

Planning for the Future Series 6

COURT OF PROTECTION

APPOINTMENT OF DEPUTY FOR PROPERTY AND FINANCIAL MATTERS

A person may lose mental capacity to make decisions about their financial affairs.

The issue of capacity is subject to the Mental Capacity Act 2005 and the question of whether or not a person has capacity may not be straightforward. There are great shades of understanding and the law seeks to empower individuals to make their own decisions as far as possible.

If a person does not have capacity, for example, because of the effects of dementia, stroke, profound learning disabilities or accident, their finances cannot be dealt with by a third party unless the third party has legal authority. The legal authority may be via a Lasting Power of Attorney registered at the Office of the Public Guardian or an Enduring Power of Attorney made before 1st October 2007 and registered in accordance with the correct statutory procedure and after giving notice to the specified relatives.

In the absence of one of these types of Power of Attorney, a third party must apply to the Court of Protection to be appointed as the person's deputy. Note that this applies to lawful spouses and civil partners.

Who can apply?

It is usually the next of kin who applies, for example husband, wife or civil partner; or child or children jointly

A solicitor

A panel deputy

The Local Authority

EXAMPLE

Joe is 38 and has a car accident and is in a coma. Joe is a sole trader repairing washing machines. Joe has a wife Sue and three children under 18. Joe hadn't made a Lasting

Power of Attorney because he thought that he was too young and it was something that older people did.

Joe's bank accounts were frozen and Sue had no income and very limited capital resources to pay the mortgage and other bills and look after herself and the children.

(It must be pointed out at this stage that if Joe had made a Lasting Power of Attorney appointing Sue as his attorney, she would have been able to deal with his affairs without any problem. Hindsight is a very cruel mistress).

Sue is in a terrible predicament, she is worried sick about Joe and also how she is going to keep the house going for the children.

SOLUTION

Sue must obtain legal advice as soon as possible and submit an application to be appointed as Joe's deputy. Urgent applications are possible in certain circumstances.

PROCEDURE

There is a complex procedure which must be followed and which protects the best interests of the person lacking capacity at all times. Medical evidence regarding the lack of capacity to manage financial affairs must be produced; certain specified relatives notified to enable objections and concerns to be raised; the Court must find that the person in fact lacks capacity and an insurance bond arranged and paid for annually to safeguard the person against any loss. The deputy is required to prepare annual accounts and submit them to the court for approval. The deputy may receive a visit from the Court Visitor to check and support them.

Usually it takes about 4- 6 months to obtain the Order.

NEXT STEPS

This is a basic guide, so contact us to talk about your wishes to enable us to advise you about your options and how we can help you.



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Naomi Pinder qualified as a solicitor in 1988 and for over 20 years she has specialised in helping clients in planning for the future through Wills, Trusts and Lasting Powers of

Attorney; Probate and the administration of estates and trusts; capacity and Court of Protection; later life care planning and related elder client issues.

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