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### **Legal Issues Caring for Parents with Dementia**

Incidents of Alzheimer's disease, Parkinson's disease and other disorders that cause dementia have become more common among aging adults. While any form of memory loss is emotionally devastating for everyone involved, dementia can present extraordinary challenges for older adults and their families when drafting a will, making health care decisions, and taking care of other legal and financial matters.

Moreover, it is often the children of dementia-affected adults who end up making decisions on their behalf. But it is important for family members to understand the legal and financial implications of their actions.

The following factors should be considered when assessing your loved one's mental capacity for making important legal, financial and health-related decisions.

#### **Diagnosis of Dementia-Causing Illness or Signs of Dementia**

Different states have slightly different legal standards, or tests, for determining the mental competence necessary to enter into legal agreements. Typically, as long as dementia is minor or nonexistent, a person in the beginning stages of a dementia-causing disorder will be deemed mentally competent in the eyes of the law.

If the individual in question has been diagnosed with Alzheimer's disease but is still mentally competent in the eyes of the law, for example, you should consider entering into a [durable power of attorney](#). This allows a trusted individual to make legal, financial and health care-related decisions and sign legal documents on his or her behalf (which will be needed once dementia sets in).

The durable power of attorney is not possible if the subject already is mentally incompetent (in which case a legal guardianship, a much more complicated process, is necessary).

#### **Existence of a Written Will**

If your loved one does not have a will, and there are no signs of dementia, it may be a good idea to draft a will in anticipation of the future onset of dementia. This also is a good time to create an inventory of all assets and liabilities; locate deeds, bank accounts, tax documents and insurance policies; and tie up any other contractual and/or financial loose ends.

If he or she does not have a will and *is* exhibiting clear signs of dementia, you may want to consider options such as a [guardianship](#). The court may not recognize a will signed or executed while the individual is suffering from dementia but the individual's estate will be handled by the state in the absence of a will.

If he or she already has written and signed a will, keep in mind that changes made by someone deemed mentally incompetent may not be held as valid (requiring action by a guardian or someone with a power of attorney).

#### **Capacity to Make and Execute a Will**

The mental ability to make and execute a will is called "testamentary capacity." Wills often are challenged when it is suspected the "testator" -- the person who signed the will -- lacked testamentary capacity at the time (see "[Reasons to Challenge a Will](#)" for more details).

Statutes and case law may vary among different jurisdictions, but testamentary capacity generally requires that the testator was aware of the following when signing the will:

- The extent and value of their property
- Those who are the natural beneficiaries of their estate (next of kin)
- The disposition he or she is making (in other words, he or she must have the ability to make a reasonable judgment based on the elements listed above)

### **Fitness to Drive a Car or Perform Other Tasks**

Grown children of elderly adults often worry about their parents' safety while driving a car; their ability to enter into contracts and execute financial transactions; or engage in other activities that may prove treacherous if done with a diminished mental capacity. Depending on the situation, you may need to obtain a formal assessment of your parent's mental competence.

This is much more difficult with respect to driving an automobile. Since the only legal standard for maintaining a driver's license in most states is to complete an application and pass the vision test, older adults exhibiting signs of dementia usually are not restricted from driving at the administrative level. This means the family typically has to take a more active role in enforcing a no-driving decision.

A handful of states, including New York and Florida, have programs designed to help the doctors and families of adults with dementia make such determinations. Some states, however, require a driving test for elderly drivers (specific age set by state law). Check with your state's driver's licensing-issuing agency for more information.

### **Help with Daily Living Activities**

Make sure you evaluate the potential cost of caring for a loved one who suffers from dementia. Insurance and/or public services may help to some extent. By the time your parent is in need of daily assistance, you should have either a durable power of attorney or guardianship in place.

The [Alzheimer's Association](#) provides various resources to help those caring for Alzheimer's patients.

### **Advance Directives: End-of-Life Preferences**

It's always a good idea to explicitly state one's end-of-life wishes (called "advance directives") in a written will, since emotions may otherwise overshadow a parent's wish to not be kept alive with a feeding tube, for example. Such end-of-life issues may need to be raised periodically as situations change.

See " [Health Care Decision-Making Issues](#) " for more information about advance directives.

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