

## Why are lasting powers of attorney so important for care home residents?



Running a care home can be stressful - managing budgets and administration, keeping residents and their families happy and ensuring consistent ongoing care and support. This burden increases when a resident has an accident, becomes unwell or loses mental capacity. Who makes decisions on behalf of that resident? Who can the managers and owners of the care home turn to when a problem arises?

If the resident has a lasting power of attorney (LPA) life will be easier for everyone involved, especially the care home provider. A LPA allows a person to decide who they would like to look after their property and financial affairs if they do not have the mental capacity to do so. The LPA can also be used before a person loses mental capacity, and some residents of care homes ask their attorneys to manage their finances for them.

This is such a valuable arrangement it is surprising, perhaps, that more care homes do not encourage or even

require residents to enter into a LPA. Once in place and registered, a care provider is able to deal directly with the resident's chosen attorneys; ensuring that delays are avoided when immediate decisions need to be made and providing continuity of care through contact with financial institutions.

Without a LPA the care provider could be caught in financial limbo whilst the resident's family applies to the Court of Protection to appoint someone to manage the resident's financial affairs. If the family is unable to pay the fees in the meantime, the care home will be placed in a difficult situation. As well as using valuable administrative resources, a lengthy delay could place a heavy burden on cash flow and viability.

Care home owners are recommended to broach the subject of LPAs and authority before an individual takes up residence and care home residents and their families are encouraged to

consider these vital issues long before any urgency arises.

A very important point to consider is that the person entering into a LPA must do so before they lose mental capacity. If a resident has been diagnosed with early onset dementia or Alzheimer's they could still enter into a LPA, but a doctor may need to be consulted to confirm that they have capacity to do so. If a resident has a LPA that has not been registered, it cannot be relied upon. The registration procedure currently takes between two and four months and will only be available for the attorneys to use from the date of registration.

Birkett Long will visit your care home and give a free presentation on the benefit of LPAs for your staff, residents and their families. For this service, or for further information, contact Caroline Dowding on 01206 217394 or email [caroline.dowding@birkettlong.co.uk](mailto:caroline.dowding@birkettlong.co.uk)

## Care sector appoints red tape champion

**The Care Providers' Alliance, a coalition of a range of the care sector's representative bodies, has appointed Dame Denise Platt as its Red Tape Champion.**

**Dame Denise, who has unrivalled experience of the care sector and is respected by both the sector and the Government, has agreed to act as the Alliance's champion in trying to reduce red tape and administrative burdens on the care sector. Her role is to understand the administrative burdens on the care sector and use her skills and knowledge to help The Government and the sector to reduce bureaucracy and red tape, enabling it to focus its energies on service delivery.**

## Premises: perils and opportunities

Whatever your health-related or social care business or undertaking, your premises may give you the opportunity of revenue from sharing or subletting space to other occupiers. This can provide useful and in some cases vital income streams. However, there are property law traps to watch out for if you allow others to share the use of your property. You could find that the occupiers acquire more rights than you intended and disputes can arise as to the terms of their occupation.

### Care Homes

It is very important that care homes and nursing homes have written agreements in place with all their residents to set out their rights to occupy and the terms of their occupation. This may take the form of a lease or a licence, as appropriate.

### GP Surgeries

If you are one of the many GP surgeries where the building is owned by a subset of the main GP partnership, a lease should be put in place between the doctors who own the building and the partnership as a whole to clarify and record rental flows, where repairing and insurance obligations lie, and occupation rights of the non-owning partners. In relation to freehold premises you may, as an alternative, seek to split the legal and beneficial titles of the property so that the legal title is treated as a partnership asset while the beneficial title is recorded as belonging to only those partners who truly own it. In these circumstances the partnership agreement will need to be amended to record the rights and obligations associated with each title.

### Other third party occupiers

If you permit others to occupy any space at your premises, such as other health professionals, therapists or bodies such as the Citizens Advice Bureau, you should ensure that the basis of this occupation is properly

documented. If a room is to be given over to their exclusive use, a lease should be put in place. This should be formally excluded from the security of tenure provisions of the Landlord and Tenant Act 1954, so that the occupier does not acquire any rights to a new lease at the end of the agreed term. If the occupier does not operate from one fixed place in the building, a licence would be more appropriate. In any other circumstances, beware of granting a licence. The courts have held on many occasions that a licence to use a room or rooms where exclusive possession is given legally amounts to a lease, which (unless the formal exclusion procedure is followed) will probably have security of tenure. If an occupier has security of tenure, this limits your rights to ask them to vacate and can have an adverse effect on property values.



### Leasehold premises

If you hold your premises under a lease, you will need to carefully check its terms before you grant a licence or sublease to any other occupier. Usually the landlord's consent will be required for any sub letting, and a subletting of part may not be allowed. Sharing occupation under a licence may also be prohibited unless it is to an associated company. You would need to obtain the landlord's specific agreement to any arrangement outside the terms of the lease, or risk facing action from the landlord for breach of covenant

For further information, please contact Anya Radford on 01245 453812 or email [anya.radford@birkettlong.co.uk](mailto:anya.radford@birkettlong.co.uk)

## Health and Social Care Act 2012

On 27 March 2012, the Health and Social Care Bill 2010-12 received Royal Assent to become the Health and Social Care Act 2012 ("Act").

Key reforms under the Act include the introduction of clinical commissioning groups with responsibility for commissioning services from 2013 and placing local authorities in control of public health in place of primary care trusts.

The intention of the Act is to:

- focus clearly on protecting and promoting patients' interests;
- apply a comprehensive system of regulation for all types of provider;
- rationalise existing regulatory structures and reduce duplication; and
- create joint working between the Care Quality Commission (CQC), Monitor and the NHS Commissioning Board.

The Secretary of State for Health will retain overall accountability and powers to intervene where necessary.

At Birkett Long we keep informed about legislative changes affecting our clients – for advice or guidance on regulatory or legislative matters contact Tracey Dickens on 01206 217326 or email [tracey.dickens@birkettlong.co.uk](mailto:tracey.dickens@birkettlong.co.uk)

### BIRKETT LONG LLP

PHOENIX HOUSE, CHRISTOPHER MARTIN ROAD  
BASILDON SS14 3EX  
T 01268 244144

ESSEX HOUSE, 42 CROUCH STREET  
COLCHESTER CO3 3HH  
T 01206 217300

NUMBER ONE, LEGG STREET  
CHELMSFORD CM1 1JS  
T 01245 453800

E [HEALTHCARELAW@BIRKETTLONG.CO.UK](mailto:HEALTHCARELAW@BIRKETTLONG.CO.UK)  
WWW.BIRKETTLONG.CO.UK

Birkett Long LLP is authorised and regulated by the Solicitors Regulation Authority (Authorisation No: 488404)

Birkett Long LLP is authorised and regulated by the Financial Services Authority (Authorisation No: 481245)

Whilst every care and attention has been taken to ensure the accuracy of this publication, the information is intended for general guidance only. Reference should be made to the appropriate adviser on any specific matters.

© Birkett Long LLP 2012. We hope you find this newsletter of interest, but if you would prefer not to receive it or wish to receive a copy via email, please contact the Business Development and Marketing Team on 01206 217334.

Reference: NEWS/HEALTHCARE07/2012