

# Making a will and a lasting power of attorney

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Fact sheet



## Introduction

Putting in place arrangements for what happens to your estate after your death is a sensible step for the future security of your family. It also ensures that your wishes will be carried out in the way you want them to be.

Taking steps that will enable trusted friends or advisers to manage your financial affairs and make decisions about your health and welfare, if you are unable to do so yourself in the future, is also a wise move.

This guide to making wills and lasting powers of attorney (LPAs) is designed to highlight key points.

This fact sheet does not constitute our advice taking into account your circumstances but is designed to give you background information about the area of law concerned and some general practical advice. It should not be relied on without seeking specific advice from us.

## Why make a will?

Writing a will is one of the most important personal and financial decisions we make in our lifetimes.

But while it is never too early to make a will, far too many people leave it too late. A recent survey for AXA Sun Life Direct suggested that 55 per cent of adult Britons had not made a will.

Failing to make a will means that you have no control over what happens to your estate. Your assets will be distributed according to the laws of intestacy, which may not be the way you planned.

Regardless of your financial status, a will allows you to decide who will benefit from your money, property or possessions when you are no longer around.

Making a will is particularly important:

- for unmarried couples or those not in a civil partnership who cannot inherit from each other unless this is specified in a will. If one partner dies, this could cause serious financial problems for the other;
- if you have children a will allows you to put in place arrangements for their future care if either one or both parents die;
- if you want to pass on your assets in the most tax-efficient way;
- where your will circumstances have changed. For example, if you have separated and your former spouse or civil partner lives with someone else, you may not wish them to benefit from the automatic inheritance they are entitled to under the laws of intestacy, so you need to set out your wishes in a new or updated will.

## Should I use a solicitor?

There are various options for making a will.

- DIY – Of course, you can make a will yourself, but it is all too easy to make mistakes. Any errors can cause problems after your death, which can be time-consuming and costly to sort out, reducing the value of your estate for your beneficiaries.

Common errors include not being aware of the requirements to make a will legally valid, or to validate any changes, such as getting married, or of the effect of a divorce or dissolution of a civil partnership on a will.

There are also rules that enable dependants to claim from an estate if they believe they have not been adequately provided for, which could lead to your will being overturned.

- Will-writers – Will writing services are available but the sector is unregulated. This means that anyone can offer to give advice about drawing up a will, without necessarily having any particular training, expertise or insurance cover.
- The best way to make a will is by working with a solicitor. By doing so, you will have peace of mind that you are dealing with a legal professional who will draft a will that sets out your wishes in a legally compliant and tax-efficient way. You also have the reassurance of knowing they are trained and regulated.

Making a will by using a solicitor is not as expensive as you might think. It is also worth remembering that the modest price you pay now to make a will is a worthwhile investment for your future peace of mind that the people you want to benefit will do so in the way you wish them to. If you would like a quote for the cost of preparing your will, please contact us.

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## What do I need to do?

You will almost certainly already have an idea of what you want to say in your will and it is a good idea to give this some serious thought before you see your solicitor. Doing so will make it easier for your solicitor to draw up the will and will reduce the time and costs involved.

Issues to consider include:

- how much money and other assets you have, for example, property, savings, occupational and personal pensions, insurance policies, bank and building society accounts, shares and valuable items such as antiques or jewellery. This will also include your business assets, should you have any;
- who you want to benefit from your will. You should make a list of all the people to whom you wish to leave money or possessions (known as beneficiaries). You also need to consider whether you wish to leave any money to charity;
- who should look after any children under the age of 18;
- who is going to sort out the estate and carry out your wishes as set out in the will (known as the executors and/or trustees).

Working with you, your solicitor will prepare a will that sets out your wishes regarding the distribution of your estate to your beneficiaries. Most people's affairs are fairly straightforward, but your solicitor's experience and knowledge will allow them to identify potential problems and advise you on ways to resolve them. They will also be able to advise you on minimising your liability to tax now and after your death.

In some circumstances, it may be appropriate for you to use our standard will form, which is available at [www.gregglatchams.com/estate-planning-and-tax/will-instruction.htm](http://www.gregglatchams.com/estate-planning-and-tax/will-instruction.htm) along with guidance on whether this is suitable for you. Please contact a member of our Estate Planning & Tax team if you have any queries about the form.

## How can I use my will to pay less tax?

On your death, inheritance tax is charged at a hefty 40 per cent on your estate above an allowance known as the nil rate band – currently frozen at £325,000 until 2015 – so forward planning is essential.

A tax-efficient will is a key tool in this process. Your solicitor will review your estate, including all your personal and business assets, and explore tax minimisation opportunities.

These include trusts and ways to make the best use of gifts and exemptions allowed under the inheritance tax regime, including lifetime gifts, annual gifts, gifts to charities and agricultural and business property relief.

As part of this process, they will look at your tax planning from all angles so that one tax saving does not generate another tax change.

## Who should I appoint as an executor(s)?

Executors are the people responsible for carrying out your wishes and for sorting out the estate through probate, the legal process of distributing someone's assets after their death.

They must:

- collect together all the assets of your estate;
- deal with all the paperwork;
- pay all debts, taxes, funeral and administration costs in the estate;
- pay out bequests and transfer any property to beneficiaries.

