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## What Do We Need To Think About Next? Early Planning from a Legal Perspective.

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*This issue of the newsletter provides an overview of the stages of Alzheimer's disease and highlights information and resources that are useful for the early stage.*

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People are often overwhelmed with the many things they have to think about and plan for after a diagnosis of dementia. Families face a welter of concerns about medical treatment, activities, caregiving, housing, long-term care planning, and how to maximize living and independence. At the same time they must plan how and when to appropriately share decision making as the disease progresses, and take over financial and personal decision making.

Our legal system esteems and protects individual rights. At 18 years of age individuals are adults in the eyes of the law with full ability to exercise all constitutionally protected rights. There is no age at the other end of the spectrum or any clinical diagnosis per se which takes away those rights, even if, as a practical matter, a person is unable to understand or exercise them.

Individuals in the early and moderate stages of dementia are usually able to execute legal documents which allow a trusted person to assist them in making decisions when they are no longer able or willing to do so for themselves. They are also able to sign a valid will, which applies only to assets owned in a sole name at death and is not effective until death.

In both documents outlined below, the person is not surrendering his legal rights, but rather allowing someone else to exercise them. Death is the big divide here—no power given in a document survives death, nor does being named “executor” or “personal representative” in a will allow the one so named to exercise power during the life of the person who signed the will.

One of the most useful documents is called a Durable Power of Attorney. Durable means it survives the incapacity of the person who appoints an agent, or an attorney-in-fact. A Durable Power of Attorney is a document which allows a person to choose someone to step in and make decisions in the event he or she is unable to do so or to act on that person's behalf in any other situation. It is based on trust and is effective when signed. The powers are spelled out in the document.

A Durable Power of Attorney has limitations: many stock brokerages want to use their own forms; the Secretary of State's office has its own form for transfer of vehicle title; and Social Security has its own procedure for allowing another person to receive someone's benefit checks. But a well drawn Durable Power of Attorney can be used to handle bank-

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## Early Planning from a Legal Perspective

ing, many financial and personal affairs, and property transfers. The document must be signed by the person, witnessed and notarized.

Michigan also allows for a second type of Durable Power of Attorney, which is effective ONLY when two doctors determine a person is incapacitated. This type can be cumbersome and time consuming to effectuate, but can be effective when paranoia is present as another way to reassure someone that the document will not be used unless two doctors think it should be.

A Patient Advocate Form operates similarly to allow someone (an advocate) to make ONLY medical treatment decisions in the event a person is unable to do so. An advocate is guided by what the person has written concerning medical treatment. A person may authorize the advocate to make a decision that will hasten his death from the underlying illness or disease—not euthanasia. The person does NOT have to be terminally ill for such a document to be in effect, but two doctors must state in writing that they are unable to participate in making medical treatment decisions. The advocate may make decisions concerning refusal or discontinuance of medical treatments such as antibiotics or feeding tubes, and may also access medical records and consent to admission to long-term care facilities.

In both of these documents more than one person may be named as an agent or advocate and a successor fiduciary may also be named in the event the first person is unable or unwilling to serve.

For the person diagnosed with dementia, the knowledge that someone will be there to help and take care of things for them when they are not able to is very reassuring. For caregivers these documents allow them to step in with legal authority when necessary to ensure smooth handling of many facets of daily living.