

THE SKETCHLEY LAW FIRM, P. A.

Providing Compassionate Support & Guidance Through Elder Law & Guardianship

YOUR LOVED ONE'S CAPACITY

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In order to execute certain legal documents, persons must have capacity. The degree of capacity that is necessary depends on the transaction. Not only is capacity an important prerequisite to executing documents and preventing challenges to the legality thereof, incapacitated persons may be a danger to themselves, and to others in their community.

While only licensed professionals can properly diagnose capacity issues, family members have a distinct advantage. They are able to observe the person in the home setting over a period of time, rather than in the limited clinical or office setting over a short period of time.

Cognitive Impairments

Cognitive problems regarding capacity include deficiencies in memory, communication, mental flexibility, calculation, and orientation. Examples include forgetting to pay regularly reoccurring bills that have been paid with regularity in the past, asking repetitive questions, marked decline in the organization of the home, disorientation as to date or place, or the inability to find the right words and phrases. The inability to compare choices or adjust to change may also be signs of incapacity.

Emotional Indicators

Moods and emotions that are constantly undergoing change may be warning signs. Rapid and unexplained changes in emotion such as laughter to anger may indicate capacity issues.

Emotional distress may be a cause for concern as well. Attention should be given to the intensity and duration of the distress, and

whether there are any physical manifestations of that emotional distress.

Behavioral Indicators

Delusions and hallucinations may be behavioral indications that capacity is impaired. Uncharacteristically poor grooming or hygiene, as well as inappropriate dress and modified behavior such as the uncharacteristic refusal to seek medical treatment or to regularly take prescribed medicines may all be behavioral indicators of incapacity. Unusual gifts or loans to caregivers or friends or even to family members may be indicative of incapacity.

Paranoia over whether the person's assets are being stolen, or random behavior such as participation in unwise investment schemes may be additional indicators of impairment.

Knowing when your parent or loved one no longer has capacity can be a difficult issue to evaluate and confront. There are signs that your loved one's capacity may be an issue, but care must be taken to be aware of ageist stereotypes and the normal effects of aging in observing a loved one's behavior.

One must also consider whether there are mitigating factors that might explain the behavior, such as whether there is stress, grief, depression, or reversible medical issues affecting capacity. Certain physical limitations as hearing or vision loss, or educational, socio-economic and other cultural factors are not capacity indicators, they may simply require a different approach in communication.

If you would like to arrange for one of our attorneys to speak to your group or organization about this topic, please contact Tracy Rouse at (850) 894-0152. Past newsletters can be found at www.sketchleylaw.com.



The Professional Center at SouthWood
3689 Coolidge Court, Suite 8
Tallahassee, Florida 32311

Telephone: (850) 894-0152
Facsimile: (850) 894-0634
(850) 297-2884

