

Legal Guidelines for Families – Mental Incapacity in Malta

Last updated: January 2026 | 1

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Introduction

When a person is diagnosed with a condition that compromises mental capacity (dementia, severe psychiatric disorders, brain injuries, stroke with cognitive impairment), it is essential for families to take swift legal action. Maltese law provides specific tools to protect the rights and interests of persons losing mental capacity.

These guidelines help families understand what to do in the initial stages following diagnosis.

Step 1: Understanding Mental Capacity

Under Maltese law, a person must have mental capacity to make valid legal decisions. A person in early stages of a degenerative condition may still be legally capable. A medical certificate can confirm this. Early action is crucial.

Indicators of capacity loss:

- Difficulty understanding information
- Inability to retain information in memory
- Difficulty weighing consequences of decisions
- Inability to communicate the decision

Assessment process:

- Medical evaluation by qualified physician
- Cognitive assessments may be required
- Capacity can fluctuate - timing of legal actions matters

Step 2: Creating an Enduring Power of Attorney (EPA)

What is it?

An EPA allows a person to appoint someone (an “attorney”) to make financial, medical, and personal decisions on their behalf if they lose mental capacity.

Legal Basis: Civil Code Articles 1864A onwards (Act XIII of 2016)

Requirements:

- Must be signed while mentally capable
- Requires medical certificate confirming capacity
- Signed before a notary
- Must be registered at the Public Registry
- Only becomes effective once incapacitation occurs

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Why it matters:

- Avoids lengthy court proceedings
- Allows trusted family members to act immediately
- Protects finances and ensures appropriate care
- Respects the person's wishes made while capable

Ordinary Power of Attorney and Incapacity

An **Ordinary Power of Attorney** (standard POA) automatically **ceases to have legal effect once the person becomes mentally incapable**. This is because ordinary POAs are valid only while the person granting the power is of sound mind and capable of making decisions.

In practice:

- Once a doctor certifies that the person no longer has mental capacity (for example, after a dementia diagnosis that affects decision-making), the ordinary POA stops working.
- The person appointed under that POA (the attorney) can no longer act legally on their behalf.
- Banks and public institutions in Malta typically suspend such powers immediately after incapacity is certified.

What families should do:

- If the person still has partial capacity: request a medical certificate confirming they can sign an Enduring Power of Attorney (EPA) immediately.
- If the person has already lost capacity: the family should apply for Guardianship under the Guardianship Act (2012).
- This ensures that a legal representative can continue to make financial, medical, and personal decisions lawfully.

Step 3: Apply for Guardianship (if no EPA exists)

What is it?

A legal process to appoint a guardian for someone who has lost mental capacity and has no EPA in place.

Legal Basis: Guardianship Act (Act XX of 2012)

How it works:

- Apply to the Guardianship Board
- Provide comprehensive medical reports
- Propose a suitable guardian (family member or professional)
- Board assessment and decision

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The guardian may:

- Make healthcare and personal care decisions
- Manage finances and living arrangements (if specifically authorized)
- Make decisions about treatment and accommodation

Important notes:

- Guardian must act in person's best interests
- Regular reviews by Guardianship Board
- Guardian accountable for decisions made

Step 4: Interdiction/Incapacitation Procedures

When used:

These are older legal measures used in complex situations:

- When EPA or guardianship are insufficient
- Family disputes over care decisions
- Suspected abuse or financial exploitation
- Criminal proceedings may be involved

Process:

- Formal court application required
- Full judicial proceedings
- Complete removal of person's legal capacity
- Court-appointed curator manages all affairs

Considerations:

- Most restrictive option available
- Expensive and time-consuming
- Should be last resort
- Person loses all legal rights

Step 5: Emergency Situations

If capacity is lost suddenly:

- Contact family doctor immediately
- Apply for emergency guardianship if needed
- Banks may freeze accounts until legal authority established
- Healthcare decisions may need court intervention

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Temporary measures:

- Next of kin may make urgent medical decisions
- Social services can intervene if person at risk
- Emergency guardianship available in crisis situations

Rights and Dignity

Respecting the person:

- Involve them in decisions when possible
- Consider their previously expressed wishes
- Maintain their dignity and autonomy
- Ensure least restrictive option chosen

Safeguards:

- Regular review of arrangements
- Right to legal representation
- Complaints procedures available
- Protection from abuse and exploitation

Summary Decision Matrix

Situation

- Recommended Action
- Person diagnosed, still capable
- Create EPA immediately

- Person already incapacitated, no EPA

Apply for Guardianship

- EPA exists but attorney unsuitable
- Apply to court for replacement
- Emergency incapacitation
- Emergency guardianship

Key Contacts

Support Organizations:

- Malta Dementia Society – Family support and guidance
- Caritas Malta – Social services and support

Government Offices:

- Department for the Elderly and Community Care
- Mental Health Services
- Social Security Department

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Final Recommendations for Families

Act Early:

- Don't wait until capacity is completely lost
- Begin legal planning at diagnosis
- Keep all legal documents updated

Seek Support:

- Join family support groups
- Get professional legal advice early
- Don't navigate this process alone

Plan Comprehensively:

- Consider both financial and healthcare decisions
- Discuss wishes while person still capable
- Plan for long-term care needs

For professional legal advice specific to your situation, always consult with a qualified Maltese lawyer or notary. These guidelines provide general information only.