

Modern medicine is helping us to live longer and healthier lives. Alzheimer's and other forms of dementia will develop gradually, with the early stages often going unnoticed. The recently diagnosed patient must deal with the legal issues immediately, while still in the early stages of the disease, and still deemed competent.

To have testamentary capacity, the person making the will (the Testator) must be of sound mind, memory and understanding. They must understand the nature and effect of a will; remember the nature and extent of their property; understand the extent of what they are giving under the will; remember the people they might be expected to benefit under the will; and, understand the nature of the claims that may be made by persons they are excluding under the will.

A person may still be able to make a good will after having been declared incapable of managing his or her affairs. The fact that the Deceased was mentally ill and suffered from confusion does not mean that they did not have testamentary capacity. Cognitive impairment or confusion alone is not grounds for declaring a person incapable of making a will.

Irrational beliefs, falling short of producing general insanity, and which have no relation either to the testator's property or to the persons that might be expected to benefit, can have no bearing on the question of testamentary capacity.

Talk with your family and loved ones. Next, get a copy of your Will, and any Health Care Powers of Attorney, living wills, and other legal documents you have executed in the past. Decide whether these documents still reflect your current wishes.

There is therefore no reason why a person in the early stages of Alzheimer's cannot make or change a Will. If you don't prepare for the future, plan on having you and your family suffer the consequences.

It is a common fallacy that once a person becomes incapable of running their day-to-day affairs, they are then no longer competent to make a Will.

Be sure to make a list of all of your assets, then, call a lawyer who specializes in Elder Law areas of Probate, Disability Planning, and Estate Planning.

The primary objective when planning for incapacity is the avoidance of the court controlled guardianship system and its costs in time and money.