



Phillips' Legal Corner



Question:

My mother is going into residential care and has been told she needs to sell her home. She's rather frail and needs someone to act on her behalf, what can we do to help?

Answer:

Ben Holden, solicitor at Phillips, explains how you can help a relative who may become mentally or physically incapable of managing his/her own affairs

'When an elderly or infirm relative goes into residential care it can be very stressful for all concerned' says Ben Holden, solicitor. 'This can be especially difficult if your relative develops dementia or any other age-related mental health problems.

The best way that you can help your mother, providing she is not mentally incapacitated, is to suggest that she has a Lasting Power of Attorney (LPA) prepared for her. This is a legal document that will enable her to appoint a family member or trusted friend to deal with her affairs. There are two types of LPA but the most appropriate one for your mother, if she needs to sell her home, is the one dealing with property and financial affairs. The LPA comes into play either when your mother chooses or when her mental health declines. The second type of LPA deals with health and welfare, for example making choices about care homes or deciding upon medical treatment.

The person making the LPA has to be of sound mind but if your mother has a pre-existing mental illness such as dementia, then her GP may have to be approached to confirm whether she is mentally capable. If your mother is definitely not of sound mind, then unfortunately family members cannot make an LPA on her behalf. Instead a member of her family will have to apply to the Court of Protection for a Deputyship Order. This process can take up to 6 to 12 months and is often very stressful and expensive.

My advice to you is don't leave your family affairs to chance – your mother should make an LPA at the earliest opportunity, whilst she is in relatively good health, it's a lot less stressful and expensive than applying to the Court of Protection. If you have any questions or would like to pop in for a chat, please call me on 01256 854 618.'

Ben Holden is a solicitor specialising in Wills, Lasting Powers of Attorney, Probate and Trusts. He is also a member of the Society of Trust and Estate Practitioners (STEP) and Solicitors for the Elderly. Email Ben on bholden@phillips-law.co.uk or call him on 01256 854 618. Find out more at www.phillips-law.co.uk