

Wills – who should make them?

Making a will could leave more of your wealth intact for later generations



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Parents have much to occupy their lives these days; managing the household budget, thinking about where the children go to school/university, not to mention ensuring each child's packed lunch meets with Jamie's seal of approval. So perhaps we can be mistaken for believing that making a will and power of attorney is something to put off until later in life.

By making a will and proper arrangements you will reassure your loved ones that you have thought about their future.

My partner or my kids will get everything any way so there is no point

This is a common misconception that can lead to unintended and unfortunate results. Where someone dies without making a will (intestate) the estate will be distributed in a strict order laid down by the law. These rules do not make any provision for partners who are not married.

OK, what do the rules say if someone dies intestate leaving a spouse and children?

In this case the estate (apart from jointly owned property which may be treated differently) will be distributed so that the surviving spouse becomes entitled to the deceased's belongings and the first £250,000 of the estate. Of the balance half, this will be held for the children until their 18th birthdays, and the surviving spouse will be entitled to the income from the other half for his or her life.

What do the rules say if someone leaves a spouse and there are no surviving children?

Then the surviving spouse is entitled to personal belongings and the first £450,000 of the deceased's estate. Other relatives of the deceased (such as brothers and sisters) would be entitled to a share of the balance even if the deceased had no intention that they should benefit.

Are there any additional advantages to making a will?

Yes, there are a number. For a start you can choose who will administer your estate (your executors).

If you have infant children you can appoint guardians in your will to look after their affairs until they are adults.

By making a will you may be able to incorporate tax planning measures, this would reduce the liability to inheritance tax where the intestacy rules may expose your estate to a greater amount of inheritance tax than you may wish.

There are other advantages as well, but in general terms making a will gives you the flexibility to determine how your estate will be dealt with to the best advantage of those you care about after your die.

Passing on your estate is probably the biggest financial transaction that you will ever have to plan for; however the cost of such advice will normally be modest relative to the potential cost and family distress if you fail to do so.

Lasting Powers of Attorney

Should I make a Lasting Power of Attorney (LPA)?

In a word: yes. There is an unfortunate misconception that an LPA should only be considered by the elderly or those showing early signs of dementia, but unfortunately this is often too late. While no one wishes to contemplate a time when they are no longer able to manage their own affairs, the loss of mental capacity may happen earlier in your life than you might envisage, such as a stroke or in an accident.

How can someone's affairs be managed if he/she loses capacity without making an LPA?

There are sadly many occasions where we are contacted by family members after their relative has lost capacity and where no LPA has been made. The result is that an application to the Court of Protection is required for someone to be appointed to deal with the affairs of the incapacitated person. This will take in excess of three months thereby causing additional distress for the family.

What does an LPA do?

By making an LPA you can authorise a trusted person to make decisions on your behalf without delay. There are two forms of LPA: one dealing with personal welfare decisions, the other giving the attorney authority to make decisions about finances and property.

LPAs cannot be used until registered with the Public Guardian, but they can be registered even if the person concerned has not lost capacity. It is undoubtedly the case that applying for registration of an LPA is much simpler and cheaper than having to apply to the Court of Protection for the appointment of a deputy to administer the incapacitated person's affairs.

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