

Legal Planning for Persons in Louisiana



With
Alzheimer's
Disease

Legal Planning

Individuals with Alzheimer's disease or another dementia should start planning for the future as soon as a diagnosis is made. This brochure covers issues concerning legal planning and Louisiana law. If the person with Alzheimer's has the mental capacity necessary to sign official documents, then he should actively participate in the legal planning process. The planning process should include authorizing another person to make decisions on health care, financial issues and long-term care.

Determining Legal Capacity

In order to determine the ability of the individual with Alzheimer's to understand the meaning of a legal document and the effect of signing it, follow these tips:

- Talk with the person.

Find out if the person understands what is being explained to him.

- Ask for a medical consult.

A medical professional can give insight into the mental capacity of the person with Alzheimer's. Be sure the medical professional's opinion is in writing and stored with important papers.

- Check for existing legal documents.

Check to see if advance directions, a living will, trusts, and/or a mandate, commonly known as power of attorney, were executed before a diagnosis of Alzheimer's disease.

- Consult with a professional.

Schedule a visit with an attorney knowledgeable about long-term care planning.

Legal Documents Guide

- **Mandate for Financial/Property Decisions**

A **Power of Attorney**, also known in Louisiana as a **Mandate**, allows the person with Alzheimer's to choose an agent who can legally make decisions regarding finances or property issues when the person with Alzheimer's is no longer competent. In Louisiana, all mandates are presumed "durable", meaning they remain valid after the patient is no longer competent.

- **Advance Directives for Health Care**

This **Power of Attorney** for health care decisions, also known in Louisiana as a **Mandate**, allows the person called the principal, to appoint an agent to make decisions regarding health care, including surgery, medical expenses, prescriptions, and nursing home residency. It becomes effective when signed unless the document provides that it is effective only when the principal becomes disabled. Disability is determined when either two physicians or the attending physician and the agent agree the principal is incapable of making reasoned decisions (called a conditional procuration).

However, as long as the principal is competent, the principal maintains the right to make his or her own health care decisions. The general authority to make health care decisions does not include decisions regarding life-sustaining

procedures. The agent can, however, be given specific authority to make life-sustaining decisions.

- **Living Will**

A **Living Will** expresses the person's decisions regarding the use of artificial life support systems or appoints an agent to make these decisions for him. It is only to be used when two physicians (one of whom is the attending physician) have examined the person and certified in writing that the person has been diagnosed as having a terminal and irreversible condition. A **Living Will** can be registered with the Secretary of State.

- **Interdiction**

Interdiction is a legal proceeding where the court decides, based on the evidence, that a person is unable to make reasoned decisions regarding the care of his person, his finances, and/or to communicate his decisions. Once an individual is found to be unable to consistently make reasoned decisions regarding his person or his property, the court appoints a **curator** to make decisions for that person.

A **curator** has the has the legal authority to make decisions regarding the care of the person and/or his property. Some interdictions are limited in scope, with the curator given authority over only certain aspects of the person's life, for example, to handle the person's finances only, but not his living arrangements. Any interested person eighteen years or older, who qualifies according to the law,

may be appointed curator. A curator is often called a guardian or conservator in other states.

The **curator** also has a duty to prepare a yearly accounting for all the funds of the interdict.

After a petition for **interdiction** is filed, a notice to appear in court and a copy of the petition are served on the individual with Alzheimer's by the Sheriff's office.

The individual can retain his own attorney. If he does not, one will be appointed by the court. A hearing will be held by the court where evidence is presented along with evidence of any less restricted means of providing for the individual.

- **Trusts**

A trust is the relationship resulting from the transfer of title of property to a person to be administered by him (as a fiduciary) for the benefit of another.

A **Revocable Trust** is created by an individual during his lifetime. The individual with Alzheimer's can appoint himself or someone else as trustee. The trustee is responsible for wisely investing and managing the assets in the trust. Once the Alzheimer's patient can no longer act as trustee because of cognitive impairment, an alternate or successor trustee can manage the trust according to its terms.

