

Relying on the concept of ‘next of kin’

When is this enough?

Jessica Gisby, Associate Solicitor in our wills and probate team, discusses the key facts and advice around the use of next of kin and lasting powers of attorney.

Next of kin is a commonly used term in everyday language, yet despite its frequent use ‘next of kin’ only provides legal rights where children are concerned and, even then, only in certain circumstances. The general rule is that the parent or guardian of a child under the age of 18 has authority to make decisions on their behalf, but some laws allow children to make their own decisions prior to reaching 18, for example, consenting to sexual activity.

“Whilst you may anticipate that your spouse, or another close relative, would have automatic access to your finances or medical records should the need arise, this simply is not the case,” says Jessica. “It is important to understand the legal rights and responsibilities that a next of kin has in respect of your affairs and how you can grant them the powers they might need.”

Why name a next of kin?

Many services, particularly those involving healthcare, ask for details of your next of kin. You can name whoever you feel is most appropriate, however naming that person does not grant them any legal rights or responsibilities. Rather, organisations simply ask for details so that they know who you wish to be kept informed about your care and any decisions that the organisation needs to make on your behalf.

Naming someone as your next of kin in such circumstances does, therefore, have advantages. It ensures that person can liaise with the service provider and that they are kept up to date with your progress and treatment. In many circumstances, care providers will also take into account your next of kin’s views when they are making any decisions about your care. This could include important details about you which would otherwise be unknown to your care giver. For example, they may have knowledge of specific dietary requirements or preferences which they can pass on for you.

The advantages are, however, limited and it is not enough to presume that your spouse or children will be able to take over your affairs if needed without you having taken steps to put proper legal authority in place.

Legal position

All of your affairs, financial and medical, must be kept confidential during your lifetime and may only be released to certain persons, in certain circumstances, after your death. If a solicitor holds your will, they cannot release this to your children simply because you have said they are your next of kin.

Likewise, your GP cannot disclose your medical records to your spouse, even if you named your spouse as your next of kin when you joined the practice. In fact, both these examples would ring alarm bells with a professional, as if your next of kin requested these documents this might be a sign of possible coercion.

The law is designed to help everyone retain their independence for as long as possible. All the time a person has sufficient mental capacity, their decisions are their choice and theirs alone. Even if that person makes an unwise decision, no one else may step in and take that choice away from them. For example, a doctor cannot take someone's driving licence away if that person has capacity and wishes to continue to drive.

Because of the way the law works, there is often a grey area during a period of time when somebody might need additional help, but they still understand and can make their own choices. For example, this could be during the early stages of dementia when the decline of mental capacity may happen very gradually.

How to ensure your next of kin does have legal rights

The only way to give your next of kin legal rights and empower them to deal with your affairs on your behalf is by appointing them under a lasting power of attorney.

You can make arrangements for this at any time so long as you have sufficient mental capacity. It is, therefore, advisable to plan this well in advance rather than leaving it until your health deteriorates.

Your attorneys may be appointed under:

- a health and welfare lasting power of attorney, which grants your attorneys the authority to make decisions about your medical treatment and other health care needs; or
- a property and financial affairs lasting power of attorney, which authorises your attorneys to access your finances and make decisions about your financial circumstances; or
- under both types.

Without valid documents in place no other person, including your next of kin, may make these decisions for you.

Financial problems without a lasting power of attorney

Without a property and financial affairs lasting power of attorney, no one will be able to access your finances and your bank accounts would be frozen until appropriate authority is granted by the court. In the meantime, important bills could end up going unpaid.

For those who end up in this situation the court may appoint a deputy, however this is a time-consuming and lengthy process.

Health problems without a lasting power of attorney

If you were to become vulnerable without having made a health and welfare lasting power of attorney, and you no longer had capacity to make your own decisions, it would fall to your medical providers to make decisions about your healthcare. Many people, understandably, would rather have loved ones make their decisions so that they can discuss these in advance and make their own wishes clear. For example, if it is your wish to stay living in your own home for as long as possible, you can make this wish known to your attorneys. If a doctor is in charge of this decision, they may decide that you should be kept in hospital for longer or discharged only into the care of a nursing home and, without your legal authority, no one will be able to override this on your behalf.

The court is extremely reluctant to appoint a health and welfare deputy, so for most of those who have not appointed an attorney for health and welfare, only their medical providers will be in a position to make decisions for them.

How we can help

If you want to make sure that your next of kin will be able to deal with your affairs on your behalf, the only way to do so is to prepare lasting powers of attorney.

Our experts can advise you on the implications and process and we can help draft the documents for you to ensure that all your wishes are clear and legally binding.

For further information or advice on this issue, contact jessica.gisby@adamsandremers.com or call 01273 403284



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