

# When would you need a deputy?

Normally, we make our own financial decisions. We decide where we live, how we spend our money and where our income goes. Sometimes we also delegate that authority to others. If we receive benefits, we may ask someone to act as an appointee or we may appoint an attorney to make decisions on our behalf.

In these cases, we do so having sufficient mental capacity. The situation is different however for those who lack the capacity to make their own decisions. In these cases, it is common for

the Court of Protection to appoint a deputy to make decisions on that person's behalf. The deputy can be a family member, friend or a

professional. The court order appointing the deputy sets out the powers, duties and responsibilities. It may include an authority to open and close bank accounts, receive income or pay bills. It is also possible to have a

personal welfare deputy to make decisions about where someone lives or what kind of care they receive.

The deputy must comply with the Mental Capacity Act 2005 which provides a statutory framework to empower and protect vulnerable people who are not able to make their own decisions. In addition to compliance with the Act, deputies are carefully supervised by the Office of the Public Guardian on behalf of the Court of Protection and are given a supervision level (I being the most stringent to III being the lightest available).

Griffith Smith Farrington Webb LLP has been working with vulnerable adults, deputies (and before them receivers) for many years and has considerable experience in this field.



Nicholas J. Evans  
Senior Solicitor and Chairman



## Planning for the future? – Make sure you know the facts



Welcome to the 2010 edition of our Tax, Trusts and Estates Department newsletter. For over 128 years our offices in Brighton, Hassocks and Henfield have served the local

community, acting for generations of local families. Our expanding team continues to hold an enviable reputation based on our experience, expertise and friendly approach. We have free client parking at all

of our offices and are happy to visit you at home, when necessary.

### Where there's a will - change to Intestacy rules

If you died without leaving a valid will, your estate would be distributed in accordance with the rules of intestacy. The intestacy rules changed last year and whilst the position for spouses and civil partners has improved, the rules can still have unexpected results. Almost half the population die without a valid will and the intestacy rules rarely reflect what the deceased would have

intended. Our advice remains – make a will and benefit from the expertise of our Estate Planning team who can ensure that your wishes are implemented in the most tax efficient way.



Nadia Cowdrey  
Senior Solicitor & Head of the Tax  
Trusts & Estates Team

## MARCH 2010 Make a Lasting Power of Attorney Month

During March 2010, our Tax, Trusts & Estates Team will be advising upon and preparing Lasting Powers of Attorney at a discounted rate. Please contact us for further information

Visit our website today at [www.gsfwsolicitors.co.uk](http://www.gsfwsolicitors.co.uk)



You should not take or refrain from any action in reliance on anything contained in this Newsletter. If you wish to discuss a particular matter or would like some general advice, please contact us.

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## Lifetime gifts – what can I give?

We are often asked to advise clients who wish to make gifts of cash or other assets, usually motivated by their desire to mitigate Inheritance Tax (IHT), help their children or protect assets from potential care home fees. Making a gift may seem straightforward but there are often legal and tax consequences that need to be considered first. Individuals have an annual exemption (currently £3,000) which they can give away each year without any IHT consequences and gifts made to

a spouse, civil partner or charity are exempt from IHT. However, if a gift is made within 7 years of the donor's death and no exemptions apply, the value is taken into account when calculating the estate's IHT liability. In some cases a gift may also give rise to payment of Capital Gains Tax. It is also important to note that if an individual makes a gift for IHT planning purposes, they must not retain any benefit from it. If they do, the value of the gift will still be considered part of their estate for IHT purposes on their death. For example, if a donor

gives away an investment property but continues to receive the rent, this will be regarded as a "gift with reservation of benefit" and not a true gift. Clients often seek our help when they are thinking of giving away their home to their children because they are worried about paying care home fees. Our advice, as always, is to tread very carefully here. If a local authority believes property has been given away for the sole purpose of enabling the donor to receive local authority assistance then the value of the property would still be taken into account

when means-testing for eligibility for assistance with fees. If you are thinking of making a gift make sure that you have access to all of the facts before you do so.



