

Monthly newsletter for people caring for those affected with Alzheimer's disease or other forms of dementia.



California Central Coast Chapter

**Santa Barbara County**  
1528 Chapala St., #204  
Santa Barbara, CA 93101  
Tel: 805.892.4259

120 E. Jones St, #113  
Santa Maria, CA 93454  
Tel: 805.636.6432

**San Luis Obispo County**  
71 Zaca Ln Suite 110  
San Luis Obispo, CA 93401  
Tel: 805.547.3830

**Ventura County**  
2580 E. Main St Suite 201  
Ventura, CA 93003  
Tel: 805.494.5200

24-Hour Helpline:  
**800.272.3900**  
alz.org/CaCentral

## Legal Capacity, Conservatorship & Dementia

By Leila Thayer

*Disclaimer: This information is provided as a service and does not constitute legal advice. Please consult a professional, such as your attorney or an elder law attorney who specializes in legal issues that affect people over the age of 60.*

Planning for the future is important for all of us, but it is especially critical when someone has been diagnosed with Alzheimer's disease or another dementia. Because Alzheimer's disease is progressive, it is important to make plans as early in the disease process as possible. Early planning will ensure that the person with dementia is able to fully participate and clearly express his/her wishes, and understands what he is doing. With the help of family and friends, he can plan for his future and know that his wishes will be known and carried out.

A person who is in the early stages of the disease can voluntarily give her right to make financial and healthcare decisions to a trusted loved one. This is a process that many of us are familiar with. If you have signed documents giving your *Power of Attorney* (POA) to another person, you have taken one of the first steps toward this. In California, it is recommended that a person make this POA *durable*, which means that this document remains valid even if the person's legal capacity to make decisions has been removed, or if she is incapacitated.

As the person moves through the stages of the disease, his ability to make decisions



diminishes. However, it is important to note that his legal capacity to make decisions for himself is not automatically taken away at the time of diagnosis. An individual's capacity to make his own decisions is assumed under the law and is only removed when a court decides to remove it. It is important, therefore, to allow the person with dementia to feel that his autonomy is being respected to the furthest extent possible.

There may come a time, though, when a person's dementia has progressed to the point that it is not safe for her to make decisions regarding her healthcare, living situation, or finances. If early planning has taken place, then the agent designated by the person on a Durable Power of Attorney (DPOA) can make those decisions on her behalf. However, if these safeguards have not been put in place, then it may be necessary to pursue conservatorship.

In California, the guidelines for conservatorship are outlined in the California Probate Code and are strictly enforced. Conservatorship can only be granted if a doctor has declared the person

## Checklist

What are the legal & financial documents or rules you should be aware of:

- ◆ Learn what a **POLST** (Physicians Orders for Life Sustaining Treatment) form is and how it is used. <http://www.ohsu.edu/polst>
- ◆ Understand what an **Advanced Directive** is and ensure you have them in place. Five Wishes is just one example of a tool you can use.
- ◆ Take the Legal & Financial class offered by the Alzheimer's Association to **learn the terminology** for legal & financial issues.
- ◆ Create a long-term budget
- ◆ Make sure your medicare benefits meet your needs
- ◆ Explore benefits for Veterans
- ◆ Explore Younger-onset benefits

legally incapable of making decisions by completing form GC-335, an official court document called a *Capacity Declaration*. Once this is submitted to the court, it must be confirmed by a judge. Conservatorship is a long, difficult process that requires an attorney's guidance, at the very least. Most families that pursue conservatorship of a loved one must hire an attorney, which can be an expensive procedure. This can all be avoided by making sure that the correct safeguards are already in place at the time of diagnosis, such as a DPOA and Advanced Health Care Directive. In the absence of these, conservatorship becomes the only option to ensure a person's financial and physical safety.



In California, there are two types of conservatorship. The first is *conservatorship of the person*, which gives the conservator the right to make healthcare decisions for the person. This includes deciding where the person will live, what medical procedures she should have, and other important decisions regarding her physical body. The second type is *conservatorship of the estate*, which gives the conservator all the responsibilities of managing the person's finances. This includes purchasing and selling property, managing bank accounts, paying bills, et cetera. In most cases, a conservator of a person with dementia will assume both of these responsibilities.

Most often, it is a family member who takes on the responsibility of being a loved one's conservator. However, there are also agencies that can be hired to take on the role. These agencies will charge a

fee for their services, paid by the person's estate or by his family. In the event that a person with dementia does not have family available to be a conservator, or the family does not have the financial means to hire a conservator, the county government can step in and appoint a Public Conservator.

Regardless of who the conservator will be, he must be approved to act as conservator by the court. Once appointed, his actions—especially all financial transactions—will be closely monitored by the court. If it is determined that he is not acting in the best interest of the conservatee, he can be removed as conservator and fined for any violations of the Probate Code.

Pursuing conservatorship is a difficult and arduous process that should be used only as a last resort. With proper planning, there are many other ways to ensure that a person with dementia is safe and that her wishes are carried out. From the time of diagnosis, the person with dementia should be included in the planning process to the furthest extent possible. Until her legal capacity to make decisions is determined, it should be assumed that she is able to at least contribute to the planning.

Having these plans in place will make the caregiver's role much easier as the disease progresses and he must assume more responsibilities on behalf of the patient.

The Alzheimer's Association has many resources to guide families through the legal planning process. Visit [alz.org/help-support](http://alz.org/help-support) to learn more.