

Losing Capacity – Power of Attorney or Deputyship

If your loved one becomes ill, you may need help to manage their financial affairs for them. What you can do depends on the following:

Do they already have a Power of Attorney?

There are two types of Power of Attorney which can still be used when a person loses capacity – a Lasting Power of Attorney (LPA) and an Enduring Power of Attorney (EPA).

If the person has already made a Power of Attorney it can now be registered with the Court, if it hasn't been already, and used by the Attorneys.

What if they haven't made a Power of Attorney?

If the person who is ill is still capable of understanding then it may not be too late to make an LPA. Otherwise it will be necessary for a close relative to apply to the Court for Deputyship.

Registration of the LPA

Once an LPA is made it must then be registered with the Court before it can be used. The Court retain the LPA for a 4 week period to allow time for receipt of any objections to registration. The registration process is however very slow and can take up to 3 months. Once the LPA is registered and returned you can begin to act as the Attorney.

What is an LPA?

A Lasting Power of Attorney allows a person to appoint someone else to deal with their affairs on their behalf.

They can appoint one or more Attorneys to act for them on their own, jointly or jointly and severally. Someone is required to act as the Certificate Provider, which is something we will do for you if we draw up the LPA.

What is a Deputyship Order?

When a person lacks capacity and there is no LPA or EPA in place, the Court can appoint someone to assist with the administration of their affairs. This will be a Deputy for Property and Financial Affairs and in some rare cases there can be a Deputy for Health and Welfare also.

“Brilliant, as ever. Very thorough, patient and explained everything very well”

How is a Deputyship application made?

The person wanting to be appointed Deputy will have to complete some forms setting out the circumstances of the person who has lost capacity.

Their GP or Consultant will have to complete a medical report confirming they no longer have capacity.

The documents are complex but we can help and advise you on the process.

These documents are then filed with the Court who list the matter for a hearing and hopefully then grant the Deputyship Order. Unfortunately, the process is extremely slow and can take 6 to 9 months, it is also considerably more expensive than making an LPA.

Case Study

Our client, David, approached us about having a Lasting Power of Attorney (LPA) prepared for his wife, Margaret. Unfortunately, Margaret had received a diagnosis of dementia. This meant she did not have ‘mental capacity’. Therefore, preparing an LPA was no longer an option.

David couldn’t access finances held in her sole name; even some of their jointly held accounts were inaccessible. He needed funds from various accounts for Margaret to receive nursing care in their home; he had to be able to access all their bank accounts.

We advised David to apply to the Court of Protection for a Deputyship Order.

We guided him through the process and helped him with the detailed paperwork. He had to provide comprehensive evidence of Margaret’s finances and medical records. At the Court, a Judge carefully considered the application and granted David the Deputyship.

David said to us that if he’d known the length of the Deputyship process and the costs, he and Margaret would have had Lasting Powers of Attorney prepared. This would have guarded them against having to undertake a stressful process which was more costly and time consuming.

We can help you with LPAs and deputyship applications

Contact one of our Probate team for assistance on 01962 844544

Other useful factsheets:

- Power of Attorney. Please ask if you would like a copy