

Who Makes Decisions When You Can't ?



Many of us, particularly when we are young, never consider what would happen if we became mentally incapable and were unable to make our own decisions. But this could happen to any one of us at any time, suddenly in an accident or illness, or gradually through the ageing process.

If you become mentally incapable of managing your affairs a formal application needs to be made to the Court of Protection for the Court to appoint a Deputy. A Deputy is someone appointed by the Court with ongoing legal authority, as prescribed by the Court, to make decisions on behalf of a person who lacks mental capacity.

This application would usually be made by a friend or family member. However, applications are currently taking approximately six months to process, effectively meaning your affairs could be in a state of limbo for some considerable time with your family unable to deal with your finances and/or personal welfare.

Fortunately there is an alternative to an application to the Court of Protection known as a Lasting Power of Attorney.

Lasting Power of Attorney (LPA)

An LPA is a legal document which allows you (as the donor) to plan ahead by choosing one or more people (the attorneys) to make decisions on your behalf. There are two types of LPA available, a Property and Affairs LPA and a Personal Welfare LPA. You can make both or just one, depending upon your

requirements. LPAs can only be used once they have been registered with the Office of the Public Guardian.

Property & Affairs LPA

A property and affairs attorney is there to manage your finances and property when you lose capacity to do so – although they can act before this if you so wish.

Property and affairs refer to any possessions owned by a person such as a house or flat, jewellery, income, savings or investments.

Personal Welfare LPA

A personal welfare attorney can only make decisions about your health and welfare matters when you lack the capacity to make them yourself.

Welfare decisions are anything about a person's healthcare, where they live, what they wear, what they eat and anything about their general care and wellbeing.

Advantages of Making an LPA

- If you do become mentally incapable of handling your own affairs your attorney(s) can act almost immediately, rather than having to wait several months for an

application to the Court of Protection.

- You designate your attorneys rather than your family/friends and the Court selecting the Deputy. This is obviously preferable as you can choose those that you most trust and this should reduce the possibility of financial abuse.
- LPAs will generally be a cheaper option than an application to the Court of Protection.

Enduring Powers of Attorney (EPA)

Enduring Powers of Attorney were replaced by Lasting Powers of Attorney on 1st October 2007. But, if you made an EPA before that date it remains valid subject to it being registered once the donor becomes incapable. However, EPAs do not cover welfare matters and therefore if you have created an EPA you may wish to consider making a Personal Welfare LPA.

Should you wish to discuss how a Lasting Power of Attorney could help you and your family please contact Eve Austin on 01704 531991 or eveaustin@hhlegal.co.uk.

LPAs can reduce the possibility of financial abuse and are a cheaper option than an application to the Court of Protection.

Hodge Halsall

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- business and commercial
- buying & selling your home
- civil litigation
- employment law
- family law
- landlord and tenant
- personal injury
- wills, trusts and probate

For further details relating to any of the above services please contact your local Hodge Halsall office, email info@hhlegal.co.uk or visit our website at www.hodgehalsall.co.uk.

We use the word 'Partner' to refer to a member of the LLP. Hodge Halsall LLP registered Office: 18 Hoghton Street, Southport, Merseyside PR9 0PA Tel: 01704 531991. Also at: 2 Liverpool Avenue, Ainsdale, Southport PR9 3LX Tel: 01704 577171. Partners: Mark P Robinson, Judith Bond & Gordon Hatton. Hodge Halsall LLP is a Limited Liability Partnership registered by the Solicitors Regulation Authority, registered No. OC328351

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Pre-Nuptial Agreements : for Better or for Worse ?

Whilst pre-nuptial agreements remain unenforceable in English courts they are becoming increasingly popular as couples seek to protect the assets they take into a marriage and the courts take ever more notice of the arrangements contained within a pre-marital agreement.

Pre-nuptials received a boost earlier this year when Susan Crossley was forced to drop her claim for part of her husband's £45 million fortune. The Crossleys had entered into a pre-nuptial agreement that stated that neither would claim a penny of the others wealth if the marriage broke-up. Mrs Crossley tried to claim the agreement was invalid. However, the Judge, in ruling on the pre-nuptial, stated "...the court will look to the pre-nuptial agreement as not simply one of the peripheral factors of the case but as a factor of magnetic importance". Following the ruling Mrs Crossley withdrew her claim.

The extent to which courts will take note of the arrangements within a pre-

nuptial agreement will depend upon a number of issues including the length of the marriage and any significant changes since the marriage, such as the birth of any children.

