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The Premier Partnership Limited

Your Family Office

NewsLETTER

Welcome to our latest publication. In this edition we will be looking at Powers of Attorney – and why they are needed, along with pensions, and an additional article on Bitcoin which we hope you will find helpful.

Although we have written on Powers of Attorney before, I recently caught a clip of a comment of a well-known 'Good Morning' presenter, relating the problems she had recently experienced in looking after her husband, who had been ill through Covid-19 complications.

Not uncommonly, she found that day to day matters such as banking, insurance, dealing with utility companies, amongst other things, became impossible to do.

These matters were ordinarily dealt with by her husband, and were largely registered in his sole name. There are lots of things, not just financial issues, that require a person to have the legal authority to act for another person, when that person loses their own capacity to act – however temporarily.

That legal authority is called a Power of Attorney, and the one thing the pandemic has taught us is that such a document is needed now more than ever.

Powers of Attorney

In these days of complex money laundering data requirements, and GDPR (General Data Protection Regulations), having the right legal documents to transact matters on behalf of another person is obligatory. Institutions demand such documentation before they will even consider discussing a person's details with a third party. Without those documents, life can become very difficult for the person attempting to assist another, such as a family member who has become ill.

Most people know what a Will is, and its importance as a document following a death. However, few people understand that a Power of Attorney is equally, if not more important, because it provides the ability to act whilst the nominated person is still living. The effect of what happens when a person suddenly loses capacity is often underestimated. Clients generally assume that their family members are automatically entitled to make medical and financial decisions on their behalf, but sadly that is not the case and the reality is different.

What is this document (s)?

A Power of Attorney is a legal document, put in place when a person (the Donor) gives another person (the Attorney) the power to act in the Donor's name. The Power of Attorney must be made and put in place whilst the Donor has the capacity to make such decisions. This appointment can continue beyond the Donor's loss of capacity, which includes both mental and physical attributes.

Lasting Powers of Attorney (LPA) were introduced in 2007 by the Mental Capacity Act and replaced the old system of Enduring Powers of Attorney, that had existed to that point in time. More on the old system later.

There are two separate types of LPA and we would always recommend enacting both types to ensure that full decision making can be maintained.

The two types are:

1) Property and Financial Affairs

2) Health and Welfare

Property and Financial Affairs

This gives the Attorney authority to deal with the Donor's property and assets. This would include the power to act in Bank Accounts, and Investment Portfolios; paying bills and expenses (this would include medical expenses) and care costs; and, for example selling a property. There are however legal limitations on the Attorney's ability to make gifts under the authority. These are usually restricted to gifts of a seasonal nature, such as Birthdays or Christmas, provided they are restricted to such a size of gift as can reasonably be expected to be given ordinarily by the Donor on such occasions. Gifts to Charities are covered under the same guidance.

Health and Welfare

This type gives the Attorney the authority to make decisions in relation to the Donor's health and wellbeing; including where they live. This would include day to day medical care and treatments. The Donor can also decide whether they should receive life sustaining treatment. There is a separate legal document known as an 'Advanced Decision' required in relation to end of life care.

I don't think I need it everyone knows me!

Sadly, this is no longer an effective route to take, as legally without an LPA, family members will not be able to act or deal with affairs of an incapacitated person. The family members will have little or no say regarding the care of a loved one. Doctors will still consult with family members on significant medical decisions, but the LPA gives the authority for the Attorney to play a far greater part in the Donor's care.

Court of Protection

If you don't have an LPA and something happens, you will need to apply to the Court of Protection for the granting of a Deputyship Order to provide the authority required. This involves instructing legal representatives to issue proceedings to apply for the Order. This can be both time consuming and costly, and would come at a time when you least need delay or costs.

How Do We Get An LPA?

Well, we can certainly help you there, and the process involves the completion of a set of forms for each LPA required. There are several aspects of the forms that need to be discussed and understood before application, dependant upon the donor's personal situation, their wishes and their asset base.

The Donor effectively decides who to appoint as their attorney, which is a position of great trust, and remember LPA's are not just for the elderly. Sickness and accidents can happen at any time. Care needs to be taken in the appointment of Attorneys, taking note of their own ages, abilities and circumstances. Joint Attorneys are allowed, and these can act individually or jointly, dependant upon how the LPA is created. However, if jointly appointed, if one of the Attorneys themselves are unable to continue, then the LPA would cease. So the appointment of an 'Alternate Attorney', who can step in when required should also be considered.

Once the forms have been completed, they need to be signed in a particular order, prescribed by legislation, to be legally correct. Once completed, the applications are sent to The Office of the Public Guardian (OPG) and the LPA can then be created. Once created, it is not compulsory for the power under the LPA to be used, but its there ready, when needed.

Enduring Power of Attorney

An Enduring Power of Attorney (EPA) could have been created between 10 March 1986 and 30 September 2007, and is the forerunner of today's Lasting Power of Attorney (LPA). The EPA existed alongside another document, a Power of Attorney (POA) which granted authority for a temporary period, but ceased if the Donor lost mental capacity. The EPA style continued after the loss of mental capacity - hence the word 'enduring'.

EPA's granted before 1 October 2007 remain valid, and many clients have them, and they can still be registered with the Courts as and when required. However, the drawback with EPA's is that they cannot be used immediately. They have to be registered with the Courts first to activate them, even if they were actually created a considerable time ago. This requirement again, may come at the wrong time, and can be costly.

Summary

There is no doubt that an LPA is an essential piece of legal documentation that is required more and more in society, due to an ever ageing population. They sit alongside the person's Will in terms of importance, and there is no other document that is acceptable to any third party when presenting the need to act on behalf of another person. Remember, they do not have to be used upon the creation, but they will save considerable time, cost, and distress, if the LPA's are ready to use when needed.

