



INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

The information included on this page is for educational and informational purposes only. Please consult an attorney regarding specific legal questions.



Dealing with Dementia

While everyone experiences memory lapses or a mild slowing of cognitive abilities as they age, dementia is a pathological condition that impairs thinking to the point of disability. Having dementia may affect a wide range of cognitive abilities including language comprehension, attention span, memory, reasoning skills, learning capability, and even personality traits.

Dementia causes many problems, both for the person who has it and for the person's family. Some common signs of dementia are memory loss, time and place disorientation, and personality changes. This article provides resources for those with dementia, as well as their caregivers, about guardianships, estate planning, disability planning, and Medicaid and Medicare.

What is a guardianship?

A guardianship is a court-supervised administrator designated for an incapacitated person. There are two types of guardianships: 1) of the person and 2) of the estate. Legally speaking, the incapacitated person is often referred to as the "ward." A guardian of the person is in charge of the ward's care and custody. A guardian of the estate is also in charge of the ward's property and finances, if there is any money or property in the ward's name.

Because a guardianship is a court-supervised proceeding, there are specific rules regarding all areas of guardianship, and it is highly encouraged that you speak with a lawyer about the requirements and specifications of appointing a guardian for your child or yourself should you become incapacitated.

How do I create a guardianship in case I become incapacitated?

If you appoint an eligible guardian by a written declaration, you must sign the

written declaration. Also, the declaration should be dated. If the declaration is handwritten, then it must be entirely in your handwriting. If the declaration is not handwritten, then you will need to have it witnessed in your presence by at least two credible witnesses 14 years of age or older who are not named as a guardian or alternate guardian. The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.



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What happens if I die without a will?

If a person dies without a will, their property is disposed of according to state law, or what is called the “laws of intestate succession” and the decedent’s “heirs at law” inherit the property. Dying without a will can cause many delays and end up costing much more than a standard probate. Instead of having an executor that can act free of court, an administration may have to be opened in court wherein a judge must approve every action taken on behalf of the estate by the administrator.

What is involved in a probate?

Probating a will simply means “proving” a will in court so that the testator’s wishes can then be carried out by the executor. Once approved by the court, the executor can begin gathering assets and passing the title from the testator to the beneficiaries. If the will is not proved in court, then the decedent’s property passes to his or her heirs at law, as if he or she died without a will.

Power of Attorney

Powers of attorney are an essential part of any estate plan and can enable a person (principal) to designate an agent (and alternate agent) to make business and health care decisions on their behalf. All adults, no matter what age, should have the proper powers of attorney in place in order to prepare for any type of

situation wherein a person may become disabled yet still needs to conduct important business.

A medical power of attorney is a document that allows the principal to designate someone to make health care decisions on their behalf only if they cannot make the decision themselves. This document only authorizes the agent to make health care decisions — no business activity can be conducted under a medical power of attorney.

A directive to physicians, commonly referred to as a “living will” or an “advanced directive,” is a document that allows a competent adult to instruct his or her physician to withhold or withdraw life sustaining treatment in the event of a terminal or irreversible condition. Directives are best used and the most effective after fully informing your wishes to family members, who might contest the withdrawal of these actions.

Medicare and Medicaid

Medicare’s coverage for mental or emotional illness — including various forms of dementia — includes inpatient and outpatient care, treatment by doctors, and treatment by Medicare certified health care providers. The amount of Medicare coverage depends on the kind of hospital where the individual receives treatment: general hospital, psychiatric hospital, nursing facility, or home care.

In addition, qualifying persons are eligible to receive therapeutic services and medications through Medicare.

Medicaid is a state-administered health insurance program available for low-income individuals and families that qualify under an established eligibility group. Medicaid covers all or a portion of nursing home costs for individuals with mental illness who meet income and asset eligibility guidelines. ❖

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GOVERNMENT LIAISON SERVICES, INC.
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TOLL FREE: 1-800-642-6564

www.GovernmentLiaison.com
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