



Planning Ahead for Dementia: What Every Family Needs to Know

Podcasts

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In this informative ACTEC Estate Planning Essentials podcast, Archer partner **Steven Mignogna** and Gerard Brew (McCarte & English) outline the critical steps families should take when facing early signs of cognitive decline. They explain how to select the right Power of Attorney, the differences between durable and springing POAs, when a revocable trust can help, and how to avoid costly and stressful guardianship proceedings.

Both ACTEC Fellows draw on decades of experience to explain how to evaluate capacity, involve medical professionals, prioritize safety at home, choose trustworthy agents or trustees, and build a reliable advisory team. Their conversation offers clear, practical guidance to help individuals and families plan proactively, maintain control over financial and personal decisions, and protect loved ones as dementia progresses.

To listen to the complete podcast, click [here](#).

See below for the complete transcript:

Hello, I'm Steve Mignogna, an ACTEC Fellow who practices in New Jersey and Pennsylvania, and with me is Gerard Brew, who practices in New Jersey and New York. In this video, we're going to answer some questions about planning ahead for dementia, what every family needs to know.

Now, ACTEC Estate Planning Essentials includes a video previously done about managing diminished capacity. In this video, we're going to build upon that, but we do suggest you also go back and watch that video if you haven't done so before. We'll start with talking about the initial steps families should consider when dementia or cognitive decline sets in, and then talk about remedies that are available for families in dealing with that.

What Families Should Do When Dementia Begins

Let me start, Gerard, with a very difficult, complicated question, but ask you for the most simplistic, streamlined answer you can provide, which is how do you make these decisions before it's too late?

Gerard Brew: Well, thank you, Steve. I think the first and most important thing for folks to do is to plan early and review their plans often. There are a number of documents that can be executed that are very powerful and

effective in governing both assets and personal affairs if somebody becomes incapacitated. And the tragedy, I think, both of us have seen is that if you wait too long, you end up losing control, and there will need to be some sort of court proceeding.

Three Key Tools to Plan Ahead (POA, Springing POA, Revocable Trusts)

Several documents can be considered:

Power of Attorney is one of them. Power of attorney has two types. You can have a **springing power of attorney** that requires two physicians to certify that you're impaired, and therefore, your agent named in the power of attorney will take over. The downside of that is you need two physicians to certify that, and when your proposed agent brings that to the financial institution, if they look at the physician's certifications and there's uncertainty, they might choose not to recognize it.

The more commonly used power of attorney in my experience is a **durable (POA)** one, one that takes effect now and is effective forever. If I name you as my agent today in a durable power of attorney, Steve, you could, tomorrow, take all of my assets. The person I'm naming, of course, has to be trusted.

And the last mechanism that can be explored is creating and funding what we call a **revocable trust**, a trust that is created, and the assets can be transferred into it so they're administered through a trust mechanism.

Safety First: Evaluating Living Conditions

Those are the three mechanisms that are available. The other thing I advise all families to think about is safety. I view it as the most important when I'm brought into these situations. What is the situation at home? Is whoever it is, mom, dad, or relative, safe? And if there's doubt, bringing in a professional care manager to come up with an assessment of the living situation is very critical.

Steve Mignogna: Yes, that's an excellent point about safety. We do focus on the legal analysis and options, but safety first for sure.

Why Guardianship Should Be Avoided

Now, I also want to echo one thing you said and emphasize it, which is that a power attorney is a fairly simple device to take. It can be done in a matter of minutes, perhaps a bit longer. The creation of a trust is viable, but a bit more involved. People really do need to avoid guardianship proceedings if they can. You and I have both been in situations where guardianship proceedings occur in court. It's expensive, it takes a lot of time, money, and energy. You're left to the schedule of the court and the disposition by the court. It can be intrusive because the person who's being declared incapacitated has to be involved as well, and all of that time over many weeks or months could be avoided within an hour or less by a power of attorney.

So, I think that's one of the lessons we want to convey today, that folks should really think about those devices and not wait until they're past the point.

Understanding Capacity Before Signing Legal Documents



Now, just to distinguish, to do the power of attorney, while it's a recommended option or the trust, the person has to have capacity, right? ***What are the things that you, Gerard, consider for folks to look at as to whether the person doing these documents has capacity?***

Gerard Brew: Well, one of the steps that's always available is to bring in a medical professional, a neuro psychologist, a neurologist, or even a treating physician to get a read on the situation.

We, as lawyers, are trained generally, ACTEC Fellows certainly have great experience in dealing with planning for elderly people, and part of our routine work is assessing capacity and even the understanding of the documents, even with a person with capacity. So, going to a capable and experienced lawyer is always the first step.

