



Helping protect your property and assets



Making a Will

Making a Will may prove to be one of the most straightforward yet important financial decisions you make. You should ensure you have a valid Will. Without a Will, your assets and possessions will ultimately be distributed according to the rules of intestacy, meaning you have no influence over who receives the assets in your estate. Sorting out your affairs may also prove far more difficult. Making a Will is a straightforward process and will ensure your wishes are clearly documented and followed in full. **The issues which can be covered in a Will include:**

Appointment of Executors - you will need to appoint in your Will Executors, who are those you trust to make sure your wishes are carried out after your death. An Executor needs to be aged 18 or above, and they can be beneficiaries of your Will. Careful thought should be given as to whom you appoint.

Guardianship of young children - if you have children under the age of 18 years, you should appoint in your Will(s) guardians who would care for your children after your death. Ideally a primary guardian and a reserve.

Specific legacies to individuals and/or Charity - can be specific item or sums of cash.

Property and other asset protection - do you want to ensure your estate passes to your chosen beneficiaries and is not at risk from any future spouse or live-in partner, or from the impact of long-term care costs?

Inheritance tax planning - is your joint estate in excess of the inheritance tax threshold? Your estate can include your house, lump-sum pension proceeds, life policies, death in service benefits, savings, investments and even your personal possessions.

Distribution of your estate - would you like your spouse/partner to inherit all of your estate in the first instance? If you have no spouse/partner or if you both die together, does your estate pass to your children? If not then to whom and in what percentages?

Any specific funeral wishes you have - do you have any specific funeral requests? These can be noted in your Will.

Reviewing Your Will

Once you have a Will, keeping it up to date and relevant to your situation is vital. A review of your Will in relation to your current circumstances should be carried out on a regular basis - every two years is recommended.

Our panel of legal specialists are able to offer a free of charge Will review service, comparing your existing Will instruction with your current family and financial circumstances, producing a summary and detailing any recommendations.

We would strongly suggest that a review is considered as a matter of urgency under any of the following circumstances:

- Your Will was produced more than 5 years ago - changes to inheritance tax rules and other legislation may not be reflected in your Will and should be considered.
- Prior to a marriage, a civil partnership or divorce - any one of these events will trigger a need to review and possibly re-write a Will.
- Following the birth of a child/grandchild - you may now need to appoint guardians, and legacies and the distribution of your estate should be reviewed.
- Following the death of a family member or friend who may be mentioned in your Will.
- At the time of retirement - an important time to review your Will.
- If there has been any significant change to your financial situation - issues such as inheritance tax may now need to be considered.

Protecting Your Assets

Despite assets belonging to you, they can be at threat both during your lifetime and after your death. Potential threats can include one or more of the following:

- Long term care fees
- Inheritance tax
- Remarriage of a widowed spouse

By taking time to structure your Will correctly it is possible to protect your main assets, such as your family home, and ensure they are available to be passed on to your family and other beneficiaries, thereby providing you with added peace of mind.

How you own and hold assets such as property is vital in planning your estate, and seeking professional advice can prove invaluable. A well written Will can ensure your aims are achieved, and maximum protection is provided for your assets.



Lasting Powers of Attorney

A Lasting Power of Attorney is a legal document which allows you to choose someone you trust to make decisions on your behalf about things such as your property and financial affairs, or your health, at a time in the future when you no longer wish to make those decisions, or if you lack the mental capacity to make those decisions yourself. **There are two types of lasting power of attorney available - one covering your property and financial affairs, and the other covering your personal welfare:**

Lasting Power of Attorney - Property & Affairs

This allows those designated by you, your Attorney(s), to make decisions and take the appropriate actions on your behalf in respect of your property and financial affairs. Your designated Attorney(s) can manage your finances and property whilst you still have capacity as well as when you lack the capacity to do so - the choice is yours.

You can decide what and the extent of the powers you give to your Attorney(s) when making decisions about your property and financial matters.

