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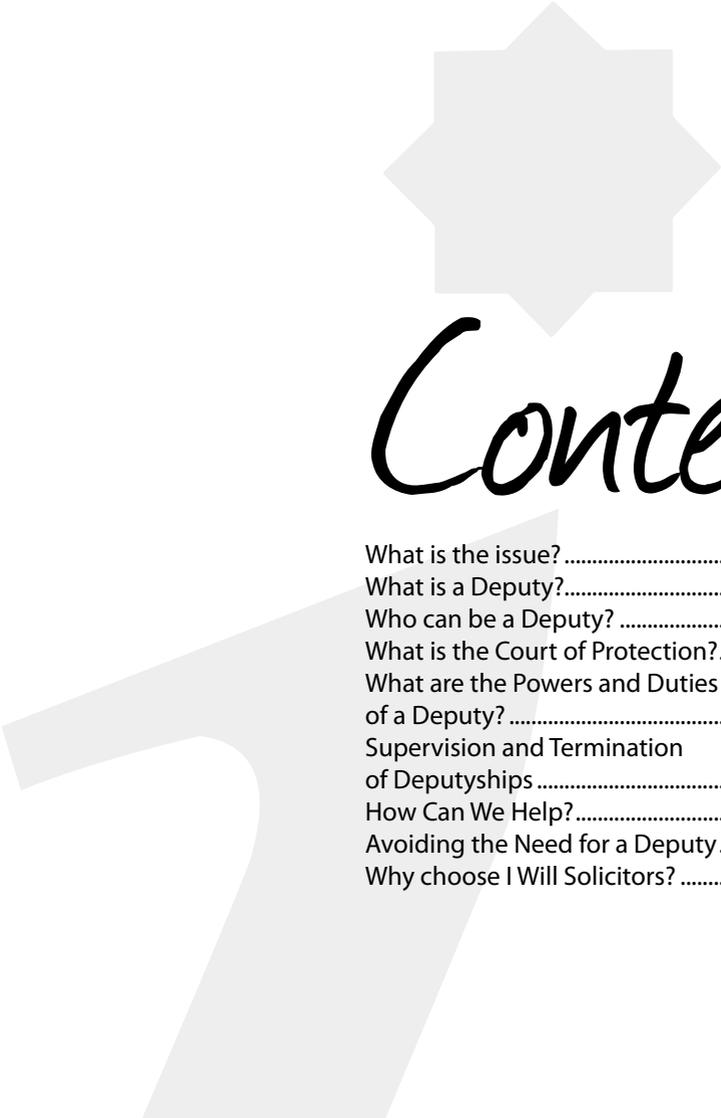
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mental capacity,

DEPUTYSHIPS AND THE COURT OF PROTECTION





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What is the ISSUE?

Unfortunately, many families are left in a situation where a loved one (the Patient) has lost the mental capacity to deal with their affairs. This can be quite a sudden process and as well as the difficulties of adjusting to the new role of caring for the Patient, families are also often left in a situation where they have no access to vital funds and are unable to manage the finances of the Patient. When this happens the affect can be very distressing.

If the Patient has not appointed an Attorney under what is known as a Lasting Power of Attorney (LPA) or an Enduring Power of Attorney (EPA), there is only one real option and that is to apply to the court for the appointment of a Deputy.

What is a DEPUTY?

A Deputy (formerly called Receiver) is a person (or occasionally a Trust Corporation) appointed by the Court to deal with the financial and/or personal affairs of those who are mentally incapable of managing their own affairs. The Deputy may be a professional person, or may be a relative of the mentally incapable person. We have experience in applying to the Court for the appointment of a Deputy and in assisting Deputies in dealing with the "general management" of the patient's affairs.

Who can be a

DEPUTY?

Any person over the age of 18 can be a Deputy. Any prospective Deputy must declare any criminal convictions or bankruptcy arrangements to the court when applying to become Deputy and these could lead to the application being refused.

