
WILLS, PROBATE & LASTING POWER OF ATTORNEY

Q&A FACT BOOK

This fact book provides you with the answers to our commonly asked questions relating to wills, probate and lasting powers of attorney.

What is a will?

A will is a legal document where you can specify who should receive your money, property and possessions upon your death. A solicitor will ensure that the wording is clear and legally binding.

Do I need a will?

If you own a property, have children, are married, divorced or cohabiting, the answer is yes. Without a valid will in place you will die “intestate”, meaning your assets might not go to who you wish.

What will happen if I do not have a will?

As mentioned above, if you are to die without a will, you will die “intestate”. Therefore, the law will decide how your estate is to be distributed, giving you no control over who benefits from your assets. Your loved ones may also find it more costly and time-consuming.

How do I make a will?

With the help of one of our experienced solicitors, we can assist you with the creation of your will. By using a solicitor, you can ensure you are protected if anything goes wrong and have confidence knowing that your will will be securely stored.

Is there an age limit on making a will?

In England and Wales, you must be over the age of 18 and in Scotland, over the age of 16 to create a will. There is no upper age limit.

What do I need to bring to my appointment?

We ask that you bring valid ID with you, such as a passport or driving licence, as well as a recent utility bill or bank statement. Before the appointment, consider who you wish to appoint as executors, beneficiaries and guardians (if applicable).

What is an executor?

An executor is somebody you appoint to carry out the instructions within your will. It is their role to carry out your wishes according to the law. Some of the executor’s duties include:

- Making funeral arrangements.
- Paying all debts owed by the deceased.
- Gathering and obtaining all the assets owned by the deceased.
- Distributing assets as specified in the will.

Bear in mind that the law only allows a maximum of four people to act as executor at the same time.

Who should I appoint as my executor/s?

You have the option to appoint family, friends or legal professionals as the executor to your will. Many people appoint their partner as well as a friend or other relative. However, appointing a legal professional has its benefits such as that individual having the technical and legal knowledge needed to administer your will.

What is a beneficiary?

A beneficiary is a person you specify within your will whom is to inherit your property, money and assets. You can have more than one beneficiary if you wish more than one person to benefit from your estate.

What happens if my executors or beneficiaries die before me?

Sadly, in such circumstances, we recommend that you review your will. Depending on how your will was written, you might not need to have it rewritten, however we suggest you get in touch with us to talk it through.

I live with my partner, but we are not married or in a civil partnership. Would I inherit their assets if they were to die?

It is a common misconception that because you live with your partner, you are therefore in what is called a 'common law marriage'. This is not the case. If you and your partner wish to benefit each other upon your death, it is important that you have a valid will in place.

Can I amend my will at a later date?

Of course you can. A will should reflect your circumstances as they are now, and then be updated as and when these change. We recommend that you review your will every five years to ensure it is still valid.

What is a mirror will?

If you and your partner wish to write identical wills, your solicitor can prepare mirror wills. They must be individual wills and therefore separate legal documents.

Where should I store my will?

There is no law specifying where your will should be stored, as long as your executor knows its location. As an option, we can securely store your will free of charge at our Chepstow office.

Do I need a will if I have a Lasting Power of Attorney (LPA)?

A will is a completely separate document to an LPA. A will is legally binding after your death and an LPA is legally binding during your lifetime.

How do I know a will is valid?

For a will to be valid at the time of creation, it must meet certain criteria:

- The individual who made the will must have been at least 18 years of age at the time it was created.
- The will must be in writing and signed by the person making it with two witnesses present.
- The person making the will must have been of sound mental capacity at the time it was created.
- The person making the will must not have been under undue influence.

A will can also become invalid if:

- The person making the will makes another at a later date.
- The person making the will gets married or enters into a civil partnership, and this wasn't mentioned in the original will.
- The person making the will deliberately destroys it.

For more information on the creation and updating of wills, please get in touch with a member of our Wills Team on 01291 639523.

What is probate?

Probate is given to the name of the administration of someone's estate upon their death. If someone dies owning significant assets, a formal 'grant' must be obtained from the probate registry for that estate to be collected and divided between the beneficiaries mentioned in the will.

Do I need a grant of probate?

You will require a grant of probate if the estate includes more than £5,000 with banks or other institutions. You will also require probate if the estate contains land or buildings that is not also owned by a wife, husband or civil partner.

