



Custody law, healthcare proxy and living will

Further information on
precautions for emergencies.



Custody, healthcare proxy and living will

Even if it is easy to put off subjects of this nature: accidents, illness or old age can mean that you are no longer able to manage important matters yourself. Spouses, children or close relatives cannot automatically act for you or represent you legally in such situations. Because, contrary to a widely held opinion, there is no statutory right of representation among spouses or for children with respect to their parents. The law provides for various options to ensure that your interests are safeguarded and that your affairs can be managed if the worst comes to the worst.

Legal custody

If you are no longer able to manage your own affairs, either in part or in full, as a result of illness or disability, the court can appoint a custodian for you. A volunteer custodian will be appointed as a matter of preference. Should this not be possible, the court will appoint a professional custodian. This person can then act for you in precisely defined areas, the so-called areas of responsibility. Examples of areas of responsibility are accommodation and financial matters or healthcare. As a fundamental rule, your wishes must be respected, provided these are also in the interests of your well-being.

Important: a custodian will only be appointed in so far as this is necessary. This applies in several aspects. For example, a custodian is not necessary if there is a proxy who can represent you in legal dealings. This can be on the basis of a healthcare proxy. If no healthcare proxy exists, custody will be arranged solely for those areas of responsibility in which you are unable to manage your affairs yourself. Finally, custody can last only for as long as you require it.

Judicial procedure

Responsibility for the appointment of a custodian lies with the Custody Court. You yourself can submit the application for appointment of a custodian. Third parties, e.g. family members, neighbours or friends, can also suggest this. The court will then check whether custody is necessary. If the court ascertains that custody is necessary, it issues a ruling setting out, among other things, the areas of responsibility to which the custody applies, and who is to be the custodian. Depending on his/her financial position, the costs incurred through the custody proceedings may be payable by the person placed under the control of a custodian.

Healthcare proxy

The purpose of the healthcare proxy is to authorise a person of your trust in the event of you no longer being able to manage specific matters. This can be for example the handling of bank or insurance matters, or conclusion of a nursing-home contract. If you have not issued a healthcare proxy and are no longer able to manage your affairs (in part) yourself, court custody proceedings will be started as a fundamental rule. A correctly drawn up healthcare proxy can therefore prevent the initiation of custody proceedings in many cases.

More detailed information is available on the Internet site of the Ministry of Justice North-Rhine Westphalia (**www.betreuung.nrw.de**).

You can register a healthcare proxy with the German Chamber of Notaries in return for a small fee. This guarantees that the healthcare proxy will be observed at a later date. Further information is available on the Internet site of the Central Healthcare Register (**www.vorsorgeregister.de**).

Living will

A living will enables you to determine in advance whether and how you wish to receive medical treatment in specific situations, if you are no longer able to make these decisions on your own responsibility as a result of illness, accident or age. You can use a living will to indicate in particular whether you consent to or reject life-prolonging measures in specific circumstances. A living will must be drawn up in writing and signed in



your own handwriting. It is important to make a strict distinction between healthcare proxy and living will. While the healthcare proxy regulates who can represent you legally if the worst comes to the worst, the living will concerns exclusively the question of which medical measures you wish to receive in the event of you no longer being able to express this wish yourself.

Further information

Further information concerning custody law as well as assistance for volunteer custodians and proxies is available from the custody associations and custody authorities in North-Rhine Westphalia. A list of custody associations and custody authorities can be found on the Internet site of the Ministry of Justice of the Federal State of North-Rhine Westphalia (www.betreuung.nrw.de).

Further information on living wills is available on the Internet site of the Ministry of Justice North-Rhine Westphalia as well as in the brochure entitled "Living wills", which can be found on the Internet site of the Federal Ministry of Justice and Consumer Protection (www.bmjv.de).



Published by:

Ministry of Justice of the Federal State
of North-Rhine Westphalia
Justice Communication
40190 Düsseldorf
Info 47/last amended: August 2015

All brochures and leaflets of the Ministry of Justice can be found at
www.justiz.nrw.de.

All publications can be ordered by telephone on working days between
08.00 and 18.00 hours.

Nordrhein-Westfalen **direkt**



0211 837-1001

nrwdirekt@nrw.de