

ifpas
INSURANCE AND FINANCIAL
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"SHE LIES IN THE HOSPITAL"



"SHE LIES IN THE HOSPITAL"

She lies in the hospital, her face contorted.

“Who are you? “

She said to her brothers, not recognising them at all. She is single, in her late 50s, unmarried, a multi millionaire, and both their parents have passed on. And she has totally lost her mental capacity due to stroke. This was the situation of my client’s sister. Sharon (not her real name) suffered from stroke and was hospitalised. She bought a critical illness policy which can be claimed but her sibling has to borrow money just to pay for her medical bills and daily expenses.

Though she is a millionaire, nobody has the legal rights to help her with all the financial transactions. This has a disconsolate but familiar ring, where it is said that water is everywhere but not a drop to drink.

Last year, there were 478 mental capacity act applications (1) and most of them were for the appointment of deputyship to deal with the loss of mental capacity. Based on the statistics on 1st April 2015 to 31st Mar 2016, the leading cause of loss of mental capacity is dementia and neurological disorder.

What can trigger loss of mental capacity?

1. Stroke
2. Brain injury due to accident or illness
3. Dementia
4. Mental health problems
5. Intellectual disabilities

Indicators of Registry Activities

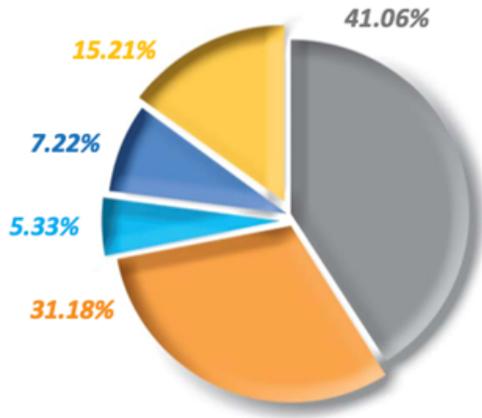
— Court Orders

1 April 2015 to 31 March 2016

Total no. of Court Orders = 263

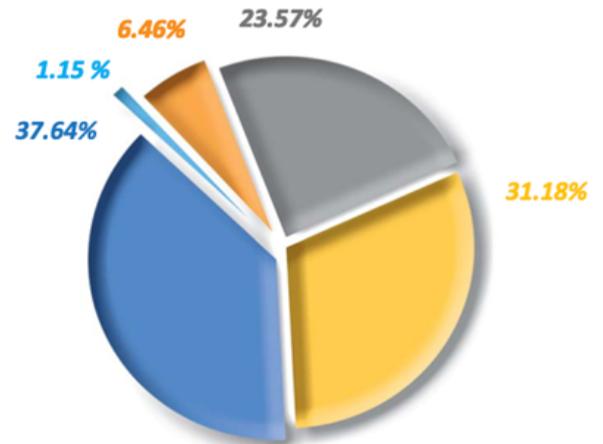
Cause of Loss of Capacity

- Accident
- Neurological Disorders
- Psychiatric Disorder — Dementia etc.
- Psychiatric Disorder — Development
- Psychiatric Disorder — Psychotic
- Psychiatric Disorder — Substance related



Persons Lacking Mental Capacity By Age Group

- 19
- 21 - 34
- 35 - 55
- 56 - 70
- Above 70



Research and data from Ministry of Social and Family Development (MSF) Singapore (2)

Types of LPA

There are two types of LPA

- 1) LPA Form 1 - Standard version that donors use to grant donees general powers with basic restrictions.
- 2) LPA Form 2 - For donors who wish to grant donees customised powers. LPA Form 2 has to be drafted by a lawyer.

What are the decision powers to grant your donee(s)?

1. Personal welfare :

- For example, deciding on where the donor is going to stay,
- Deciding who the donor may have contact with, deciding day to day care decisions like what to wear and to eat;
- Handling the donor's personal correspondence;
- Giving or refusing consent to the carrying out or continuation of a treatment (including the conduct of a clinical trial) by a person providing health care for the patient if and only if the donor expressly states this in the LPA.

