

## **The Window of Opportunity: Legal Steps to Take When You First Notice Memory Problems**

You have been seeing the signs for months. Mom or Dad has not quite been themselves lately. They are forgetting things more often: appointments, addresses, payments, names. The other day, they got lost going to a place they have frequented for years.

When you try to bring it up, they brush it off. “I’m getting older,” they say. “What do you expect?”

There may be other explanations, such as stress, poor sleep, or simply the normal effects of aging. And some days, they seem completely fine, which makes the situation even harder to read.

Still, something does not feel right. If they are experiencing early stages of dementia or another cognitive condition, it raises an urgent question: What can you do right now, while they can still participate in making decisions?

### **Dementia, Legal Capacity, and Estate Planning**

Dementia is one of the hardest things a family can face together. It involves a gradual loss of cognitive ability that can affect memory, judgment, and decision-making.

At this stage, many families are waiting for a formal diagnosis. But this is what many people do not realize: Legally, a diagnosis is not what determines whether someone can make decisions. *Capacity* is what matters.

**One of the most common misconceptions is that legal capacity is all or nothing. In reality, it exists on a spectrum.**

Someone in early cognitive decline may forget recent events, repeat questions, or become confused at times and still retain the legal ability to sign documents and make meaningful decisions. Capacity is not about perfection. It is about understanding.

*Legal capacity* is essentially the standard that determines whether a person understands what they are signing and appreciates the consequences of that decision.

That is why the early stages of cognitive decline should be an important moment for everyone. It is often one of the last windows in which a person can actively participate in estate planning—while their decisions still carry legal weight.

### **Why Timing Matters**

Taking action during this in-between stage can be critical for several reasons:

- **The power of a valid signature.** Legal documents such as powers of attorney (POAs) and wills or trusts require the person signing them to understand what they are doing. If capacity declines too far before those documents are in place, it may be too late to create them—and that window does not always close gradually.
- **Preserving their voice.** Early planning allows your loved one to choose who will act on their behalf when they no longer can rather than leaving the decision to be made by default state laws or a court.

- **Avoiding court involvement.** Without valid planning documents in place, families may need to go through guardianship or conservatorship proceedings, which can be time-consuming, public, expensive, and stressful. Further, there is no guarantee that the court will appoint someone the incapacitated person would want to make important decisions for them.

This period prior to a diagnosis is also an opportunity to have conversations that may become more difficult later. If cognitive decline is progressing, families often have a limited window to talk through preferences for medical care, financial decision-making, or whom they trust to step in if needed. These conversations are often just as important as the legal documents themselves.

### **The Autonomy Toolkit: Four Keys to Protection**

Used together, the following four documents can help ensure that if capacity changes over time, decisions can still be made smoothly and in line with your loved one's wishes:

- **Financial power of attorney.** Allows a trusted person to manage bank accounts, pay bills, and manage financial matters on a person's behalf. Without it, families may be unable to access funds needed to help pay for care or daily expenses.
- **Medical power of attorney.** Names the person who can make healthcare decisions if your loved one is unable to do so, helping ensure that their care reflects their values and preferences. It also ensures that the people in the room during a medical crisis are guided by your loved one's values—not left to guess or disagree over what they would have wanted.
- **Health Insurance Portability and Accountability Act (HIPAA) authorization.** Federal privacy law restricts what information healthcare providers can share and with whom. A HIPAA authorization allows healthcare providers to share medical information with designated family members so they can stay informed and involved.
- **Digital vault.** A secure, organized record of key account credentials, contacts, and documents—financial accounts, email, photos, subscriptions, and more. As more of life moves online, lack of access to these accounts can be its own crisis. A digital vault prevents that.

### **The First Steps Can Be the Hardest**

Recognizing the early signs of dementia is often an emotional turning point for families. It can be difficult to know what are signs of normal aging and what may signal something more.

Because of that uncertainty, families often wait to take action, but this period can be crucial for establishing an effective plan, and it may be the last time your loved one can still take part in decisions and help shape what comes next.

The goal is not to rush or assume the worst. It is to use this window, while it is still open, to ensure that the right protections are in place, so that your family is ready for whatever comes next.