

Legal Matters

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Many carers may find themselves having to think about looking after the financial affairs of the person they care for. It may be short term (e.g. for a stay in hospital) or long term.

Once someone can no longer manage their own affairs they will need a person, most likely the carer, to help. You can reduce possible problems and complications by thinking ahead.

Practical Tips:

Plan ahead even though you may feel that it is not yet necessary.

Bank Account

If you need to operate someone else's bank or building society account usually a letter to the bank from the person concerned is enough. This is known as a 'third party mandate'.

Social Security Benefits

If you need to help someone collect their pension or benefit, you should consider becoming their agent or appointee. An agent is a person authorised to collect someone's benefit or pension on their behalf. An appointee is someone appointed on behalf of people who have mental incapacity, which stops them from managing their financial affairs by themselves. An appointeeship only gives authority over the incapacity benefits, not their financial affairs as a whole

You will find more information about agents and appointees by reading leaflet API (called 'A Helping Hand'), which is obtainable from any Benefits Agency office.

Power of Attorney

This is a document, which gives someone the legal right to manage another person's financial affairs, for example if they are in hospital or away on holiday. An ordinary Power of Attorney only applies so long as the person giving it is mentally competent. It does not cover, for instance, the sale of a house.

An Enduring Power of Attorney remains valid even if the person giving it later becomes mentally incapable but it must be created by someone who is mentally capable at the time. This could be a good idea if the person you care for is getting more forgetful and absent-minded, and you think they may soon become incapable of managing their own affairs. It covers major transactions such as buying or selling shares or houses.

The Enduring Power of Attorney gives powers to continue even if the donor becomes mentally ill.

Some people arrange the Enduring Power of Attorney early on and it comes into effect only under certain conditions e.g. person becomes too frail or is diagnosed as having dementia.

- Any existing 'ordinary' power would be automatically cancelled because the donor has become mentally incapable. In these circumstances an 'enduring' power will have to be registered at the Public Guardianship Office.
- An Enduring Power of Attorney can be created by the Public Guardianship Office at the request of a family who need it when the person concerned has become too ill to organise it.

If you require further assistance or advice on matters relating to an application to register an Enduring Power of Attorney, then written enquiries can be sent to the Public Guardianship Office, marked for the attention of the Enduring Power of Attorney Team, at the address listed below.

Practical Tips:

You could discuss these conditions with your relative and write them into the agreement. Consider doing this at the same time as making a Will, as a way of preparing for the future.

Who Can be an Attorney?

- anyone over 18;
- anyone who has not been bankrupt;
- a relative or friend;
- an accountant or solicitor.

Practical Tips:

It is sensible to warn of potential risks. An Enduring Power of Attorney, is a very powerful document that will give the Attorney mostly unfettered and unchecked access to the financial assets of the person who made the power, including their property. Attorneys should be chosen with care.

Receivership

If a person becomes mentally incapable and they have not arranged an Enduring Power of Attorney, the usual way to deal with their financial affairs is to appoint another person under the Mental Health Act 1983. This can be done by appointment of a Receiver, or through various short orders and directions, in the Court of Protection. These are all administered by the Public Guardianship Office.

The Public Guardianship Office will decide whether a receiver needs to be appointed to act on behalf of a person which may include selling a house or property. Alternatively, if the capital value of an estate is below a certain amount, a Direction may be issued. The person appointed will be accountable and required to complete an annual enquiry to confirm the income and expenditure made on behalf of an individual.

For Further Information and Advice Contact:

Public Guardianship Office

Archway Tower

2 Junction Road

London N19 5SZ

☎ (0845) 330 2900 (local call rate)

9.00am - 6.00pm Monday to Friday

website: www.guardianship.gov.uk

Useful Leaflets obtainable from the Public Guardianship Office:

- Enduring Powers of Attorney
- Making an Application
- Duties of a receiver
- Handbooks for receivers
- Fees

Practical Tips:

An accountant or solicitor will charge a fee so it is a good idea to get a few quotes. It may be expensive to pay for a solicitor or accountant to make an application to the Public Guardianship Office, so consider making direct contact yourself. They will be able to give you practical advice on the options available to you.

Making a Will

It is always a good idea to try and keep all important documents and papers in one place. Try and gather together things like birth and marriage certificates, insurance policies, post office savings book, share certificates, building society accounts, driving licence, pensions etc. If any of these are in the care of a bank or solicitor write down where they are.

Practical Tips:

- make sure someone knows where the file is containing all the documents;
- write down as much information as possible (e.g. if the person you cared for paid into a pension fund while working, write down the administration address);
- plan ahead, organising everything now may seem unnecessary and tedious but it will make things so much easier later on;
- make a Will, you can write a Will yourself but if it is unclear it may cause difficulties after death. Local solicitors can help you make a will but obtain a quote first.
- consider making your accounts joint so the person who is left can still draw cash. When a person dies, in law, their assets may be frozen until probate is granted. If you and the person you cared for have joint accounts then money can be drawn out. If not, you may be unable to draw money out of the bereaved person's account.

- make a list of your assets.
- check on any pensions, which may be due.
- check on any insurance policy or pre-paid funeral plan that could cover the cost of the funeral. (see section 7).

The British Bankers Association has produced two leaflets which may be helpful. They are called:

- Disability Legislation: You and your Bank
- Signing your name: How to overcome difficulties

Section 9 - Contact Details

Benefits Enquiry Line

☎ 0800 882200
Minicom 0800 243355

Citizens Advice Bureaux

19 Cartlett
Haverfordwest
☎ 0845 1202939

10 Meyrick Street,
Pembroke Dock
☎ (01646) 683805

Disability Law Service

They publish a free booklet called 'Guidelines for Wills and Trusts', they will also give advice over the telephone or by letter.
Monday - Friday 10.00am to 1.00pm - 2.00pm to 5.00pm
39-45 Cavell Street
London E1 2BP
☎ (0207) 7919800
Fax: (0207) 7919802
Minicom: 0207 7919801
E-mail: advice@dls.org.uk

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Archway Tower
2 Junction Road
London N19 5SZ
☎ 0845 330 2900 Monday - Friday 9.00am to 6.00pm
website: www.guardianship.gov.uk