

The Consequences of not having a Lasting Power of Attorney

When someone loses mental capacity and is no longer able to manage their own affairs, this difficult situation can be made easier if the person has made a Lasting Power of Attorney (LPA). An LPA allows an individual to appoint someone of their choice in advance, to look after their affairs should they be unable to do so.

What happens if there is no LPA?

If an LPA is not in place, or has not been registered before the loss of capacity, then for the individual's affairs to be looked after, it will be necessary to make an application to the Court of Protection.

What is the Court of Protection?

The Court of Protection is a specialist Court which looks after the interests of people who lack capacity to make specific decisions. The Court has authority to make decisions on a person's finances, property and welfare and can also appoint a Deputy to make decisions in the best interests of those unable to make their own decisions.

What is the Office of the Public Guardian – is it different from the Court of Protection?

The Court of Protection and Office of the Public Guardian (OPG) are essentially the same institution and their names are often used interchangeably. The simplest explanation (for these purposes) is that the Court makes all the decisions and the OPG handles the ongoing administration. The two bodies work together but with separate defined roles.

Why is an application to the Court of Protection necessary?

Once someone can no longer deal with their own affairs such as a bank account, then unless an LPA is in place, the individual's assets are effectively frozen and their affairs are in limbo. Money cannot be accessed to pay for even essential services. In this situation, an application to the Court of Protection is essential so the Court can appoint a Deputy to act in the individual's best interests. The Deputy appointed is ultimately the Court's decision and will be the person who will act as Attorney for the individual under the Court's supervision.

How would someone lose capacity?

Someone loses mental capacity in a variety of ways. The most common of these is when a person suffers from one of the various forms of dementia in a moderate to advanced stage. Other common ways in which someone lacks capacity include individuals who have suffered from an acquired brain injury, those who suffer from severe post traumatic stress disorder and sometimes those who suffer from severe forms of cerebral palsy.



What are the downsides to an application to the Court of Protection?

- An individual has no choice who will be appointed to deal with their affairs. If a professional Deputy is appointed, such as a solicitor, this person may be a stranger.
- The process can be both distressing and intrusive for the family.
- The process is costly. An application to the Court can be a difficult process and legal advice should be taken incurring legal fees.
- There are fees of the Court and on going fees throughout the Deputyship. The Court will wish to supervise the Deputy and will charge fees for doing so.
- The Deputy also has to take out a “security bond” to cover their actions as Deputy which is also paid annually.
- An application can take several weeks and until a Deputy order is made the individual's affairs are frozen.
- There can be further delays as medical evidence is sometimes required. Some medical practitioners charge for providing medical evidence.
- Once the Court has appointed a Deputy, the Deputy will receive a Deputy order which sets out specific powers depending on the individual's needs. These powers cannot be exceeded.
- There are on going responsibilities for a Deputy, for example filing an annual account and report and accounting to the Court for all financial transactions in the previous year. This is not only onerous, but expensive.

How can an application be avoided?

By making an LPA an individual can appoint a person of their choice and in most cases avoid the need of involvement by the Court.

Why Use Linder Myers

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