

LEGAL PLANS

CONSIDERATIONS FOR HELPING A PERSON
LIVING WITH DEMENTIA PLAN FOR THE FUTURE



PLAN FOR THE FUTURE

While it's important for everyone to plan for the future, legal plans are especially vital for a person diagnosed with dementia. The sooner these plans are put in place, the more likely it is that the person living with dementia will be able to participate in the process.

Legal planning includes:

- » Preparing for long-term care and health care needs.
- » Making arrangements for finances and property.
- » Naming another person to make decisions on behalf of the person with dementia.





CONTENTS

- 1. Legal capacity.....p.2
- 2. Legal documents.....p.3
- 3. Finding a lawyer.....p.7
- 4. Meeting with your lawyer..... p.8
- 5. Terms your lawyer may use.....p.10

This brochure contains only general information and is not meant to be legal advice. Laws vary by state and are constantly changing. As a result, we make no warranty or guarantee of the accuracy or reliability of the information contained herein. You should consult a lawyer before acting on any information contained herein for advice specific to your situation.

1. LEGAL CAPACITY

In most cases, a person living in the early stage of the disease is able to understand the meaning and importance of a given legal document, which means he or she likely has the legal capacity (the ability to understand the consequences of his or her actions) to execute (to carry out by signing it).

As long as the person has legal capacity, he or she should take part in legal planning. A lawyer can help determine what level of legal capacity is required for a particular document, as it can vary from one type of document to another.

Before a person living with dementia signs a legal document:

- » **Discuss the document.**

Make sure that the person understands the document, the consequences of signing it and what he or she is being asked to do.

- » **Ask for medical advice.**

If you have concerns about the person's ability to understand, a doctor will be able to help determine the level of his or her mental capacity.

- » **Assess existing legal documents.**

Even if a living will, trust and power of attorney were completed in the past, it's important to review these documents for any changes and update as necessary.



2. LEGAL DOCUMENTS

Living will

A living will is a document that expresses how a person who is physically or mentally incapacitated wishes to be treated in certain medical situations.

In a living will, the person may state, among other things, his or her wishes regarding artificial life support. This document generally comes into play once a doctor decides that a person is incapacitated and unable to communicate his or her desires regarding life-sustaining treatment.

Some states may require a particular form for a living will; in others, it may be drafted by the person's attorney. Check local laws.

TRAVELING TIP

If a person living with dementia travels outside his or her state, it's a good idea to check the local laws of their destination to find out whether existing legal documents will be recognized there.

Power of attorney

A power of attorney document allows a person living with dementia (the principal) to name another individual (an agent or attorney-in-fact) to make financial and other important decisions on his or her behalf once he or she no longer can. Typically, the agent is a spouse, domestic partner, trusted family member or friend.

The agent should be chosen carefully. It's helpful for the principal to have a thorough conversation with the agent about what the responsibility entails. In addition, a successor agent (or agents) should be named in the event the original agent is unavailable or unwilling to serve.

Power of attorney documents should be written so that they are “durable,” meaning they are valid even after the principal is incapacitated and can no longer make his or her own decisions.

The person living with dementia maintains the right to make his or her own decisions as long as he or she has legal capacity. Power of attorney does not give the agent the authority to override the principal's decision-making until the person with dementia no longer has legal capacity.

Once the principal is unable to make decisions, the agent is then authorized to manage the principal's income and assets. The agent is responsible for acting according to the principal's wishes and in the person's best interest.



ADVANCE DIRECTIVES

Advance directives are legal documents that allow a person to document preferences regarding treatment and care, including end-of-life wishes.

Types of advance directives include:

- » Durable power of attorney for health care.
- » Living will.

Power of attorney for health care

A power of attorney for health care allows a person living with dementia to name an agent to make health care-related decisions on his or her behalf when he or she is incapable of doing so. These decisions include choosing:

- » Doctors and other health care providers.
- » Types of treatments.
- » Care facilities.

