

Understanding the Florida Living Will

An Educational Overview of Florida's Living Will Declaration — What It Covers, How It Is Signed, and How It Is Carried Out, with Links to the Florida Statutes, Florida Administrative Code, and Federal Law

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Laws change. The links in this report point to official or primary sources. Always confirm you are reading the most recent version.

1. What a Living Will Is

A **living will** is a written declaration in which a competent adult states, in advance, whether **life-prolonging procedures** should be provided, withheld, or withdrawn if that person later has a terminal condition, an end-stage condition, or is in a persistent vegetative state and can no longer make or communicate decisions. It is governed by Part III of [Chapter 765, Florida Statutes](#), the Health Care Advance Directives Act.

Despite the name, a living will has **nothing to do with property**. A “last will and testament” disposes of assets at death; a “living will” speaks while you are alive about the medical care you do or do not want at the end of life. The two documents are frequently confused, and the confusion matters: a person who has signed only a last will has made no statement at all about life support.

A living will is also different from a **Designation of Health Care Surrogate**, which names a person to make decisions for you. A living will speaks for you *directly*; a surrogate speaks *on your behalf*. The two are usually signed together, and a surrogate is bound to follow a living will (Section 5).

Florida's Legislature has declared that every competent adult has the fundamental right to control decisions about his or her own health, including the right to refuse treatment, and that this right should not be lost when a person becomes incapacitated. See [§ 765.102, Fla. Stat.](#)

2. The Three Conditions a Living Will Addresses

A Florida living will operates only when a physician has determined that one of three conditions, defined in [§ 765.101, Fla. Stat.](#), exists:

- **Terminal condition** — a condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.
- **End-stage condition** — an irreversible condition caused by injury, disease, or illness that has resulted in progressively severe and permanent deterioration, and for which, to a reasonable degree of medical probability, treatment would be ineffective.
- **Persistent vegetative state** — a permanent and irreversible condition of unconsciousness in which there is the absence of voluntary action or cognitive behavior of any kind and an inability to communicate or interact purposefully with the environment.

Your living will may address all three conditions or only some of them. The statute's suggested form lets you initial each condition separately, and you may add instructions about specific procedures — for example, whether you want **artificially provided nutrition and hydration** (feeding tubes) continued. “Life-prolonging procedure” is itself a defined term and **does not include** medication or procedures necessary to provide comfort care or to alleviate pain.

3. How a Florida Living Will Must Be Signed

Under [§ 765.302, Fla. Stat.](#), a living will must meet these requirements:

- It must be **signed by the principal** (or by another adult at the principal's direction and in the principal's presence) — the person making the declaration must be a competent adult;

- It must be signed in the presence of **two subscribing adult witnesses**; and
- **At least one witness must be neither the principal's spouse nor a blood relative.**

A notary is **not required** by the statute. Many people have the document notarized anyway so that out-of-state hospitals, which may be unfamiliar with Florida's rules, will accept it without question. The statute provides a suggested form at [§ 765.303](#); any form that meets the requirements is valid, including forms from other states ([§ 765.112](#)).

Once signed, it is your responsibility to **tell your attending physician** that the living will exists. The physician must make it part of your medical record. A copy is as effective as the original; keep copies with your surrogate, your physicians, and the hospital you would most likely be taken to.

4. How a Living Will Is Carried Out

A living will does not operate automatically. [Section 765.304, Fla. Stat.](#), sets the procedure:

- The attending physician must first determine that you **lack capacity** to make your own decisions.
- The attending physician **and one other consulting physician** must determine that you have a terminal condition, an end-stage condition, or are in a persistent vegetative state, and that there is no reasonable medical probability of recovery. See [§ 765.306](#).
- If you designated a surrogate in the living will, the surrogate is consulted and carries out your instructions. If you did not, your health care surrogate under a separate designation acts; if there is neither, a **proxy** is selected under [§ 765.401](#) (Section 6).
- Life-prolonging procedures are then withheld or withdrawn in accordance with your declaration. Comfort care and pain relief continue.

If you regain capacity at any point, the living will is set aside and your own decisions control. A physician or facility that is unwilling to comply with your living will must make a reasonable effort to transfer you to a provider that will ([§ 765.1105](#)). Health care providers who act in good faith reliance on a living will are protected from liability ([§ 765.109](#)).

