

Deputyship Orders - What are they?

Deputyship Orders – Lost mental capacity and no Lasting Powers of Attorney?

Making a Lasting Power of Attorney appointing Attorneys to act upon your behalf if you lose mental capacity is becoming increasingly popular as people find comfort in the security that if anything should happen to them, they know who will be taking control of their Property and Finances and Health and Welfare. So, what happens if someone you love loses mental capacity but has not executed a Lasting Power of Attorney? The answer is a Deputyship Order.

What is a Deputyship Order?

A Deputyship Order is an Order granted by the Court of Protection appointing the applicant as a Deputy for the person who has lost mental capacity (the “Donor”). The Deputy is appointed to make decisions on behalf of the person who has lost mental capacity. The main difference between a Lasting Power of Attorney and a Deputyship Order is that the Donor chooses their Attorney/Attorneys but in a Deputyship Order this is a person or persons appointed by the Court.

Who can apply for a Deputyship Order?

A Deputyship Order is usually applied for by a family member, close family friend or a relevant professional. They are bound by their appointment to act in the best interests of the Donor and therefore the Court will take careful consideration of all of the factors declared in the Deputyship Order Application to decide whether the applicant is suitable to be appointed as the Donor’s deputy.

How is the application made?

The application is made by completing a lengthy and in-depth application form which is then submitted to the Court of Protection. There is the application form itself, a form upon which you detail all of the Donor’s assets, income and liabilities, an capacity assessment which has to be completed by a medical professional and a declaration to be made by the proposed Deputy. Once the application is received by the Court of Protection, there is a strict procedure of Service and Notification to ensure that the Donor is made aware of the application along with certain other family members as set out in Legislation within a set time frame. There is a Court fee to be paid for the application and the Court usually take several months to decide whether to grant the Order, during which time, the Donor has no-one appointed to assist them.

Why are Lasting Powers of Attorney preferable to a Deputyship Order?

Firstly, you can execute a Lasting Power of Attorney for both Property and Finances and a separate one for Health and Welfare so that your Attorney/Attorneys can made all decisions for you should you lose mental capacity. A Deputyship Order is usually only applied for to make decisions regarding a person’s Property and finances although there is an option to apply for both.

Secondly, as stated above, the Donor has no choice in who is appointed. By the time a Deputyship Order is considered, the person has usually already lost mental capacity and cannot make the decision for themselves.

Thirdly, a Deputyship Order is both costly and lengthy. Due to the nature of the document, the Court of Protection must take careful consideration when granting an Order and therefore the process can take several months during which time nothing can be done.

For further information on Deputyship Orders or Lasting Powers of Attorney please contact the Private Client Team on 01384 371 622 and we would be more than happy to answer your queries.

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