Pre-nuptial agreements not only seek to protect assets during a marriage but can also guide other issues such as the religion or education of any children. However, arrangements relating to the custody of children contained in a pre-nuptial are likely to have little bearing on the decision of the court in a custody hearing. To ensure that there can be no accusation of coercion or last minute pressure any pre-marital agreement should be completed by each party using independent solicitors and the agreement being signed at least 21 days before the wedding.

With the introduction of Civil Partnerships same sex couples can have similar arrangements known as Pre-Civil Partnership Agreements.

Whilst pre-nuptial agreements are yet to be recognised in English law they do seemingly carry weight in the minds of



Judges. They should therefore be on the wedding list of all those getting married – even if they are not one of the more romantic subjects for those considering marital bliss.

For further details on pre-nuptial agreements, or for advice on any family or marital issue, please contact Clare Ellison at Hodge Halsall on 01704 531991 or clareellison@hhlegal.co.uk.

Pre - nuptial agreements can be of "magnetic importance" in deciding the division of assets in a marital breakdown.

Inside this issue

<i>Pre-Nuptial Agreements : for Better or for Worse ?</i>	1
<i>Take Control – Make a Will</i>	2
<i>Increase in National Minimum Wage</i>	2
<i>Making a Gift of Your Home</i>	3
<i>Care Home Fees – A Crisis ?</i>	3
<i>Who Makes Decisions When You Can't ?</i>	4

Welcome to Hodge Halsall's First Newsletter For Private Clients

This Newsletter is designed to summarize various areas of law that may impact upon you and your family. It is a periodic publication of Hodge Halsall LLP and is intended for legal guidance only. It is not to be construed as a substitute for legal advice. For advice specific to your circumstances please contact your Hodge Halsall representative.

We are interested in your opinion. If you have any suggestions about how we can improve Legal News or if you would like us to cover a specific topic please contact: Derek Alman at derekalman@hhlegal.co.uk or call 01704 531991

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Take Control – Make a Will



Do you ever worry what will happen with regards to your property and affairs on your death?

If you have a family, especially children, common sense suggests a requirement to ensure that upon your death your wishes and requests have been clearly documented in a Will making adequate provision for your family as you think fit.

If you do nothing, and don't make a will, your estate will be held intestate and distributed in accordance with the statutory rules contained in the Administration of Estates Act 1925 and subsequent amending legislation.

The only exception to this is that any assets held in the joint names of the survivor and the deceased would pass automatically by survivorship to the

survivor and will not be distributed in accordance with the statutory rules.

However, assets which are held in the deceased's sole name would be dealt with as follows; for example if you were to die leaving a spouse and children:

Spouse entitlement

- Personal chattels as defined by S55 of the Administration of Estates Act 1925 (heirloom, personal possessions, jewellery, cars, collectables)
- A statutory legacy of up to £125,000.00
- Interest on the statutory legacy from the date of death until date of payment
- One half of the excess over the statutory legacy to be held on Trust allowing the surviving spouse access to income only.

Children's entitlement

- The other half of excess over the statutory legacy is held on trust for the children in equal shares contingent on attaining 18 or marrying.
- On your spouses' death the life interest which he or she was entitled to (allowing access to income) this fund will pass to your children contingent on attaining the age of 18 or marrying.

Matters are further complicated if you

were to die leaving a spouse (but no children) and either parents or brothers and sisters of the whole blood or their children. Your spouse is entitled to personal chattels, a statutory legacy of £200,000.00, interest on statutory legacy from the date of death until the date of payment and one half of the excess over the statutory legacy to your spouse absolutely. The other half of the excess over the statutory legacy will pass to your parents or the survivor of them. If you have no surviving parents at the date of your death then to your brothers and sisters of the whole blood in equal shares or their children.

If you have not made a Will, you run the risk of leaving your affairs to be distributed in accordance with the law as opposed to fulfilling your wishes and intentions.

As you will see from above if you have children your estate, upon your death, will not automatically pass to your surviving spouse as you might expect. It is imperative that at such a distressing time your surviving spouse does not have to deal with the further upset of the effect of the Intestacy Rules.

For advice on making a Will contact Eve Austin at Hodge Halsall on 01704 531991 or eveaustin@hhlegal.co.uk.

By not having a Will you leave your assets to be distributed in accordance with the law rather than your wishes.

