

## **Basics of legal planning**

It is normal to feel overwhelmed by the details of legal planning, and some elements may not apply to your situation. Take your time to review the information on this page. Have conversations with your care partner or family members about the legal plans you would like in place.

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Legal planning should include:

- Taking inventory of existing legal documents, reviewing and making necessary updates.
- Making legal plans for finances and property.
- Putting plans in place for enacting your future health care and long-term care preferences.
- Naming another person to make decisions on your behalf when you no longer can.

## **Legal capacity**

During the legal planning process, you may hear the term "legal capacity" as it pertains to your ability to execute (put in place by

signing) a legal document. Legal capacity is the ability to understand and appreciate the consequences of one's actions and to make rational decisions. This term is important to understand because it does have an effect in later stages of the disease, when some important care issues emerge.

Legal capacity requirements can vary from one legal document to another. A lawyer can help determine what level of legal capacity is required for a person to sign a particular document. Creating a legal document does not imply that your rights are immediately revoked. The legal forms that you complete now will not be implemented until you legally no longer have the capacity to make decisions.

## **Legal documents**

Legal documents help ensure your wishes are followed as the disease progresses and make it possible for others to make decisions on your behalf when you no longer can. Once legal documents are filled out, distribute copies to your care team, including your care partner, spouse, attorney and physicians.

### **Power of attorney**

The power of attorney document allows you (the principal) to name another individual (called an attorney-in-fact or agent) to make financial and other decisions when you are no longer able. A successor agent or agents should also be named in case the original agent you choose is unavailable or unwilling to serve. Power of attorney does not give the person you appoint (agent) the authority to override your decision making. You

maintain the right to make your own decisions, as long as you have legal capacity.

## **What is the difference between a general power of attorney and a durable power of attorney?**

Power of attorney documents should be written so that they are "durable," meaning that they are valid even after you, the principal, are no longer able to make decisions for yourself. If a power of attorney document does not explicitly say that the power is durable, it ends if you become incapacitated.

### **Power of attorney for health care**

A power of attorney for health care allows you to name a health care agent to make health care decisions on your behalf when you are no longer able.

Health decisions covered by the power of attorney for health care include:

- Doctors and other health care providers
- Types of treatments
- Care settings
- End-of-life care decisions, such as the use of feeding tubes
- Do not resuscitate (DNR) orders

Discuss your wishes regarding care with your chosen agent early and often to make sure that this person understands your wishes and is willing and able to act on your behalf when the times comes.

### **Durable power of attorney for finances/property**

A durable power of attorney for finances/property allows you to designate another person to make decisions about your finances, such as income, assets and investments, when you can longer do so.

### **Physician Orders for Life Sustaining Treatment (POLST)**

POLST is a standardized medical order form that indicates the specific types of life-sustaining treatment you do or do not want if seriously ill. POLST is a physician order and must be completed and signed by your physician. As a physician order, it is placed in your medical record. Emergency personnel, such as paramedics, EMTs and ER physicians, must follow these orders. POLST complements your advance directives and is not intended to replace it. POLST is not available in every state.

Learn more: [Find your POLST state program](#)

## **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

### **Living will**

A living will, a type of advance directive, expresses your wishes for what medical treatment you want, or do not want, near end of life, such as life-prolonging treatments. Depending on the state in which you live, a specific form for a living will may be required, or it may be drafted by your attorney. It is a document you should prepare and sign before the disease progresses.

### **Standard will**

A standard will provides information about how your estate will be distributed upon death. In your will, you may name an executor, the person who will manage your estate, and beneficiaries, the person(s) who will receive the assets in the estate. The executor named in the will has no legal authority during your lifetime.

### **Living trust**

A living trust is the other document that provides direction about your property and assets. It allows you to pool financial resources in one place (a trust) and provide instructions about how to handle these resources when you are no longer able. To do this, you appoint a trustee to follow instructions after you can longer manage your affairs. You should also name a successor trustee who will take over if the initial trustee is unable to serve. All assets should be transferred to the trust, including titles of property and bank accounts. Depending on state law and your personal circumstances, a living trust may allow an estate to

avoid probate, the process used by the court to distribute your property after death.

