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Guide to Wills and Lasting Powers of Attorney

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Lasting Powers of Attorney

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) allows you to choose a person or people you trust to help you make or to make important decisions on your behalf should you ever be unable, or no longer wish, to do so.

There are two types of LPA: Property and Financial Affairs and Health and Welfare. To ensure you are fully protected you should arrange both.

Property and Financial Affairs LPA

Gives your attorney(s) the ability to make financial decisions, e.g. to sell property or pay bills. This LPA can be used as soon as it is registered, with your permission.

Health and Welfare LPA

Gives your attorney(s) the ability to make medical decisions on your behalf when you are unable to do so yourself, e.g. when to refuse life-sustaining treatment or decisions about your care needs. This LPA is only used if you are unable to make decisions for yourself.

The image shows a sample form for a Lasting Power of Attorney for Health and Welfare. The form is titled 'Lasting power of attorney for health and welfare' and is from the Office of the Public Guardian. It includes a helpline number (0300 456 0300) and a 'Help?' section. The form is divided into sections, with 'Section 1 The donor' being the first. It asks for the donor's name, date of birth, and address. There is a section for 'Restrictions' and a section for 'Any other names you're known by'. At the bottom, there is a section for 'For OPG office use only' which includes fields for 'LPA registration date' and 'OPG reference number'. A red circle highlights these two fields. The form also includes a 'Help?' section with a question mark icon and a 'Help?' text.

Features of both types of LPA

Gives your attorney(s) power to:	Property and Financial Affairs	Health and Welfare
Act on your behalf	✓	✓
Manage bank accounts	✓	
Collect benefits or a pension	✓	
Sell your home	✓	
Deal with utility bills	✓	
Deal with solicitors	✓	
Discuss medical issues with your doctors		✓
Make decisions about your daily routine		✓
Make decisions about moving into a care home		✓
Make decisions about your healthcare		✓
Deal with social services		✓

Why do I need LPAs?

- Decisions about your future health or money are in safe hands as you will have someone you know and trust making decisions about your finances and health.
- They give you more control over what happens to you if you have an accident or an illness and cannot make your own decisions (you 'lack mental capacity').
- They are a straightforward way to keep things simple.
- No one has a legal right to make decisions on your behalf without one.
- Both married and cohabiting people need Lasting Powers of Attorney to deal with each other's affairs.

What happens if I do not have LPAs?

- Your family will not be able to access your money to pay for bills or care costs without an LPA.
- If you are married, your spouse is not automatically entitled to make decisions for or about you, even with joint bank accounts.
- If you want your spouse to deal with your affairs you need to appoint them as an attorney.
- If you are incapable, your family will have to go through the Court of Protection which can be a long, expensive and stressful process.

How do I make an LPA?

Making an LPA is a fairly straightforward process. Forms and guidance can be found at <https://www.gov.uk/power-of-attorney/make-lasting-power>

You can decide how many attorneys you want to appoint. It is recommended to have at least two in case one become unable to take care of your affairs. If you appoint multiple attorneys you need to think about whether you want them to make decisions together or independently.

If you decide to make both types of LPA you are allowed to choose the same people to be your attorneys for both.

Your attorneys must be over 18 years of age, have the mental capacity to make their own decisions and not be bankrupt or subject to a debt relief order.

You can make an LPA online or using paper forms. Either way, you need to get other people to sign the forms, including the attorneys and witnesses.

You can get someone else to use the online service or fill in the paper forms for you, for example a family member, friend or solicitor.

You must [register your LPA](#) or your attorney(s) will not be able to make decisions for you. It costs £82 to register your LPA with the Office of the Public Guardian (OPG).

Help is available from the OPG if you do not have a computer or access to the internet, or if you need some help with the online forms. They can be contacted at:

- customer services@publicguardian.gov.uk
- Telephone: 0300 456 0300

We are able to assist with putting LPAs in place and if you are interested please ask us for our questionnaire to complete.

Wills

What is a Will?



A Will is a legal document that allows you to clearly state what should happen to your assets when you die.

Having a Will in place is the best way to ensure your wishes are made clear. A Will can also specify details for your funeral, avoiding disputes between family members.

