

## **Too Late to Plan? Navigating Legal and Financial Barriers After Dementia Progresses**

Looking back, the signs often seem obvious: missed appointments, repeated questions, unpaid bills, or subtle changes in judgment and behavior. You noticed something was different, but you thought there would be more time.

Now the situation has changed. If your loved one's cognitive decline has progressed to the point where they can no longer understand or sign legal documents, many of the planning tools families rely upon may no longer be available. In their place comes a different set of legal and financial challenges.

### **When Legal Access Becomes the Problem**

Recognizing cognitive decline is rarely straightforward. Even physicians may struggle to determine exactly when memory issues become significant impairment. At this point, the focus is not on what could have been done earlier, but on what can be done now.

Families frequently encounter obstacles such as:

**Banking barriers.** You try to help manage accounts or pay bills, only to be told by the bank that you have no authority to act. Even an existing Power of Attorney may be rejected if it is outdated or lacks required language.

**Medical communication limits.** You contact your loved one's physician to discuss a decline in health, only to learn that privacy laws prevent the provider from sharing information without proper authorization. Without a current HIPAA authorization, communication may be limited.

**Financial disruption.** Bills go unpaid, insurance policies lapse, or taxes are missed—not because anyone is neglecting responsibilities, but because no one has the legal authority to step in.

These situations are frustrating and often urgent. They also highlight an important reality: without proper legal authority, even devoted family members may be unable to help.

### **Why Traditional Planning May No Longer Be Available**

Most estate planning documents require the person signing them to have sufficient legal capacity. If that capacity has been lost, the opportunity to create or update those documents may be gone.

This can affect the ability to execute:

- A new or updated Power of Attorney
- A Health Care Proxy or HIPAA Authorization
- Changes to a Will or Trust
- Other important planning documents

## When the Court Must Become Involved

When legal authority cannot be established through planning, court involvement may become necessary.

In Massachusetts, we use both **Guardianships** and **Conservatorships**. A Guardian may be appointed to make personal and medical decisions for an individual who can no longer make those decisions independently. A Conservator may be appointed to manage finances, property, and other financial affairs.

These proceedings can provide an important path forward, but they come with trade-offs. They can be time-consuming, costly, and part of the public record. Once appointed, Guardians and Conservators operate under court supervision and may be required to file reports with the court.

Perhaps most importantly, the court decides who will serve. If family members disagree or no suitable family member is available, the court may appoint a professional Guardian or Conservator—someone your loved one would not have chosen for themselves.

## Common Assumptions That Lead Families Here

These situations rarely arise because someone was careless. More often, they result from understandable assumptions:

**"We'll wait for a diagnosis."** By the time a formal diagnosis is made, legal capacity may already be impaired.

**"I'm the spouse, so I can handle everything."** Marriage alone does not automatically grant authority to access accounts, sell property, or sign legal documents for a spouse.

**"We already have a Power of Attorney."** Older documents may not contain language required by financial institutions or may no longer meet current needs.

Understanding these common misconceptions can help families avoid unnecessary complications.

## Finding a Path Forward

Even when traditional planning opportunities have been missed, options may still exist.

Some individuals experience periods of clarity during which limited planning may still be possible. When appropriate, an experienced attorney can evaluate whether documents may be executed during those periods and ensure that capacity is carefully documented.

An attorney can also help families navigate Guardianship and Conservatorship proceedings, resolve disputes with financial institutions, and coordinate legal and financial decision-making during a difficult time.

Dementia changes life for families in profound ways—legally, financially, and emotionally. But even when planning was delayed, there are often still paths forward. With the right guidance,

families can establish the authority they need, protect their loved one, and regain a sense of stability during a challenging chapter.

If your family is facing these issues, we are here to help.