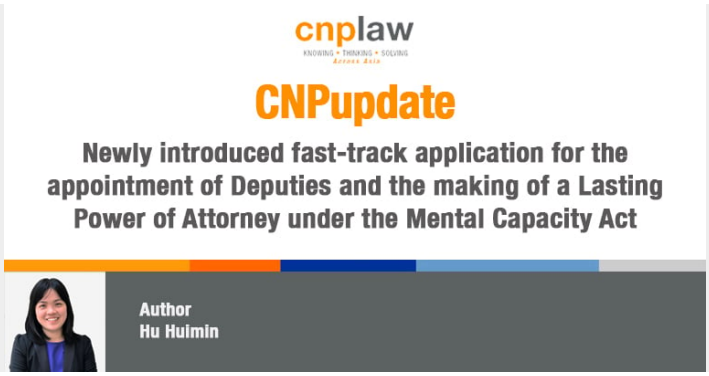
NEWLY INTRODUCED FAST-TRACK APPLICATION FOR THE APPOINTMENT OF DEPUTIES AND THE MAKING OF A LASTING POWER OF ATTORNEY UNDER THE MENTAL CAPACITY ACT

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What happens when a loved one loses mental capacity? Who is the right person to make decisions for his medical care and treatment? Do family members have the right to deal with his or her assets?

Appointment of deputies under the Mental Capacity Act

In the absence of a Lasting Power of Attorney ("LPA"), the family members of an individual who has lost mental capacity ("P") will have to file an application to the Family Court to appoint deputy/ deputies in order to make decisions on behalf of P in respect of P's personal welfare and property and affairs. When P's family members and loved ones are unable to agree on who is to be appointed as a deputy, the deputyship application may turn into a contest in Court.

Recent amendments were made to the Mental Capacity Act to facilitate uncontested applications in which all relevant persons i.e. the immediate family members, relatives and friends who have a close relationship with P or are responsible for P's care, give their consent to the proposed appointment of deputies. With effect from 9 September 2019, an uncontested application can be made through the Integrated Family Application System (iFAMS) electronic portal set up by the Family Justice Courts.

In an uncontested application, P must be at least 18 years old at the filing of the application. The proposed deputies must be a family member such as a parent, grandparent, spouse, sibling, child or relative. Such an application must also be supported by a medical report from the individual's doctor providing details of P's medical condition and mental capacity.

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In an uncontested deputyship application, the powers sought are restricted to a specified list. In respect of personal welfare, deputies in an uncontested application can only seek powers to consent to medical and dental treatment and decide on where and with whom the individual is to live, as well as care services and travelling arrangements. In respect of property and affairs, the deputies in an uncontested application can seek powers to open or close bank account(s), pay the individual's debts, cancel credit cards, terminate GIRO arrangements, rent out property belonging to the individual, and to decide on upgrading or renovation of property belonging to the individual, amongst other things. In the event that the deputies seek powers to withdraw monies from the individual's bank account or CPF account, to claim insurance monies, or to sell shares or motor vehicles, the total amount received by the deputies cannot exceed $60,000.

The newly introduced procedure to file an uncontested deputyship application, therefore, serves to allow straightforward cases that do not involve sizeable assets to be fast-tracked and orders for the appointment of deputies to be made in a shorter period of time. This will help P and his family reduce the costs and time involved in having deputies appointed for P.

In cases where consent from all the relevant persons cannot be obtained, the deputyship application has to be filed under the normal track process. In addition, where the deputies wish to seek specific orders to sell P's property or deal with P's property in a manner that does not fall within the specified list of powers, the application has to be filed under the normal track process.

Enhancements to the registration of a Lasting Power of Attorney

An application to Court for the appointment of deputies is not necessary when there is a valid LPA in place. The LPA is a powerful legal document which enables an individual who is at least 21 years of age (known as the "Donor") to voluntarily appoint trusted persons (known as the "Donee(s)") to make decisions and act on his or her behalf in the event of a loss of mental capacity.

In an LPA, a Donor can appoint his or her Donee(s) to make decisions in respect of his personal welfare (medical treatment, care, and living arrangements) and property and affairs. The authority conferred by an LPA is subject to the provisions of the Mental Capacity Act and any conditions or restrictions specified by the Donor in the LPA.

A Donor can choose to appoint one or more Donees in the LPA. The Donor can also choose to appoint different individuals as Donee(s) to make decisions in the areas of Personal welfare and Property and Affairs. Under the Mental Capacity Act, it is assumed that the Donees are to act jointly in making decisions unless the LPA specifies that the Donees may act jointly and severally, or jointly in respect of some specified matters but jointly and severally in respect of other matters.

By making an LPA, an individual is exercising his freedom of choice on the appointment of the decision-

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makers whom he trusts as reliable and competent to make decisions in his best interests in the event of his loss of mental capacity. Making an LPA also helps to avoid uncertainty as to the most suitable and appropriate person to make decisions on behalf of the individual when there is a loss of mental capacity.

Under the Mental Capacity Act, an LPA must be properly executed in accordance with the prescribed formalities and registered with the Office of the Public Guardian to be valid. In order to register an LPA, an application for registration must be made to the Office of the Public Guardian. The Office of the Public Guardian has extended a waiver of the application fees for LPA Form 1 applications by Singapore citizens until 31 August 2020 to encourage more Singaporeans to make an LPA.

Concluding remarks

The making of an LPA is encouraged to avoid the uncertainty involved when one loses mental capacity. When there is no valid LPA in place, family members may encounter difficulties in having access to the assets of an individual which may inevitably affect the quality of care and treatment that can be afforded by the family. A deputyship application thus becomes necessary in order for the family members to be appointed by the Court and be given powers to make decisions or act on behalf of the individual. In simple and straightforward cases in which all relevant family members and interested persons consent to the appointment of the proposed deputies, the deputyship application can be filed as an uncontested application and the Court may grant such orders in a shorter period of time.

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