ALZHEIMER'S FOUNDATION OF AMERICA

RAPHAN LAW PARTNERS LLP

Which legal documents are needed when Alzheimer's touches your family?



Presented by the Alzheimer's Foundation of America/Care Connection

Moderated by Susan Shipman, LMSW

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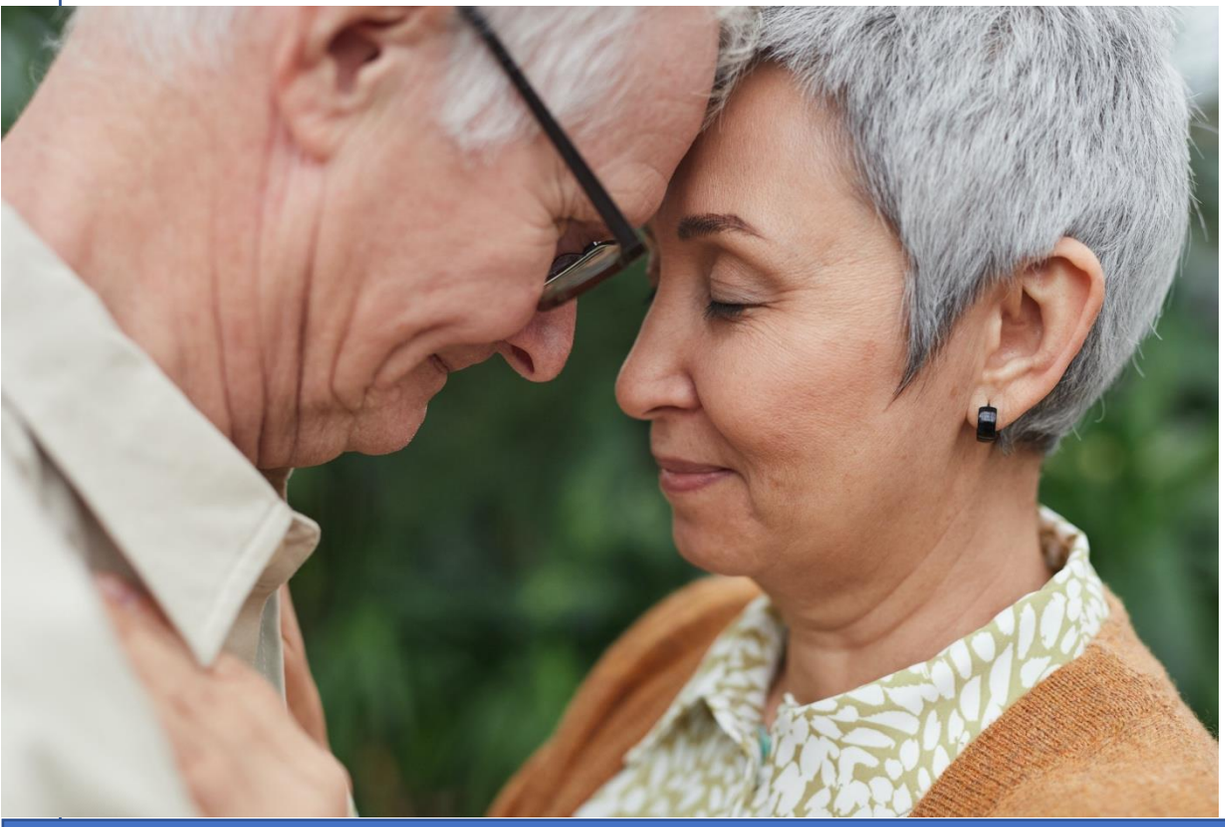
Alzheimer's can take a deeply emotional, legal, and financial toll on your family.

Knowing the issues your family may face, and planning with a few simple legal documents, can relieve the burden and help everyone move forward to focus on care.

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Planning For The Future



When Alzheimer's touches you or your family, planning for life-changing issues such as dependence, incapacity, financial decisions, and even death is important to address *while you are able to do so*.

Waiting until you have a problem may be too late.

Making these plans early, some of which are relatively easy, will provide peace of mind.