For a person in the late stage of dementia, the health care agent may also make end-of-life decisions, such as providing nutrition through a feeding tube or giving do-not-resuscitate (DNR) instructions to health care providers.

When the time comes, these decisions can be difficult for families to make. Help avoid disagreements and distress by having open and candid conversations early on so everyone is aware of the end-of-life plans in place.

Will

A will — which is different than a living will — is a document identifying whom a person has chosen as:

- » Executor: The person who will manage the estate.
- » Beneficiaries: The people who will receive the assets in the estate.

The executor named in the will has no legal authority while the person with dementia is living; the executor's authority takes effect when the person dies.

A will cannot be used to communicate health care preferences, but it can offer peace of mind that a person's expressed wishes for his or her estate will be fulfilled upon death. An individual living with dementia should have a signed will put in place as soon as possible, while he or she is still able to make decisions. Be sure to check local laws, as the validity of a will varies state by state.

Living trust

A living trust is another way for the person living with dementia to give instructions for how his or her estate should be handled upon death.

Depending on state law and other individual circumstances, a living trust may allow an estate to avoid probate (the process used by the court to distribute the property of a person who has died). It may or may not provide tax advantages.

The person who creates the trust (a grantor or trustor) appoints him- or herself (and possibly someone else) as trustee(s). If a single trustee is designated, the trust document should also specify a successor trustee, who will take over if the initial trustee is unable to serve due to incapacity or other reasons. A trustee is usually a person but may also be an institution, such as a bank. The trustee is responsible for carefully managing the assets of the trust.

For more information on living trusts, consult a specialist, such as an elder law attorney or financial advisor.

Guardianship/conservatorship

A guardian or conservator is appointed by a court to make decisions about a person's care and property. Guardianship is generally considered

when a person with dementia is no longer able to provide for his or her own care, and either the family is unable to agree upon the type of care needed or there is no family.

Acquiring guardianship takes time. It involves enlisting the help of an attorney and testifying in court for guardianship proceedings. Not only does a guardian make health care and financial decisions, he or she also makes sure the person's day-to-day needs for safety, food, shelter and care are met. Guardians are responsible to and supervised by the court.

The rules surrounding guardianship vary by state. Any family considering guardianship or conservatorship should consult with an elder care attorney familiar with the process in that state.

3. FINDING A LAWYER

Many legal forms, such as a power of attorney and living will, can be completed without professional help. However, if you have a complex situation or questions, it's a good idea to seek legal advice from an attorney specializing 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.
- » Call the free **Alzheimer's Association 24/7 Helpline (800.272.3900)** for a list of elder law attorneys in your area.
- » Use **Alzheimer's Association & AARP Community Resource Finder (alz.org/CRF)** to locate a legal expert.
- » Contact your local Area Agency on Aging or use their Eldercare Locator (**eldercare.gov; 800.677.1116**) to find free legal resources.

4. MEETING WITH YOUR LAWYER

Prepare to meet with your lawyer by gathering all of the documents related to the assets of the person living with dementia.

WHAT TO BRING

- ☐ Itemized list of assets (e.g., bank accounts, contents of safe-deposit boxes, vehicles, real estate), including current value and the individuals listed as owners, account holders and beneficiaries.
- ☐ Copies of all estate planning documents, including wills, trusts and powers of attorney.
- ☐ Copies of all real estate deeds.
- ☐ Copies of recent income tax returns.
- ☐ Life insurance policies, including their cash values.
- ☐ Long-term care insurance policies or benefits booklets.
- ☐ Health insurance policies or benefits booklets.
- ☐ List of names, addresses and telephone numbers of those involved in decision-making, including family members, domestic partner caregivers, as financial planners and/or accountants.



What to discuss with your lawyer

Be sure to talk to your lawyer about the following key issues, as well as any other concerns you have:

- » Options for health care and long-term care decision-making for the person living with dementia.
- » Options for managing the individual's personal care and property.
- » Possible coverage of long-term care services, including what is provided by Medicare, Medicaid, veterans benefits and other long-term care insurance.

