

Too Late to Plan: Navigating Legal and Financial Barriers After Dementia Progresses

Looking back, it often feels clearer. The signs were there—missed appointments, repeated questions, small but noticeable changes. You were paying attention; you just thought there would be more time.

The situation has now changed. If your loved one's cognitive decline has progressed to the point where they may no longer understand or sign legal documents, that shift has real consequences. Many of the traditional planning tools families rely on may become unavailable. In their place, a different set of challenges begins to emerge.

When Legal Access Becomes the Problem

Recognizing and responding to cognitive decline is rarely straightforward. Even medical professionals can struggle to identify exactly when early symptoms cross into something more serious. It is not about assigning blame. At this stage, the focus shifts from what could have been done to what can be done now.

Families in this position frequently encounter the following obstacles:

- **Banking barriers.** You try to step in to manage accounts or pay for care, but the bank refuses access. Even an existing power of attorney may be rejected if it is outdated, unclear, or lacks specific language.
- **Medical communication limits.** You contact the doctor to discuss your loved one's sudden decline only to find that privacy laws prevent them from sharing information with you without formal authorization. Without a current Health Insurance Portability and Accountability Act (HIPAA) authorization, the conversation stops there.
- **Financial disruption.** Bills go unpaid, insurance coverage lapses, or taxes are missed—not because of neglect, but because no one has clear legal authority to act.

These situations are both urgent and deeply frustrating. They also reflect a hard reality: Without the right legal authority in place, even close family members can find themselves unable to step in and assist their loved ones, regardless of how obvious the need is.

Why Traditional Planning May No Longer Be Available

Most estate planning tools depend on one key requirement: The person creating them must have legal capacity at the time they sign. If that capacity is gone or too far diminished, so is the option to create or implement the tool.

Documents that may no longer be executable include a new or updated power of attorney, a revised will or trust, and written authorization for access to medical information.

When the Court Steps In

When legal authority cannot be established through planning, families may need to go to court to get that legal authority. This process, commonly called *guardianship* (or *conservatorship* in some states), allows a judge to appoint someone to make financial and medical decisions on behalf of a person who can no longer make them independently.

Guardianship can provide a path forward, but it comes with important trade-offs. The process can be time-consuming, expensive, and in the public record. Once appointed, the guardian operates under court supervision, not independent judgment. And critically, the court decides who is appointed—which may not be the person your loved one would have chosen. If no suitable family member is available or if family members disagree, a judge may appoint a professional guardian: someone your loved one has never met.

Common Assumptions That Lead to This Point

Situations like these rarely stem from a single misstep. More often, they reflect a series of understandable assumptions that turned out to be wrong:

- **Waiting for a formal diagnosis.** By the time a diagnosis is documented, legal capacity may already be diminished.
- **Assuming that a spouse has automatic authority.** Marriage alone does not grant the legal right to sell property, access accounts, or sign documents on a spouse's behalf.
- **Relying on an outdated power of attorney.** Older documents or those lacking specific language may not be accepted by financial institutions or healthcare providers when needed.

Understanding these gaps can help families better navigate the situation they are now facing and avoid similar challenges in the future.

Finding a Path Forward

Even when traditional planning options are no longer available, options may still exist. In some cases, a person may experience moments of clarity or lucid intervals during which limited planning may still be possible. Executing documents during these periods requires careful, contemporaneous documentation of capacity and the involvement of an experienced attorney.

An attorney can also help families navigate guardianship proceedings, resolve access disputes with financial institutions, and coordinate care and financial decision-making during what is often a disorienting time.

Dementia can change the landscape for families in profound ways—legally, financially, and emotionally. But even in more advanced stages, the situation is rarely without options. With the right guidance, families can help establish the authority they need, restore a sense of order, and make informed decisions about care and finances. Reach out to us today for support and a structured path forward.