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*DivorceInKentucky.com*

## “LIVING WILL” DATAPACK FOR HEALTHCARE DIRECTIVE

Dear Prospective Client:

I understand that you are interested in having us prepare a Living Will for you.

Unless you have some unique circumstances in your life and assuming you are a **Kentucky resident**, I think your interests will be best served by utilizing the *Kentucky Living Will* packet produced by the Kentucky Attorney General.

For your convenience, we have attached a copy of this packet to this "Datapack". However, the document is available in both English and Spanish in PDF format at <http://ag.ky.gov>.

We encourage you and your loved ones to each prepare a Living Will today to prepare for a time when you cannot make healthcare decisions for yourself.

If you feel you also need a **Durable Power of Attorney** or other trust or estate planning documents in addition to a simple "Living Will", we will be happy to assist you. Just give us a call!

Very truly yours,

JAMES K. MURPHY  
RUTH J. WILKERSON  
WILLIAM L. HOGE, III  
*Attorneys at Law*

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## Attorneys at Law

Concentrating in Family Law Representation  
throughout Greater Metropolitan Louisville

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*Hoge Partners, PLLC is the successor to Hoge & Associates, a law practice with a four-decade history of providing legal services throughout Metropolitan Louisville, including Jefferson, Oldham, Hardin and Bullitt Counties.*

### **JAMES K. MURPHY**

Jim Murphy is the Managing Partner of **Hoge Partners, PLLC**. He began practicing law in Kentucky in 1993. He graduated *magna cum laude* from Washington & Lee University and *cum laude* from the Lewis School of Law at Washington & Lee University.

Prior to joining Hoge & Associates in 2014, Jim's practice with another Louisville firm focused in commercial transactions, real estate and business. Since then, he has refocused his practice on Family Law matters with a special emphasis on associated business and real estate factors. Jim's caseload includes a variety of Family Law matters including domestic violence actions and criminal defense in child support matters as well as processing divorces, child support, child custody and post-divorce litigation. He also has significant appellate experience.

### **RUTH J. WILKERSON**

Ruth Wilkerson is a Partner of **Hoge Partners, PLLC**. She has been practicing law in Kentucky since 2010. A graduate of Transylvania University in Lexington, Kentucky and the Appalachian School of Law in Grundy, Virginia, Ruth has a varied legal background which included estate planning, workers compensation, personal injury litigation, employment law, civil rights discrimination and sexual harassment.

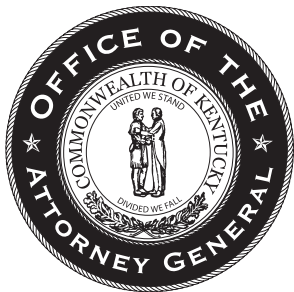
Ruth has focused on Family Law matters since joining the firm in 2014. She handles both contested and uncontested divorce actions, post-divorce litigation, modifications of child support and maintenance/alimony, disputed parenting matters such as visitation schedules and primary residence, adoption proceedings, child custody and domestic violence proceedings.

### **WILLIAM L. HOGE, III**

Bill Hoge has been practicing law in Louisville since 1972 and focused on Family Law for better than half of that period. He retired from active practice in 2017. Bill remains of counsel to the firm of **Hoge Partners, PLLC**, providing advice and guidance to attorneys Jim Murphy and Ruth Wilkerson and handling a limited number of cases. He is still a Fellow of the American Academy of Matrimonial Lawyers and formerly served as the Chair of the Family Law Sections for both the Kentucky Bar Association and the Louisville Bar Association. The majority of Mr. Hoge's legal career has been dedicated to Family Law and being of service to people going through the divorce process in Kentucky, individuals needing assistance with post-divorce matters (child support, custody, visitation, etc.), victims of domestic violence, international parental abductions and others situations relating to Domestic Relations law.