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What Plans Should I Be Making?

Right now, you may be able to handle all of your affairs –

but in the future you may need help:

- Help with your financial affairs
- Help with your medical care and decisions
- Obtaining home care (including paying for it!)
- Making decisions regarding your end-of-life care
- Arranging for the disposal for your remains.
- Distribution of your estate after death.

Some simple legal documents can relieve the financial and emotional burden and help you move forward with decisions intact, and with better care for you or your loved ones.

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3 components to help plan for future care



Advanced Directives: Giving someone close to you the authority to manage your finances, healthcare and burial if you are not able to do so.

Homecare Planning: Setting up your affairs so that you can afford to stay in your home if you need care in the future.

Estate Planning: Arranging your affairs so that your estate will go to the people you want it to when you pass away.

These documents will prepare you to receive the assistance you need to address issues which affect us later in life:

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Advanced Directives

1. Powers of Attorney
2. Health Care Proxies
3. Living Wills
4. Burial Directives

These are primarily the documents in which you can appoint agents to handle your financial, healthcare or funerial affairs, as well as declare your wishes regarding your healthcare, end of life, and disposal of your remains.

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1. Power of Attorney

A document in which you appoint a person to manage your financial affairs.

- **The person is called your "agent."**
  You can also appoint a back-up agent, or co-agents.
- **You can give your agent the authority to one do specific transactions for you.**
  E.g.: your banking, closing on the sale of a property, filing your taxes
- **Or you can give a broad grant** of authority to generally handle your finances.
- **Modifications** – you can tailor the power of attorney to meet your needs.
  E.g. –power to open your mail, access to your medical records, and hire professionals

Once you and your agent(s) execute the power of attorney, your agent can act on your behalf.

If you don't have a power of attorney and lose the capacity to make financial decisions for yourself, you might by the subject of guardianship proceeding

2. Health Care Proxy

A document in which you legally appoint an agent to make medical decisions on your behalf <u>if you are not able to do so yourself.</u>

- You can appoint a successor agent, but not a co-agent;
- If you're able to make health care decisions yourself, your agent has no authority over your care;
- You can make statements regards a particular type of care you would want to receive.
- You give your agent the right to access your medical records.

If you do not have a health care proxy, a biological family member would have priority over health care decisions than a domestic partner unless you are registered or can demonstrate financial interdependence.

3. Living Will

Your Living Will is a declaration to your health care providers as to whether you want to receive life sustaining treatment if you are at the end of your life.

- NYS, doctors are supposed to try to take all measures to keep you alive unless there is “clear and convincing” evidence you want to die naturally without medical interventions.

- Many loved ones are not ready to say goodbye at the time when such a choice must be made.

  It is better to discuss your end-of-life choices with your loved ones now, so they can reconcile your decisions while you are still able to discuss these issues with them.

If you do not have a living will, the hospital can discontinue extraordinary measure to preserve life after a review of a hospital committee determines: the life-sustaining treatment offers no medical benefit, the patient will die imminently anyway, and the treatment violates accepted medical standards.

