

Act now to help your family if you lose capacity

According to recent research by the Alzheimer's Society, there are around 800,000 people in the UK suffering from some form of dementia at present. The number of sufferers is expected to reach one million within the next eight years. For the people affected and their families, this diagnosis can be devastating. While coming to terms with the emotional impact of the disease, the practical aspects of what this means for dealing with the person's affairs can sometimes be overlooked.

Who will be looking after your finances if you are no longer able to do this yourself? What if you have to go into care and the fees need to be paid from your bank account or the house needs to be sold?

Lasting Powers of Attorney: a powerful tool

The answer to solve these problems can be very simple. By setting up a Lasting Power of Attorney (LPA) you can appoint people you trust to look after your affairs in case you lose mental capacity.

The important point about these documents is that they need to be set up while there is no doubt over the clarity of mind of the person making them, in technical jargon, while they still have "capacity". In fact, it is such an important and useful document that in the opinion of many professionals it is something everyone should set up, regardless of their age or state of health.

Frozen joint accounts

Some might think that no such arrangements would be needed in their situation, as their spouse would still be able to deal with matters. However, this often is not the case. For example, joint accounts may actually be frozen by the bank if one of the account holders loses capacity. This is because when a joint account is set up, both parties effectively give a continuing authority to each other to access the account alone. If one party loses capacity, their authority/consent for the other joint holder to use all of the funds ends. This means that not only is the money of the incapacitated person no longer available, but it could also leave their spouse in an invidious position as they will no longer be able to access joint current accounts or similar.

Court of Protection – a bureaucratic nightmare?

But what happens if you leave it too late? If you lose capacity suddenly and no Lasting Power of Attorney has been set up, relatives would have to apply to the Court of Protection (CoP) to be appointed as a 'deputy' in order to deal with the affairs of the incapacitated. This involves completing a 50-page document giving a vast amount of personal information about the applicant, their finances and other family members.

The application process takes several months and even without any professional help will cost more than £500. If the assistance of a solicitor is required, the costs can run into the thousands. Once they have got through this complicated, time-consuming and expensive application process and are fortunate enough to be appointed as deputy, they will only be allowed to deal with sums

of up to £500 at any one time. Handling any amounts in excess of this will once again have to be approved by the CoP meaning potentially more delays, forms and fees.

On top of that, the deputy's running of their relative's affairs will be scrutinised by the CoP and they may be required to provide a detailed account of all the money that has been spent. Of course, the government body will charge for this supervision and their annual fees can exceed £1,000.

The CoP takes its duty to protect the interests of vulnerable people very seriously. This is of course important in order to safeguard against any abuse of powers and mistreatment of the incapacitated. However, for the vast majority of people who are trying to do the right thing by their relative, the amount of red tape and underlying tone of distrust can be upsetting and draining at an already challenging time.

Type "Court of Protection" into the search facility of the forum on the Alzheimer's Society's website and you will find a stream of complaints about the difficulties in dealing with this officious apparatus.

Finally, the person who is applying to take over your affairs may not be the person you would want. Maybe even worse, the court could decide they are not suitable and appoint the local authority or a solicitor instead, resulting in a stranger dealing with your affairs as well as even more cost and delays.

Setting up an LPA is the better option

All these problems can be avoided by simply setting up a Lasting Power of Attorney while someone is fit and healthy.

This enables you to choose exactly who you would like to deal with your affairs and also imposing any restrictions and giving guidance to your attorneys as you see fit. Although this is an area many people like to avoid thinking about, you are saving your family from so much worry and problems in case the unthinkable happens. Also, once it is done, it gives peace of mind rather than niggling at your conscience as one of those things you know you should sort out.

So why do so many people still put off making arrangements leaving them vulnerable to the bureaucratic minefield discussed above?