In many cases a spouse or close relative will be the Deputy. In cases where there is no-one able or willing to take the role then the local authority can do so (in low value estates) or a professional Deputy (eg a solicitor) can be appointed. Where the person lacking capacity has a large estate then a professional Deputy will almost always be appropriate.



What is the Court OF PROTECTION?

The Court of Protection is the title given to that part of the Supreme Court that deals with the affairs of the mentally incapable. All applications relating to the appointment of a Deputy must be submitted to the Court. On submission of the application it is the responsibility of the Court to assess the application and issue any court order appointing a Deputy.

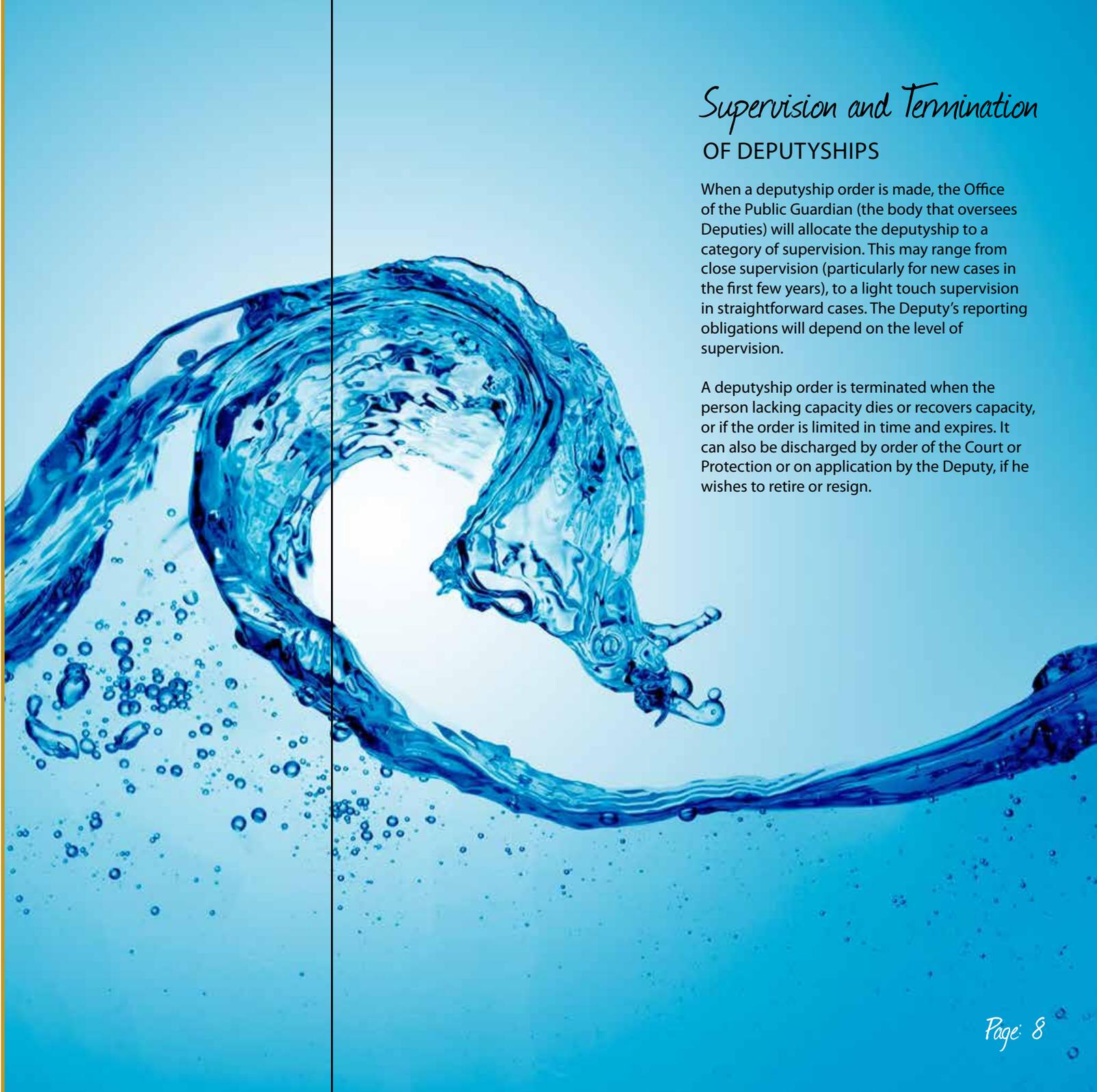
What are the Powers AND DUTIES OF A DEPUTY?