We will be happy to discuss your requirements.

Bitcoin Mania

With media hype akin to 'Beatle Mania' the world of cryptocurrencies is looming large on client radar, and we are receiving lots of questions about the subject.

Cryptocurrencies have emerged in the last decade, and although the word 'currency' is used, unlike traditional money, no notes or coins are involved or issued. There are no Central Banks involved, and no Government stands behind any of the 59 most known "Crypto's".

Cryptocurrencies instead, are a form of computer code stored in a digital wallet. In the case of Bitcoin, there is currently a finite number of 21 Million 'issued', of which 18.5 Million are in circulation. The system that holds it all together is called Blockchain. People can earn Bitcoin in several ways including buying them, using traditional Fiat (National) currency, or by 'mining' them, which involves the solving of a complex mathematical puzzle to gain the reward. However, mining Bitcoin is not exactly a Green or Carbon Neutral affair, as creating one Bitcoin takes more electric power than Norway uses in a month.

So, Should You Buy Crypto's?

The simple answer is no. Not because it's not possible to make money by buying these currencies, but because they have extreme ranges of volatility and can move up or down 20%-30% in a day. The price of Bitcoin on Sunday 18 April was $65,000, on Friday 23 April it was $50,000, a loss of $15,000 or 23% in 5 days. This level of volatility is difficult to take for our normal investment clients, who have balanced portfolios, and movement such as this is beyond any risk profiling capabilities than Regulators approve using.

To analyse both sides of the coin (sorry about the pun), let's look at the expectations of a portfolio investment, against a punt on a cryptocurrency. Investing in equities, bonds, cash and property gives the investor a share in the future profits on that entity, via dividend, rental income, or capital gain. The price of an equity or bond reflects the return investors demand in exchange for their cash today, for an uncertain but greater amount of expected cash in the future. The role of securities blended together in a portfolio, is to provide positive expected returns, by allowing investors to share in those expected future profits, from a business global activity. Holding cash however does not provide an expectation of future cash flows, a Pound coin your pocket today, does not earn you more Pounds in the future. These descriptions apply to all Fiat currencies or cryptocurrencies in a digital wallet. So returns from holding currencies including crypto's is based upon one thing - whether it goes up or down. There is no reliable or systematic way to predict the short term movement of currencies. Also, although certain things and institutions say they accept cryptocurrencies, the items you want to buy are not priced in say Bitcoin, so how do you use this 'currency'?

The volatility and the high transaction costs payable to convert your Bitcoin to useable cash, means it is highly unlikely it will be replacing the Pound in your pocket anytime soon. So if we can't use it as a currency, or as a substitute for cash, should we just expect its value to appreciate.

Like all markets, the price of cryptocurrencies are tied to supply and demand. But, there is a non zero probability that nothing will come of this fad (no future demand) and a non zero probability that certain crypto's will be widely adopted (high future demand). So a 50/50 chance. In summary we know crypto's cannot be used as cash, and do not accumulate more supply merely by existing. We know it's a toss of a coin probability that a crypto might appreciate and make you some money, and that merely holding a crypto does not entitle you to a share of the corporation's future profits. These are known knowns.

The potential of the system supporting cryptocurrencies - Blockchain, is however awesome in its potential applications, it is an open, distributed ledger that can record transactions efficiently and in a permanent and verifiable way, which has significant implications for the banking and financial world. Sadly you cannot invest in 'Blockchain' and it will take many years for it to be commercially used. So our opinion is that if you fancy a punt (gamble) then only put in what you can afford to lose 100% of the value of, or better still, use that money to add to your existing portfolio: ISA; Pensions Account, and enjoy more predictable returns on your investments. We do not, and probably will not hold any crypto-currencies in our portfolios. Our experience tells us never to say never, but that will probably happen after I have retired.

(Many years away yet!)

Maximising Pension Contributions

Please always remember that investing into a pension offers significant tax advantages and benefits.

Income Tax Relief is available on contributions at your highest rate of tax. This provides a significant boost to values within the scheme immediately.

The funds grow in a tax efficient environment, which includes legacy planning via a pension scheme, for Inheritance Tax purposes.

In addition, 25% of the value of funds can be taken tax free from the age of 55 onwards (current legislation), along with full flexi access drawdown, so the value is yours when you need it.

Paying Contributions

There are annual allowances which limit the amount that can be paid into a pension scheme, and further limitations on the total value a pension scheme can achieve during its lifetime.

For the tax year 2021/22 the standard annual contribution allowance is £40,000 and the total lifetime allowance is £1,073,100.

However, if you are a high earner, there can be further restrictions on the amount you are allowed to contribute as the annual allowance tapers down from £40,00, to a minimum of £4,000, for total earnings over £312,000 per annum.

Individuals can however bring forward any unused allowances from the previous three tax years, carried forward to the current year, to maximise contributions.

If you are an owner/director of a business, then there is no restriction to the maximum amount that can be paid by an employer into an individual's plan, but the employers (business) entitlement to tax relief will only be granted on that part of the contribution that is deemed by HMRC to have been paid 'Wholly and Exclusively' for the purposes of the trade. Such a payment would usually be agreed beforehand with HMRC to ensure compliance.

So there are plenty of options with pension planning wrapped in a very tax efficient arrangement. But remember, there are traps for the unwary in the contributions and allowances, so always discuss requirements with us first.

You will need income when salaries or employment ceases due to retirement, and pensions are a great way to replace that income, but planning beforehand is key.

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