

CRYPTO & DIGITAL ASSETS

LPAs AND DIGITAL ASSETS



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INDIVIDUALITY
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COLLABORATION”.**

LPAs AND DIGITAL ASSETS

The importance of putting in place Lasting Powers of Attorneys (“LPAs”) cannot be overstated. The choice of attorney and informing them of your wishes enables them to act efficiently and in your best interest. The relevance of informing them of your wishes is particularly vital when considering digital assets. The pertinency of this is increased with more valuable assets such as cryptocurrency.

The reason for this importance regarding cryptocurrency is two-fold: cryptocurrencies are being used more frequently to diversify financial portfolios and issues relating to the traceability (i.e. if the attorney is not informed of the location of the wallet and any unique password the cryptocurrency is effectively inaccessible).

Holding assets on a blockchain in the form of cryptocurrencies affords the owner anonymity. There is no centralised record of who owns the cryptocurrency. Therefore, it is not possible to trace the ownership as per shares via a chain of ownership. In the event the owner or the attorney loses access, or perhaps more aptly in these circumstances the owner has not told the attorney of the existence of the asset, the cryptocurrency and its value is unreachable.

As per any advice regarding estate planning, we recommend that an inventory or log of digital assets, including cryptocurrencies is generated and regularly reviewed/updated.

The relevant LPA for managing the donor’s digital assets is known as the LPA for Property and Financial Affairs. Although it is possible with this document that it becomes effective once the donor loses capacity, we generally recommend that the donor permits the attorneys to act on their behalf from registration. Although this may initially sound daunting, most institutions only permit a third party to act on the account-holder’s behalf upon sight of

the original or certified copies of the original LPA. We would recommend that any individual who has digital assets, and specifically cryptocurrency, and is considering putting in place an LPA, inserts specific wording into either the instructions or preferences sections. The instructions section is where the donor sets out directions as to how their attorneys should/ must act. In the contrast, the preferences box is where the donor expresses any non-mandatory wishes. These wishes are useful with cryptocurrencies given the potential difficulties an attorney may face when accessing these assets. For example, it may be that the donor, so as to mitigate any potential future issues, states the attorneys should liquidate the cryptocurrencies in the event the donor loses capacity.

In the event that the individual does not make an LPA, loses capacity and the donor’s relatives require access to the various accounts and assets, the alternative is for an application to be made to the Court of Protection to act as an individual’s deputy so as to deal with their property and financial affairs. The process of applying to be the individual’s deputy is time-consuming and potentially costly.

Whereas, the process of putting an LPA in place is relatively inexpensive and, comparably, straightforward. Anyone considering putting in place an LPA should do so, especially if they have any digital assets, in particular cryptocurrencies.

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