If I or you, Steve, met with a person and we thought they were unable to execute documents, we have both an ethical duty and judgment to be implemented to determine that this person can't execute documents any longer. Of course, going back to our primary theme of planning early, that's why we like to do these things early. Documents can always be revisited, so if they're signed today and you have a valid plan today, at least you have something.

It may not, it may be that it changes over your lifetime, but your point, Steve, about avoiding guardianship and other proceedings, it's tragic. We almost always view a guardianship proceeding as a tragic failure of planning. So early and often is the key.

Steve Mignogna: Yes, we both had those conversations with clients in guardianship proceedings and how regretful they are that a power of attorney or some similar device was not done. I agree completely.

How to Choose the Right Agents and Trustees

Now, related to this is the choice of the person or persons to be the agents or trustees. From my standpoint, you'd like to pick someone who's, of course, trustworthy, who's close to the person appointing them, often a family member, but not necessarily so, and a person who not only understands the affairs that need to be addressed but has the capability to address them.

Spouse is often a choice. It can be a lawyer or an accountant. If a trust is created, there are plenty of other options, not only the ones we've listed, but also financial institutions. In some states, there are public guardians available to be chosen, but most people do have options within their domain of friends and family to pick. I think the important part is to make sure they fit the bill, because no one usually wants to say no if they're asked to do this, but it's important that they have those traits that I just discussed.

What are your thoughts on that?

Qualities to Look for in a Trusted Advisor

Gerard Brew: I think that the most important factor I remind people of is it's very worthwhile to establish a circle of advisors you trust, whether that's an accountant, whether that's a lawyer, or a financial institution, and of course, family members.



One challenge in selecting an agent, I find that in many situations, the first choice is usually a spouse, assuming the person trusts their spouse– and by the way, spouses are almost always, by most state law, the default guardian, so if you don't trust your spouse and you darn well should plan ahead of time, and if it's not your spouse, then it would be your children. If you trust neither your spouse nor your children, then the lack of planning is going to achieve something that you did not want. But I look at the possible circle of advisors that you can choose from, and there's almost always somebody who can be trusted, and of course, you can have co-fiduciaries, so if you and I, Steve, were the children of an elderly person and they didn't trust one of us to act alone or have thought we might be offended, then you can choose both of us, again, that's not always workable.

The other aspect, I think, in selecting an advisor is to make sure that the person who is going to fill the role is actually capable of fulfilling it. Being a caregiver, being an agent, being a trustee, particularly if, say, for example, children have young children at home, very busy careers, and now they're asked to take on managing the affairs of an 80-something-year-old or 90-something-year-old parent, that's a very, very challenging job.

So when you're planning, you should have discussions with the agents that, in fact, you are naming them. They might not, and they should be given the option to express that they just might not be capable of doing that at this stage in their life.

Designing Powers of Attorney: Options and Variations

Steve Mignogna: Yes, that's an excellent set of points, and I would add to that to make clear that there are different types of powers of attorney. We discussed some of that before. The powers of attorney can be limited; they can include multiple people being appointed to have a checks and balances situation. You want to make sure you have backups named. All this is designed to make sure that you avoid the time and expense of court proceedings. And this allows the agents, the people appointed, to work together and to achieve the best result for the person who appoints them, whether it be medical decisions, economic decisions, or a combination. So, again, these are very different types of powers of attorney, and these types of considerations are common.

And I think our point is that people need to think about this. You don't want to wait until it's too late for the person to be able to execute the power of attorney or related documents. You want to do it at a time when you're planning in advance for what may come.

Comparing Costs: Planning Ahead vs. Court Intervention

And Gerard, as we talk about different options such as powers of attorney, trusts or guardianship proceedings, people naturally are concerned about costs. *Can you shed some light on what estimates would be involved with those costs?*

Gerard Brew: Well, that would vary from state to state, and what planning is involved. But I can say this with absolute certainty: the cost of doing the planning early, before someone is impaired or incapacitated, is a small fraction of what things cost if you need a guardianship or you need to have somebody figure out your financial and legal affairs after you're incapacitated.



I would advise people to consult a trusted lawyer and to find out what the fees are. I know that people are concerned about expenses that come up in every lawyer's discussion with clients, but being penny-wise early can result in a great expense later without planning.

ACTEC Resources for Families Navigating Dementia

Steve Mignogna: And to add a capstone to this discussion, I'd say that ACTEC for the public service has a wealth of resources available at the ACTEC website. As to the types of issues we've just discussed, one can go to actec.org/estate-planning. But again, we've mentioned the videos that ACTEC has and other resources, which we were happy to include in this video, to help the public learn more about their options.

Related People



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