

Legal Documents

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Legal documents help ensure that the wishes of the person with dementia are followed as the disease progresses and make it possible for others to make decisions on behalf of the person when he or she no longer can. Please be aware that laws can vary from one state to another.

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Power of attorney

While preparing these documents can be stressful, not having them can create problems such as uncertainty about who can make decisions or somebody making a decision that the person living with dementia would not want.

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 the person with dementia 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 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.

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 when he or she is no longer able. This type of legal document is also called an "advance directive." These decisions include choosing:

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

For a person in the late stage of dementia, the health care agent also may 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.

Know 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.

Living will

A living will is also a type of advance directive that expresses how a physically or mentally incapacitated person 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.

Make sure everyone has copies

Once legal documents are filled out, the individual living with dementia, the caregiver or a trusted family member, the attorney and health care professionals should all have copies.

Standard will

A will — which is different from 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 is living. A will only takes effect when a person 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 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). There may be tax implications for this step.

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, 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.

Portable medical orders (POLST)

A portable medical order (POLST) is a medical document that tells any medical provider your wishes for what kind of medical care you wish to receive. These are for people with severe illnesses and are more specific than Do Not Resuscitate (DNR) or advance medical directives.

The forms and regulations vary by state. Your healthcare provider will discuss your preferences with you, answer any questions and fill out the form. It becomes part of your medical records and all care providers are required to follow its directions. You can change or delete the form at any time you choose.

Help is available

Do you need assistance locating an elder law attorney? Start with these resources:

- If you have a family attorney, he or she may be able to refer you to an elder law attorney.
- Use the Alzheimer's Association [Community Resource Finder](#) to find legal experts in your area.
- Use the [online directory](#) of the National Academy of Elder Law Attorneys.
- Visit the [Eldercare Locator](#) online or call 800.677.1116.
- Visit [LawHelp.org](#) to learn about free or reduced cost legal aid programs in your community.

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