

Number 25

## Nominating a next of kin

Despite the widespread use of the phrase 'next of kin', this is neither defined nor given formal legal status by English law. Next of kin cannot consent to or refuse treatment on an individual's behalf (nobody can do that for an adult). A next of kin has no legal liability, or rights to access medical records or personal possessions. Nominating a next of kin does not affect who will inherit from the resident when they die.

On the other hand, if a resident nominates a next of kin and gives authority to discuss their condition with them, they can provide valuable information to the staff looking after a resident, particularly if the resident becomes unconscious or unable to communicate this information themselves.

### Nearest Relative

It is important not to confuse the concept of next of kin with the very different role of 'nearest relative' under the Mental Health Act. The Nearest Relative has a specified role under that Act and the individual authorised to undertake that role is subject to the statutory rules under the Mental Health Act. It is wholly distinct from any nomination of nearest relative.

### Making a nomination of Next of Kin

There are no rules about who can and who cannot be a next of kin. A resident may nominate their partner, a member of their family or a friend. There is no restriction on nominating an unmarried partner and a resident's family have no right to argue who should be the next of kin if the resident has not made a nomination (and as there is no legal status attached to it).

### Next of kin card

To make the issue more straight forward and to ensure that residents have considered who should be consulted, we have created a next of kin card. This may be carried by an individual in their wallet or handbag or it may be affixed to their records. In addition the card provides express authority to discuss matters that would otherwise be confidential. Copies of the card are available from RadcliffesLeBrasseur<sup>1</sup>.

### An addition to everyone's credit card case

In fact a next of kin card could be usefully carried by everyone, not just those in care homes. If you are admitted to hospital and are unconscious, the card will enable medical staff to discuss your condition and likely wishes about how you would like to be treated with your nominated next of kin.<sup>2</sup>

**Andrew Parsons**  
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For more information on Care Home Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

<sup>1</sup> Please contact Julia Worton at [julia.worton@rlb-law.com](mailto:julia.worton@rlb-law.com)

<sup>2</sup> Readers are advised to obtain full legal advice on making decisions and managing their assets. They should consider making an Enduring Power of Attorney, a Living Will and a Will. For further details please contact Julia Worton.

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