5. The Living Will and Your Health Care Surrogate

When you have both a living will and a Designation of Health Care Surrogate under [§ 765.202](#), the surrogate must make decisions consistent with your living will. The living will controls the end-of-life situations it addresses; the surrogate handles everything else — consent to surgery, choice of facility, medications, rehabilitation, and the many medical decisions a living will never reaches. The suggested living will form in § 765.303 also allows you to name a surrogate (and an alternate) specifically to carry out the living will, which is useful if your general surrogate is someone you would not want making the final decision to withdraw life support.

6. What Happens Without a Living Will

If you have no living will and no surrogate, a **proxy** — your spouse, adult children, parents, siblings, another relative, or a close friend, in that order — may make decisions under [§ 765.401, Fla. Stat.](#) But a proxy who would withhold or withdraw life-prolonging procedures must show, by **clear and convincing**

evidence, that the decision is the one you would have made. Without a written declaration, that burden falls on grieving family members who must reconstruct your wishes from memory, often while disagreeing with one another. The living will exists to spare them that.

7. Changing or Revoking a Living Will

A living will may be revoked at any time by a signed and dated writing, by physically destroying it, by an oral expression of intent to revoke, or by signing a later inconsistent declaration. Revocation is effective when communicated to the attending physician. See [§ 765.104, Fla. Stat.](#) There is no procedure to “amend” a living will by marking it up; changes are made by signing a new declaration and destroying copies of the old one. Review it after a marriage, divorce, serious diagnosis, or change in your own views.

8. The Living Will and the Do Not Resuscitate Order

A living will is often confused with a **Do Not Resuscitate Order (DNRO)**, but they are different instruments. A DNRO is a **physician's order** on the Department of Health's official **Form DH 1896**, printed on **yellow paper**, signed by both the patient (or surrogate/proxy) and a physician. It instructs paramedics and facility staff not to attempt cardiopulmonary resuscitation if the heart or breathing stops. See [§ 401.45, Fla. Stat.](#), and [Rule 64J-2.018, F.A.C.](#) Emergency responders **cannot** act on a living will at the scene — they are trained to resuscitate unless a valid DNRO is present. A person with a living will who wants its instructions honored in an emergency at home or in a nursing facility generally needs a DNRO as well, obtained through the treating physician.

9. Other Points Frequently Discussed

- **Pregnancy.** A living will is not effective to withhold or withdraw life-prolonging procedures from a pregnant patient before viability ([§ 765.113\(2\)](#)).
- **Facility obligations.** Hospitals, nursing homes, and hospices must ask whether you have an advance directive, provide written information about your rights, and place the directive in your record ([§ 765.110](#)). Federal law requires the same of Medicare- and Medicaid-participating providers under the Patient Self-Determination Act, [42 U.S.C. § 1395cc\(f\)](#).
- **Privacy.** A surrogate carrying out a living will is your “personal representative” under the federal medical-privacy rule and is entitled to your medical information ([45 C.F.R. § 164.502\(g\)](#)).
- **Anatomical gifts.** Organ and tissue donation may be addressed in the living will or separately under [§§ 765.510–765.547](#).
- **Faith and conscience.** Nothing in Chapter 765 requires anyone to sign a living will. Some people use it to request that *all* available treatment be provided; the form accommodates either choice. Religious traditions differ on these questions, and many people consult clergy before signing.
- **Guardianship.** A valid living will remains in effect if a guardian is later appointed, and it is a recognized less-restrictive alternative to guardianship ([§ 744.3115](#)).

10. Do Your Own Research — Primary Sources

Each link below goes to an official or primary source. If you are reading a printed copy, the full web address is shown.

[Chapter 765, Fla. Stat. — Health Care Advance Directives](https://www.flsenate.gov/Laws/Statutes/2025/Chapter765)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter765>

[§ 765.101 — Definitions \(life-prolonging procedure; terminal and end-stage condition; persistent vegetative state\)](https://www.flsenate.gov/Laws/Statutes/2025/765.101)

<https://www.flsenate.gov/Laws/Statutes/2025/765.101>

[§ 765.102 — Legislative findings and intent](https://www.flsenate.gov/Laws/Statutes/2025/765.102)

<https://www.flsenate.gov/Laws/Statutes/2025/765.102>

[§ 765.104 — Amendment or revocation](https://www.flsenate.gov/Laws/Statutes/2025/765.104)