### **Guardianship / conservatorship**

Turning to the courts to appoint a guardian or conservator is not common, and often occurs when families are in disagreement about how to handle your legal, financial or health care decisions.

At the point when you are no longer able to make your own legal, financial and/or health care decisions, and if you did not establish a power of attorney, someone else may have to step in as your guardian (also known as a "conservator" in some U.S. states) to coordinate your care. In this case, the guardian is appointed by a court to make decisions about your care and property. This may be a person who is not known to you or your care partner, typically an attorney or a bank.

Guardianship proceedings can be an arduous and emotionally taxing process for everyone involved. Having conversations ahead of time and involving your family in your plans for the future may help prevent future disagreements about your financial and/or health care decisions that lead to the pursuit of guardianship.

## **Tough talks**

Actor Kyle Chandler shares the difficult conversations he had with his mom after her diagnosis.

## [Read More](#)

While the guardianship process varies from state to state, it requires going to court to testify. The person seeking guardianship files a petition in court, the court issues a summons and a copy of the petition to you. The court will hold a hearing at which time you (or another individual) can object to the guardianship.

Other important documents you should have in place are:

- Medical Release of Information: Signing a medical records release form at your doctor's office will ensure that your doctor can share information with a family member or friend. This can be beneficial to those who are helping coordinate your care.
- Hospital Visitation Form: Federal regulations require hospitals participating in the Medicare and Medicaid programs to adopt written policies and procedures regarding patients' right to designate the visitors of their choice, including a prohibition on discrimination in visitation based on sexual orientation and gender identity. Although most hospitals are covered by the federal rule above, some other medical facilities like hospices might not be following the same rule. If you are in a domestic partnership, civil union or marriage, you may want to work with your local medical facilities to determine if you need to complete any visitation forms.

## Preparing your advance directives

Most people do not need an attorney to prepare advance directives. Many U.S. states have designed advance directive forms for people to complete on their own by filling in the blanks. If you are making plans without a legal professional, you can get copies of advance directives for your state for free through the following:

- Your state's health department
- The American Bar Association website has [state-specific advance directive forms](#)
- Office supply stores
- Your local library

## Getting help from an attorney

If you are unsure about how to complete legal paperwork, you and/or your care partner may want help from well-qualified legal advisors. Consider getting legal advice from an attorney who specializes in elder law, an area of legal practice focused on issues that affect seniors.

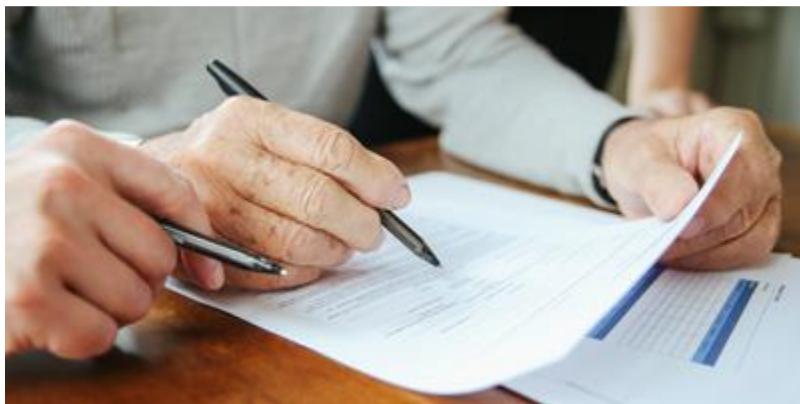
If you meet with an attorney, be sure to discuss these three key issues and any other concerns you may have:

1. Options for health care decision making.
2. Options for managing your personal care and property.
3. Possible coverage of long-term care services, including what is provided by Medicare, Medicaid, veteran benefits and other long-term care insurance.

Gather all documents relating to your personal assets ahead of time so you can bring them to your appointment. Use our [Financial and Legal Document Worksheet \(PDF\)](#) to organize what to bring to your attorney.