It is not necessary to appoint more than one executor although it is advisable to do so, in case one of them dies. It is common to appoint two, but up to four executors can take on the responsibility for administering the will after a death. The people most commonly appointed as executors include relatives, friends, and solicitors.

It is important to choose executors with considerable care since their job involves a great deal of work and responsibility. You should always approach anyone you are thinking of appointing as an executor to see if they will agree to take on that responsibility. If someone is appointed who is not willing to be an executor, they have a right to refuse.

Because the role of executor places a considerable responsibility on the person involved, it is worth considering whether your solicitor should carry out this role, rather than a relative or friend. Your solicitor will have extensive experience in acting as an executor, which can make the process easier and quicker, as well as relieving your loved ones of a difficult task at a stressful time.

If an executor dies, any other surviving executor or executors can deal with the estate. If there are no surviving executors, legal advice should be sought.

If you would like a quote for administering your estate, please contact us.

## What happens if there is a dispute over the will?

A death can sometimes lead to disputes. For example, a beneficiary may feel that they have been inadequately provided for in the deceased's will and the resulting disagreement may lead to a will being challenged.

Your solicitor will be able to use his/her experience to resolve probate disputes, taking an objective view of the issues and finding practical solutions and satisfactory outcomes.

Making your will with a solicitor can help to avoid many issues that could potentially give rise to a dispute and ensure that it is legally compliant.

## What do I do about my will if my circumstances change?

When a will has been made, it is essential to keep it up to date to take account of changes in circumstances. It is also advisable for you to review the contents of your will regularly to make sure that it still reflects your wishes.

The most common changes of circumstances that affect a will are:

- getting married, remarried or registering a civil partnership;
- separating, getting divorced or dissolving a civil partnership;
- the birth or adoption of children.

The only way you can change a will is by making:

- a codicil to the will; or
- a new will.

A codicil is a supplement to a will that makes some alterations but leaves the rest of it intact. This could be done, for example, to increase the amount of cash you leave to a beneficiary, to change an executor or guardian named in a will or to add new beneficiaries.

You can add as many codicils as you wish to a will but they are only suitable for very straightforward changes. If a complicated change or changes are involved, it is a good idea to make a new will to ensure your intentions are clearly expressed.

Your will should begin with a clause stating that it revokes all previous wills and codicils. Revoking a will means that the will is no longer valid. The old will should be destroyed.

## Looking after your will

Once your will has been made, it should be kept in a safe place. There are a number of places you can keep a will, including:

- at home;
- with your solicitor (a service offered free of charge by Gregg Latchams);
- at your bank;
- at the Principal Registry of the Family Division of the High Court, a District Registry or Probate Sub-Registry for safe keeping.

## Why make an LPA?

When you make your will it is also sensible to put in place a Lasting Power of Attorney (LPA). This allows you to appoint someone to manage financial and other matters on your behalf, to take effect if you are no longer able to do so for yourself.

An LPA allows the person making the arrangement (the donor) to give a relative, friend or professional adviser (such as a solicitor), the legal authority to manage their financial and property matters, such as selling their house or managing their bank account, if they become mentally incapacitated. This person is known as an attorney.

The LPA also allows the donor to give an attorney – not necessarily the same person as the one handling their financial affairs – the power to make decisions on matters including their health and welfare, for example whether to have medical treatment or their day-to-day care.

Your attorney(s) must always act in your best interest so it is vital that you appoint people in whom you have complete confidence.

Making an LPA avoids the need for complicated legal proceedings to unfreeze the assets of someone who has become incapable of handling their own affairs in old age – or at any age – but has made no provision in case that happens.

By seeking your solicitor's advice on drawing up your will and LPA, you will have real peace of mind that your affairs in the future will be handled in accordance with your wishes. Your solicitor may also be able to act as your attorney, if you wish.

## What do I need to know about LPAs?

To make an LPA, the donor must have capacity and be aged over 18.

The attorney is appointed to make decisions as if they were the donor themselves and must act in the donor's best interests. The duties of attorneys are also set out in the Mental Capacity Act Code of Practice. Attorneys should be aware of this and follow the guidance provided by the Code.

The LPA must be set out in the legally required format and contain a certificate completed by an independent person to confirm that the donor understands the LPA's importance and that they are not under any pressure to make it.

An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. An unregistered LPA will not give the attorney any legal powers to make decisions for the donor. The LPA can be registered either before the donor loses mental capacity to make decisions or when their attorney or attorneys have reason to believe this has happened.

A form to provide the information required to enable us to set up an LPA on your behalf is available at [www.gregglatchams.com/estate-planning-and-tax/poa-instruction.htm](http://www.gregglatchams.com/estate-planning-and-tax/poa-instruction.htm) with guidance. If you have any queries, please contact a member of our Estate Planning & Tax team.

## How do I revoke the LPA?

The donor can revoke or cancel the LPA as long as they have the mental capacity to do so. If there is any dispute about whether the LPA has been cancelled or ended, the Court of Protection has the authority to make a decision.

If the attorney is a spouse or civil partner, the dissolution or annulment of a marriage or a civil partnership will end their appointment or revoke the power, unless the donor has specifically stated in their LPA that this is not to happen.

An LPA for property and financial affairs is revoked if the donor or attorney(s) are made bankrupt. Bankruptcy does not terminate an LPA for personal welfare.