

Why you need a will and lasting power of attorney



This guide contains general information based on the law in England and Wales.



Having a will and lasting power of attorney

Writing a will is a task that many of us find easy to put off. After all, who wants to think about illness and death? People often intend to plan their will later in life, and some don't even consider a lasting power of attorney (LPA).

This approach is risky. Accidents, critical illness and death can hit at any time, regardless of age. Being unprepared means your loved ones may face additional complications and stress at an already difficult time.

Having a will and an LPA also benefits your family. As well as protecting your wishes and interests, these documents ease the strain of tricky decisions and complicated legal processes. Here, we explain what purpose each serves, how they are different and why having both is so important for both your and your family's future.

Wills

The main purpose of making a will is to state who you would like to inherit your money and property after you die. Surprisingly, research by Royal London suggests that more than half (54%) of the adult population in the UK does not have a will. ¹

Making a will is the only way to ensure your estate goes to the people and causes you want it to when you die.

If you die without a will, you have no control over what happens to your money, assets and property. Instead, the government will decide who gets what under the **rules of intestacy**. ² These are relatively complex and strict rules that set out which of your living relatives is entitled to inherit from you if you die 'intestate'.

Example: estate distributed intestate

Oscar was in a partnership with Caryn for 30 years, but they never married. They lived in Cambridgeshire. They have a daughter, Romy, who is 22 years old. Oscar recently died without ever having made a will.

Their jointly owned house automatically becomes Caryn's, but Oscar's significant investment portfolio passes to Romy. As there is no will dictating how Oscar's estate should be distributed, Caryn may now be unable to meet her living costs and she would have to make a claim in the courts to potentially benefit from Oscar's estate.

There may be unintended outcomes if an estate is distributed according to the rules of intestacy, such as:

- A surviving spouse/civil partner may not necessarily inherit the family home.
- An unmarried partner does not have an automatic right to inherit.
- A significant inheritance tax (IHT) liability could arise, which could have otherwise been avoided or reduced with a will.
- Administering the estate can take longer and therefore result in higher legal fees.

Footnotes

1. <https://www.royallondon.com/media/press-releases/2018/december/perplexed-by-wills/>

2. <https://www.citizensadvice.org.uk/family/death-and-wills/who-can-inherit-if-there-is-no-will-the-rules-of-intestacy/>



By contrast, having a will ensures that:

- Your money and assets go exactly where you want them to.
- The estate (i.e., the money and property owned by somebody when they die) is distributed in an IHT-efficient manner.
- Legacies can easily be left to charities or people who are unrelated to you.
- Parents can specify guardians who are responsible for bringing up their children or overseeing their care while they are under age 18.

In writing a will, you name executors, who are often close family and friends, to take on the legal responsibility of carrying out your instructions. A will helps reassure loved ones that they are respecting your wishes and gives them a clear plan to follow.

Once you have a will in place, it should be reviewed regularly to ensure it reflects any changes in your life and how these might affect your wishes. It is a little-known fact that getting married automatically revokes an existing will (unless it was written in anticipation of the marriage) but getting divorced does not.

A properly written will can also help to avoid disputes. Badly drafted or outdated wills may cause arguments amongst loved ones which could have to be resolved by a solicitor. A will makes clear who you want to benefit from your estate and helps to avoid further stress and legal fees for your family and friends.

Lasting power of attorney

Whereas a will is used to ensure your wishes are carried out after you die, a lasting power of attorney (LPA) is used to protect your interests during your lifetime. An LPA is a legal document that lets you appoint one or more people (known as 'attorneys') either to help you make decisions or to make decisions on your behalf.

As financial advisers, we are unable to take instructions, or provide information to anyone on behalf of an incapacitated individual unless there is a valid LPA in place.

There are two types of LPA:

1. Health and welfare: the attorney can make decisions relating to medical care, accommodation, daily routine and giving or refusing consent to life-sustaining treatment. It can only be used once mental capacity (generally, the ability to make and communicate decisions) has been lost.

2. Property and financial affairs: the attorney will have the authority to manage bank accounts, deal with benefits and pensions, pay bills or buy/sell property. It can be used once mental capacity has been lost, or whilst somebody still has mental capacity if they simply no longer wish to make their own decisions.



An LPA gives you more control over what happens to you if, for example, you have a serious accident or an illness which affects your ability to make decisions independently. This could be a temporary situation or could be a longer-term solution if you lose mental capacity.

You can only prepare an LPA when you have the mental capacity to do so. A partner or close family member, for example, will not automatically have the legal authority to manage your affairs if you have an accident or lose capacity due to a deteriorating illness.

If it is too late to prepare an LPA, somebody who you might otherwise want to be your attorney will have to apply to the Court of Protection to be made a deputy, which can be an expensive and time-consuming process.

The advantages of having an LPA include:

- You can choose someone you trust to manage your affairs and make decisions for you.
- Restrictions can be applied, and written guidance can be provided in advance to assist the attorneys in their duties.
- Matters are made much easier for those involved in managing your affairs. Even paying utility bills can be complicated without an LPA.
- Your attorneys can manage your affairs immediately in the event they need to do so, whereas applications to the courts may take many months to be finalised.



Enduring power of attorney

Before LPAs were introduced in 2007, somebody may have already set up an enduring power of attorney (EPA). EPAs can continue, although alterations to existing EPAs cannot be made. There are two important differences with an EPA compared to the newer LPA:

- An EPA does not allow an attorney to make decisions about personal care and welfare. Therefore, somebody with an existing EPA may wish to put in place a health and welfare LPA.
- LPAs only come into effect when registered with the Office of the Public Guardian. On the other hand, some EPAs (depending on how they are written) may give the attorney power to act prior to registration.

Why it is important to have both a will and an LPA

If a will is put in place but an LPA is not, the Court of Protection would appoint a deputy to manage your property if something happens to you during your lifetime that means you lose mental capacity. This may add further stress to your family, who would not have direct control over your assets.

If you set up an LPA but do not put a will in place, then you will have no control over what happens to your money and belongings after you die.

Creating a will and arranging an LPA are two of the most important ways to help safeguard your future and take control. At Holden & Partners we encourage everybody to have a valid will and an LPA.

Holden & Partners are experienced in advising and helping families put a plan in place to manage their financial affairs. We work with legal specialists who handle wills and LPAs. Working this way ensures your financial affairs are looked after, and you are prepared for whatever the future brings.

Please do get in touch to discuss any aspect of your financial planning.





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This guide contains general information based on the law in England and Wales. It should not be used as a source of information for individuals resident outside of England and Wales to understand the legal system in their relevant jurisdiction.

Contact us

Holden & Partners

The Piano Works, 117 Farringdon Road, London EC1R 3BX

T: 020 7812 1460

E: info@holden-partners.co.uk

www.holden-partners.co.uk

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GWLPA 042022