# KENTUCKY LIVING WILL PACKET



## LIVING WILLS IN KENTUCKY

A Living Will gives you a voice in decisions about your medical care when you are unconscious or too ill to communicate. As long as you are able to express your own decisions, your Living Will will not be used and you can accept or refuse any medical treatment. But if you become seriously ill, you may lose the ability to participate in decisions about your own treatment.

**You have the right to make decisions about your health care. No health care may be given to you over your objection, and necessary health care may not be stopped or withheld if you object.**

The Kentucky Living Will Directive Act of 1994 was passed to ensure that citizens have the right to make decisions regarding their own medical care, including the right to accept or refuse treatment. This right to decide — to say yes or no to proposed treatment — applies to treatments that extend life, like a breathing machine or a feeding tube.

In Kentucky a Living Will allows you to leave instructions in four critical areas. You can:

- Designate a Health Care Surrogate
- Refuse or request life prolonging treatment
- Refuse or request artificial feeding or hydration (tube feeding)
- Express your wishes regarding organ donation

Everyone age 18 or older can have a Living Will. The effectiveness of a Living Will is suspended during pregnancy.

It is not necessary that you have an attorney draw up your Living Will. Kentucky law (**KRS 311.625**) actually specifies the form you should fill out. You probably should see an attorney if you make changes to the Living Will form. The law also prohibits relatives, heirs, health care providers or guardians from witnessing the Will. You may wish to use a Notary Public in lieu of witnesses.

The Living Will form includes two sections. The first section is the Health Care Surrogate section which allows you to designate one or more persons, such as a family member or close friend, to make health care decisions for you if you lose the ability to decide for yourself. The second section is the Living Will section in which you may make your wishes known regarding life-prolonging treatment so your Health Care Surrogate or Doctor will know what you want them to do. You can also decide whether to donate any of your organs in the event of your death.

When choosing a surrogate, remember that the person you name will have the power to make important treatment decisions, even if other people close to you might urge a different decision. Choose the person best qualified to be your health care surrogate. Also, consider picking a back-up person, in case your first choice isn't available when needed. Be sure to tell the person that you have named them a surrogate and make sure that the person understands what's most important to you. Your wishes should be laid out specifically in the Living Will.

If you decide to make a Living Will, be sure to talk about it with your family and your doctor. The conversation is just as important as the document.

A copy of any Living Will should be put in your medical records. Each time you are admitted for an overnight stay in a hospital or nursing home, you will be asked whether you have a Living Will. You are responsible for telling your hospital or nursing home that you have a Living Will.

If there is anything you do not understand regarding the form, you might want to discuss it with an attorney. You can also ask your doctor to explain the medical issues. When completing the form, you may complete all of the form, or only the parts you want to use. You are not required by law to use these forms. Different forms, written the way you want, may also be used. You should consult with an attorney for advice on drafting your own forms.

You are not required to make a Living Will to receive healthcare or for any other reason. The decision to make a Living Will must be your own personal decision and should only be made after serious consideration.

For additional copies of this packet, you may download it from the Attorney General's website at <http://ag.ky.gov/family/consumerprotection/livingwills> or make photocopies of this packet.

*This packet is provided to you by the Office of the Attorney General for informational purposes only.*

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# INSTRUCTIONS FOR COMPLETING THE KENTUCKY LIVING WILL FORM

The Living Will form should be used to let your physician and your family know what kind of life-sustaining treatments you want to receive if you become terminally ill or permanently unconscious and are unable to make your own decisions. This form should also be used if you would like to designate someone to make those healthcare decisions for you should you become unable to express your wishes.