Increase in National Minimum Wage

The minimum wage will increase as follows, with effect from 1st October 2008:-

Adults : From £5.52ph to £5.73ph
Ages 18 – 21 £4.60ph to £4.77ph
Ages 16 – 17 £3.40ph to £3.53ph

The Government is also bringing in tougher penalties for employers who break the law. The maximum penalty for non-payment of the minimum wage will increase from £5,000 to an unlimited fine. Serious cases of non-compliance will be tried in a Crown Court.

The minimum wage was introduced in April 1999 and has increased by 59% since that time – almost double the rate of inflation.

Making a Gift of Your Home



You may be thinking of making a gift of your home to members of your family.

It is quite possible to make such a gift and for Inheritance Tax purposes the gift will be a potentially exempt Transfer, meaning that if you survive for 7 years from the date of the gift then its value drops out of account of your estate when calculating Inheritance Tax.

If you retain any rights over the subject matter of the gift (e.g. continuing to live in a house that you have given away) then the gift will not be perfected for Inheritance Tax purposes since you will have deemed to have "reserved a benefit" in the property and the value will then not come out of your estate for Inheritance Tax purposes.

There will be no Capital Gains Tax to pay on a gift of your main home, provided it is your principal private residence. However, in other cases, you may be charged Capital Gains Tax even though you are making a gift and receiving nothing in return.

It is important to note the effect of making a substantial gift, either of savings, or of your home and then subsequently making a claim for help with Care Home fees.

The Local Services Authority is empowered to assess your means (both capital and income) to see if your income meets the amount you are required to pay for Care Home fees. Any shortfall could be made up by way of State Benefits.

The Community Care Act empowers County Councils to treat a Resident as still possessing capital of which he has deprived himself for the purposes of reducing the amount that he may be liable to pay for his accommodation, and thereby increasing the amount of Capital State Benefits received.

This means that although your home may have been given away, its value may still be brought into account in assessing the money available to you to meet your own Care Home fees. There is no "safe" period between making the gift and moving into the Care Home or claiming assistance with fees but the intention at the time of the gift is important. If it appears that the home was given away to increase the amount of help you receive with the Care Home fees then even though the property may have been validly given away, the resident may still be assessed as though they

own the capital and there may be serious financial difficulties in meeting Care Home fees.

If a family home is brought into account as an asset that must be used to pay Care Home fees, the County Council is empowered to place a Charge over the property if ownership is retained and its value is not used to provide money to meet Care Home fees.

In addition, if the resident enters the Care Home or makes a claim for assistance with fees within 6 months of making the gift there is power for the County Council to seek money from the recipient of the gift. The house may also become charged with a mortgage to the County Council even though it now belongs to other members of your family.

A further point to bear in mind is that a disadvantage of giving away your home and "getting away with it" (i.e. if the Local Authority do not assess you as still owning the value of the home and are helping you with Care Home fees) is that you will have no choice as to which Home you are put in by the Authority.

If you are considering making a gift of your home please ensure you speak to us first. Contact Gordon Hatton on 01704 577171 or gordonhatton@hhlegal.co.uk

The effect of making a gift of your home and then subsequently making a claim for help with care home fees should not be underestimated.

Care Home Fees – A Crisis ?

Research has shown that the future average cost of a four year stay in a care home will reach nearly £224,000 in the next 20 years. The government is currently in a consultation period into the growing long term care funding gap which threatens to leave England with a £6 billion shortfall. With figures such as these being quoted millions of people are fearful of having to sell their homes to pay nursing home fees.

However, there are options available to allow people to retain their home and meet care home costs:

• Discretionary will trusts

Previously used in inheritance tax planning these devices can also be used to provide a relatively simple way

of possibly reducing the value of your home and therefore making it harder for the relevant authorities to insist on its sale to pay care home fees.

• Equity release

Home owners can release the equity in their homes to generate cash which can be used to pay care home costs. There are various schemes available and expert advice should be sought. Downsizing may be a cheaper alternative.

• Long term care insurance

Long term care cover provides insurance against future care costs. However, there are few suppliers and as a result cover can be expensive.

• Long term care annuities

If care is already required when you come to take out an annuity you can apply for a specialist long term care option.

All the above could provide some relief from the impending long term care crisis. However, all the options mentioned require careful consideration as all have significant financial implications. Professional advice should be sought before any commitment is made.

Please contact: Geoff Dootson on 01704 577171 or GeoffDootson@hhlegal.co.uk for advice on Care Home Fees Planning.