KNOW YOUR LOCAL LAWS

Couples who are not in legally recognized relationships are especially vulnerable to limitations in making decisions for each other, and may be unable to obtain information about a partner's health status if legal documents are not completed. Make sure you understand your state's laws.

5. 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, domestic partner or friend; see also *health care agent*.

Artificial life support: Medical equipment and other technology used to prolong the life of a seriously ill person by sustaining essential body functions (e.g., breathing).

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

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

Conservator: A person appointed by the court to make decisions on behalf of the person living with dementia; referred to as the *guardian* in some states.

Custody: Legal responsibility for a person.

DNR: Do-not-resuscitate; refers to a person's instructions that, if his or her heart or breathing stops, the doctor should not try to restart it. A DNR is a medical instruction or order and must be issued by a physician.

Domestic partner: An individual who is part of an unmarried heterosexual or homosexual cohabitating couple. Definition may vary according to state and/or employer.

Durable: When a power of attorney document is durable, it is valid even after the principal 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. The executor of a will carries out the instructions of the deceased as outlined in the will.

Grantor: A person who arranges for his or her assets to be transferred to another person or entity; for example, the grantor of the John W. Smith Living Trust is John W. Smith. Also called a *trustor*.

Guardian: The individual appointed by the court to make decisions on behalf of the person with dementia; referred to as the *conservator* in some states.

Health care agent: The person given legal authority to make health care decisions for the principal through a power of attorney for health care document; usually a spouse, trusted family member or friend.

Legal capacity: The ability to understand and appreciate the consequences of one's actions and make rational decisions.

Principal: The individual who chooses another person through a power of attorney document to make decisions on his or her behalf when they are no longer able.

Probate: The process used by the court to distribute the property of the deceased.

Summons: A notice to appear in court. A summons is delivered to the person with dementia when a petition of guardianship or conservatorship has been filed on his or her behalf.

Trustee: The individual or institution chosen to manage the trust assets on behalf of the beneficiaries.

Trustor: The person 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*.



QUICK TIPS FOR LEGAL PLANNING

Consider the following as you make plans.

- » Those named in the power of attorney document should have a copy of and access to the original document.
- » The person living with dementia should name a successor (backup) agent for power of attorney in the event that the agent may one day be unable to fulfill their responsibilities.
- » Once a power of attorney for health care document and/or a signed living will is in place, give copies to the person's health care providers.
- » The person living with dementia should decide if the agent with power of attorney for health care has authority to consent to a brain autopsy. This may vary by state.
- » Consider choosing an attorney or a bank to manage the individual's estate if the person lacks a trusted individual with the time or expertise to do so.
- » The person living with dementia should discuss his or her wishes with the chosen power of attorney to make sure the agent is comfortable carrying them out.



alz.org/care

Access reliable information and resources, such as:

- » Alzheimer's Navigator® – Assess your needs and create customized action plans of information and support.
- » Community Resource Finder – Find local resources.
- » ALZConnected® – Connect with other caregivers who can relate to your situation.



alz.org/education

Free online workshop:

- » *Legal and Financial Planning for Alzheimer's Disease.*



800.272.3900

24/7 Helpline – Available all day, every day.

alzheimer's association®

The Alzheimer's Association is the leading voluntary health organization in Alzheimer's care, support and research. Our mission is to eliminate Alzheimer's disease through the advancement of research; to provide and enhance care and support for all affected; and to reduce the risk of dementia through the promotion of brain health.

Our vision is a world without Alzheimer's disease®.

800.272.3900 | alz.org®

This is an official publication of the Alzheimer's Association but may be distributed freely and without charge by unaffiliated organizations and individuals. Such distribution does not constitute an endorsement of these parties or their activities by the Alzheimer's Association.