

Legal Questions for Elder Care Issues

People with AD often live beyond their ability to make decisions for themselves. One of the most important things you can do is to help your loved one prepare for the future while he/she is able to consider the options. One way of doing so is through advance directives.

Advance directives are written documents that state a person's wishes regarding healthcare choices and/or the designation of another person to make healthcare decisions in the event that the ill person is impaired and cannot make those decisions. In addition to advance directives, there are financial issues to consider. Who will pay the bills and manage your loved one's money when he/she can no longer do so? How will your loved one pay for his/her care? Several documents that can help are Living Wills and Powers of Attorney for Healthcare and Finances. One of the goals of Advance Directives is to avoid the cost and difficult process of Guardianship.

Below are some questions that you may want to review and ask an elder law attorney for the current appropriate answers. **The questions listed with a (*) behind them can be found in the attached green brochure entitled "Legal Plans, Assisting the person with dementia in planning for the future."** The brochure briefly covers Legal Capacity; Legal documents; How to find a lawyer; How to prepare for your first meeting; What to discuss with your lawyer; and Terms your lawyer may use.

Seeking Legal Guidance

- At what point in the disease process should families seek legal guidance and assistance?

Guardianship/Conservatorship

- What is a guardian/conservator?*
- When does a person assume that role?*
- Does a person need a guardian if they have appointed a Durable Power of Attorney?
- What is the process, how much does the process cost, and how long before a guardianship takes effect?

A Will versus a Living Will

- What is a living will, and when can it be instituted?
- What is a will, and when can it be instituted?*
- What is the cost of a will or living will?
- Is an attorney needed to seek either?

A Living Trust

- What is a living trust?*
- If my loved one has a living trust, does he/she still need a durable power of attorney for finances?
- What is the cost of obtaining a living trust?
- What is the difference between a revocable trust and an irrevocable trust?

Power of Attorney

- What is a “durable” power of attorney?*
- Is a “springing” power of attorney the same as a durable power of attorney?
- What is the difference between Power of Attorney and Power of Attorney for Healthcare?*
- How much does getting a durable power of attorney cost and when does it become effective? When does it become ineffective?
- Do I need a lawyer to obtain a durable power of attorney?
- If I have Durable Power of Attorney, can I make healthcare decisions for my loved one?

Spousal Issues

- What is spousal impoverishment?
- How can a spouse’s assets, house, car, etc. be protected if my loved one is put into a nursing home?
- What are the Medicaid eligibility requirements?
- What does the state define as a transfer of assets, and what are the penalties for transferring assets?

Nursing Home Costs

- Can a nursing home require a family member to personally guarantee payment of the bill?
- If I have a durable power of attorney, can I admit my loved one into a nursing home against their will?
- Is long term care insurance available to help pay the cost of a nursing home?
- Are there any benefits available to Veterans of the U.S. Armed Forces?

One Final Note:

“**Looking Ahead: Planning for Future Legal & Financial Needs**” is an educational program conducted by a local attorney who specializes in elder law. It addresses the legal side of planning for a loved ones financial future. The class is offered free through the local Alzheimer’s Association chapter. For more information, please call the Alzheimer’s Association at (800) 272-3900 to sign up or to receive a calendar listing.

Some helpful websites:

National Academy of Elder Law Attorneys: <https://www.naela.org/>

The NAELA is a non-profit association that provides a resource of information, education, networking and assistance to those who deal with the elderly and people with special needs. You can also read “Questions & Answers When Looking For an Elder Law Attorney” by going to http://www.naela.org/About_QandA.aspx.

Area Agency on Aging (Eldercare Locator): www.eldercare.gov or call (800) 677-1116

This website or phone number can be used to find the area agency on aging closest to you. If you call the phone number of your area agency on aging, it will lead to an information and referral line, where you will receive referrals of elder lawyers in your area.