

# alzheimers

## How to Gain Guardianship for a Parent with Dementia

### Making Sense of Guardianship

Caregivers for people with Alzheimer's disease or related dementia often reach a point when they realize their loved one is unable to make rational or informed decisions. If their parent is cooperative and easy going, this incapacity may not be a problem. But if it's coupled with a tendency to stubbornly refuse assistance or care, it can be dangerous. This is when guardianship can be an important tool for families. Guardianship also can be required when a person with Alzheimer's or dementia is no longer able to legally sign power of attorney documents due to mental incapacitation.

*Guardianship gives you the legal right to make decisions for a parent or loved one with Alzheimer's or dementia. Guardianship is obtained through a court proceeding and granted by a judge.*

### When Guardianship is Required

The elderly parent who lives alone in an unsafe condition but who refuses assistance is an archetypal character in the world of the senior advocacy. For instance, imagine a senior named Elda who has Alzheimer's disease:

Elda's grown children became concerned because she's living alone with Advanced Alzheimer's. Elda recently left the stove on again and started a minor, but very smoky kitchen fire. Her children unplugged the oven, so she's been eating generic goldfish crackers and Pepsi (refusing the meal delivery her children attempted to arrange). She has sundowners and often wanders the not-so-safe neighborhood at night looking for a corner-store that closed 20 years ago. She has lost \$20,000 and counting to Nigerian email scammers. And she recently fell, bruising her hip badly after tripping on a box of old newspapers in her cluttered apartment. Her children know she's a disaster waiting to happen.

If Elda continues to refuse assistance in this situation, the best option for her family would be to seek guardianship.

## Authorities of Guardians

Guardians have the same sort of authority a parent has over minor child. With guardianship, families can assure that their loved ones who is mentally incapacitated due to Alzheimer's disease and other types of dementia are:

- in a safe and dignified living situation
- free from financial exploitation
- able to receive necessary long-term caregiver
- able to receive necessary medical care

## How to Obtain Guardianship

America is built on due process. Depriving an adult of his or her rights is no small thing, so these court proceedings assure guardianship is not abused. In the proceeding, the family member who is seeking guardianship (the petitioner) must provide evidence that the person with Alzheimer's disease or dementia is incapacitated and proof of their own ability to be competent guardians

Determining whether the person with Alzheimer's disease or dementia is competent is usually the easy part. A court psychologist will have typically made that determination before the hearing, although the petition can present additional evidence at the hearing.

But the bulk of the court proceeding is used to establish that the petitioner is an appropriate guardian. The Alzheimer's Foundation notes:

*"The court scrutinizes all of the actions of the guardian, including the management of the individual's personal financial affairs, and decisions regarding medical treatments and long-term care. Some states even require a potential guardian to take a court-approved class in order to learn about their responsibilities."*

People seeking guardianship need to demonstrate that there is care plan in place and will make appropriate use of their parent's funds. If the court agrees that the petition would make an appropriate guardian and that the senior is genuinely incapacitated, guardianship is granted.

## Elder Attorneys

If you are in a position where you may need to initiate guardianship proceeding, you should consult with an elder attorney if possible. Elder attorneys specialize in matters such as guardianship. That said, because this is similar to family law and a fairly simple proceeding it is not uncommon to seek guardianship without an attorney. If you do have to initiate a proceeding without an attorney, make sure to do in depth research online and at your local library so that you are able to navigate the proceedings effectively.

## Establishing Emergency Guardianship

Though most people are experiencing mild to moderate impairment by the time they're diagnosed with dementia, they're also still typically capable of understanding their situation and making decisions. Even if your loved one hasn't created an estate plan and power of attorney at the time of diagnosis, you likely still have time to work through the process and make a satisfactory care plan, including choosing health care and financial representatives.

However, there are a couple of cases where you may need to establish temporary or permanent legal guardianship as a first step. For instance, if:

**1. Your loved one is being financially exploited.** According to Kim Boyer, founder of Boyer Law Group, this scenario unfortunately common. "Some predators are professional scam-artists," she says. "They identify single, elderly people who are slightly impaired and have no family around. They then gain the victim's trust, and get access to his or her funds." In other cases, caregivers, whether family members or hired help, are themselves the perpetrators of financial abuse.

**2. Your loved one truly lacks the capacity to make his or her own decisions, and has not appointed anyone to do so in his or her place.** This situation is more common when a relatively young person experiences a catastrophic event, such as a major accident or a stroke, than it is in the case of cognitive illness, but it does occasionally occur.

In either case, both a physician and the court will have to declare that the patient lacks the capacity to direct his or her own care. From there, gaining guardianship is a matter of showing that you're fully willing and capable when it comes to acting in your loved ones best interest.

Outside of not having felonies or bankruptcies on your record, Boyer says that one of the most important considerations is whether or not you've been involved with the patient's money in the recent past, and particularly whether you've made any questionable transactions. "If you want to be appointed someone's guardian, one of the best things you can do for yourself is to stay completely away from their money," she concludes, "No matter how you stack up on paper, the court will do its best to look at your actions."