

# Planning for your future

Putting your legal affairs in order

# Agenda

- Top Legal and Practical Tips
- Powers of Attorney
- Wills
- Payment of Pensions
- Lifetime Gifts
- State Benefits
- Funeral plans
- Financial Advice
- Research care at home or at care home
- Current Funding of Care system
- State Pension and NHS Nursing Care funding

# Top Legal and Practical Tips

- Do you or a member of your family have the legal authority to act?

## **Lasting Power of Attorney**

Property and Financial Affairs – used once registered

Health and Welfare – use once registered and donor lost capacity

## **Enduring Powers of Attorney**

Register if donor loses capacity

## **Deputyship – Court of Protection**

If no LPA or EPA and family member lost capacity

More complicated and expensive

# Attorneys

- Who?
- How many?
- Joint or Joint and Several?
- Initial and replacement?
- Type of authority – restrictions/conditions /guidance?
- Register now or later?

## Key principles

- **Presumption of capacity**
- **Best interests**

- Do you or your family member have a **Will** in place?

“Protect your **property**” with a gift share of house of first to die to:

- children absolutely – divorce, bankruptcy etc.
- life interest trust – to survivor; tax neutral; protects survivor; or
- discretionary trust – most flexible and protective; not tax neutral
- make maximum use of available NRBs/RNRBs

Sever the joint tenancy – convert to tenants in common

- Separate finances

Joint accounts – 50/50

e.g. joint account £50,000 - £25,000 each

have to spend £3,500 to get to below £23250 each (£46500 in total)

if 2 accounts with £25,000 in each – only care home resident has to spend £1750 to fall below threshold

- Pensions into joint account
- Make lifetime gifts for tax planning reasons
  - can be tax efficient
  - shows other intent behind the gift – to avoid deliberate deprivation of capital argument
- Ensure all state benefits being claimed
  - AA (over 65's)/Pension Credit
  - DLA (under 65's)
  - NHS NCA

- Consider funeral planning
  - ignored for most LA financial assessments – depends on the LA
  - puts in place what you want so your bereaved family does not need to decide/worry
- Seek specialist and Independent Financial Advice

# Types of Care

- Stay at home
  - help with cooking and cleaning and other basic tasks – ad hoc or daily
  - Live-in care
  - Is Care Agency registered with Care Quality Commission (CGS)?
  - What training/skills do they have?
  - How often will there be a change of Carer?



- Sheltered Accommodation

- ability to live independently with live-in care available

- self contained apartments with services:

- Laundry, communal sitting room and gardens, security systems,

- Warden, 24 hour assistance with alarm

- Close Care (Extra Care and Assisted Living)
  - Self contained with own front door
  - within grounds of a care home should emergency happen
  - menu of services ( cleaning, catering, laundry, social and personal care)

- Downsizing!
- Care Home
  - don't rush the decision
  - visit several homes to compare care and costs
  - check CQS inspection report

# Paying for care – current system

## Capital limits:

- Above £23250 – no financial assistance from LA
- Between £14250 and £23250 – LA financial assistance on a sliding scale
- Below £14250 – financial assistance in full; **but** remember income!  
LA allow for expenses from income  
“Allowance” of approx. £28.25/week – clothing/personal

# What is included in “Capital”?

- Savings – cash in banks and building society
- Shares and investments
- Property – can be disregarded

# Is the resident's home included?

A person's home is not included in the means assessment if one of the following lives in the property:

- Spouse or civil partner
- A relative aged 60 or over
- A disabled relative or dependant child aged under 18 years

First 12 weeks - disregarded  
Temporary care

# Discretionary disregard

- LA can disregard the value of the property if occupied by spouse/child/relative over 60 year or disabled
- No obligation to exercise this power but should give individual consideration to any requests to do so
- e.g. 40 year old child lives there and has given up own home/job to move in and care for Mum

# Deferred Payment Agreements

If after 12 weeks property not sold – ask LA for a “Deferred Payment Agreement”

- LA pay towards care until property sold
- Money repayable once sold or resident dies
- Interest can be charged (maximum 3.18% although likely to increase shortly)



# Third Party Top-ups

Even if qualify for LA funding – LA may limit amount will pay

- If particular care home more expensive
- Close family or friends asked to pay top-up
- Top-up must be sustainable and not out of resident's capital/income

# Deliberate deprivation of assets

- Intentionally reducing assets to qualify for funding from LA towards care costs
- E.g. spending, making gifts or certain investments
- If LA feels that you have deliberately deprived yourself of assets, those assets = 'notional capital' and will still be taken into consideration when reviewing your ability to pay for care.
- LA could seek to reclaim those assets.
- You may want to pass on savings or other capital to your children or others during your lifetime, but this can affect your eligibility for funding, and you should consider the impact this could have in the future.

## Examples of “Deprivation”?

- Lump-sum payments e.g. gifts
- Substantial expenditure incurred suddenly and out of character
- House transferred to someone else
- Assets put in to a trust that cannot be revoked
- Assets converted into another form that are disregarded e.g. personal possessions
- Assets reduced by living extravagantly, e.g. gambling
- Assets used to purchase an investment bond with life insurance
- Selling an asset for less than its true value

Timing and motivation for a disposal of assets are of central importance – what was the intention behind the disposal

LA has a responsibility to consider these elements as part of means test

In order to claim that you have deprived yourself of assets, LA must show that you were aware that you may need care and support in the future when you carried out the transfer

# State benefit available

Attendance Allowance – non means tested

- Over 65 years of age
- Needed care (help with essential daily tasks e.g. washing and dressing) for longer than 6 months
- 2 rates/week : £68.10 lower      £101.75 upper

# NHS Funded Nursing Care

- Health and Social Care Act 2001
- Assessed as needing nursing care in a home with nursing
- Non means-tested and tax free
- £219.71 per week
- Fully funded Continuing Healthcare – all care paid for by NHS
  - unstable/unpredictable and in need of 24 hour specialist/acute nursing care