



Mental Capacity (or lack of) & Lifetime Mortgages

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Mental not Physical – Legal Definition

Mental Capacity Act

A person lacks capacity to make a decision if they have an *"impairment of or disturbance in the function of their mind or brain"* (either temporary or permanent), and as a result they cannot do one or more of the following:

- Understand the information relating to this particular decision (including its benefits or risks)
- Retain the information for long enough to make this decision
- Weigh up the information involved in making this decision
- Communicate their decision in any way

If in doubt you must assume they have capacity.

If they do lack capacity how do you proceed with a lifetime mortgage?

- EPA
- LPA
- Deputyship

Who can sign?

- Spouse
- All Attorneys – joint/joint and several
- Co-owner

Who needs to be informed/advised?

- Family?
- Co-attorneys?
- The Donor?
- The OPG?
- The Executors

Purposes of Equity Release?

- The benefit of the Donor
- Home improvements
- Repaying debts
- Paying for care
- Gifting
- IHT Planning

Common Requirements

- Original LPA
- For the benefit of the Donor
- Account details
- Sign-off

Questions?