A Deputy's powers derive from the deputyship court order made by the Court of Protection and the Deputy cannot exceed those powers. The order may give wide powers to the Deputy, or it could set limits to those powers, for example providing that large items of expenditure or investment cannot take place without further permission of the court.

The Deputy's duties are set out in the Mental Capacity Act 2005 and in particular follow the general principles set out in the Act:

- A person must be assumed to have capacity unless it is shown otherwise
- A person cannot be treated as unable to make a decision until all practicable steps have been taken to help him, without success
- A person cannot be treated as lacking capacity merely because he wishes to make an unwise or eccentric decision
- Any decisions made on behalf of a person must be in the person's best interests
- Before making a decision, consideration must be given as to whether its purpose can be achieved in a way that is less restrictive of the person's rights and freedom

In addition to following these general principles, the Court of Protection places numerous obligations on the Deputy, as a safeguard to the person lacking capacity. These include obtaining a security bond, complying with supervision by the court and filing annual reports and accounts.



Supervision and Termination OF DEPUTYSHIPS

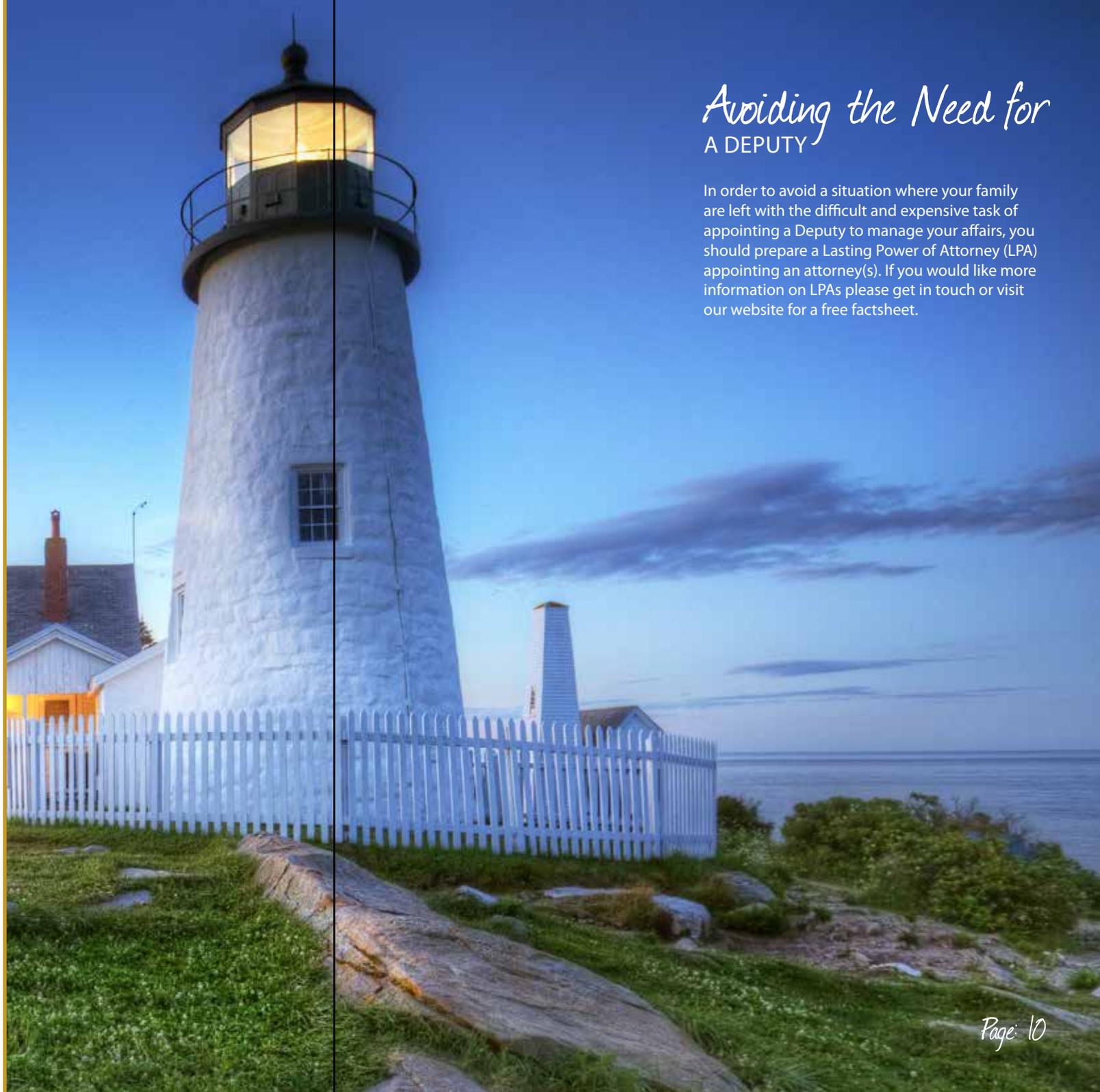
When a deputyship order is made, the Office of the Public Guardian (the body that oversees Deputies) will allocate the deputyship to a category of supervision. This may range from close supervision (particularly for new cases in the first few years), to a light touch supervision in straightforward cases. The Deputy's reporting obligations will depend on the level of supervision.