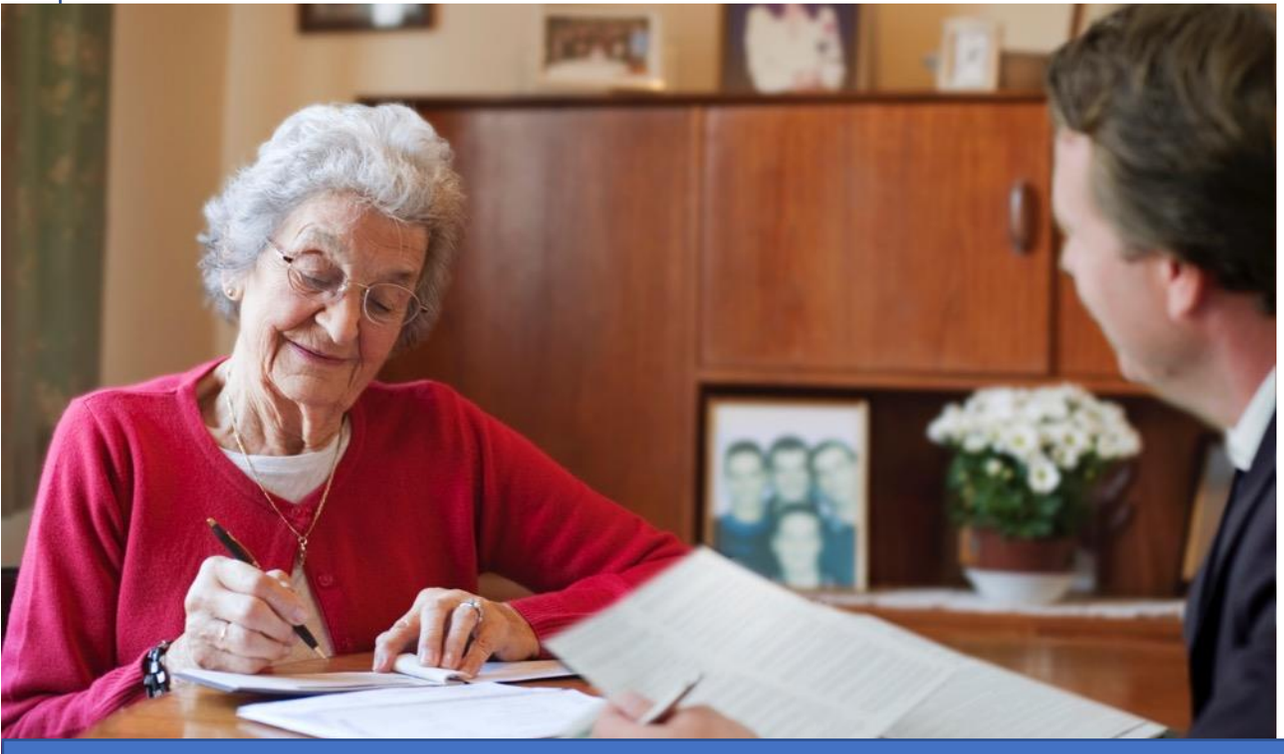
4. Disposition of Remains (Burial Directive)

A document in which you appoint an agent with the legal authority to dispose of your remains.

- You can leave directions to you agent of what you want them to do with your remains.
- You can also indicate if you have a prepaid burial plan to pay for your instructions (recommended).

If you don’t have a Burial Directive, a family member would have the legal authority to make funeral arrangements over a domestic partner unless you are registered, or can show financial interdependence

How can I Plan For My Future?



1. Home Care
2. Medicaid Planning
3. Estate Planning
4. Wills - Intestacy

Proper legal planning gives you peace of mind knowing that your thoughts and wishes are carried out in the way you would like.

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1. Home Care Planning

Many people as they get older require help in their home in order to live independently.

- A 2020 Survey by the US Dept of Health and Human Services found that nearly 70% of all people 65-years or older will need long-term care services. Women on average need care for 3.7 years, and men on average need care for 2.2 years.
- Some people may only require assistance with maintaining their home, such as shopping, light cleaning and meal preparation.
- Other people may also require assistance with their personal care, such as bathing, grooming and dressing.
- In 2020, median home care services in the US were approximately $55,000 a year

There are steps you can take to help ensure that you can afford home care if you need it in the future, but can't afford to privately pay for it.

2.Medicaid Planning-Nursing Homes

Occasionally people cannot be safely cared for at home and must live in a facility which provides a nursing level of care.

- You can legally transfer assets out of your name to be eligible for institutional Medicaid benefits, but there is a five-year lookback period to avoid a penalty.

- Careful and accurate planning and an application by an experienced elder law attorney can help avoid costly delays and penalties.

Money/assets transferred within 5 years will still be considered the Medicaid applicants money/assets.

3. Estate Planning

Estate Planning Documents appoint someone as a fiduciary (either an executor or trustee) to dispose of your property upon your demise according to the instructions you give them.

Last Will and Testament – a document in which you appoint an executor to dispose of your property according to your wishes after the Will is accepted for probate by the Surrogate Court.

