

# Your Loved One is Diagnosed with Alzheimer's Disease - What do you do?

By Karen S. Timko, CELA  
January 2017

According to Alzheimer's Association statistics, more than five million Americans are living with Alzheimer's Disease. It has become the sixth leading cause of death in the United States and the incidence of Alzheimer's Disease continues to increase as we live longer. Eventually many people will be faced with the situation where a loved one has been diagnosed with Alzheimer's Disease. Once your loved one receives such a diagnosis you are faced with the uncertainty such a diagnosis creates for the future. You know that Alzheimer's Disease is a progressive illness and that your loved one's cognitive abilities will decrease over time. You recognize that your loved one will probably need long term care services from caregivers to ensure her safety, regardless of whether she lives at home or eventually requires the services provided in a personal care home or nursing home. But where do you start to plan for the future? An eldercare attorney can help create a plan to appoint decision makers for your loved one, and protect her assets from the costs of long-term care starting with the following legal documents:

1. General Durable Power of Attorney. The most important estate planning document your loved one should have is a General Durable Power of Attorney ("POA"). This document appoints an Agent, and successor Agents, to handle all financial and legal matters. A meeting with an eldercare attorney should be scheduled promptly after diagnosis so that your loved one can decide who will make financial decisions for her as her Agent. The specific terms of the POA are very important because the Agent will be authorized to make decisions for your loved one only to the extent the POA document specifically grants the Agent such authority. It is especially important to consult with an eldercare attorney to be sure that the POA includes specific powers that authorize the Agent to engage in eldercare planning to preserve your loved one's assets and expedite eligibility for needs-based government programs such as Medicaid and Veterans benefits. If your loved one has no POA or the Agent designated in her POA cannot serve and your loved one has later lost the capacity to sign a new POA, you will be required to go to court to have a guardian appointed to make decisions for her, which is time consuming and expensive. If your loved one has a POA but it does not include the specialized eldercare planning powers and she no longer has capacity to sign a new POA, her Agent will be prohibited from undertaking eldercare planning to protect her assets and qualify her for government benefits because of the failure of the document to authorize such planning.

2. Healthcare Power of Attorney and Living Will. The second important legal document is a Healthcare Power of Attorney (“HCPOA”) with a Living Will. In the HCPOA your loved one names an Agent and perhaps successor Agents to make health care decisions for her starting at the time her physician determines that she can no longer make her own decisions. A Living Will expresses your loved one’s wishes regarding life sustaining treatment if her physician determines that she is unable to make her own decisions and she is in a permanent coma or is terminally ill. If your loved one fails to sign a HCPOA or Living Will, her health care providers will look to her closest living relatives to make such decisions.
3. Asset Protection through Trusts. There are multiple types of trusts that can be used to assist your loved one with protection of her assets from the costs of her future long-term care. Assets held in the name of your loved one and/or her spouse can be retitled in the name of a trust that will hold such assets and expedite eligibility for Veterans benefits that provide a monthly income to certain veterans, spouses of veterans and surviving spouses of veterans. Assets retitled into a Medicaid asset protection trust expedite eligibility for Medicaid benefits should your loved one need nursing home level of care while continuing to live at home or in a nursing home. Additionally, a Supplemental Needs Trust can be created to hold assets that your loved one would otherwise inherit. Through this type of trust, the assets held in trust are available to supplement her needs, or the cost of long term care that is not otherwise provided through needs-based government benefits, without affecting her eligibility for such government benefits.
4. Ownership of Assets and Beneficiary Designations. Finally, you should confirm whether your loved one is a joint owner of any assets because assets that are jointly owned pass upon death, to the joint owner. You should also confirm whether she is a beneficiary of any assets including retirement accounts, such as an IRA and life insurance. Assets inherited by your loved one will be countable in the determination of her eligibility for long-term care benefits. The inheritance of assets by your loved one could disqualify her for government benefits or extend the time before she is eligible for government benefits. To avoid this untoward result, your loved one can be removed as a joint owner of assets and a trust that is discussed above or other beneficiary, can replace her for the beneficiary designation.

The diagnosis of Alzheimer’s Disease can be devastating. However, an eldercare attorney can assist your loved one with a plan to name her decision makers, protect her assets and help guide her through the uncertainties of her future.