

Your guide to Financial matters for the elderly

finance planning

Managing your future

Every adult has the right to manage his or her own money and affairs. Sometimes, however, our ability to do this decreases as we grow older. Whether this is caused by illness, disability, or an accident, there are a number of practical steps you can take to prepare for this.

If this describes your situation, or that of someone close to you, you should consider getting legal advice. We can help by encouraging you to get your affairs in order and make your wishes for the future known. This may involve anything from writing a will to choosing someone to take a power of attorney (legal authority to act for you) over your financial affairs, if this is necessary.

This can lighten the burden on relatives or carers who might otherwise find it difficult to make complicated decisions on your behalf.

Where there is not enough time to take these precautionary steps, or if the person is already 'incapacitated' (unable to handle their own financial affairs), it is usually the relatives of the person who need advice. In these circumstances there are a number of options available. One of these options is to apply to the Court of Protection, which is the court that can make arrangements for maintaining the person's financial affairs. We will tell you the best course of action in your case.

What we will need to know

If you are the client, we will need to know:

- whether or not you have made a will;
- who you would choose to handle your affairs, if this is necessary;
- what assets or income you have;
- any special wishes about how you want your property or assets to be handled; and
- whether you have a particular medical condition (if so, we will need permission to speak to your doctor).

If you are getting advice on behalf of an elderly person, we will first need to confirm with the elderly person that they want to instruct us and get the appropriate information. Once we have had a chance to consider the information, we can explain your options to you. However, it is not always possible to take instructions from someone other than the elderly person.

An ordinary power of attorney

This is a legal way of giving someone else the power to manage your financial affairs when it is difficult for you to manage them yourself, perhaps because of a physical disability. Usually you appoint someone you trust, such as a close relative, friend, or solicitor as your 'attorney'. Nobody can simply 'take' a power of attorney. You have to 'donate' it willingly. The donor decides who to appoint as attorney, and can cancel the arrangement at any time.

Power of attorney only applies if you are fully aware of the implications of the arrangement. The power of attorney will come to an end if you become mentally incapable of managing your financial affairs.

Lasting power of attorney

A lasting power of attorney goes one step further than an ordinary power of attorney, because it carries on, or 'lasts', even after you have become unable to manage your affairs—whether temporarily or permanently, or because of an illness, disability or accident. Lasting powers of attorney have now replaced enduring powers of attorney, although valid enduring powers of attorney made before 1st October 2007 can still be used. No new enduring powers of attorney can be made after 1st October 2007.

For a lasting power of attorney to be valid, you must fully understand the implication of the arrangement at the time of making it. A certificate provider will need to sign a certificate to say that you are aware of the implications and that nobody is pressurising you into making a lasting power of attorney. (A certificate provider is someone who has known you for at least two years, or someone with specialist in assessing if a person is incapacitated.) The attorney must be at least 18 years old and must not be bankrupt if appointed to make decisions about a person's property and money. More than one attorney can be appointed at the same time.

Your attorney cannot start making decisions on your behalf until the lasting power of attorney has been registered by the Office of the Public Guardian, who will make sure your attorney is aware of his or her duty to act in your best interests. The Office of the Public Guardian will charge a fee for registering the lasting power of attorney.

There are two types of lasting powers of attorney;

- health and welfare lasting power of attorney; and
- property and financial affairs lasting power of attorney.

Health and welfare lasting power of attorney

A health and welfare lasting power of attorney can be made to give your attorney the right to make personal welfare and medical treatment decisions on your behalf if at some time in the future you are unable to make those decisions yourself. A health and welfare lasting power of attorney can only be used when it has been registered and the donor has lost capacity (the ability to handle their own affairs).

Property and financial affairs lasting power of attorney

A property and financial affairs lasting power of attorney can be made to give your attorneys the right to make financial decisions, such as managing your bank account. Once registered, a property and financial affairs lasting power of attorney can be used while the donor still has capacity, unless the lasting power of attorney specifies otherwise. We will be able to ensure that your lasting power of attorney is properly set up and registered, and that it is in the best interest of the donor.

The Court of Protection

If someone is mentally incapable of making a particular decision at a particular time, and they haven't made a lasting power of attorney, and the decision isn't one that can be made on an informal basis, the matter can be referred to the Court of Protection. The court may either choose to make the decision itself on the person's behalf, or choose someone else, known as a 'deputy', to make the decision for them.

Where the court appoints a deputy to manage someone's property and financial affairs on an ongoing basis, the deputy usually has to keep accounts, enter into a security bond, and report to the Office of the Public Guardian. The Court of Protection charges an application fee, and the Office of the Public Guardian charges a yearly fee to cover the costs of supervising the deputy's work. This can be a difficult process and we have experienced solicitors who can make the process as smooth as possible.

Appointeeship

If a person is incapacitated and entitled to receive a retirement pension or other state benefits, the Department for Works and Pensions can choose an 'appointee' to receive those benefits on that person's behalf. The appointee can be a relative, friend or someone from the caring professions (such as the local authority social services department). They will be asked to produce some proof that the claimant is incapacitated, such as a doctor's certificate. There is no fee involved in this service.

Other financial matters

We can advise on a wide range of other legal matters affecting elderly people. For example;

- equity-release schemes, where you can unlock some of the capital tied up in your home;
- funding arrangements for long-term care;
- estate planning by making a will or lifetime gifts; or
- where you suspect that an elderly person may be the victim of financial abuse.