

## **SAFEGUARDING YOUR FUTURE**

***If you lose the mental ability to make decisions about your medical treatment and care what would happen if you hadn't made plans? One option is to appoint an attorney to look after things for you if the worst should happen. David Bruton, from legal firm HRJ Law, which has offices in Welwyn Garden City and Hitchin, explains:***

Every year through illness, disability or injury thousands of people lose the ability to make decisions that affect their lives. We can all be affected by this either personally, or through someone close to us.

If this unfortunate situation should arise then, unless planned for, your assets may be frozen until the Public Guardianship Office authorises the appointment of a Deputy. This person is usually either a member of the family or a professional adviser. The process usually takes a few months, and some see it as expensive.

Up until 2 years ago the alternative to a Receivership was a document called an Enduring Power of Attorney (EPA) in which the 'donor', gave the legal right to one or more people, called 'attorneys', to manage the donor's financial affairs and property. However significant changes were made in 2007 as a result of the Mental Capacity Act 2005 which made provision for people to choose someone to manage not only their finances and property should they become incapable, but also to make personal health and welfare decisions on



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their behalf. This is done through a lasting power of attorney (LPA). LPAs replaced EPAs in 2007 although an EPA made before 1<sup>st</sup> October 2007 is still valid.

An LPA enables the donor to nominate a spokesperson (the attorney) to make decisions regarding personal welfare, including healthcare and consent to medical treatment. Different attorneys can be named for making different categories of decision, so for example you can nominate someone to deal with your financial affairs and another person to make decisions as to your welfare. An attorney is only able to make decisions about end of life treatment if this is included in a clear statement on the LPA form. However, the LPA does not grant the attorney the right to demand a particular medical treatment if the medical professionals are not in agreement; nor does it give the attorney the right to make decisions which are not in the donor's best interests.

LPA's are relatively complicated documents and, in order to be valid, they must be witnessed by someone who signs to certify that the donor understands the purpose of the LPA and has not been subjected to undue pressure. Although the mechanism to enter into an LPA can appear expensive and long winded, if you become mentally incapable of handling your affairs without such a document in place, the process of receivership will end up being even more expensive and long winded.

To be sure that your future is safeguarded your first step should be to check and list all Wills, Codicils and powers of attorney that you have signed and note on your list the date and whereabouts of each such document. Then consider whether these cover all reasonably possible eventualities,

remembering that a loss of capacity is not necessarily limited to the elderly. Good independent legal advice is key here to ensure that any plans you make for the future have a strong legal foundation.

HRJ Law is based in Hertfordshire and offers a full range of legal services to local and national private and commercial clients. This includes all aspects of business, family and private client law in addition to personal injury, clinical negligence, general litigation, debt recovery and notarial services.