldn't. When that happens, a Pre-Need Guardian might be one of those last resort, a Guardianship hearing or Guardianship proceeding might be one of the last resorts to save the client from him or herself. Again, they're rarely used.

So those are your healthcare documents. Of course, we're here to answer any of your questions, and we hope that this podcast episode assisted you in further understanding the legal documents that we've drafted for you. If you'd like some more information, I've written a book entitled *The Florida Residency and Estate Planning Guide*, and you can pick up that book for free by clicking on the link below and we'll be happy to send you one. If you'd like more information about your particular state plan and would like a complimentary appointment, please click the link or call us and we'd be happy to establish that appointment for you. If you'd like to listen to more podcasts like this one, we also have a link below for that.