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Family Law News & Views

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Family Law

Winter sports and LPAs

We cannot imagine how difficult it is for the family of Michael Schumacher. Following his skiing accident early this year, the Formula 1 racing driver has been in an induced coma.

What if something similar were to happen to you?

Of course your family and friends would be devastated, but it could also have very serious financial implications. If you are incapacitated, nobody, not even your spouse, will be able to access your bank accounts to pay bills. If you are a business owner or investor, nobody can take over the reins and deal with matters on your behalf unless they have the authority to do so.

What is the solution?

If you already have a registered Lasting Power of Attorney (LPA), you have the solution. Your Attorneys can deal with your financial affairs straight away. If you have made an Enduring Power of Attorney, it will need to be registered, which will take a few months, but matters will be in hand. If you have neither, someone close to you would have to apply to the Court of Protection to be appointed as your Deputy. This is an expensive process and one that takes three to four months. In the meantime, your financial affairs would be in limbo.

What could you do to avoid this?

Make a LPA now! It is not just the old and frail that need LPAs. Anyone at any age can have a serious accident similar to Michael Schumacher, or suffer a stroke or other illness. It is far better to have the peace of mind now that should the worst happen, your finances will be dealt with straight away, your family will be looked after and your business should not suffer.

By making a LPA now, you can choose your Attorneys and replacements allowing you to plan well into the future. You can choose the people you trust as your Attorneys, which may be your spouse, adult children, a good friend or professionals (e.g. solicitors or accountants) or a mixture of family, friends and professionals.

A LPA can also be used when you have the mental capacity but cannot physically deal with matters. Imagine the scenario – you have a skiing accident and break your leg. You have to stay in hospital in Switzerland, but need to deal with a business or financial transaction in person back home in the UK. If you have a LPA in place and registered, you can instruct your Attorneys to deal with the transaction on your behalf.

A simple solution, which can be done now, to give you peace of mind.



Property confusion

As mentioned in Family Law News & Views Issue 1, there are two ways to jointly own a property – either as 'joint tenants' or 'tenants in common'.

Firstly, the law confuses everyone by using the word 'tenant'. So apologies from the legal profession for any confusion caused. So, what is the difference in the terminology?

If you own a property as 'joint tenants', you and the other owners own the property in equal shares and if one owner dies, the survivors still own the property in equal shares by what is known as 'survivorship'. For example….

Rachel, Ross, Phoebe and Joey own a house as joint tenants. Joey dies. His share does not pass to his family according to his Will. Instead, Rachel, Ross and Phoebe now own the house as joint tenants. Then, Rachel dies. Again, her share does pass to her family, but to the remaining owners, Ross and Phoebe.

If you own a property as 'tenants in common', firstly you can own the property in equal shares, or unequal shares. If one owner dies, their share does not automatically pass to the other owners, but will pass under the terms of their Will or by the intestacy rules (if they do not have a Will).

So, if Rachel, Ross, Phoebe and Joey own their house as 'tenants in common' say in equal shares, if Joey dies, his quarter share would not pass to the remaining three owners, unless he left his share to them by Will.

It is very common for couples to own their family home as joint tenants. If one dies, the home passes to the survivor automatically. However, there may be reasons why you do not wish ownership to pass in this way. It may be a second marriage and one spouse may want their children from their previous marriage to benefit. Or, there may be other reasons. It is possible to sever the joint tenancy, so that you own the property as tenants in common. It is a very simple process, but one that must be done with the benefit of legal advice.

Dates for your diary

Tuesday 4th March - 10.30am to 11.30am—Newmarket Day Centre

Julie McDonald will be hosting a free legal clinic for visitors of the Newmarket Day Centre. She will be there to answer your questions on any Family Law subject, Wills or Lasting Powers of Attorney. Julie hosts a free legal clinic at the Newmarket Day Centre on the first Tuesday of every month.

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