Many believe that it is very expensive to make arrangements and reading some of the press coverage they appear to be correct. Indeed, many solicitors charge fees in excess of £300 for preparing a single Lasting Power of Attorney. However, this does not have to be the case. If individuals are happy to actively get involved in arranging these forms with professional guidance, it is realistic to prepare a form for less than £150.

Another reason that deters people from completing a Lasting Power of Attorney is the thought that the forms are too complicated. While this might be true if you attempt to complete the forms on your own, with assistance from professionals who deal with these forms regularly, they should not pose too much difficulty.

LPA for Property and Financial Affairs and LPA for Health and Welfare

There are two types of LPA. The LPA for Property and Financial Affairs (LPA PFA) discussed above is for appointing people to look after all your financial matters. There is also an LPA for Health and Welfare (LPA HW). You can appoint attorneys which can be the same or different ones to those under any LPA PFA you may have. This will enable them to make decisions on your behalf if you became unable to make them yourself. This would include areas such as which

nursing home you should live in, the level of care you are to receive, which social or cultural activities you should partake in, consenting to any medical treatment, etc.

To register or not to register

Lasting Powers of Attorney cannot be used until they have been registered by the Office of the Public Guardian. This registration process takes a minimum of six weeks and therefore the official recommendation is to register the forms as soon as they have been signed. In case of someone becoming incapacitated there would then be no delay in their affairs being dealt with and this is of course the ideal scenario. Further, this will guarantee that any problems discovered during the registration process can be sorted out while the person has capacity to correct the forms, if needed.

On the other hand, the OPG's registration fee of £130 per form discourages many people from registering the forms at the time of signing them. There are some fee reductions available for people on low income or in receipt of certain benefits. In the case of a married couple who do not qualify for this and want to make both types of LPAs together with even reasonable professional fee charges this would result in a total bill of more than £800. Some people may see as too much to spend to cover an event which may never happen. Therefore, rather than not bothering at all, it is still the far better option to have the forms drawn up and keeping them in a safe place to be registered at a later date.

Registration can be carried out at any time either by the person who made the LPA themselves or by their attorneys in case the person has lost capacity. The registration process is relatively straight forward and can normally be carried out by the individuals themselves, but many professionals who deal with LPAs also offer a registration assistance service.

A good time to arrange Lasting Powers of Attorney is when making or reviewing a Will, as most professional Willwriters will also prepare LPAs, but they can also be drawn up independently.

Special Offer for NHS Fellowship Members

Lasting Powers of Attorney: £120 including vat

Discounts for NHSRF members: please contact us for latest deal quoting NHSRF/WS

NB: prices @ April 2013 and may increase in future. Please contact us for latest rates quoting NHSRF/WS

Our friendly and helpful staff offer a telephone based service. As well as avoiding the inconvenience of having to attend a solicitor's office this means that we can reflect our reduced overheads in prices that are much lower than those often charged by solicitors

If you don't have a lasting or an enduring power of attorney or require further information please contact 0800 019 6076 (select option 2 – Wills & Estate Planning) or email estateplanning@affinityadvise.co.uk . Quote ref: NHSRF/Website

Notes:

Figures quotes and details given in this article are based on information available in 2013/14 and may change in the future.

Affinity Estate Planning Ltd , Affinity Connect Ltd, and Affinity Financial Awareness Ltd are all part of The Farleigh Group Limited. Registered offices: 8 Farleigh Court, Old Weston Road, Flax Bourton, BS48 1UR. All Registered in England and Wales – registration numbers 5247048, 4256854, 5246999, 5247007.

Affinity Financial Awareness Limited is authorised and regulated by the Financial Conduct Authority and is entered on the FCA register under reference number 409160 <http://www.fca.org.uk/firms/systems-reporting/register/search>. The FCA does not regulate the preparation of Lasting Powers of Attorney, Wills or Trusts. Affinity is a member of the Institute of Professional Will-Writers.



(OFT logo will be superseded from April 2013 by Trading Standards Institute)

www.tradingstandards.gov.uk/advice/Areyouaconsumer.cfm