Lasting Power of Attorney - Personal Welfare

This allows you to plan ahead regarding your personal health care and welfare by choosing one or more people to make decisions on your behalf. These decisions can only be taken by your Attorney(s) when you lack the ability to make decisions for yourself. This could result from conditions such as dementia, or if you are unconscious following an accident.

You can decide to give your Attorney(s) the power to make decisions about any or all of your personal welfare matters, including health care issues, such as giving or refusing consent to medical treatments etc.

The Value of Lasting Powers of Attorney

By drafting a lasting power of attorney, you are providing those you trust with a legal document which will allow them to manage your affairs on your behalf should you ever reach a point when you are unable to manage them yourself.

Not having such arrangements will mean it is necessary for someone to apply to the Court of Protection to be appointed as a Deputy to manage your affairs, under the supervision of the Court. This will prove far more expensive than choosing your own attorneys in advance.

Probate Administration

Probate is a term commonly used when talking about applying for the right to deal with a deceased person's affairs and takes place after a person's death. It usually involves proving that the deceased's Will is valid, identifying and valuing all of the deceased person's property and assets, paying any outstanding debts and tax, and distributing the assets as detailed in the Will. The probate process varies depending upon whether a Will exists.

If the person who has died leaves a Will:

In this case one or more Executors may be named in the Will to deal with the deceased person's affairs. The Executor(s) apply for a 'grant of probate' from a section of the court known as the Probate Registry. The grant of probate is a legal document which confirms that the Executor(s) has the authority to deal with the deceased person's assets. They will need this to show they have the right to access funds, deal with finances, and collect and share out assets in the Will.

If the person who has died didn't leave a Will:

If there is no Will, a close relative of the deceased can apply to the Probate Registry to deal with the estate. In this case they apply for a 'grant of letters of administration'. If the grant is given, they are known as Administrators of the estate. Like the grant of probate, this is a legal document which confirms the Administrator's authority to deal with the deceased person's assets.

Is Probate required for all deceased estates?

A grant of probate may not be needed where:

- The person who died left total assets valued at less than £5,000
- They owned everything jointly with someone else and everything passes automatically to the surviving joint owner

In most other cases the banks or other relevant institutions will need to see the grant of probate before transferring control of the assets, so probate is required.

Using a professional to undertake probate:

When faced with the probate process many Executors prefer to have the administration carried out on a professional basis, with the estate paying a bank, solicitor or trust company to take the responsibility (and liability) off their hands.

What is a Living Will?

An Advanced Medical Directive, also known as a Living Will, allows an individual to state which treatments they would or would not wish to receive should they become ill in the future and unable to make decisions on their treatment. If an Advanced Medical Directive is made you are asking medical professionals not to give you certain medical treatments. The statement, which can be written or verbal, is known as an 'advance decision to refuse treatment'.

What is the legal standing of these documents?

Advance decisions to refuse treatment are covered by the Mental Capacity Act 2005, which became part of law in April 2007, and are strongly supported by the BMA. According to the official government website, by law, a valid advance decision refusing life-saving treatment means the individual concerned can't be treated. If a doctor did treat the person, legal action might be taken against them.

How do they differ from a standard Will and lasting powers of attorney?

A standard Will deals with an individual's estate and affairs after their death - an Advanced Medical Directive refers to certain medical treatment whilst the person is still alive.

Lasting powers of attorney generally pass on full decision making and signing powers to one or more attorneys, who will act in a person's best interests should they lose the capacity to manage their affairs. An Advanced Medical Directive sets out an individual's wishes in respect of specific areas and medical treatments.

Why have an Advanced Medical Directive?

A main benefit is to ensure a person's close family/friends are clear on their wishes and are not left to make difficult decisions on their behalf without knowing their feelings.

Help and Advice

Should you have any questions or require help with reviewing or making your Will, or wish to discuss any other legal aspects of your estate, Cockburn Lucas have developed relationships with a dedicated panel of specialist solicitors who we would be delighted to recommend. What to do next? Get in touch for an obligation free meeting, and *relax*.

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