

# **Now What?**

## *A Diagnosis of Alzheimer's Disease and the Legal Issues That Require Prompt Attention*

*By Kerry R. Peck, Esq.*



**THE DIAGNOSIS:** *Stan was 68 years old when he was diagnosed with Alzheimer's disease. A successful banker, Stan had made a nice life for his wife and children and was an integral part of his neighborhood. He was an active member of his church and the local school board. Despite a family history of Alzheimer's disease, Stan's world was shattered when the doctor delivered the test results. He was thrown into a whirlwind of doctor's appointments and new medications. He was uncertain whether to keep his diagnosis a secret or tell his friends. Before he even began to battle the disease, Stan felt his life was already becoming less of his own.*

*He decided to take back control of his life and called an old friend who was a practicing elder law attorney. Within the week, he and his family were sitting in the elder law attorney's office to discuss his options.*

### Alzheimer's Disease from a Legal Perspective

**A** heartbreaking diagnosis of Alzheimer's disease requires prompt action. Those diagnosed are unprepared to deal with the disease, let alone the financial and legal consequences the entire family needs to face. Unfortunately, the only certainty about Alzheimer's disease is that the progressive nature affects the mental and physical functions of each patient differently. Therefore, there is no time to waste in planning for the family's future. Advanced legal planning protects the individual's right to participate in the decision-making process and protects the family from unnecessary court intervention.

### Capacity: The Clock is Ticking

All of us desire independence and the preservation of dignity. A person with dementia must quickly put in writing their health and financial plan while still competent to do so. Any delay could prevent their meaningful input as the cognitive impairments get worse.

When executing legal documents, the issue is "legal capacity." Legal capacity is the level of mental capacity needed to sign official documents. The client needs to know what the document means and the implications that will result from the document. Therefore, it is essential that a person with memory loss puts their legal affairs in order before they become cognitively impaired.

If diagnosed with early-stage Alzheimer's disease, the individual will generally have the legal capacity to execute powers of attorney, a will and/or a revocable living trust.

### Hire an Elder Law Attorney

Post diagnosis, the Alzheimer's family has only uncertainty ahead. When it comes to important legal paperwork to determine end-of-life choices, cutting corners will only make life more difficult. Although it may seem like a unnecessary expense, hiring an elder law attorney can save the family a lot money in the long run. An elder law attorney has experience in the issues affecting those with Alzheimer's, their families and the older-adult population. Those areas of law include: estate planning, long-term care planning, planning for government benefits, and all other issues that arise with Alzheimer's disease.

An attorney can navigate complex issues which may arise, such as interpreting different federal and/or state laws and/or executing an estate plan to protect the family's assets while still keeping the patient eligible for government benefits. This is very important since family will likely need access to all of their assets in the future to pay for the cost of healthcare.

### Choose an Attorney Like You Choose a Doctor

You don't hire a podiatrist for heart surgery. Adopting the same reasoning, don't hire a real estate lawyer to plan for the Alzheimer's family. The **Alzheimer's Association®**, **Greater Illinois Chapter** or **The National Academy of Elder Law Attorneys** can assist in locating a qualified, experienced lawyer. Ask friends and family for a referral, seek guidance from local community groups. Verify the prospective attorney's background by reviewing the law firm's website and inquiring about Alzheimer's planning experience. Has the attorney received peer recognition? Published articles? Lectured on Alzheimer's Planning? The selection of the proper lawyer is very important!

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# legal issues with alzheimer's

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## Powers of Attorney: Who Do You Trust?

Two of the most important documents you must execute are powers of attorney for health care and property. Without these documents in place, the individual will lose control of their future, and the family may as well, since the Court could have to step in to determine what is in the person's best interest. This may result in the appointment of a non-family member to make decisions for your loved one.

**Power of Attorney for Health Care:** Use this document to appoint an "agent" to make medical decisions on behalf of the individual. The agent should be someone trustworthy who is an integral part of their life. The agent must be aware of how they want medical decisions made.

A power of attorney for health care clarifies the person with Alzheimer's wishes when they become unable to speak for themselves. This includes crucial decisions related to medical treatments, end-of-life (life support) and organ donation. This will not only protect their wishes, but it will take a HUGE weight off the family's shoulders as there will be no question as to how the individual's care should be handled.

**Power of Attorney for Property:** Use this document to appoint an "agent" to manage finances and property. This could include paying bills, managing bank accounts and caring for the home. If the agent is not an expert with numbers, a professional can be appointed to manage the assets. Appointing someone to manage financial affairs can also protect from financial exploitation or scams in the later stages of Alzheimer's.

## Your Will & Trust: Protecting Your Family's Legacy

Regardless of the zeros on the paycheck, **EVERYONE needs an estate plan.** If these documents are not in order already, a diagnosis of Alzheimer's Disease should encourage you to get the ball rolling.

**Revocable Living Trust:** The biggest cost of Alzheimer's Disease is often long-term care. By hiring an attorney to do Medicaid planning, the Alzheimer's family can preserve their assets for the future by remaining eligible for government benefits. In addition, the use of a revocable living trust is a probate-avoidance mechanism. Illinois law requires that a post-death probate proceeding be opened in court when a person dies with assets in excess of \$100,000.00 (in the individual's name alone). A probate proceeding is a public process that must remain open not less than



six months. A revocable living trust can avoid this court case and the associated costs.

**Will:** This document allows the Alzheimer's patient to finalize their legacy. This document will distribute the estate and address questions such as guardianship of children, charitable donations, funeral and burial wishes and naming an executor to manage the estate.

## A Family Discussion

Finally, finalizing the estate plan will mean little to nothing if the family unit is unaware of the individual's wishes. Sit down in a heart-to-heart conversation with family and loved ones, discuss the health care plan and wishes, including discussion of nursing home placement and/or in-home care. An unclear future can lead to family feuds, forcing a loved one to make crucial decisions at an emotionally unstable time. ●

*ABOUT THE AUTHOR: Kerry Peck leads the elder law firm of Peck Ritchey, LLC. He is past president of the Chicago Bar Association and a member of the board of directors of the Alzheimer's Association®, Greater Illinois Chapter.*