Emma Redford  
Senior Solicitor & Henfield  
Branch Manager

## Maximise your assets - the transferable nil rate band

With property prices still high, many of our clients are looking for ways to minimise their IHT liabilities. In October 2007 the IHT rules were reformed to enable married couples and those in a civil partnership to claim up to two IHT nil rate bands (NRB) on the second death.

The NRB is currently £325,000. If you leave an estate worth up to the NRB there is no inheritance tax to pay on it. If the estate exceeds the NRB, 40% IHT is charged on the value above the NRB. As with lifetime gifts, assets passing from one spouse or civil partner to another are exempt from IHT as are gifts to charities.

The new law enables the second to die spouse or civil partner to use the unused part of the NRB

of the first to die. This is called 'the transferable nil rate band'. So if the first to die leaves 50% of their NRB to their children, and the remainder to the survivor, the second to die will be able to use their own and 50% of the NRB of the first to die based on the rates in force on the second death.

For example, the NRB in 2007/08 was £300,000. If the first to die spouse left an estate worth £300,000 and gave 50% to their spouse and 50% to the children, then there would be



50% of the NRB unused. If the second death occurs in 2009/10 when the NRB had increased to £325,000, the calculation of the transferable nil rate band will be 50% of £325,000 = £162,500. The second to die's estate would then have a total NRB of £325,000 + £162,500 = £487,500.

### The implications for IHT planning

The introduction of the transferrable nil rate band increases lifetime tax planning opportunities for the surviving spouse or civil partner.

Surviving spouses who remarry may benefit from further IHT savings and clients in this situation should take advice as soon as possible to ensure that tax planning opportunities are not lost. For example, the first spouse to die leaves their whole estate to their widow (our client). Within two years, our client remarries and signs a Deed of Variation of the Will of their first

spouse, redirecting assets equal to the NRB of the first to die to the children. The second spouse also leaves the whole of his estate to our client. When our client dies, her children can claim both her NRB and the unused NRB of her second husband. This could mean assets worth up to £975,000 passing free of IHT to her children.



Phil Warford  
Legal Executive and Associate



## Lasting Powers of Attorney – what are they and why are they so important?

There may come a point in life when managing your property and financial affairs becomes difficult or impossible due to either an accident, ill-health or mental illness. By simple forward planning, you can alleviate any potential stress and strain that this situation may have on both you and your family by putting in place a Lasting Power of Attorney (LPA).

There are two types of LPA:

A **Property and Affairs LPA** allows you to choose one or more persons, your Attorney(s), to manage finances and property on your behalf. If you wish to continue to manage your own affairs, you can do so although, if you did lose capacity at a later stage, your Attorney will continue to be able to act on your behalf.

A **Personal Welfare LPA** allows your chosen Attorney(s) to make decisions regarding your health and welfare. Unlike the Property and Affairs LPA, your Attorney can only take decisions regarding your personal welfare when you lack the capacity to make them for yourself.

The Personal Welfare LPA allows your Attorney to make some quite significant decisions on your behalf, including:

- giving or refusing consent to particular types of health care, including medical treatment
- decisions about day to day



care, including your diet, dress and daily routine

- whether you continue to live in your own home, perhaps with help and support from social services, or a private care agency, or whether residential care would be more appropriate for you

In some cases Social Services have stepped into make decisions on behalf of a vulnerable person, when they have felt that person lacked the mental capacity to make particular decisions for themselves. By making a Personal Welfare LPA you choose the people that you would want to make these types of decisions for you. Your Personal Welfare Attorneys must wherever possible involve

you in the decision - making process even if you lack capacity to make a particular decision yourself. All Attorneys whether appointed under a Property and Affairs LPA or Personal Welfare LPA must act in your best interests.

Whichever LPA you make, it is not effective until it is registered with the Office of the Public Guardian (OPG).

### I already have an Enduring Power of Attorney – Isn't this the same thing?

Property and Affairs Lasting Powers of Attorney replaced Enduring Powers of Attorney on 1 October 2007. However, an Enduring Power of Attorney granted before 1st October 2007 continues to be effective.



Alice Smee  
Solicitor