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Lasting Powers of Attorney – why it makes sense to appoint a professional

Many people very sensibly confer lasting powers of attorney (LPAs) on others so that their affairs can be properly managed in the event that they lose the ability to do so themselves. However, as a High Court ruling underlined, it often makes good sense to appoint a professional, rather than a loved one, as your attorney.

The case concerned a woman who, by her will, bequeathed her home equally to her four children. About two years prior to her death, aged 93, an LPA was registered in favour of her daughter. The latter subsequently used the power conferred on her by the LPA to purportedly transfer the property, which was formerly owned solely by her mother, into her and her mother's joint names, as tenants in common.

The result of the transfer was that, when the mother died, her daughter's half share of the property fell outside her estate. That in turn meant that the inheritance of her other three children was significantly reduced. Acting as executor of her estate, her son challenged the transfer on the basis that the daughter had no power or authority to make it.

Upholding his claim, the Court noted that the half share in the property was a gift to the daughter. Section 12 of the Mental Capacity Act 2005 requires that an LPA may generally only be used to make gifts of reasonable value to charity or to loved ones or other connections on customary occasions, such as birthdays or anniversaries. Gifts that do not fall within those exceptions must be authorised by the Court of Protection.

Such authority having neither been sought nor granted, the High Court concluded that the transfer was void. The registration of the daughter's half share in the property was therefore a mistake on the face of the Land Register. The Court ordered that the Register be rectified to the effect that the mother remained the property's sole owner at the date of her death.

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Make a professionally drafted Will before time catches up with you

It is a sad fact that many people lose their ability to make rational decisions in old age and that is why it is so vital to make a professionally drafted Will before time catches up with you. The point was robustly made by a High Court ruling.

About three years prior to his death aged 97, an unmarried and childless man made a will by which he bequeathed the lion's share of his estate to two of his sisters. They, having predeceased him, his numerous nieces and nephews were the principal beneficiaries of the Will.

The will purported to replace an earlier Will he had made when he was in his eighties. By that document, he had left the entirety of his estate to his great nephew, to whom he was at that time very close. His great nephew launched proceedings challenging the validity of the later Will.

Ruling on the case, the Court noted that, over a year before he made the disputed Will, a GP had described him as increasingly confused. He was subsequently seen by a consultant psychiatrist who said that he was calm, pleasant and cooperative. He was, however, prey to various paranoid and persecutory delusions and had expressed odd or eccentric ideas about his own history. He was diagnosed as suffering from dementia complicated by some psychotic thinking.

Upholding his great nephew's claim, the Court found that he lacked the mental capacity required to execute the disputed will. His irrational thought processes were causative of his decision to make it. The Court pronounced in favour of the first Will, the provisions of which were rational on their face.

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Law firm's document archive proves decisive in resolving bitter Will dispute

One of the very many advantages of having your Will professionally drafted is that, if the original document goes missing, solicitors can be relied upon to have kept a copy. In a High Court case on point, a law firm's carefully kept archive proved decisive in resolving an inheritance dispute that tore apart a farming family.

Following a farmer's death, his widow asserted that his Will was found in a locked suitcase under his bed. Although the document was subsequently mislaid, she obtained a copy from the law firm that drafted it.

She and her son, who were the principal beneficiaries of the Will, applied to have the copy admitted to probate. Their application was resisted by the farmer's three daughters, who disputed the widow's claim that the original Will was still in existence when their father died. They pointed out that, where a Will cannot be found following a person's death, there is a legal presumption that it has been deliberately destroyed and, thereby, revoked.

Upholding the application, however, the Court was satisfied that a Will in the same form as the copy document had been duly executed by the farmer, under the law firm's guidance. There was nothing in the entirely explicable loss of the original document to excite suspicion and the Court accepted that it remained in the suitcase, unrevoked, when he died.

The terms of the copy document were unsurprising and conformed to the daughters' own understanding of what their father's Will was likely to contain. There was no real reason for him to have revoked a Will that was made only five years prior to his death. Given that the copy had been provided by the law firm that drafted the original document, there could be no doubt that it was genuine.

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Make a Will and appoint a professional Executor – two ways to avoid conflict

There is ultimately only so much that you can do to prevent your loved ones falling out over inheritance issues after you are gone. However, as a High Court decision showed, the threat of bad blood developing can be greatly reduced by making an expertly drafted will and engaging a professional as your executor.

The case concerned a woman whose principal asset, a house, was said to be worth up to £400,000 but who died without making a Will. Under the rules of intestacy, her estate was to be divided equally between her five children. In the absence of a Will, there could be no executor, professional or otherwise, so one of her sons (the defendant) took on the role of administrator of her estate.

Another of her sons (the claimant), however, sought his removal from that office. He did so on the basis that the defendant had delayed too long in selling the house and distributing the proceeds to the sibling group. The defendant responded by accusing the claimant of fraud. After he failed either to put in evidence or to attend a hearing before a judge, however, the claimant was appointed as substitute administrator in his place.

Rejecting the defendant's application to set aside the judge's order, the Court found that he had no good reason for his failure to attend the hearing. His fraud allegation had only been abandoned at a very late stage in the case and the claimant had been put to considerable expense in defending himself. For that reason, the defendant was ordered to pay the claimant's legal costs on the punitive indemnity basis.

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