Revocable Trust – a document into which you transfer property which you control until your death, and then after is disposed by your trustee according to your wishes as defined in the trust document.

- Revocable Trusts do not need to be probated, the Trustees already have the legal authority to distribute your property.

Beneficiary Designations/TOD Accounts – insurance policies and financial accounts which list the beneficiary of the account upon the death of the primary owner.

Domestic partners or non-traditional families have no standing to contest the probate of a Will or challenge the validity of a Revocable Trust!

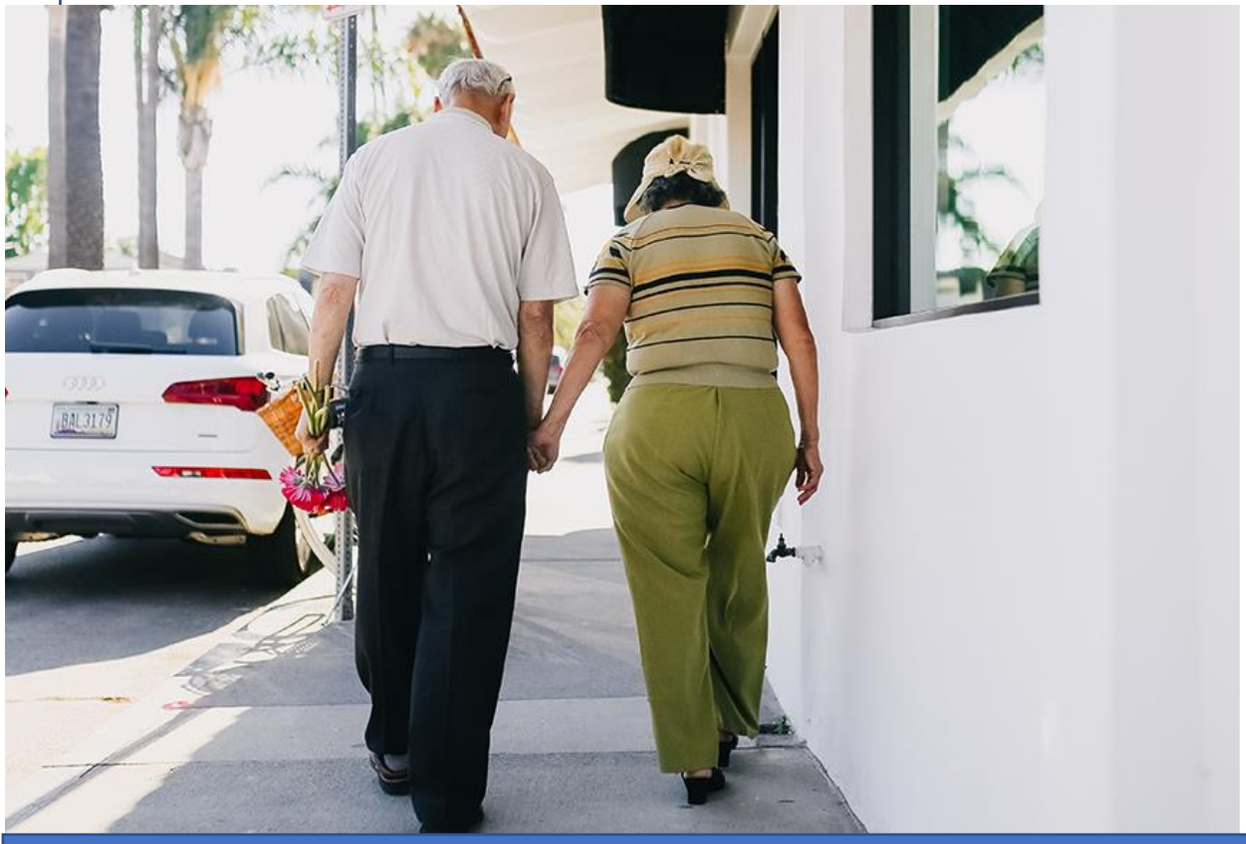
4. Wills - Intestacy

If you do not have a Last Will and Testament, the law has a default Will under which your property will be distributed.

