

Building Your Team

**A Legal and Financial Guide
and Workbook for Decisions
When Living with Dementia**



Attorney Mark T. Johnson has prepared this guide and workbook for general informational purposes. Please consult an attorney for legal advice for your particular situation.



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Disclaimer: The information in this guide is not legal advice. Do not act on this information without the advice of professional legal counsel, who must discuss with you your specific circumstances and wishes before giving you legal advice.

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Building My Team

Introduction



Making legal and financial decisions can be involved and sometimes difficult. This can be especially true if you have dementia. Dementia can advance to cause significant impairment in the ability to understand and decide complicated legal and financial matters.

Fortunately, you do not have to make every decision or plan all by yourself. A team of family members, friends, and professionals can help you with your legal and financial plans. Early discussions and planning can give you control of your plan, so that your choices are carried out by the people you've chosen to help you. Your team can support you with your decisions along the way. A companion guide—Leading the Team—has been prepared to assist those who care for individuals living with dementia.

This guide covers the following topics:

- Identifying your team members
- Your team for personal decisions
- Your team for health decisions
- Your team for financial decisions
- Your team for final wishes
- Autonomy and protection
- Decision makers appointed by a court
- Capacity to make decisions
- Resources

This guide is presented in a 5-day format, so that each topic is a manageable project. Even though each topic is described as a day, you can move from topic to topic in five consecutive days, one day a week for five weeks, or one day a month for five months. Follow this guide at your own pace. The main goal is to work through the process—consider the options, discuss, plan, and revisit as needed.

This guide is written with references to Wisconsin law, so please keep in mind that there may be numerous ways it will not apply in other states.

Day 1—Identifying Your Team Members



Who is my team?

- Who helps me now with various decisions and tasks in my life?
- Who can I add to my current team of helpers?
- Who do I want to help me as my ability to manage things diminishes?
- Who will help me when I can no longer manage things for myself?
- Who will take care of my final wishes after I'm gone?

When choosing your team, ask these questions:

- Do they have the skills to help me?
- Do they have the time to help me?
- Will I need to pay for the help I receive?

Recruiting your team:

- People I know personally:
 - Family
 - Friends
 - Neighbors
- People I know professionally:
 - Financial Advisor
 - Accountant
 - Lawyer
 - Doctor
 - Care provider
- How can I make sure my team will know each other and work well together?

And, one more valuable team member: Time

- Time lets you make your wishes known.
- Time allows you to plan well.
- Time lets you discuss wishes and concerns with others.
- Time gives you an opportunity to update your plans.

Day 2—Your Team for Personal Decisions



What personal decisions will I need help with?

- Living arrangements:
 - Will I live in a single-family dwelling?
 - Will I live in an apartment or condo?
 - Will I need to move to an assisted living facility?
 - Will I need help moving or down-sizing?
- Pets
 - Who will help feed my pets?
 - Who will take my pets to the veterinarian?
 - Who will take my pets for walks and exercise?
- Social activities
 - How will I stay in contact with my relatives and friends?
 - How will I stay connected to my religious community?
 - How can I access clubs, senior centers, and community centers?
- How will I stay safe at home?
- How can I travel safely?

Legal advice and documents for personal decisions

- A. Trusted advisors—family, friends, clergy, attorney, financial planner, daily money manager
- B. Supported decision-making agreement
- C. Durable power of attorney for finances

A supported decision-making agreement is a formal document to designate someone to help with gathering information, making a decision based on that information, and communicating the decision. A supporter is not a substitute decision maker, power of attorney, or guardian. For more information, the website for the Wisconsin state form for a Supported Decision-Making Agreement is listed in the Resources on page 12.

Day 3—Your Team for Health Decisions



What health care decisions will I need help with?