**NOTE: You may fill out all or part of the form according to your wishes. Keep in mind that filling out this form is not required for any type of healthcare or any other reason. Filling out this form should solely be a personal decision.**

1. Read over all information carefully before filling out any part of the form.
2. At the top of the form in the designated area, print your full name and birth date.
3. The first section of the form on page one relates to designating a "Health Care Surrogate." Fill this section out if you would like to choose someone to make your healthcare decisions for you should you become unable to do so yourself. When choosing a surrogate, remember that the person you name will have the power to make important treatment decisions. Choose the person best qualified to be your health care surrogate. Also, consider picking a back-up person, in case your first choice isn't available when needed. Be sure to tell the person that you have named them a surrogate and make sure that the person understands what's most important to you. **Do not complete this section if you do not wish to name a surrogate.**
4. The next section of the form is the "Living Will Directive." Fill out this section to identify what kinds of life-sustaining treatments you want to receive should you become terminally ill or permanently unconscious.

## **Life Prolonging Treatment**

Under this bolded section on page one, you may designate whether or not you wish to receive treatment (such as a life support machine), and be permitted to die naturally, with only the administration of medication or treatment deemed necessary to alleviate pain. If you do not want treatment, except for pain, and would like to die naturally, check and initial the first line. If you want life-sustaining treatment, check and initial the second line. Check and initial only one line.

## **Nourishment and/or Fluids**

Under this bolded section on page two, you may designate whether or not you wish to receive artificially provided food, water, or other artificially provided nourishment or fluids (such as a feeding tube). If you do not want to receive artificial nourishment or fluids, check and initial the first line. If you want to receive nourishment and/or fluids, check and initial the second line. Check and initial only one line.

## **Surrogate Determination of Best Interest**

**Important: This section cannot be completed if you have completed the two previous bolded sections.** Under this bolded section on page two, IF you have designated a person as your surrogate in the first section, you may allow that person to make decisions for you regarding life-sustaining treatments and/or nourishment. Check and initial this line ONLY if you wish to allow your surrogate to make decisions for you and if you do not want to detail your specific life-sustaining wishes on this form.

## **Organ/Tissue Donation**

Under this bolded section on page two, you may designate whether or not to donate your all or any part of your body upon your death. If you wish to donate all or part of your body, check and initial the first line. If you do not want to donate all or part of your body, check and initial the second line. Check and initial only one line.

5. On page three, you will sign and date the form. Sign and date the form **in the presence of two witnesses over the age of 18 OR in the presence of a Notary Public.**

The following people CANNOT be a witness to or serve as a notary public:

- a) A blood relative of yours;
  - b) A person who is going to inherit your property under Kentucky law;
  - c) An employee of a health care facility in which you are a patient (unless the employee serves as a notary public);
  - d) Your attending physician; or
  - e) Any person directly financially responsible for your health care.
6. Once you have filled out the Living Will and either signed it in the presence of witnesses or in the presence of a notary public, give a copy to your personal physician and any contacts you have listed in the Living Will. A copy of any Living Will should be put in your medical records. Remember, you are responsible for telling your hospital or nursing home that you have a Living Will. Do not send your Living Will to the Office of the Attorney General.

# KENTUCKY LIVING WILL DIRECTIVE AND HEALTH CARE SURROGATE DESIGNATION OF

\_\_\_\_\_  
(PRINTED NAME)

\_\_\_\_\_  
(DATE OF BIRTH)

My wishes regarding life-prolonging treatment and artificially provided nutrition and hydration to be provided to me if I no longer have decisional capacity, have a terminal condition, or become permanently unconscious have been indicated by checking and initialing the appropriate lines below.

## HEALTH CARE SURROGATE DESIGNATION

By checking and initialing the line below, I specifically:

\_\_\_\_\_ (check box and initial line, if you desire to name a surrogate)

Designate \_\_\_\_\_ as my health care surrogate(s) to make health care decisions for me in accordance with this directive when I no longer have decisional capacity. If \_\_\_\_\_ refuses or is not able to act for me, I designate \_\_\_\_\_ as my health care surrogate(s).

Any prior designation is revoked.

