



Hope for the best, prepare for the worst

Few of us think of making arrangements in case we lose our mental capacity, but what can happen if we don't?

Many people believe their spouse or next of kin will automatically have the right to make decisions for them if they can't do so for themselves.

But, unfortunately, this is not the case. It sounds alarming but the truth is that, if you are taken into a nursing home, your loved ones may not have any say in the details of your care, or even what you can eat. If you have lost mental capacity, your bank may also shut down accounts and freeze assets. Even if the bank takes no action, your next of kin could face a lengthy legal process to access your money.

So, how can you ensure your next of kin is able to make decisions on your behalf?

Registering a lasting power of attorney (LPA)

You can give someone a pending right to make decisions for you by registering a legal document called a 'lasting power of attorney'. It names who you choose to make decisions for you, if you cannot. There are two types of LPA: a property and financial affairs LPA and a health and welfare LPA. We strongly advise that you register one of each type. You can delegate decision-making to two different people if you choose.

Many people think about their LPA later in life, but the unfortunate reality is that it's possible to lose capacity through injury or illness at any age. An LPA is like an insurance policy: you hope you'll never need it, but if and when you do, you need to have one already in place.

Under a health and welfare LPA, your 'attorney' can make decisions about your medical treatment, where

you're cared for, the type of care you receive and day-to-day things like your diet, how you dress and your daily routine. They can consider if you need new clothes, hairdressing or some extra support so you can go out more, and they can also make decisions about where you live. If you were being poorly looked after in a care home, for example, your attorney could transfer you to a better one or overrule your carers if they believed their decisions were not in your best interests.

In a nutshell, they make the choices you would make for yourself if you could.

What if I don't have a health and welfare LPA?

The health and welfare LPA is the most often overlooked, as people aren't always aware of how much their daily life, care, and interactions with their partner or family could be affected. Without one, healthcare professionals make the decisions. We have heard some poignant examples, such as one client was not allowed to give her husband cake (which she said always brought a smile to his face) or even assist with daily baths despite the fact that he would have preferred to have his wife taking care of this very intimate part of his routine.

Next of kin can only gain control of these matters by going through the Court of Protection to become a 'personal welfare deputy'. Usually this is only granted if there's a dispute in the family about what's best for the person in question or if major long-term decisions need to be made, such as where they will live.

One of the major benefits of LPAs is to prevent disputes in the family. Some families disagree over



where a dependent relative should live or how a loved one should be treated medically, and this discord can make a stressful situation even more upsetting.

A 'statement of wishes' can give you extra influence

An LPA can do more than just name the people you trust and leave it at that. Your 'statement of wishes' document, referred to in your LPA, could cover any preferences that you want to make sure your attorney knows. You may specify, as one of our own clients did, that if you end up in a care home, they must provide 'fresh flowers, fresh coffee (in bone china cups) and good wine in a large glass'!

You'll need to choose whether or not you want your attorney to make decisions about life-sustaining treatment; if not, such decisions will be made by your professional healthcare team (some people make an advance decision instead, also sometimes called a living will).

How to get started

Whilst you can draw up an LPA yourself online, most clients find it easier to do so through a solicitor. If you don't have a pair of these essential documents already, we recommend you put arrangements in place to make sure your nearest and dearest can protect your interests, no matter what.

Key facts at a glance

- 1** There are two separate LPAs: one for health and welfare and one for property and financial affairs.
- 2** You must sign your LPAs while you are still mentally competent.
- 3** To become valid, your LPAs are registered with the Office of the Public Guardian (OPG).
- 4** A 'statement of wishes' is a separate document in which you write any preferences that matter to you.
- 5** Having an LPA does not mean your attorneys can take control of your affairs against your will. If there's any room for doubt, as might happen during the onset of dementia for example, the diagnosis of two independent doctors is needed.
- 6** Your financial LPA can be used on a one-off basis for your attorneys to sign on your behalf if you cannot leave the house or are on holiday. The activation can be reversed.
- 7** Under a financial LPA, your attorney can only spend your money on you. Making gifts to other people is very limited through an LPA. A joint bank account may be an important safety net for couples and a family trust might be useful for some people.