

# Does a dementia diagnosis mean it's too late for estate planning?

By *Linda T. Cammuso*

If you or a loved one are among the millions of individuals diagnosed with dementia or Alzheimer's disease, it is possible to create or modify an estate plan. Taking that step quickly is crucial.

A whole range of emotions and decisions follow such a life-changing diagnosis. It is natural to experience concerns about your future and that of your family and loved ones. Dealing with your new reality will not be easy and it will take time and support.



## Legal Briefs

Unfortunately, a complication of Alzheimer's disease and dementia is declining cognitive and physical health. Since these changes may affect your ability to participate meaningfully in decision-making at some point in your illness,

timing is critical when it comes to estate planning.

You will need to have sufficient mental capacity to understand and approve the estate planning documents — and to sign documents that allow other people to act on your behalf. The sooner you act, the greater control you will have over legal decisions regarding your health and finances.

A diagnosis of dementia or Alzheimer's does not necessarily mean a person lacks legal capacity to make decisions and sign documents. To the contrary, medical advancements and greater public awareness have resulted in these conditions being diagnosed earlier, when cognitive function may still be well intact.

The treatment and care of people with these types of degenerative conditions can be extremely costly because the disease can span many years. As you undertake the process of securing a team of care professionals, make sure you include legal and financial professionals who have the

knowledge and resources to handle elder care matters. An attorney qualified in this area can assist you in developing legal documents that communicate your wishes regarding health care, financial decisions and the disposition of your assets upon your death. A critical component to this plan is strong lifetime documents to ensure you have the right people lined up to make decisions when you are no longer able to do so. Additionally, your attorney can work with you to ensure your plan helps preserve your assets from nursing home spend down.

If you are the family member of a person who has reached a stage where sufficient mental capacity is questionable, it is still possible to undertake planning. A medical evaluation regarding legal capacity can help determine whether a person is able to sign documents. Additionally, an existing durable power of attorney may authorize the agent to engage in planning on the principal's behalf.

Where no planning has been done and

a person has lost legal capacity, a family member or other trusted individual can petition the Probate Court for a guardianship/conservatorship to handle financial and health care decisions. The court can even authorize the creation of an estate plan, for example, to provide long-term care/nursing home asset protection.

Don't consider it too late to contact an estate planning attorney if you, or a family member, has been diagnosed with dementia. Schedule the appointment as soon as possible: the sooner you act the greater control you will have over your legal decisions now and in the future.

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