To find an elder law attorney, start with these resources:

- Call our 24/7 Helpline for referrals at 800.272.3900
- Use our [Community Resource Finder](#) to find an elder law attorney in your area
- Use the [online directory](#) of the National Academy of Elder Law Attorneys
- Visit [LawHelp.org](#) to learn about free or reduced cost legal aid programs in your community



After a diagnosis of Alzheimer's or other dementia, financial planning often gets pushed aside because of the stress and fear this topic evokes. However, you can reduce stress by planning ahead.

- [Where to begin](#)
- [Care costs](#)

- Pay for care
- Professional assistance

## Where to begin

To begin financial planning, start with these priority steps:

- Use the Financial and Legal Document Worksheet (PDF). This will assist you in organizing needed documents and taking an inventory of all assets and debts you and your partner are responsible for.
- Identify family members that should be included in your financial plans. For example, those with knowledge of your situation and those who may be able to provide support.
- Identify the costs of care. Consider the costs you may incur now and in the future.
- Review government benefits. You may be eligible for benefits that provide assistance with prescription costs, transportation and meals.
- Review any long-term care insurance policies. If a policy is in place, check whether it may help cover future care costs.
- Check Veterans benefits. If you have served in the armed forces, regardless of the branch or length of service, there are veterans benefits that may help with expenses.
- Decide who can help you complete routine financial responsibilities. This may include paying bills, arranging for benefit claims, making investment decisions, managing bank accounts and preparing tax returns. The following

resources from the Consumer Financial Protection Bureau may be helpful as you discuss financial responsibilities with those whom you wish to act on your behalf when you are no longer able.

- [Help for Powers of Attorney](#) (PDF)
- [Help for Court-Appointed Guardians](#) (PDF)
- [Help for Trustees](#) (PDF)
- [Help for Representative Payees and VA Fiduciaries](#) (PDF)

## Care costs

To plan for your financial needs during the course of Alzheimer's disease, you'll need to consider all the costs you might face now and in the future. Since Alzheimer's is a progressive disease, the type and level of care needed will intensify over time. Care costs will vary depending upon where you live. Have a family meeting to discuss how much future care might cost and to make financial plans.

## Free program

Managing Money: A Caregiver's Guide to Finances is a new course about managing care costs and planning for the future.

[\*\*Take the Course\*\*](#)

Common care costs include:

- Ongoing medical treatment for Alzheimer's symptoms, diagnosis and follow-up visits.
- Treatment or medical equipment for other medical conditions.
- Safety-related expenses, such as home safety modifications or safety services.
- Prescription drugs.
- Personal care supplies.
- Adult day services.
- In-home care services.
- Full-time residential care services.

## **Resources to pay for care**

A number of financial resources may be available to help cover care costs. Some may apply now and others in the future.

Financial resources include:

- Medicare, Medicare Part D and Medigap.
- Insurance, including life and long-term care.
- Employee or retirement benefits.
- Personal assets such savings, investments and property.
- Veterans benefits.
- Medicaid.
- Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), if you are younger than 65.
- Community support services, such as Meals on Wheels, respite care and transportation services. To find services, use our free Community Resource Finder.

## About reverse mortgages

This is a type of home equity loan that allows a person age 62 or older to convert some of the equity in his or her home into cash while remaining the homeowner. Reverse mortgages do not have an impact on Social Security or Medicare benefits, but they may affect qualifying for other government programs.

There are risks and benefits to reverse mortgages. Some risks may jeopardize your ability to continue to live in your home. To find out how a reverse mortgage might affect you, your beneficiaries and your estate, speak with your attorney or financial advisor.

## Professional assistance

If you have a complex financial situation or not comfortable doing financial planning on your own, you can get help from a financial advisor, such as a financial planner and or an estate planning attorney. They can help you identify potential financial resources and outline a plan to make your financial resources last. Make sure to ask the financial advisor if he or she is familiar with elder care or long-term care planning.

When selecting a financial advisor, check qualifications such as:

- Professional credentials.
- Work experience.
- Educational background.

- Membership in professional associations.
- Areas of specialty.

If you need help locating a financial advisor, start with these resources:

- [Alzheimer's Association Community Resource Finder](#).
- Visit [Eldercare Locator](#) online or call 800.677.1116.
- Use the online directory of the [Financial Planning Association](#) or call 800.322.4237.
- Visit [Certified Financial Planner Board of Standards](#).