- Participating in my care and medical needs
- Dealing with my health insurance—Medicare, supplemental insurance
- Arranging help I may need at home
 - Home modifications for accessibility and safety
 - In-home care or services
- Dealing with insurance or programs that help pay for care
 - Long-term care insurance
 - Medicare and Medicaid benefits
 - Veterans Affairs benefits
- Working with staff at a care facility
- Advocating for appropriate medical treatment or services
- Making end-of-life decisions

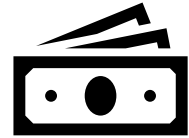
Legal advice and documents for health care

- A. Supported decision-making agreement
- B. Health care power of attorney
- C. Living Will
- D. Contracts or applications for admission to facilities or care programs
- E. Authorization for release of protected health information (HIPAA release)

A health care power of attorney can take a variety of forms. Some popular versions are the Wisconsin state form, Five Wishes, and Honoring Choices. For more information, the websites for each of these options are listed in the Resources on page 12.

Day 4—Your Team for Financial Decisions

What financial decisions will I need help with?



- Shopping
- Paying bills
- Banking
- Investing
- Tax planning
- Dealing with insurance for myself and my property
- Managing my property—arranging for repairs, paying taxes, hiring lawn care
- Managing my income—Social Security, pension, investment income
- Paying for my living expenses and care needs:
 - What can I afford with the resources I have?
 - Do I have insurance that will cover some of the cost?
 - Does a reverse mortgage on my home make sense?
 - Are there government programs I am eligible for, such as Medicaid or Veterans Affairs programs?

Legal advice and documents for finances

- A. Durable power of attorney for finances
- B. Revocable living trust
- C. Representative payee (for Social Security payments)
- D. Care contracts with caregivers or service providers, even if they are family members

A financial power of attorney is a legal document to name one or more people or entities to manage your finances for you. It can be effective right away for convenience or become effective only if you become incapacitated. It can cover one or two specific topics or cover all general financial matters for you. Advice from an attorney is strongly recommended if you wish to include power to make gifts or change how property is owned.

Day 5—Your Team for Final Wishes

What decisions will I need to make for my final wishes?



- End-of-life wishes
 - setting for my final days
 - visitors
 - feeding tube and life support
 - extraordinary measures
 - religious observances

- Wishes for burial, cremation, or funeral
 - What needs to be done?
 - Who will decide?
 - Who will do it?

- Plans to distribute my estate
 - Will
 - Revocable living trust
 - Other non-probate transfers:
 - beneficiary designations
 - joint ownership
 - transfer-on-death
 - pay-on-death

Legal advice and documents for final wishes

- A. Living will for end-of-life medical decisions
- B. Authorization for Final Disposition for burial, cremation, or funeral wishes
- C. One or more of the following: will, trust, non-probate transfers

Autonomy and Protection



- Personal autonomy is highly valued—We all want our personal choices, preferences, and independence to be respected.
- However, I may become vulnerable to other people taking advantage of me or abusing me.
 - Scams
 - Stealing
 - Physical or sexual abuse
 - Bullying, threats, or verbal abuse
- Having a good team in place and complete legal documents can help preserve my autonomy and protect me from abuse.
- Planning early gives me maximum input for expressing my wishes.
- Unforeseen circumstances or a lack of planning may lead to intervention by family members, medical providers, government agencies, or courts to protect my wellbeing.

Legal advice and documents for autonomy and protection

Listed from most autonomy/least protective to least autonomy/most protective

- A. Supported decision-making agreement
- B. Health care power of attorney
- C. Durable power of attorney for finances
- D. Revocable living trust
- E. Trusted contact person for financial institutions
- F. Conservatorship (voluntary court proceeding)
- G. Guardianship (involuntary court proceeding)

Decision Makers Appointed by a Court

Voluntary—Conservatorship



Wisconsin law allows an individual to voluntarily request a court to appoint a financial decision maker. If you believe you cannot manage your own financial affairs, you can petition the county court to appoint a **conservator** for your finances. The court does not declare you incompetent, which is the main distinction from guardianship. The conservator will have power similar to a guardian of the estate. A conservatorship can only be ended with court approval.