Who takes on the probate responsibility?

It is the executor's (named in the will) responsibility to process probate. If no will was made and therefore no executor specified, the responsibility falls to the deceased's next of kin who becomes the 'administrator' of the estate.

How long does probate typically take?

A grant of probate typically takes between six and eight weeks. Once the grant of probate has been obtained, it can take a further six to nine months for the estate to be administered. This of course depends on certain circumstances such as the parties involved.

What happens in the probate process?

Once the probate application form (PA1) has been completed and sent to your local Probate Registry, they will send you an oath and ask you to see them via an appointment. You will then need to swear an oath at either a solicitors or local probate office.

Why should I ask a solicitor for help with obtaining probate and administering an estate?

You may require assistance with the probate process, particularly as this is often an emotional and upsetting time. Your reasons may be that:

- You are too busy to deal with it yourself – it can be very time-consuming.
- You may find it stressful or difficult.
- You may have more confidence knowing the estate is being handled by a professional.

- You can be assured that you will not be held personally liable if something was to go wrong.

Do I need to use the same solicitor that created the will?

If you are the executor or administrator, you can choose whichever solicitor you wish to carry out the probate and administration of the estate.

Can I refuse the role of executor?

If you wish to refuse your role as executor, it is important that you have so far had no dealings with the estate. You will be required to sign a deed of renunciation enabling you to give up your role – which will be done through a solicitor.

What is inheritance tax?

Upon your death, your property, money and possessions may be liable to pay inheritance tax. Depending on the threshold, if, how and when it is paid depends on the size of your estate. Inheritance tax can become complicated which is why we suggest speaking to a professional.

For more information on probate, the process and administration, please get in touch with a member of our Probate Team on 01291 639523.

LASTING POWERS OF ATTORNEY ? ? ?

What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal document that allows you to specify someone (or multiple people) to act on your behalf regarding financial and health decisions, should you lose mental capacity to do so yourself.

Who should make a Lasting Power of Attorney?

An LPA often doesn't get thought of until the last minute or later stages of life. If you are over the age of 18 and have a condition that is likely to cause a loss of mental capacity such as dementia, we recommend that you set up an LPA as soon as you can. However, we do recommend that you have one made should any unfortunate events happen in the future.

What are the different types of Lasting Powers of Attorney?

Property and Financial Affairs LPA

This type of LPA allows your attorney to manage your property and money. This includes bank accounts, building society accounts, the selling of your home and any pensions.

Health and Welfare LPA / Personal Welfare LPA

With this LPA, your attorney will be in charge of decisions relating to your health and wellbeing, such as nursing homes, medical care and treatment.

How is mental capacity assessed?

The Mental Capacity Act 2005 states that in order to have capacity to make an LPA, you must:

- Have all the relevant information.
- Be able to retain that information.
- Be able to weigh up that information to arrive at the decision of making an LPA.
- Understand the foreseeable consequences of making or not making an LPA.

What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPAs) was replaced by the Lasting Power of Attorney in October 2007. However, EPAs created previous to this are still valid legal documents.

Who should I choose as my attorney?

It is your decision as to whom you appoint as your attorney, as long as that person is over

LASTING POWERS OF ATTORNEY ? ? ?

18 and has not been declared bankrupt. We recommend that you choose someone who you know well, can be trusted and has your best wishes at heart. The person you appoint can be a family member, relative or professional, such as a solicitor.

How many attorneys can I appoint?

There is no limit to the number of people you can appoint as your attorney.

Do I need replacement attorneys?

It is not essential to appoint replacement attorneys, but it may be a good idea to consider replacements if you have only appointed one primary attorney should something happen to them.

What happens if I do not make a Lasting Power of Attorney?

If the unfortunate happens and you lose mental capacity without having a will in place, a member of your family or a representative will need to apply for a Deputy Application Court Order. This enables that person to act on your behalf. The Court Order can take between six to eight months and cost up to £2,000, which is why we recommend you have an LPA in place to avoid such situations.

Can I cancel my Lasting Power of Attorney?

If you have the mental capacity to do so, you can cancel your LPA at any point.

For more information on Lasting Powers of Attorney, the different types and the process, please get in touch with a member of our Lasting Powers of Attorney Team on 01291 639523.



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