

Alzheimer's Services of Louisiana



Legal Planning For Louisiana Residents

The mission of Alzheimer's Services of Louisiana is to provide education and support services to memory-impaired individuals, caregivers and professionals, and to enhance community awareness of Alzheimer's disease and related disorders.

Updated 4/27/2011

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 coverage.

Determining Legal Capacity

In order to determine the cognitive 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 legal capacity of the person with Alzheimer's. Be sure the medical professional's opinion is in writing and retain with important papers.
- **Check for existing legal documents.**
Check to see if advance directives, living will, trusts, and letters of mandate commonly known as power of attorney, were executed before a diagnosis of Alzheimer's disease.

Legal Documents Guide

- **Mandate**
A **Power of Attorney**, commonly known in Louisiana as a **Mandate**, allows the person with Alzheimer's to choose an agent who can legally make decisions 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, commonly 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 based on the opinion of either two doctors or the attending physician and agent agree the principal is disabled (called a conditional procuration). **However, as long as the principal is competent, the principal maintains the right to make his or her own 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 medical and financial evidence, that a person is unable to make reasoned decisions regarding the care of his person and/or to communicate his decisions.

Once an individual is found to be unable to consistently make reasonable decisions regarding his person or his property due to a disability, the court appoints a curator to make decisions for that person.

A curator has the legal authority to make decisions regarding the care of the person and/or his property. 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 has a duty to act according to the wishes of the interdict. 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 delivered to the individual with Alzheimer's. The individual can retain his own attorney or one will be appointed by the court. A hearing will be held by the court where medical evidence is presented along with evidence of any less restrictive means of providing for the individual.

- **Living 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 **Living Trust** is created by an individual during his lifetime. It is yet another way to ensure the management of property. The individual with Alzheimer's can appoint himself or someone else as trustee. The trustee is responsible to wisely invest and manage 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.

A **Living Trust** helps avoid the necessity of probate - the legal process by which the court distributes the deceased person's assets.

- **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, and other related legal areas that typically affect older adults. You may contact the National Association of Elder Law Attorneys (naela.org) for a list of attorneys that practice elder law in Louisiana.

Legal advice and services may be provided by a referral from the local parish Bar Association. Other referral sources can be found through the Louisiana State Bar Association at LSBA.org and lawhelp.org/la. For information about free legal assistance, contact the Louisiana Civil Justice Center helpline at 1-800-310-7029 or 1-504-355-0970, your local parish Counsel on Aging, or the Governor's Office of Elderly Affairs.

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.
- Copies of estate planning documents, including advance directives, living wills, trusts, and letters of mandate.
- Copies of recent income tax returns.
- Life insurance policies and the cash value.
- Health insurance 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 Your 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.

Tips and Glossary

Legal Tips

- In the Letters of Mandate or power of attorney, name a successor in case the primary agent cannot act on behalf of the individual with Alzheimer's.
- If immediate family members don't get along, consider a mediator.
- If it is not possible for a person to manage the estate, call a bank or Louisiana Guardianship Services, Inc. for help, 504-830-2829, ext. 11 or www.laguardianship.org.
- Involved individuals should have a copy of the mandate or advance directive and have access to 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 or bank who manages the assets of a living trust.
- **Mandate** - also known as a Power of Attorney, is a contract by which a person (the principal) gives authority to another person (the mandatory, agent or attorney-in-fact) to transact one or more affairs for the principal.

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Alzheimer's Services of the Capital Area

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Phone 225-334-7494
Toll-free 800-548-1211
www.brhope.org

New Orleans Regional Alzheimer's Center

2605 River Road
New Orleans, LA 70121
1-504-849-9081

Shreveport-Bossier City Region

910 Piermont Road, Suite 410
Shreveport, LA 71106
1-318-861-8613

Alzheimer's Association

24-hour helpline
Toll-free: 1-800-272-3900

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