

Binding or not, living wills offer a final word on how one's own life should end

By **CHARLENE STEENKAMP**

● The validity and use of living wills in South Africa is contentious, but they may still play a valuable role speaking for you when you are no longer able to.

Many people may be of the view that a general power of attorney will suffice if they are mentally incapacitated or in a coma following an accident, says David Knott, a fiduciary expert from Private Client Trust, a division of Private Client Holdings.

“Unfortunately, a power of attorney becomes invalid the moment the grantor of that power of attorney cannot exercise his judgment,” Knott says. “A living will spares your family the anguish of making life-support decisions without your input and allows you to have the last say – ensuring that your doctor understands your end-of-life wishes and treats you accordingly.”

“Many people would rather die than live additional years on life-support that will rack up enormous medical bills, which their family will have to pay.”

A living will could also prevent arguments between family members should they disagree on what happens to you, he says.

The South African Medical Association and the Health Professions Council of South Africa have both issued guidance notes stating that all patients have the right to refuse treatment, and, in practice, life support is withdrawn from patients in line with their living will wishes daily in South Africa.

However, at present there is no law regarding living wills and the right to choose to die, and there is a chance your wishes contained in a living will may not be carried out by doctors who may fear being sued by a family member who does not agree with treatment being withdrawn.

Professor Willem Landman, an executive member of advocacy group Dignity South Africa and executive director of the Ethics Institute, says the ethical and legal values and principles are already contained in laws such as the National Health Act and court rulings, but there is no specific legislation on living wills.

The fact that nothing has been done about legalising living wills in South Africa for more than 20 years since draft legislation on end-of-life decisions was proposed to parliament by the South African Law Reform Commission in the 1990s “is an injustice to people at the end of their lives because it fails to recognise their constitutional rights to dignity”, he says.

Dignity South Africa has been campaigning for legislation on advance directives, which include living wills and healthcare durable power of attorney (an instruction by

Tips on Living Wills

- **A living will should be a separate document from your last will and testament because it serves a different purpose. A last will and testament takes effect after your death, whereas a living will comes into play while you are still alive but in an incapacitated state.**
- **All a living will has to say is something like: “When I’m no longer able to make decisions on my own behalf and express my own preferences and I am dependent on life support, I want treatment to be discontinued.”**
- **Because there is no law in South Africa on living wills, it is best to have two witnesses see you sign, to pre-empt any challenges down the line.**

a competent person to be acted on should they become incompetent to make their own healthcare decisions).

Louis van Vuren, CEO of the Fiduciary Institute of Southern Africa, says despite the legal vacuum, living wills are nonetheless useful documents because they make your wishes clear.

There seems to be general acceptance in South Africa that passive euthanasia – withdrawing life support from a patient – is OK, and it happens every day, he says.

But Landman says legal clarity is essential. “Doctors do not know whether they might be sued by family or reported by other healthcare professionals if they respect a living will and the patient dies, hence they think they need a court order, or they fail to act on the directive of the patient”.

Explicit legislation is also necessary to provide guidelines and stipulate formalities

for a living will to be properly executed. For example, there should be clarity that family members should not be allowed to override a living will and that artificial means of keeping someone alive include artificial nutrition and hydration, and other practical points, Landman says.

Knott says living wills have moved away from simply focusing on specific treatments and medical procedures to also focusing on patient values, personal goals and health outcome states.

“For example, a living will might designate an agent to make care decisions; dictate what kind of life-support treatment that patient does or does not want; discuss pain management, personal grooming and bathing instructions; address how the patient wants to be treated, including religious, spiritual, and emotional support; and detail funeral or memorial plans.”