2. Property and affairs :

- Dealing with property – buying, selling, renting and mortgaging property;
- Opening, closing and operating bank accounts;

What is lasting power of attorney?

LPA is a legal document that allows a person who is at least 21 years old to voluntarily appoint one or more persons (donees(s)) to make decisions and act on his behalf if he loses his mental capacity. A donee can be appointed to act in two broad areas, namely, personal welfare, and property & affairs matters.

Benefits of an LPA

An LPA enables a person (donor) to make a personal choice and decision on selecting a trusted decision maker(donee(s)) who is reliable and competent to act in his/her best interest when he/she loses mental capacity one day.

It also relieves the stress of having to apply for deputyship when the person loses mental capacity without an LPA in order (3). It is stressful because applying for deputyship can take 3-4 months or even longer especially when there are disputes in the family, on who should be the deputy. In the meantime, in some complex or difficult circumstances, the family member may have to scramble to borrow money, in order to pay for the bills incurred by the donor.

2. Property and affairs (cont'd) :

- Receiving dividends, income, inheritance benefits and other financial entitlement on behalf of the donor;
- Handling tax matters;
- Paying the rent, mortgage repayments and household expenses;
- Investing the donor's savings; and
- Purchasing a vehicle or other equipment the donor needs.

3. or Both

As a best practice in advising your client, always have a substitute donee(s) or a licensed trust company under the Trust Companies Act (Cap.336), as prescribed by the mental capacity regulations just in case the first donee formally refuses the appointment to the public guardian office or pass away in a common disaster with donor or becomes bankrupt.

What happens when you don't have an LPA?

- 1.No one will be authorised to make medical decisions and personal welfare decisions on the donor's behalf that is in his/her best interest.
- 2.Property and affairs will be in a gridlock where the donor might have money but no one has power to assess it to take care of the donor's personal welfare.
- 3.The next of kin of the donor will have to apply to the family court for deputyship which will take 3-4 months or even longer.

Deputyship and it's implication

The family court has simplified the process of applying for deputyship (4).

However, for someone who has long term permanent mental incapacity, there is a high chance of outliving the existing resources. Hence, investing it might be necessary to stretch the existing resources.

However, in the decision by Colin Tan DJ in RE TQR [2016] SGFC98 (5), the court made several observations and pointers on deputies' power to make investment. In the event that P's (person that is alleged to lack mental capacity) investments fall in value by more than 30%, the deputies would be personally responsible to P for the loss and would reimburse P for the loss sustained.



In Conclusion

Our job as financial planners is an integral one. As we have an ageing population, the incidence of age related issues will increase over time. Whilst we might have astutely done the work of wealth accumulation and preservation, the distribution portion of the financial plan is equally important. Hence, I urge all planners to start a conversation with your client, if this isn't so, on lasting power of attorney, so that situations may be avoided where an individual may have a critical illness policy, but regrettably no access to the benefits.



About the Author

Vincent Lim is a licensed financial practitioner and holds the ChFC®/S, and AEPP® designations.

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Reference:

1. 478 mental capacity act applications and most of them were for the appointment of deputyship.: <https://www.straitstimes.com/singapore/family-justice-court-launches-cheaper-and-faster-way-for-users-to-file-applications>
- 2.<https://www.msf.gov.sg/research-and-data/Research-and-Data-Series/Documents/Key%20Statistics.pdf>
3. Difference between LPA and deputyship: <https://www.sgdivorcelawyer.sg/mental-capacity-act>
4. Family justice courts, duration of application process of deputyship. 3-4 months but can be longer depending on the complexity of the case: <https://www.familyjusticecourts.gov.sg/what-we-do/family-courts/deputyship>
5. In Colin Tan DJ in Re TQR [2016] SGFC 98. If deputies makes investment decisions, and the value of the investment fall by more than 30%, deputies is liable for the losses: <https://lawgazette.com.sg/feature/deputies-donees-disputes-cases-mental-capacity-act/>
6. Code of practice for mental capacity act: https://www.msf.gov.sg/opg/Documents/CSC.MSF.OPGWebsite/Documents/Cod_e_of_Practice_Oct16_final.pdf