All assets owned by a Revocable Trust are considered available by Medicare and the VA to pay the costs of long-term care.

Irrevocable Trust. The assets owned by the **Irrevocable Trust** are generally not considered available assets by Medicaid or the VA to pay the costs of long-term

care. However, transferring assets to, and distributions from an **Irrevocable Trust** may cause significant tax consequences and Medicaid penalties.

A competent attorney should be engaged to assist with drafting the trust documents and advising about the consequences of establishing a trust.

Will

A **Will** is a legal document that names an executor and the legatees; the former manages the estate and the latter receives the estate at the time of death. This specific legal document is only effective after the person making the **Will** is deceased. Most people, including those with Alzheimer's, can benefit from having a **Will**.

Finding a Lawyer

Choosing a lawyer who practices in the area of *elder law* would be helpful. Elder law is an area of law focusing on disability planning, interdiction, long-term care planning, and other related legal areas that typically affect older adults. You may contact the National Academy of Elder Law Attorneys (www.naela.org) for a list of attorneys that practice elder law in Louisiana.

Additional legal information is available at <http://goea.la.gov> website and the "Legal Self Help" tab, or at www.louisianalawhelp.org/.

Legal Appointment Preparations

It may be helpful to bring the following documents:

- An itemized list of current assets.
- Copies of all titles/deeds to real estate, if available.
- Copies of estate planning documents, including advance directives, living wills, trusts, and powers of attorney that already exist.
- Copies of recent income tax returns.
- Life insurance policies and cash value.
- Health insurance or long-term care policies or benefits booklet.
- Admission agreements to health care facilities.
- A comprehensive listing of names, including family and anyone involved with the legal planning.

Issues to Discuss with Attorney

- Health care decision-making and property management options.
- Coverage of long-term care services including what's provided by Medicare, Medicaid and other health insurance.
- Whether VA benefits may be available to help with the cost of care.

Tips and Glossary

Legal Tips

- In the **Power of Attorney**, name a successor or replacement agent, in case the primary agent cannot act on behalf of the individual with Alzheimer's.

- Those appointed as agents for finances and health care decision making should have a copy of the Power of Attorney or Advance Directive and have access to the original documents.
- A signed living will and a copy of the advance directive or mandate for health care should be given to physicians and health care providers.

Glossary of Legal Terms

- **Advance Directive** – a generic term for legal documents that state your preference for medical treatment if you become unable to make your own decisions.
- **Agent** – the individual appointed in a mandate or power of attorney who is authorized to make legal, financial, and/or medical decisions for another individual.
- **Curator** – the court-appointed person authorized to make legal and financial decisions for another individual
- **Legatee** – the individual named in a will who receives the estate upon the death of the will maker.
- **Trustee** – the individual who manages the assets of a trust. A bank or other institution may also be a trustee.
- **Mandate** – also known as a Power of Attorney, is a contract by which the person (the principal) gives authority to another person (the mandatary, agent or attorney-in-fact) to transact one or more affairs for the principal.

Other Resources

Alzheimer's Services of the Capital Area

3772 North Boulevard
Baton Rouge, LA. 70806-3822
Phone: 225-334-7494
Toll Free 800-548-1211
alzbr.org

Alzheimer's Assn. Louisiana Chapter

3554 North Causeway Boulevard, Suite 902
Metairie, LA. 70002
Phone: 504-613-6505

Alzheimer's Assn North Louisiana

910 Piermont Road, Suite 410
Shreveport, LA. 71106
Phone: 318-861-8680

Alzheimer's Assn Central Louisiana

7732 Goodwood Boulevard, Suite 110
Baton Rouge, LA. 70806
Phone: 225-331-3615

Alzheimer's Association

24-hour Helpline
Toll-Free: 1-800-272-3900

National Academy of Elder Law Attorneys

www.naela.org

This document is meant to serve as a guide only. You should seek competent legal advice from a qualified attorney regarding the drafting of any of the documents referenced in this guide.

Reviewed by ELTF

4/2020