

# Looking after the elderly

by Tom Fitzpatrick, **FitzPatricks solicitors**

It's time to get moving, if you are not organised already.

Caring for the elderly is not just a British concern. Denzil Lush, Master of the Court of Protection, reports that concerns about elderly care are recognised worldwide. But changes are afoot. Enduring Powers of Attorney (EPAs) are to be replaced by Lasting Powers of Attorney (LPAs) on 1st October.

Since 1985, solicitors have encouraged clients, even when fit and well, to make EPAs. These were backed by Parliament and allowed the Donor to appoint family, friends, or advisers to look after assets should future mental incapacity – i.e. dementia or a stroke – prevent the Donor from doing so. Without an EPA, mental inca-

capacity means the person must become a 'patient' and his/her assets will be totally controlled by the Court of Protection. The Court will then appoint a receiver, whose only powers concern income. If capital assets, like a house or shares, must be sold, the consent of the Court will be needed and the proceeds will remain under the Court's control. Obtaining consents for selling assets and using capital sums involves delays and Court fees, so solicitors encourage all clients to prepare EPAs and avoid bureaucracy.

The difficulty is that EPAs cannot deal with the Donor's health and welfare, which remain the responsibility of the next of kin. Nowadays, people

of all generations live together but, where they are not married or in a civil partnership, they are not next of kin. This means they cannot legally have any influence on each other's health and welfare. Parliament says this is wrong and changes are needed.

At the end of September, EPAs will become history. From 1st October you will not be able to make an EPA, although EPAs made before that date will remain valid. After 1st October, the EPA option will have gone – it will be LPAs or bureaucracy.

LPAs will solve the health and welfare problem but they are not straightforward. They are long and costly and attorneys must master nearly 300 pages of

official guidelines. Master Lush considers LPAs a worthy development but wonders who will consider the extra expense of making an LPA worthwhile, or if people will be prepared to act as attorneys. He was asked what contribution he was invited to make to the LPA reforms when these were discussed and replied succinctly – "Not enough".

LPAs, though very worthy, will not necessarily be user-friendly. The sensible solution is to visit your solicitor as soon as possible and take advice.

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