- First to spouse and/or children;
- If no spouse or children, then to parents;
- If not spouse, children or parents, then to siblings or nieces and nephews of deceased siblings;
- If none of the above, then to first cousins, then first cousins once removed, etc.

If you do not have a Will or Trust, your Domestic Partner or Non-Traditional Family will have no chance of inheriting your estate.

When is there a need for Guardianship?



If you have not executed a Durable Power of Attorney and/or Health Care Proxy and you become unable to handle your own affairs, nobody can handle those affairs for you.

Your bills may remain unpaid and you may not have the ability to secure the services you may need, such as homecare workers or nurses' aides.

Court Guardianship Proceeding

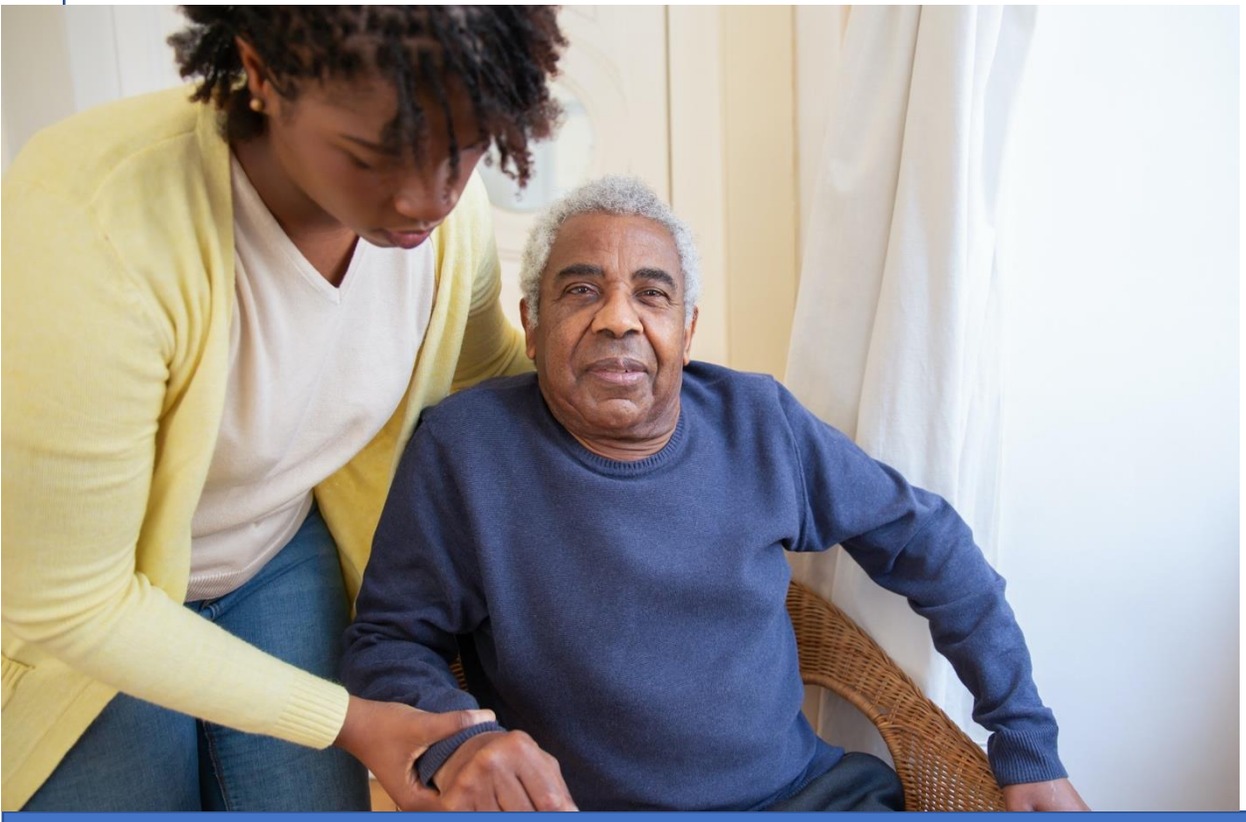


If nobody can handle your medical decisions, you may remain in a state that you'd rather not be in, perhaps stuck in a hospital or nursing home, or you may or may not receive the care and treatment that you would prefer.

