



The Bigger Picture

What will happen if you don't have a Lasting Power of Attorney in place and an accident, illness or old age mean you can no longer make your own decisions?



we need to talk about...

Who will look after you if you are no longer able?

Caring for a loved one who no longer has the capacity to look after their finances, property or themselves is often immensely upsetting and difficult to deal with. When they don't have a Lasting Power of Attorney (LPA) in place and the Court is obliged to step in, life gets even more complicated. Holly Miéville Hawkins, a solicitor at Withy King in Bath, explains why we should all consider making an LPA.

Many people don't realise that if they can no longer look after their own affairs and they don't have an LPA in place, the Court of Protection will appoint a Deputy to manage things for them. It's not simply a case of their spouse or closest relatives stepping in and offering to look after their money, home, health or social wellbeing on their behalf.

The Mental Capacity Act 2005 has been drawn up to safeguard the interests of those lacking capacity and to ensure they are not exploited. So, in the absence of an LPA for finances and affairs, an application will need to be made to the Court of Protection and it will be up to them to appoint a Deputy. This process usually takes around six

months and costs in the region of £2,000 to £3,000 in legal and court expenses.

Clients of Withy King have agreed to tell their story anonymously.

Mrs Richardson, not her real name, was recently widowed. For a number of years, Mrs Richardson has been suffering from Alzheimer's disease, and her husband had been caring for her. As her condition deteriorated, he gradually started dealing with all household matters, including their finances. Mrs Richardson had not made an LPA, which had huge ramifications for her and their children. They were left to put care in place for their mother, cope with the death of their father and deal with their parents' complex joint finances. They had no way of knowing what

money their parents had, where it was kept and how to access it. They were shocked to discover they could not access their mother's funds as she had not made an LPA appointing an attorney to help her in the event that she lost capacity to manage her own finances. They could not pay for their mother's care costs, the household bills and other living expenses.

The only option available to Mrs Richardson's children was to apply to the Court of Protection for one or more of them to be appointed as Deputy for their mother. The application process is lengthy and very costly.

They were also required to provide details of their mother's finances, which was very difficult as none of them were authorised to speak to the bank about this.

Not only was Mrs Richardson put in a position of extreme financial hardship while their application was processed and a Deputy appointed, but her chil-

dren also had to deal with arguments between family members who had their own views on who was best placed to manage Mrs Richardson's affairs.

All of this can be avoided. It is far better to take control of your destiny and draw up an LPA which clearly states who you would like to act as attorney and manage your affairs in the event that one day you are no longer able to. Family structures are getting more complex and occasionally things go wrong and disputes can arise over the actions taken by the person you have appointed as your attorney. However, all attorneys' activities are closely monitored by the Office of the Public Guardian (OPG).

On the rare occasion that the system does go wrong, the OPG will investigate the attorney in question and, if required, will work with the police and the Court of Protection to remove the attorney and take any other necessary steps to protect the vulnerable person.

To make a Lasting Power of Attorney, you must:

- ☛ Choose one or more people to be your attorney/s
- ☛ Complete the necessary forms; these are available from your solicitor who can also help you to fill them in
- ☛ Register your LPA with the Office of the Public Guardian; again, your solicitor can do this for you.

THE FIRST THREE THINGS YOU SHOULD KNOW...

...about a Lasting Power of Attorney

More Lasting Powers of Attorney are being made now than ever before. It is estimated that 380,000 LPAs will be made in the financial year 2014/15 when compared with just 85,000 in 2008/09.

☛ DO:

Take control of your future and make an LPA which identifies the person or people you want to manage your affairs if you are no longer able to.

☛ DON'T:

Leave it to the Court of Protection to decide who should look after your property and finances.

There are two different types of LPA. There is one to cover your property and finances and another to look after your health and welfare.

☛ DO:

Consider who is best able and willing to handle these matters. There may be one trusted person ideally placed to look after all your affairs or you may have two people in mind, one for each role. Whatever you decide, make sure you make it official through an LPA.

☛ DON'T:

Leave it to the Court to make such an important and personal decision.

An LPA is quick, straightforward and cost-effective to produce. The paperwork is simple to complete and your solicitor can help you with the process.

☛ DO:

Give yourself and your family peace of mind by making an LPA which reflects your wishes.

☛ DON'T

Make your family wait for up to six months and burden them with costs of £2,000 to £3,000 while the Court appoints a Deputy to manage your affairs.



HOLLY MIÉVILLE HAWKINS is a solicitor in the private client team at Withy King with particular expertise in LPAs and Court of Protection work. She represents people who lack mental capacity as well as their families in court proceedings relating to their property and financial affairs and health and welfare. She is also a member of Solicitors of the Elderly and the Law Society's Wills and Equity Committee. For advice or a confidential discussion, please contact Holly on 01225 730100 or email holly.mieville-hawkins@withyking.co.uk