A deputyship order is terminated when the person lacking capacity dies or recovers capacity, or if the order is limited in time and expires. It can also be discharged by order of the Court of Protection or on application by the Deputy, if he wishes to retire or resign.

How Can We

HELP?

Our Haroon Rashid, is a solicitor with many years' experience in dealing with Deputyship matters, including being appointed as a professional Deputy on a number of matters. We are happy to meet on a no obligation basis to discuss the individual case and can prepare applications to the Court of Protection on behalf of a family member to act as Deputy, act as a professional Deputy ourselves or assist in existing cases.



Avoiding the Need for A DEPUTY

In order to avoid a situation where your family are left with the difficult and expensive task of appointing a Deputy to manage your affairs, you should prepare a Lasting Power of Attorney (LPA) appointing an attorney(s). If you would like more information on LPAs please get in touch or visit our website for a free factsheet.

Why Choose I WILL SOLICITORS?

I Will Solicitors specialise in Wills, Inheritance Tax Planning and Estate Administration (also known as Probate), Trusts and Court of Protection work. Unlike many practices these are our core areas of expertise and not only do we have qualified lawyers of many years' experience, our lawyers are also qualified members of the Society of Trust and Estate Practitioners, (STEP). STEP is the principal professional body for estate practitioners worldwide and we strongly recommend you look out for the initials T.E.P within your adviser's credentials.



This booklet has been prepared to highlight some of the key issues relating to Court of Protection work. It is intended as general guidance only and is correct as at May 2012.

Should you require any specific legal advice,

Please contact:

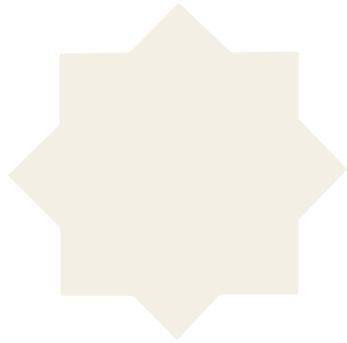
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