At that stage you may no longer be in a position to appoint a person on your own, so the commencement of a GUARDIANSHIP proceeding may be required.

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What if I'm determined incapacitated?

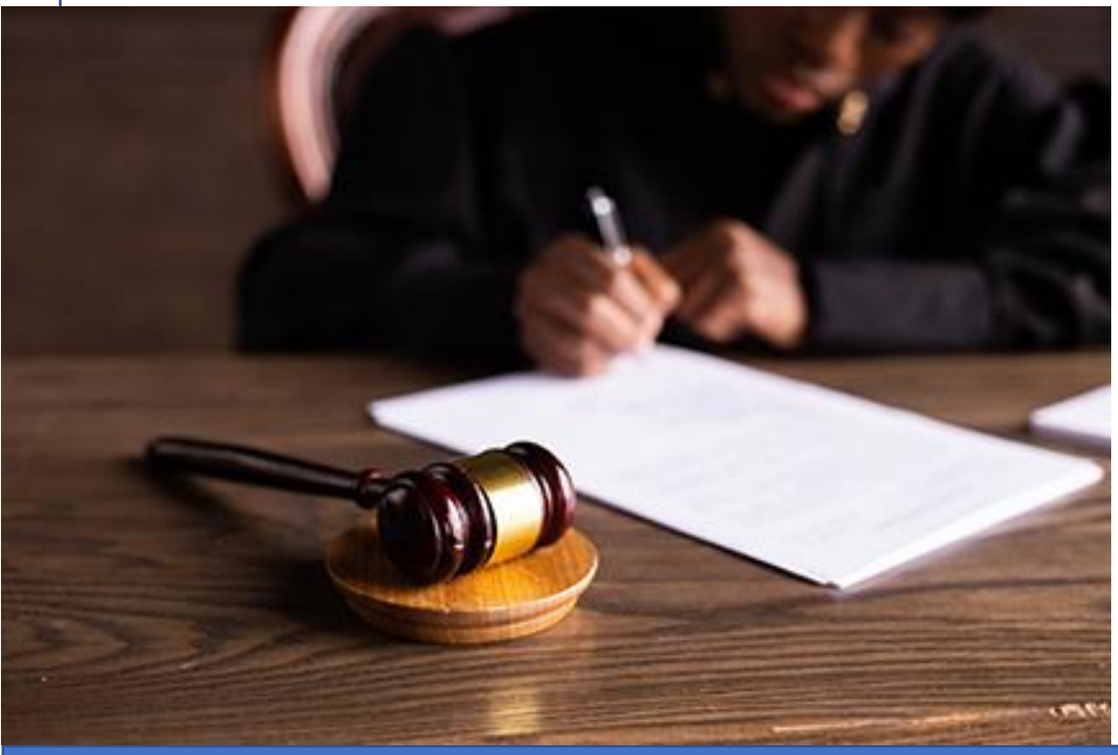


A Guardianship proceeding is a Court proceeding where any person or agency asks a Judge to declare you incapacitated.

If you are found to be incapacitated, this Judge will select and appoint someone to handle your personal and property affairs, as well as your medical decisions.

Guardianship proceedings are typically commenced by a hospital, friend or family member. The proceeding can take anywhere from one month to six months from beginning to end.

Who makes the final determination for Guardianship?



The Court may appoint a lawyer for you, as well as a Court Evaluator (who can be a lawyer or social worker) to investigate the matter for the Judge. The Court Evaluator may interview your doctors, social workers, family and friends, and review your financial materials.

After the Court Evaluator completes an investigation, he/she will issue a written report and make a recommendation.

Then, a hearing will be held before a Judge at which there will be testimony all about you. The Judge will then determine if you need a Guardian. If you are found to need a Guardian, the Judge will select your Guardian, which may not be the person that was proposed, or that is desired by you.

Once you have a Guardian, you are beholden to the Guardian's decisions on matters over which the Judge has given them authority.

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Thank you for joining us! Feel free to call me with any questions at 212-268-8200

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