

alzheimer's  association[®]

legal plans

Assisting the person
with dementia in
planning for the future



the compassion to care, the leadership to conquer

While it's important for everyone to plan for the future, legal plans are especially vital for the person with dementia.

Dementia is a general term for the loss of memory, decision-making and other intellectual abilities serious enough to interfere with daily life. Alzheimer's disease is the most common form of dementia.

Once a person is diagnosed with dementia, family and friends should help the person make legal plans. The sooner plans can begin, the more the person with dementia may be able to participate.

Legal planning includes:

- **Making plans for health care and long-term care coverage**
- **Making plans for finances and property**
- **Naming another person to make decisions on behalf of the person with dementia**



The Alzheimer's Association recommends starting legal plans now. Inside, you'll find the basics on:

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This brochure contains only general information and is not meant to be legal advice. Consult a competent legal professional for advice specific to your situation.

1 Legal capacity

What it is, how to decide

In most cases, if the person with dementia is able to understand the meaning and importance of a given legal document, he or she likely has the *legal capacity* to execute (to “carry out” by signing) it.

Legal capacity is the level of judgment and decision-making ability needed to sign official documents.

The requirements of legal capacity can vary from one legal document to another. A lawyer can help pinpoint what level of legal capacity is required for a person to sign a particular document.

Before the person with dementia signs a legal document:

Talk with the person

Find out if the person with dementia understands the legal document – and the consequences of signing it. Make sure the person knows what is being explained and what he or she is being asked to do.

Ask for medical advice

A doctor may assist in determining a person’s level of mental ability.

Take inventory of existing legal documents

Verify whether living wills, trusts and powers of attorney were signed before the person was diagnosed. The person may no longer remember having completed them.



As long as the person with dementia has *legal capacity* – the level of judgment and decision-making ability needed to sign official documents – he or she should take part in legal planning.

2 Legal documents

What they are

Guardianship/conservatorship

If a person can no longer make his or her own financial and/or health care decisions, a caregiver may have to become the person's guardian (also known as a conservator in some U.S. states).

A guardian or conservator is court-appointed to make decisions about the person's property (assets) and/or health care.

Guardianship is given by the court when it finds that a person is legally incompetent. In the case of dementia and its effect on the brain, legal incompetence relates to the person's inability to make decisions about his or her care or property.

Once a court rules that a person is legally incompetent, the court appoints a guardian or conservator for that person. A guardian has the legal authority to make decisions about the person's care and custody (legal responsibility for a person).

After filing a petition for guardianship, a summons (a notice to appear in court) and a copy of the petition are delivered to the person with dementia. The petition includes the name of the person who wants to be the guardian.

The person with dementia has an opportunity to object to the guardianship. If the person with dementia or another individual raises an objection to the petition, the court may hold a hearing.

If there are no objections, a guardian is appointed.

Living will

In a living will, the person with dementia states his or her decision about artificial life support. A living will only comes into play when a doctor decides that the person is irreversibly ill, or critically injured and near death.

Living trust

A living trust is created by a person who can make his or her own financial decisions (has legal capacity). A living trust is another way for the person to give instructions for managing property.

The grantor or trustor creates the trust and appoints himself or herself, and possibly someone else, as trustee. A trustee is usually a person or a bank. The trustee is responsible for carefully investing and managing the property (assets) of the trust.

Once the grantor or trustor, who is also acting as the trustee, is no longer able to make his or her own financial decisions, the living trust document shows who will take over as the trustee.

For the living trust to accomplish its goal, all property (assets) must be transferred to the trust. For example, a bank account would be changed from the individual's name to the name of the living trust.

Through a living trust, it may be possible to avoid probate, the process used by the court to distribute the property of a person who has died. However, a living trust may not provide tax advantages.

Power of attorney

The power of attorney document allows the person with dementia (called the principal) to name a person (called an agent, usually a trusted family member or friend) to make financial decisions when the person with dementia is no longer able (not legally competent).

Most powers of attorney are “durable,” meaning that they are valid even after the principal can no longer make decisions for himself or herself.

Power of attorney can be changed or withdrawn by the person with dementia at any time.

Power of attorney does not give the appointed person (agent) the authority to override the decision-making of the person with dementia (principal). The person with dementia maintains the right to make his or her own decisions – as long as he or she is competent – even if the decisions are not what others believe are good decisions.

The appointed person (agent) is authorized to manage and make decisions about the income and assets (property) of the person with dementia (principal). This decision-maker is responsible to act according to the instructions, and in the best interests, of the person with dementia.

What’s the difference between power of attorney and executor? The person chosen to have power of attorney makes decisions for the person with dementia during his or her lifetime. An executor manages the estate of the person with dementia after he or she has died.

Power of attorney for health care

The power of attorney for health care document allows a person with dementia to name an individual (agent) to act on his or her behalf to make health care decisions when he or she is no longer able. These decisions include choosing:

- Doctors and other health care providers
- Kinds of treatments
- Care facilities

For a person in the later stages of dementia, the decision-maker (health care agent) will choose care services and make end-of-life decisions, like the feeding of artificial nutrition or giving DNR or “do not resuscitate” instructions.

