

The Hidden Cost of DIY LPAs

ProTrust 
Estate Planning

ProTrust Estate Planning
25 North Row
Marble Arch
London W1K 6DJ
0207 113 5760

Email: info@protrustconsulting.co.uk

Website: www.protrustestateplanning.co.uk

What is a Lasting Power of Attorney (LPA)?

A Lasting Power of Attorney (LPA) is a legal document which allows a person (a 'Donor') to allocate an Attorney(s) to look after their financial decisions and/or their health and care decisions should they lose mental capacity, become incapacitated or are unable to deal with their affairs themselves.

Why are LPAs important?

Everyone knows how important it is to have a Will prepared. However, a Will takes effect only on death.

What if a person loses mental capacity or is physically incapacitated during his or her lifetime? How would financial and property transactions take place? Who would make health decisions for the incapacitated person such as where to live or treatment received?

An LPA is equally as important to put in place as a Will, if not more so, as it is actually for the benefit of the individual for their lifetime, rather than a Will which simply decides what is to happen with money, property and assets on death.

Without an LPA in place, if a person loses mental capacity, the only other legal method of being able to assist in the management of their affairs is the more formal and costly route of applying for Deputyship at the Court of Protection.

Lasting Power of Attorney – a Summary

There are two types of Lasting Powers of Attorney (LPA):

- (a) Lasting Power of Attorney for Financial Decisions; and
- (b) Lasting Power of Attorney for Health & Care.

The Lasting Power of Attorney for Financial Decisions can be used by your Attorney(s) to take decisions on bank accounts, investments and holdings and regarding selling or transferring property. Importantly, the Attorney can act even if the Donor still remains mentally capable of taking decisions. It is useful therefore not only just for mental incapacity situations but also if someone is mentally capable but physically frail or unable to travel to their local bank and other financial institutions for whatever reason.

The Lasting Power of Attorney for Health & Care can be used by your Attorney(s) only if you have lost mental capacity. It covers all decisions relating to treatment, residence and life support issues.

Both types of LPA must be registered at the Office of Public Guardian (OPG) before they can be used. Therefore, it is usual for us to prepare the Lasting Power of Attorney documents and also to complete the registration process at the same time so that they are ready for use at the right time, without delay.

The Rise of DIY LPAs

Traditionally LPAs are made through legal professionals as they are a legally binding document and complex but there is a rising number of applications being made using high street off the shelf kits or through using an online service available by the Office of the Public Guardian (OPG).

The Dangers of DIY LPAs

An LPA is a complex document and there are many issues to consider when creating an LPA. The registration process requires both the Donor and Attorney(s) to complete and submit several forms. The LPA document must be correctly prepared and registered at the Office of the Public Guardian for it to be legally binding.

Applying for an LPA yourself can have some appeal as it is a cheaper option being low or no cost aside from the application fee of the OPG. However, there are several risks associated with the DIY method of LPA application some of which are listed below:

1. Despite initial appearances, completing an application for registration is actually relatively complicated. It is easy to make mistakes which could lead to further costs and particularly delay. If the forms are not completed correctly, they can be rejected by the OPG and you would be further charged for a resubmission. If the application is rejected the Donor may have to pay a repeated application fee for £55 or even have to submit a whole new application for an additional £110 per document. Even if the application is passed through the OPG and mistakes are missed the LPA could be rejected in the future by banks, utility providers or medical professionals. Once an LPA has been granted it can be a very costly, time consuming and stressful process to correct any mistakes made.
2. Independent professionals act as an important safeguard when creating an LPA.
3. Their removal from the process could lead to an LPA being falsified.
4. The individual making the application can more easily become the victim of fraud or coercion without legal protection.
5. The Donor or even attorney might be persuaded to sign something they do not understand or feel comfortable to do so or that the full implications of the LPA are not explained and properly understood.
6. The Donor may not include all of their wishes and preferences within their LPA.
7. There are many factors to take into consideration when creating an LPA. This can be an overwhelming process and it can be daunting to think about what might happen if you lose the ability to make decisions for yourself. A key role of a professional is to provide advice and counsel through years of experience in this area.
8. Experienced professionals can provide an individual full information about all options and choices.

Without the support of a professional, it is easy for a Donor to create an LPA that does not accurately reflect the way in which they want their affairs and their welfare to be looked after in the future. Without professional legal advice they could open themselves up to the risk of fraud and financial abuse.

Things to consider

These are some of the things you will wish to consider before making a decision on how you proceed:

- The LPA process is usually a 'once in a lifetime' task. For most families there will not be a requirement to amend the LPA in future provided that the correct steps are undertaken and the choices are sensible. Our advice is to treat the matter seriously, obtain professional advice and help.
- Ask yourself whether you feel safe preparing your own LPA and application or whether you feel you may benefit from the expertise that a professional would provide.
- The initial costs of a DIY preparation are cheap but if any errors are made it could be a very costly and stressful process to rectify any mistakes
- Ask yourself whether you and those others involved all fully understand the options and choices that are available when including your wishes and preferences within your LPA document.

The importance of choosing an expert

The cost of instructing a legal professional is the main reason for many using a DIY approach to an LPA with a belief that the process is easy. It is a far from straightforward process and there is a potential risk of incurring further financial costs as well as failing to properly express their wishes. For those with very straightforward situations or with considerable legal experience the DIY method may be suitable but for most people seeking professional advice is the best way of ensuring that an LPA is effective, legally robust and safe.

Why instruct us?

As experienced professionals we can ensure that your application will be completed correctly and fully. We can ensure there is no scope for misunderstanding on your part or your appointed Attorney(s). We can offer protection against fraud and coercion by making sure you are fully aware of and comfortable with what you signing.

Contact Us

For more information and for an initial discussion for advice please contact us on:

Email: info@protrustconsulting.co.uk

Telephone: 0207 113 5760