According to the Office of the Public Guardian approximately 60% of the UK adult population do not have a valid Will in place.

Why do I need a Will?

- If you answer yes to any of the following questions you should considering putting a Will in place:

✓	Are you married or in a civil partnership?
✓	Have you been divorced?
✓	Do you have children or grandchildren?
✓	Would you like to leave a specific gift to someone?
✓	Have you had a dispute with any family members?
✓	Do you want to split your estate between several generations of your family?
✓	Do you want to make any charitable donations?
✓	Do you have any pets?

- A Will means that you can carefully plan and state your wishes, such as how your estate is to be divided, as well as making specific bequests and adding any particular funeral wishes.
- A Will can legally appoint people of your choice to look after your children.
- If you cohabit, having a Will ensures your partner's inheritance as legally they are not entitled to inherit anything from your estate.
- A Will alleviates stress for your loved ones at an emotional time.

- Making a Will can remove any uncertainty and avoid potentially lengthy and costly delays or disputes between loved ones.

Keeping your Will up to date

There are four main life events that should prompt you to amend your Will: marriage, divorce, having children or grandchildren and death.

- **Marriage:** when you marry or re-marry any previous Will that you have made is automatically revoked.
- **Divorce:** unlike a marriage, divorce does not automatically revoke a Will. If you want to change your beneficiaries – perhaps your ex husband or wife – you should amend your Will to ensure it accurately reflects your wishes.
- **Having children or grandchildren:** you might want to add new family members in to your Will as beneficiaries, or state who is to be appointed as legal guardian for any of children under the age of 18.
- **Death:** if one of your executors, beneficiaries or trustees passes away before you do you and you wish to appoint another in their place you will need to amend your Will.

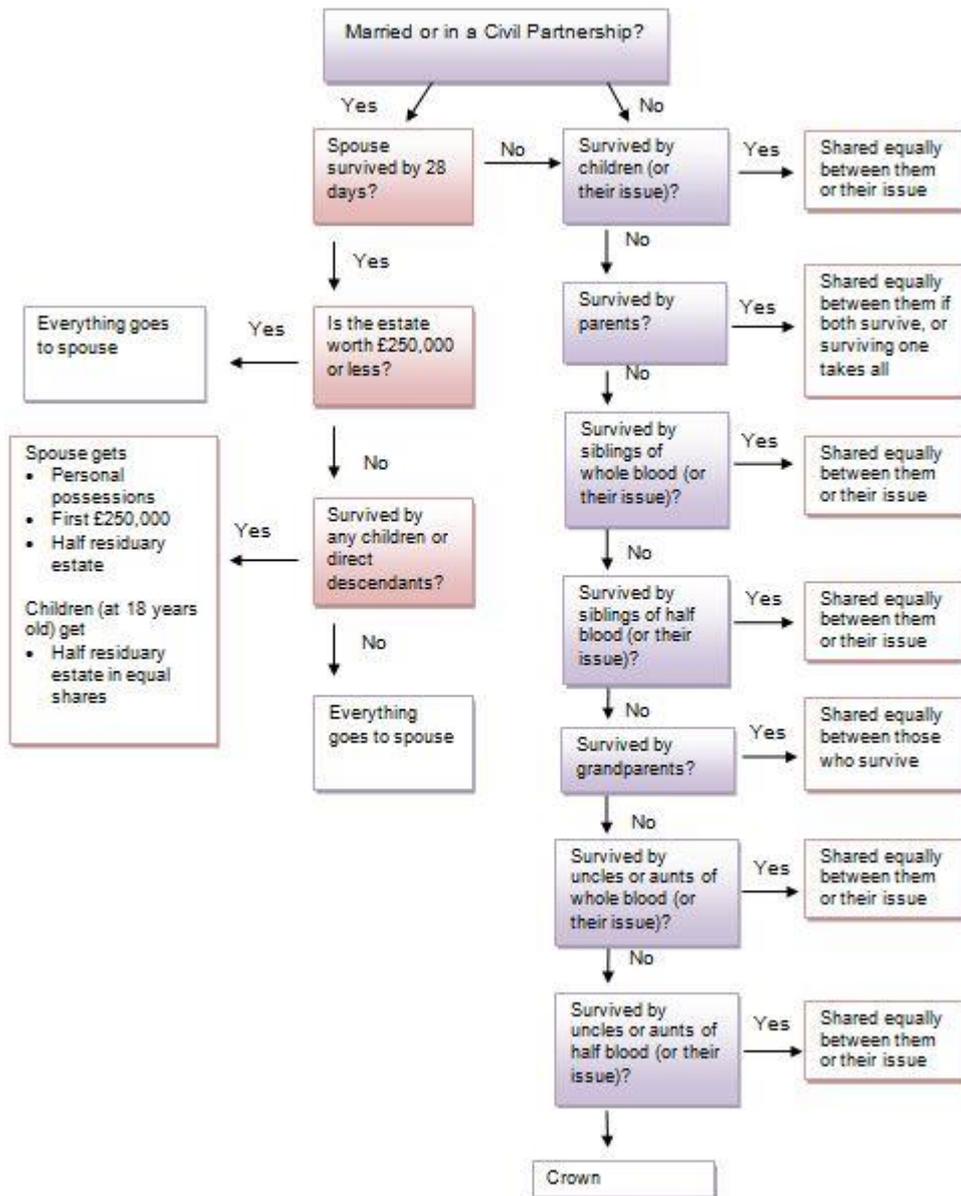
It is important to make sure your Will is up to date and valid. If your Will is invalid the Government will decide how your estate is divided, according to the Laws of Intestacy.