Will

The will is a document that shows whom the person with dementia has chosen as:

- 1) Executor, the person who will manage the estate, and
- 2) Beneficiaries, who will receive the estate

The executor, named in a will, has no legal authority while the person is living. A will only takes effect when the person with dementia dies.

A will cannot be used to communicate health care preferences. However, it can offer peace of mind that a person’s wishes will be fulfilled after he or she dies.

While all people can benefit from having a will, it is especially important for a person with dementia. He or she should have a signed will in place as soon as possible, while still able to make decisions for himself or herself.



3 How to find a lawyer

It is important to get legal advice and services from an attorney who specializes in elder law. Elder law focuses on guardianship, disability planning and other legal issues that typically affect older adults.

If you have a family attorney, he or she may be able to refer you to an elder law attorney. Your local Alzheimer's Association office can also suggest elder law attorneys in your area. To locate the Alzheimer's Association office nearest you, call 1.800.272.3900.

Free legal advice may be available in your community. Contact your local Area Agency on Aging or the Eldercare Locator at 1.800.677.1116 or www.eldercare.gov.

4 How to prepare for your meeting

All documents relating to the property (assets) of the person with dementia should be gathered ahead of time so you can show them to your lawyer.

Checklist for the meeting with your lawyer:

- Itemized list of the property (assets), including current value and the names listed as owners or account holders
- Copies of all estate planning documents, including wills, trusts and powers of attorney
- Copies of all deeds to real estate
- Copies of recent income tax returns
- Life insurance policies and cash values of policies
- Health insurance policies or benefit booklet
- Admission agreements to any health care facilities
- List of names, addresses and telephone numbers of involved family members and caregivers as well as financial planners and/or accountants



5 What to discuss with your lawyer

Be sure to talk to your lawyer about these three key issues:

- 1) Options for health care decision-making for the person with dementia
- 2) Options for managing the person's property
- 3) Possible coverage of long-term care services, including what is provided by Medicare and other health insurance

6 Terms your lawyer may use



Agent: The person given legal authority to make financial decisions for the person with dementia (*principal*) through a power of attorney document, usually a trusted family member or friend; see also, *health care agent*

Artificial life support: Medical equipment and other technology used to prolong the life of a person who is seriously ill by sustaining essential body functions, like breathing

Assets: Personal possessions of value, including cash, bank accounts, real estate, vehicles and investments

Beneficiaries: The people named in the will to receive the estate of the person with dementia upon his or her death

Conservator: The person appointed by the courts to make financial and/or health care decisions on behalf of the person with dementia; referred to as the *guardian* in some U.S. states

Custody: Legal responsibility for a person

DNR: Stands for “*Do not resuscitate*” and refers to a person’s instructions that, if his or her heart or breathing stops, the doctor should not try to restart it

Durable: When a power of attorney document is durable, it is valid even after the person with dementia can no longer make his or her own decisions

Execute: To legally sign or “carry out” a legal document

Executor: The person named in a will to manage the estate of the person with dementia upon his or her death

Grantor: The person for whom a living trust is created; for example, the grantor of the John W. Smith Living Trust is John W. Smith; also called a *trustor*

Guardian: The person appointed by the courts to make financial and/or health care decisions on behalf of the person with dementia; referred to as the *conservator* in some U.S. states

Health care agent: The person given legal authority to make health care decisions for the person with dementia (*principal*) through a power of attorney for health care document; usually a trusted family member or friend

Legal capacity: The level of judgment and decision-making ability needed to sign official documents



Principal: The person with dementia who, through a power of attorney document, legally chooses an individual to make decisions on his or her behalf

Probate: The process used by the court to distribute the property of a person who has died

Summons: A notice to appear in court; delivered to the person with dementia when a petition of guardianship or conservatorship has been filed

Trustee: The individual or bank chosen to manage the property (*assets*) in the living trust of the person with dementia

Trustor: The person with dementia for whom a living trust is created; for example, the trustor of the John W. Smith Living Trust is John W. Smith; also called a *grantor*

Many of the definitions refer specifically to the circumstances of dementia; however, these general terms may also apply to other legal situations.

Quick tips

Legal planning

- All those named in the power of attorney document need a copy of and access to the original document
- Name a successor (back-up) agent for power of attorney; your agent may one day be unable to act
- Consider a neutral third person as an agent to have power of attorney, if family members don't get along
- If a 1) power of attorney for health care document and/or a 2) signed living will is in place, give a copy to physicians and other health care providers
- See if the agent for the power of attorney for health care has authority to consent to a brain autopsy
- Consider choosing a bank to manage the estate, if you lack a family member with the time or expertise

The Alzheimer's Association, the world leader in Alzheimer research, care and support, is dedicated to finding prevention methods, treatments and an eventual cure for Alzheimer's.

For reliable information and support, contact the Alzheimer's Association:

1.800.272.3900

www.alz.org

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