

Power to you



Take control, don't lose control. **Nicola Cochran**, of **Rowberry Morris Solicitors**, explains why you should make a Lasting Power of Attorney

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There is a common misconception among clients I meet that if their loved one loses mental capacity, they can step in and manage their financial affairs. Unfortunately, this is not the case. If your loved one loses capacity without having put in place a Property and Financial Lasting Power of Attorney (LPA), or an old-style Enduring Power of Attorney (EPA), you cannot manage his or her property or finances.

In order to act on your loved one's behalf in this situation, you must apply to the Court of Protection for a Deputyship order. This is costly, time-consuming and stressful for family members. Furthermore, as you have no LPA or EPA, you have to itemise all assets in the estate, and even then the court may decide to run your loved one's financial affairs itself, retaining that person's funds. It is too late at this stage, after someone has lost capacity, to try to prepare an LPA. Just at this very difficult time, when a person has become incapable of managing their affairs, financial control may pass from the family altogether.

There is also a new Health and Welfare LPA which – as the name suggests – relates only to health and welfare decisions and takes effect only once you lack the mental capacity to make such decisions for yourself. If you are part of a married couple it is unlikely you will need this, as a spouse will be kept informed by the doctors and asked to help make decisions as a next of kin. However, where families have fallen out, a Health and Welfare LPA is essential. Sadly, I come across many situations in which, for example, a mother has fallen out with her daughter and would not want her making health and welfare decisions on her behalf, even though she is the next of kin.

A Health and Welfare LPA is also a must for unmarried couples. Even if you've been with your partner for 30 years, as unmarried you still have no legal standing on visiting him or her in hospital if he or she has an accident and is in a coma. You are not regarded as next of kin, so you have no legal right to be there. At present, there is no such thing as a common law spouse in England.

LPAs are important documents, and it is sensible to get advice from specialist lawyers about the choices you have. Like house insurance, such a remedy may never be needed – but if it is, your family will be glad you made your LPAs in time, and with a specialist lawyer.

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