

Your guide to Financial matters for older people

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. A solicitor 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 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 a 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 contact the Court of Protection, which can make arrangements for managing the person's financial affairs. A solicitor will tell you the best course of action in your case.

Finding a solicitor

If you don't already have a solicitor, you can find one at www.lawsociety.org.uk/findasolicitor or call 020 7320 5650.

What the solicitor will need to know

If you are the client, the solicitor 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, they will need permission to speak to your doctor).

If you are getting advice on behalf of an older person, the solicitor will first need to confirm with the older person that they want to instruct the solicitor and get the appropriate information. Once the solicitor has had a chance to consider the information, they can explain your options to you. These are as follows.

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 1 October 2007 can still be used. No new enduring powers of attorney can be made after 1 October 2007.

For a lasting power of attorney to be valid, you must fully understand the implications 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 skills 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:

1. Health and welfare lasting power of attorney; and
2. 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 attorney 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.

Consulting a solicitor is the best way to make sure a lasting power of attorney is properly set up and registered, and that it is in the best interests of the donor.

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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 cost of supervising the deputy's work.

Appointeeship

If a person is incapacitated and entitled to receive a retirement pension or other state benefits, the Department for Work 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

A solicitor can advise on a wide range of other legal matters affecting older 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 older person may be the victim of financial abuse.

Costs

Charges vary between solicitors and depend on your circumstances and how much advice or help is needed. Before deciding on a particular solicitor, you should always check whether their offices are accessible, and how much experience they have in this particular area of the law. You will also want to get a clear idea of their charges, but cost is not the only thing you should consider. It is just as important to find a solicitor who is approachable and whose advice you understand.

We can make the information in this leaflet available in other formats and languages on request.

Contact us on 020 7320 5832 or email accessibility@lawsociety.org.uk

More information

This is one of a series of free leaflets covering the most common types of legal services that solicitors provide. Other leaflets in the series are listed below.

You can get them from your solicitor or from www.lawsociety.org.uk/commonlegalproblems

Your guide to finding expert legal help
Your guide to buying a home
Your guide to making a will
Your guide to getting a divorce
Your guide to problems at work
Your guide to setting up a business
Your guide to making a personal injury claim
Your guide to renting out your property
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