

alzheimer's  association®

legal plans

Assisting a person with dementia
in planning 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 planning begins, the more likely it is that the person with dementia will be able to participate.

Legal planning includes:

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



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.



The Alzheimer's Association strongly advises starting legal plans as soon as possible. Inside, you'll find the basics on:

- 1** Legal capacity..... *p.3*
- 2** Legal documents..... *p.4*
- 3** How to find a lawyer..... *p.8*
- 4** Meeting with your lawyer..... *p.9*
- 6** Terms your lawyer may use..... *p.11*

1. legal capacity

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

As long as the person with dementia 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 person to sign a particular document, as it can vary from one document to another.

Before a person with dementia signs a legal document:

Talk with the person

Find out if the person with dementia understands the document and the consequences of signing it. Make sure there is an understanding of what is being explained and what is being asked to do.

Ask for medical advice

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

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. Even if legal documents were completed in the past, it is important to review them for necessary corrections and/or updates.



2. legal documents

Living will

A living will is a document that expresses how a physically or mentally incapacitated person wishes to be treated in certain medical situations. It is generally something that an individual prepares and signs prior to his or her impairment.

In a living will, the person with dementia may state, among other things, his or her wishes regarding artificial life support. A living will 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 or it may be drafted by the person's attorney.

Traveling tip

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

Power of attorney

The power of attorney document allows a person with dementia (called the principal) to name another individual (called an attorney-in-fact or agent), usually a spouse, domestic partner, trusted family member or friend, to make financial and other decisions when her or she is no longer able.

The agent should be chosen carefully. It is recommended that this individual have a thorough conversation with the principal 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 that they are valid even after the principal is incapacitated and can no longer make decisions for him- or herself. Unless a power of attorney is durable, it can be changed or withdrawn by the principal 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 has legal capacity — even if the decisions are not what others believe are good decisions.

Once a person with dementia is no longer able to make decisions, the agent is authorized to manage and make decisions about the income and assets of the principal. This agent is responsible for acting according to the person's wishes and in his or her best interest.

Power of attorney for health care

A power of attorney for health care allows a person with dementia to name a health care agent to make health care 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 later stages 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.

These decisions can be difficult for families to make when the time comes. Help avoid family disagreements and distress by having open and candid conversations early on so everyone is aware of the person with dementia's end-of-life plans.

What are 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.

Will

A will is a document identifying whom a person with dementia 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 is living; his or her authority takes effect when the person with dementia dies. A will cannot be used to communicate health care preferences, but it can offer peace of mind that a person's wishes will be fulfilled in regard to how his or her estate should be handled upon death. An individual with dementia should have a signed will in place as soon as possible, while he or she is still able to make decisions. Please note that the validity of a will is dependent on state law.

Living trust

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

Depending on state law and an individual's personal circumstances, a living trust may allow an estate to avoid probate (i.e., 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 (called 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 when/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 property (assets) of the trust.

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

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, a guardian 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 guardianship process in that state.

3. how to find a lawyer

Many legal forms (e.g., power of attorney, 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 and services from an attorney specializing in elder law. Elder law focuses on guardianship, disability planning and other legal issues that typically affect older adults.

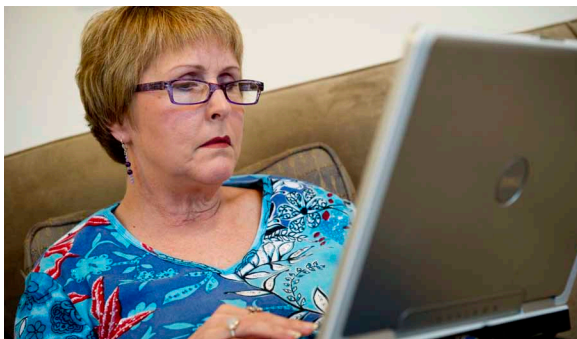
- ▶ If you have a family attorney, he or she may be able to refer you to an elder law attorney.
- ▶ Call the Alzheimer's Association 24/7 Helpline at **800.272.3900** for a list of elder law attorneys in your area.
- ▶ Use Alzheimer's Association Community Resource Finder ([alz.org/communityresourcefinder](https://www.alz.org/communityresourcefinder)) to find legal experts in your area.
- ▶ Contact your local Area Agency on Aging or the Eldercare Locator at **800.677.1116** or visit [eldercare.gov](https://www.eldercare.gov) for free legal resources.

4. meeting with your lawyer

Prepare for your meeting with the lawyer by gathering all documents relating to the assets of the person with dementia.

Checklist for meeting with your lawyer:

- 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 deeds to real estate.
- Copies of recent income tax returns.
- Life insurance policies and cash values of policies.
- Health insurance policies or benefits booklets.
- Admission agreements to any health care facilities.
- List of names, addresses and telephone numbers of those involved, including family members, domestic partners and caregivers, as well as financial planners and/or accountants.





What to discuss with your lawyer

Be sure to talk to your lawyer about the following key issues and any other concerns you may have:

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

Know your local laws

Couples who are not in legally recognized relationships are especially vulnerable to limitations regarding the ability to make decisions for each other, and may be unable to obtain information about a partner's health status if legal documents are not completed. Laws vary from state to state; make sure you understand your local laws.

Visit [alz.org/publications](https://www.alz.org/publications) to download our "LGBT Caregiver Concerns" brochure or call **800.272.3900** to request a copy.

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 courts to make decisions on behalf of the person with dementia; referred to as the guardian in some 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. 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. This may be especially significant when considering eligibility for spousal benefits. 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 person appointed by the courts 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 to make rational decisions.

Principal: A person 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. 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.

Support available all day, every day

Contact our 24/7 Helpline at **800.272.3900** for reliable information and referrals.



Alzheimer's and Dementia Caregiver Center

Visit alz.org/care to learn more about the stages of Alzheimer's and to find reliable support and helpful tools.



Quick tips for legal planning

- › Those named in the power of attorney document should have a copy of and access to the original.
- › The person with dementia should name a successor (back-up) agent for power of attorney in the event that the agent may one day be unable to act.
- › Once a power of attorney for health care document and/or a signed living will is in place, give copies to the person's physicians and other health care providers.
- › The person 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 according to state law.
- › 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.
- › The person 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

The Alzheimer's and Dementia Caregiver Center provides reliable information and easy access to resources, such as:

- ▶ Alzheimer's Navigator® – Assess your needs and create a customized action plan.
- ▶ Community Resource Finder – Find local resources.
- ▶ ALZConnected® – Connect with other caregivers.



alz.org/elearning

Free online workshop:

Legal and Financial Planning for Alzheimer's Disease



alz.org/findus

Chapters in communities nationwide provide support groups, education programs and more.



800.272.3900

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

alzheimer's association®

The Alzheimer's Association is the world's 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®.

800.272.3900 | alz.org®

This is an official publication of the Alzheimer's Association but may be distributed by unaffiliated organizations and individuals. Such distribution does not constitute an endorsement of these parties or their activities by the Alzheimer's Association.