What happens if I do not have a Will?

- Making a Will removes any doubt over who inherits what.
- If you pass away without having made a valid Will the Government will decide who inherits your possessions, property and money (your estate) according to the Laws of Intestacy, which are strict rules. This could mean that your estate passes to someone you did not intend, or that someone you want to pass things on to ends up with nothing. It does not matter what your relationship was like with those people when you were alive.
- If you die with no living close relatives your whole estate will belong to the Crown or to the Government under the law of bona vacantia.



The Laws of Intestacy



How do I write my Will?

It is possible to write your own Will, but this is a risky approach. If errors are made or if the strict witnessing rules are not followed the document could potentially be invalid, leading to a prolonged probate ordeal.

Before having your Will drawn up you should give careful thought to who you want to deal with your estate (your executors), what you want to leave and to whom (your beneficiaries), whether you want to leave any charitable donations and who you would like to be appointed legal guardian of any children under the age of 18. We would recommend that you seek specialist legal advice to make sure your Will is drawn up correctly, and we would be happy to recommend a solicitor.

Trusts

Having a Trust within your Will allows you to ringfence some of your estate to be used for a particular purpose.

There are two main types of Trust:

1. Interest in Property Trust

An Interest in Property Trust ensures that your partner will be able to remain living in the home when you have passed away.

You are able to leave your share to specific family members, which may be important if you are in a second marriage and have children of your own.

For the Trust to work the home is split between you so that when one of you passes away the full ownership is not owned by one person, and therefore no one can force your spouse to move out under the terms of the Care Act 2014 (legislation governing residential care and how individuals are assessed).

2. Discretionary Will Trust

A Discretionary Will Trust allows you to set aside certain aspects of your estate to give to someone at a specific time. This type of Trust is often used where a beneficiary is under the age of 18, for example if you want to leave money to grandchildren for university fees.

A Discretionary Will Trust may mitigate inheritance tax (IHT) being paid twice. If you left funds to your grandchild it will bypass your child and by doing so you could potentially remove the need for your grandchild to pay IHT when your child's estate passes on to them.

Funds within a Trust do not get split as part of a divorce settlement. If you were to get divorced and asked to split everything 50/50 your Trust is not included so you would take 50% plus the amount in your Trust.

You should bear in mind that appointed trustees are not obliged to follow your instructions on how the money is spent. An example could be if you leave funds in a Trust for your grandchild to buy their first car but they are unable or do not want to drive, the funds could be given to them to spend on something else.

Useful Links

<https://www.gov.uk/power-of-attorney>

<https://www.gov.uk/power-of-attorney/make-lasting-power>

<https://www.gov.uk/power-of-attorney/register>

<https://www.gov.uk/make-will>



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