A conservator is not authorized to make healthcare decisions, so you will need a healthcare power of attorney to name someone to make healthcare decisions for you if you become unable to do so yourself.

Involuntary—Guardianship

If you do not have powers of attorney, and if you become incapacitated, a guardianship may be necessary for a court to appoint someone to make decisions for you.

Guardian of the estate is a person appointed to manage financial matters, and **guardian of the person** is a person appointed to manage health and personal decisions. The person under guardianship is the **ward**. If the court determines that an individual is incompetent (based largely on the report or testimony of the examining doctor), the court appoints the guardian to make decisions on the ward's behalf.

In most guardianships, the court restricts or removes the ward's rights to act independently. The court gives the guardian most of those rights to exercise in the ward's best interest. The guardian may exercise only those powers authorized in the guardianship. The guardian is under ongoing court supervision and must give annual reports to the court regarding the ward's well-being and financial accounts. If anyone wishes to modify or terminate the guardianship, court approval is required.

Guardianship has pros and cons for those seeking this type of court-appointed authority. Pros include protecting the ward from serious mistakes or financial exploitation and providing certainty that decisions are made by a suitable substitute decision-maker. Cons include the expense of fees for obtaining a guardianship, plus the additional cost in time and energy to appear in court and file annual reports.

Capacity to Make Decisions



- You may ask, “Will my doctor or a judge declare me incompetent?”
- Capacity is a fluid concept. It can diminish over time and can have ups and downs at certain stages of dementia.
- Time is a powerful component of making decisions and signing legal documents. A person with mild dementia usually has the capacity to make decisions and to understand and sign legal documents to prepare for future incapacity.
- In some cases, the additional input from medical professionals will help an attorney or other advisor determine whether an individual has the necessary capacity to make legal or financial decisions.

Legal definitions:

- A. In general, **incapacity** is defined as the inability to receive and evaluate information effectively or to communicate decisions. Incapacity for health care decisions and for financial decisions may be separate determinations.
- B. A health care power of attorney takes effect upon a finding of incapacity by two physicians or by a physician and a psychologist, who personally examine the individual and sign a statement specifying that the individual has incapacity. For a financial power of attorney, one physician or psychologist may determine incapacity. Alternatively, a power of attorney document may state a different event or occurrence to establish incapacity.
- C. For purposes of guardianship, a person must be incapacitated, plus the incapacity must cause the individual’s personal or financial wellbeing to be at risk. This is the basis for a judge to determine a person is **incompetent**.
- D. Further details regarding legal incapacity and incompetency are specifically spelled out in the Wisconsin Statutes related to these subjects.

Resources



1. The Wisconsin Department of Health Services provides state forms for health care power of attorney, financial power of attorney, declaration to physicians (living will), authorization for final disposition: <https://www.dhs.wisconsin.gov/forms/advdirectives/adformspoa.htm>
2. The Wisconsin Department of Health Services provides a state form for supported decision-making agreements: <https://www.dhs.wisconsin.gov/library/f-02377.htm>
3. The website for Five Wishes (for health care advance directives) is www.fivewishes.org
4. The website for Honoring Choices Wisconsin (for health care advance directives) is www.wisconsinmedicalsociety.org/professional/hcw/
5. The National Academy of Elder Law Attorneys (NAELA) provides information about attorneys who practice in the areas of elder law and special needs planning: www.naela.org.
6. The Alzheimer’s Association provides information for individual’s with dementia and their families and caregivers, including publications and events for financial and legal matters: www.alz.org.
7. The Alzheimer’s & Dementia Alliance of Wisconsin has numerous resources and event available throughout Wisconsin: www.alzwisc.org.
8. The Eldercare Locator, a service of the U.S. Administration on Aging, provides information about local agencies that can assist senior citizens, plus has numerous brochures and factsheets under its “Consumer Publications” section: <https://eldercare.acl.gov/Public/Index.aspx>.