<https://www.flsenate.gov/Laws/Statutes/2025/765.104>

[§ 765.109 — Immunity from liability; weight of proof](https://www.flsenate.gov/Laws/Statutes/2025/765.109)

<https://www.flsenate.gov/Laws/Statutes/2025/765.109>

[§ 765.110 — Health care facilities and providers; discipline](https://www.flsenate.gov/Laws/Statutes/2025/765.110)

<https://www.flsenate.gov/Laws/Statutes/2025/765.110>

[§ 765.1105 — Transfer of a patient](https://www.flsenate.gov/Laws/Statutes/2025/765.1105)

<https://www.flsenate.gov/Laws/Statutes/2025/765.1105>

[§ 765.112 — Recognition of advance directive executed in another state](https://www.flsenate.gov/Laws/Statutes/2025/765.112)

<https://www.flsenate.gov/Laws/Statutes/2025/765.112>

[§ 765.113 — Restrictions on providing consent \(pregnancy\)](https://www.flsenate.gov/Laws/Statutes/2025/765.113)

<https://www.flsenate.gov/Laws/Statutes/2025/765.113>

[§ 765.202 — Designation of a health care surrogate](https://www.flsenate.gov/Laws/Statutes/2025/765.202)

<https://www.flsenate.gov/Laws/Statutes/2025/765.202>

[§ 765.302 — Procedure for making a living will; notice to physician](https://www.flsenate.gov/Laws/Statutes/2025/765.302)

<https://www.flsenate.gov/Laws/Statutes/2025/765.302>

[§ 765.303 — Suggested form of a living will](https://www.flsenate.gov/Laws/Statutes/2025/765.303)

<https://www.flsenate.gov/Laws/Statutes/2025/765.303>

[§ 765.304 — Procedure for living will](https://www.flsenate.gov/Laws/Statutes/2025/765.304)

<https://www.flsenate.gov/Laws/Statutes/2025/765.304>

[§ 765.306 — Determination of patient condition](https://www.flsenate.gov/Laws/Statutes/2025/765.306)

<https://www.flsenate.gov/Laws/Statutes/2025/765.306>

[§ 765.401 — The proxy](https://www.flsenate.gov/Laws/Statutes/2025/765.401)

<https://www.flsenate.gov/Laws/Statutes/2025/765.401>

[§§ 765.510–765.547 — Revised Uniform Anatomical Gift Act](https://www.flsenate.gov/Laws/Statutes/2025/765.512)

<https://www.flsenate.gov/Laws/Statutes/2025/765.512>

[§ 401.45 — Denial of emergency treatment; Do Not Resuscitate Orders](https://www.flsenate.gov/Laws/Statutes/2025/401.45)

<https://www.flsenate.gov/Laws/Statutes/2025/401.45>

[Rule 64J-2.018, F.A.C. — Do Not Resuscitate Order \(Form DH 1896\)](https://www.flrules.org/gateway/ruleno.asp?id=64J-2.018)

<https://www.flrules.org/gateway/ruleno.asp?id=64J-2.018>

[§ 744.3115 — Advance directives for health care; guardianship](https://www.flsenate.gov/Laws/Statutes/2025/744.3115)

<https://www.flsenate.gov/Laws/Statutes/2025/744.3115>

[42 U.S.C. § 1395cc\(f\) — Patient Self-Determination Act requirements](https://www.law.cornell.edu/uscode/text/42/1395cc)

<https://www.law.cornell.edu/uscode/text/42/1395cc>

[45 C.F.R. § 164.502\(g\) — HIPAA: personal representatives](https://www.law.cornell.edu/cfr/text/45/164.502)

<https://www.law.cornell.edu/cfr/text/45/164.502>

[Rules Regulating The Florida Bar, Chapter 10 — Unlicensed practice of law; nonlawyer form assistance \(Rules 10-2.1 and 10-2.2\)](https://www.floridabar.org/rules/rrtfb/)

<https://www.floridabar.org/rules/rrtfb/>

[In re Amendments to Fla. Family Law Rules of Procedure and Rule Regulating The Florida Bar 10-2.2, No. SC2026-1262 \(Fla. Sept. 10, 2026\) — nonlawyer form-assistance disclosure](https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf)

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11. Required Disclosures

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Respectfully prepared for your education,

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