

Women and the law

Living wills: An attorney's point of view



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By Mary Lynn Kirby

As I was pondering what to give my Father for Father's Day, I tried to think of the things that I have done that make him happy. (Not enough things came to my mind, by the way.) He has everything my money or his could buy. What came to my mind: he loved it when I would send him copies of the *Fayette Women* articles I used to write. I have been wanting to get back to writing for this magazine for many months but simply have not taken the time to do so, but I so enjoyed hearing from readers when I wrote for the many months. So, to make a long story even longer, my present to my Daddy is a subscription to *Fayette Woman* magazine (which is not unusual, Dad, a lot of men have told me they love the magazine!). So here goes, writing for you, readers, but motivated to get back to writing for my Dad. Happy Father's Day! (A little late, I'm afraid.) I love you, Daddy!

Let's start, by talking a little bit about a subject that has definitely gotten a lot of publicity lately: living wills and powers of attorney for health care. I would like to start by clarifying some terms, and then we will discuss the pros and cons of each document and whether you need both, either or neither.

First of all, both of these documents are generically named "advanced directives." This is the name that the federal law gives them. There-

fore, when you check into a medical facility of any kind, if they receive federal funding, and most all do, the admissions staff is required to ask you if you have an "advanced directive." They are asking you if you have a Living Will and/or a Power of Attorney for Health Care.

Now, what is the difference between these two documents? The Living Will specifically states that if you "have a terminal condition" or "become in a coma with no reasonable expectation of regaining consciousness" or "become in a persistent vegetative state with no reasonable expectation of regaining significant cognitive function," then you direct that the "application of life-sustaining procedures to my body" ... "be withheld or withdrawn and that I be permitted to die." If you have ever heard me speak or have been my client, you know that I have a problem with these documents, and I much prefer the Durable Power of Attorney for Health Care. The reason is simple: the Living Will is directed to a physician. This physician may be someone you have never met, but, in most cases, there are other people that you would want to have control over this decision (folks that you know and have even had conversations with about these very life and death issues.) Now these decisions will obviously be made in conjunction with a physician, and very importantly, the physician of you and your agent's choosing. Don't get me wrong, I like physicians; I just

like my husband more and I want him in charge in this type of decision.

In fairness to the Living Will, the law does say that it is ineffective as long as there is an agent available to serve pursuant to a Durable Power of Attorney. My question would be who decides when and if someone is "available." Personally, I want my husband making that decision and if he is "un-

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available," whatever that means, I have in my health care power appointed a successor agent to make the decision. Further, the Power of Attorney for Health Care does much more than just allow someone to make decisions regarding life support. This document truly enables the person you name to be your medical advocate, which means that person can, among other powers, get your medical records, check you in and out of the hospital and dispose of your bodily remains.

No matter where you come down on the Shlavo case – and I'm not really sure exactly where I come down, except to say that I know one thing for sure – it was a very sad and tragic situation for all involved. I actually got interested in the Shlavo case and have an article I cut out of the newspaper on August 15, 2001. The pivotal words in that article: Terri's husband maintains he is "complying with his wife's *unwritten* wishes not to be kept alive artificially" (emphasis my own.) We know one thing – we don't want our family to be in

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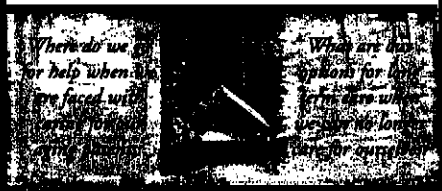
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Floored

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Clean up is simple, according to Pam. A light misting of floor cleaner, followed by a microfiber dry mop is the protocol. In between, a quick dusting with a Swiffer® keeps it looking great. When asked how she rates the new floor she replied enthusiastically, "I LOVE IT!" It most certainly adds to the charm and elegance their home radiates. And with three sons in the mix, this already-textured floor will probably receive a few more memorable impressions in the years to come.

So if the time's right for you to replace your flooring, remember the "three F's," then decide what characteristics just might make your new floor, your ideal floor. Your flooring professional just might be able to pull a rabbit out of a hat, just as Brent Kemp did for the Ansel.

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over 275 different plants, including corn. The grubs can ruin lawns and other grasses.

Control Options

(Listed from least to most insidious)

Natural - Many bird varieties thrive on eating the grubs (Robins, Sparrows, and Crows). There are some commercial products containing insect parasitic nematodes that when used in infested areas will also eat the larvae. Not quite enough help.

Hand Collecting - Picking off adults from prized specimens is somewhat helpful, but not too effective. Early morning is the best time for this surprise attack because temperatures are low and beetles tend to be sluggish. However, there is some personal satisfaction to knocking them off a plant into a bucket of soapy water. They don't swim or like soap!

Trapping - Commercial and homemade bait traps are available. They do draw a crowd of eager adults by means of either pheromones or food-type lures. Unfortunately, using any of these traps will actually attract more beetles to your yard than reduce the initial problem. Again, somewhat entertaining, but not efficient.

Milky Disease Spores (*B. popillae* or *lentimorbus*) - Effective against the grub stage. Applied to known beetle beds, the spores remain dormant for years in

Living wills

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front of 20 judges over the course of many years arguing whether or not life support should or should not be terminated. One good thing for sure, however, did come out of the Shivo case: it got us all talking about these very critical issues and it got many

the soil and become active only when inside the grub. Dying grubs turn milky white and once dead release millions of new spores into the soil and surrounding area. Reliable and works well for preventing future life cycles.

Chemical Control - Always use with caution. Remember, pesticides kill the good with the bad. With some forethought and safety usage, there's no need to destroy anything but the foe. Some detrimental, life-saving tips for chemical application are;

Use **ONLY** when needed and at the recommended rates

Read the warning labels and choose one that is least harmful to beneficial insects. The labels will state specifically, "Highly Toxic to Bees." That warning makes it too volatile for the "good guys." Look further for other choices.

Use sprays, not dusts. Dusts cling to everything and kill everything!

Spray in the early evening when most other insects are done visiting plants. The spray residue will have time to dry and be less harmful.

Avoid treating blooming plants. Butterflies, bees, and hummingbirds will be affected by the poisons.

Attempt a nonchemical approach with a commercial insecticidal soap spray. If this doesn't hinder the assault, there are several "relatively" nonhazardous pesticides - Bt (*Bacillus thuringiensis*), Marlate 25% (methoxychlor), and Pyrethrins.

Choose your weapon wisely. Once these insects are contained, it will be easier to sit back and Enjoy! —fw

people to be proactive in getting an advanced directive of some type. The law gives you the ability to avoid the adversarial result of the Shivo case. You choose whether or not to take advantage of the law. Maybe this will be your Father's Day gift to your Dad (once again, I know it's belated, but, better than not at all.) Do a power of attorney for health care. —fw