## LIVING WILL DIRECTIVE

If I do not designate a surrogate, the following are my directions to my attending physician. If I have designated a surrogate, my surrogate shall comply with my wishes as indicated below. By checking and initialing the lines below, I specifically:

**Life Prolonging Treatment** (check and initial only one)

\_\_\_\_\_ (check box and initial line, if you desire the option below)  
Direct that treatment be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical treatment deemed necessary to alleviate pain.

\_\_\_\_\_ (check box and initial line, if you desire the option below)  
DO NOT authorize that life-prolonging treatment be withheld or withdrawn.

**Nourishment and/or Fluids** (check and initial only one)

\_\_\_\_\_ (check box and initial line, if you desire the option below)  
Authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.



**LIVING WILL DIRECTIVE — CONTINUED**

\_\_\_\_\_ (check box and initial line, if you desire the option below)  
DO NOT authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

**Surrogate Determination of Best Interest**

**NOTE: If you desire this option, DO NOT choose any of the preceding options regarding Life Prolonging Treatment and Nourishment and/or Fluids**

\_\_\_\_\_ (check box and initial line, if you desire the option below)  
Authorize my surrogate, as designated on the previous page, to withhold or withdraw artificially provided nourishment or fluids, or other treatment if the surrogate determines that withholding or withdrawing is in my best interest; but I do not mandate that withholding or withdrawing.

**Organ/Tissue/Eye Donation**

I certify that I am eighteen (18) years of age or older and of sound mind, and that upon my death, I hereby give:

Check appropriate boxes and initial the line beside that box:

\_\_\_\_\_ Any needed organs, tissues, and eye/corneas

**OR**

The following organs or tissues only (check and initial all that apply):

\_\_\_\_\_ All needed organs

\_\_\_\_\_ All needed tissues

\_\_\_\_\_ Corneas

\_\_\_\_\_ Eyes

\_\_\_\_\_ Other

**OR**

\_\_\_\_\_ Only the specified organs/tissues as listed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Organs that can be donated: heart, lungs, liver, pancreas, kidneys, and small bowel.

Tissues that can currently be donated: skin (outermost layer from lower trunk and abdomen), bone, heart valves, leg veins, pericardium, vertebral bodies.

Eye donation can be the corneas (outer most layer), the sclera (shell), or the entire eye.

In the absence of my ability to give directions regarding the use of life-prolonging treatment and artificially provided nutrition and hydration, it is my intention that this directive shall be honored by my attending physician, my family, and any surrogate designated pursuant to this directive as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of the refusal.

If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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*(signature and address of the grantor)*

Have two adults witness your signature OR have signature notarized.\*

In our joint presence, the grantor, who is of sound mind and eighteen (18) years of age, or older, voluntarily dated and signed this writing or directed it to be dated and signed for the grantor.

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*(signature and address of witness)*

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*(signature and address of witness)*

**OR**

COMMONWEALTH OF KENTUCKY, \_\_\_\_\_ County

Before me, the undersigned authority, came the grantor who is of sound mind and eighteen (18) years of age or older, and acknowledged that he/she voluntarily dated and signed this writing or directed it to be signed and dated as above.

Done this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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Signature of Notary Public

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Date commission expires

*\* None of the following shall be a witness to or serve as a notary public or other person authorized to administer oaths in regard to any advance directive made under this section:*

- a) A blood relative of the grantor;*
- b) A beneficiary of the grantor under descent and distribution statutes of the Commonwealth;*
- c) An employee of a health care facility in which the grantor is a patient, unless the employee serves as a notary public;*
- d) An attending physician of the grantor; or*
- e) Any person directly financially responsible for the grantor's health care.*

*NOTICE: Execution of this document restricts withholding and withdrawing of some medical procedures. Consult Kentucky Revised Statutes or your attorney.*

*A person designated as a surrogate pursuant to an advance directive may resign at any time by giving written notice to the grantor; to the immediate successor surrogate, if any; to the attending physician; and to any health care facility which is then waiting for the surrogate to make a health care decision.*