

LASTING POWER OF ATTORNEY: TAKE CONTROL OF YOUR AFFAIRS TOMORROW, NOW

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In 2010, the Ministry of Health reported that 20,000 Singaporeans suffer from dementia. Then, the prevalence rate of dementia was 5.7% among those aged 65 years and above. This was below the reported rate of incidence in other countries. In addition, it was predicted that the prevalence rate would more than double to 45,000 by 2020. By 2014, it was projected that the figure previously projected for 2020 would be met ahead of time and by 2015!

The fact is that there is presently no cure for dementia. Early diagnosis and treatment may slow down the symptoms but it will not halt the progression of the disease. In addition to this, mental incapacity could also occur in a split second through sudden illnesses, medical complications from surgery or even accidents that render one comatose. It is high time to give serious thought to making a Lasting Power of Attorney (“**LPA**”), if not for us, then for the ones who love and care for us.

The LPA is a legal document that allows you (**the “donor”**) to voluntarily appoint a person(s) (**the “donee”**) to make decisions and act on your behalf if you lose mental capacity in the future i.e. you are unable to make a decision for yourself. A donee may be empowered with the authority to make decisions relating to your personal welfare and/or property and affairs. Personal welfare matters include decisions on where you should live, how you should be treated medically and your general day to daycare decisions. Property and affairs decisions include dealing with your bank accounts and properties.

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Imagine and put yourself in the shoes of Jayden:

Jayden is well-loved by his relatives but none of them is able to get along with one another. Jayden speeds through a red light in his car one day and collides with another car at the intersection resulting in his car flipping. Critically, Jayden suffered a brain injury resulting in loss of mental capacity.

Jayden did not execute an LPA. As a result, the onus falls upon his relatives to decide who should make an application to the Singapore courts under the Mental Capacity Act (Cap. 177A) to be appointed as a deputy to make decisions on behalf of Jayden.

As Jayden's relatives are unable to come to an agreement on who should be appointed as a deputy, there is a delay caused in the court application. As a result of the delay, there is no access to Jayden's bank accounts and there is significant hardship over Jayden's hospitalisation bills. Eventually, Jayden is discharged but he has not made full recovery and still lacks mental capacity. In addition to this, as a result of the accident, he has lost control of his legs and is wheelchair-bound and his home must now be converted into a wheelchair-friendly home.

The reality is that it is too late to leave it until the onset of dementia is diagnosed or an accident occurs resulting in the loss of our mental capacity. An LPA operates as a form of insurance to ensure that if such a situation does befall you, you have already provided for a trusted person to deal with and manage all your affairs. In Singapore, you have a choice of LPA Form 1 or LPA Form 2. LPA Form 1 allows you to grant general and wide-ranging powers with basic restrictions to the donee. In contrast, LPA Form 2 allows you to grant customised powers to the donee.

There are many benefits in making an LPA today. Just to name a few:

1. **Control:** You retain control over who you name as a donee. This means that you remove the risk of having someone being appointed as a deputy who you do not trust or want and retain peace of mind. You can also provide for restrictions in the powers of the donee.
2. **Time and costs:** An application to the court costs significantly more than making an LPA. Furthermore, an application to court can take some time and drag out over many months. In contrast, an LPA operates immediately once you have lost mental capacity. This means that the donee will have immediate access to your funds and will be able to utilise the same towards your benefit. The donee will also be able to make decisions in relation to your medical treatment and long-term care immediately.
3. **Reduce stress:** In such times our loved ones may face undue stress. When we plan for the future, this may soften the emotional and financial burden that is placed upon them to ensure that they are placed in the best position possible to make decisions in your best interests.

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