

Joint Bank Accounts - Another Good Reason to Make a Lasting Power of Attorney



Whenever we see clients to discuss their Wills, we always ask if they have made Lasting Powers of Attorney ('LPAs'). It is very important to have LPAs prepared in the event that you lose mental capacity to make decisions and act in relation to your property and financial affairs and health and welfare.

One of the main reasons for creating an LPA for property and financial affairs is to allow a friend or family member ('the Attorney') to access your bank accounts (which would otherwise not be allowed) to continue managing your money on your behalf if you are unable to do so. When this is explained to clients, the reply is often "but we have a joint bank account, so an LPA would not be needed." Unfortunately, in the majority of cases this is not true and it really does depend upon the circumstances of each case and the discretion of the bank or building society with which the account is held.

On the death of a joint bank account holder, the rules of survivorship apply, meaning that the account is automatically transferred into the sole name of the surviving joint bank account holder and he/she is allowed access to the whole of the funds within that account. However, when a joint bank account holder becomes mentally incapable of managing his/her funds within that account, the same rules do not apply and the procedure is less straightforward.

In theory, if one joint account holder becomes mentally incapable then that person can no longer consent to the continued use of and access to the joint bank account by the other joint holder. As a result, the bank or building society with which the account is held should, as soon as it becomes aware of that fact, freeze the account and limit access to the funds to:

- an Attorney acting under a registered LPA for property and financial affairs (or an Enduring Power of Attorney, which were replaced by LPAs in 2007) or failing that;

- a Deputy acting under a Deputyship Order (appointed by the Court of Protection).

The other joint account holder and the appointed Attorney (who may be the same person) can then agree with the bank or building society how to manage the joint account. If there is no Attorney appointed, the bank or building society will use their discretion to determine whether or not to temporarily restrict the access of the joint account to 'essential transactions' only (for example; living expenses, medical bills and care fees). This restriction will apply until a Deputy has been appointed by the Court of Protection to act on behalf of the joint account holder lacking mental capacity. Making an application for a Deputyship Order can take several months and cost thousands of pounds to achieve. This can leave both account holders with restricted access to funds within the account for a significantly long time and also use up a large proportion of the funds belonging to the account holder for whom the Deputyship Order is made.

We would strongly advise that anyone who owns a sole or joint bank account to make a property and financial affairs LPA to avoid the above difficulties, time and expense.

For further information on making LPAs for both property and financial affairs and health and welfare, please contact a member of our Private Client team on:

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