



## Have you made a Will? Common questions and answers:

**Q:** I am married and don't have a Will, but my husband does. Do I still need to make a Will?

**A:** Both you and your husband should make Wills. As well as ensuring that you have provided for each other, you can also cover what should happen if you both died together.

**Q:** My wife and I own everything jointly. Do we still need to make Wills?

**A:** You should both have Wills to ensure a fair division of assets if one of you dies shortly after the other. Otherwise the intestacy rules could pass your combined assets to relatives of the survivor, to the exclusion of relatives of the first to die. Remember, if you both die together and the order of deaths is unclear, the law will treat the younger as having survived the elder.

**Q:** I am married for the second time. How can I make sure that the children from my first marriage receive something from my estate?

**A:** Consider giving your spouse a lifetime right to benefit from your estate. This will enable him or her to carry on living in the house (if there is one) and receive income, while ensuring that the property and other assets pass on to your children ultimately.

**Q:** What is an executor? Who can be one and how many do I need?

**A:** An executor is responsible for looking after your money, property and other assets after your death and carrying out the wishes in your Will. You can appoint relatives, friends or professionals (such as solicitors), or a mixture, up to a maximum of four. A beneficiary of your Will, such as your spouse, can act in this role and may be the only executor, if appropriate. At least one substitute should be included. If your estate is to be held in trust for young or vulnerable beneficiaries, it is good practice for there to be at least two executors who can act together.

**Q:** I am concerned not to give too much to my grandchildren at a young age. Can I ensure that they receive money at an age of greater maturity?

**A:** Unlike an intestacy, where children must take their inheritance at 18, if you make a Will you can specify at what age you would like them to benefit. Usually this will be within the 18 to 25 age range. We can advise on the tax consequences of the options available to you.

**Q:** One of my daughters has a disability and receives State benefits. Should I simply leave her out of my Will?

**A:** You can set aside money for her using a discretionary trust, which will not affect her entitlement to State benefits.

**Q:** My husband is going to be moving into a residential care home as I am no longer able to look after him. Should I review my Will?

**A:** Yes. It would be sensible for you to review how you leave him money in your Will and perhaps consider providing for him using a discretionary trust in your Will.

**Q:** I would like to leave some gifts of personal effects. Can this be dealt with in my Will?

**A:** You can include gifts of personal belongings in your Will. However, if you would like a more flexible way of dealing with such items, which would allow you to change your mind without requiring alterations to your Will each time, consider giving personal belongings to your executors. They can then distribute these in accordance with a separate letter of wishes, which you can update periodically.



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**Q:** I own property outside the UK. Can my English Will cover this too?

**A:** What happens to property abroad when you die depends on the law of the country where it is located. In most cases it is recommended that you make a Will in that country to cover the foreign property. It is essential that your foreign and English Wills do not conflict.

**Q:** Where should I keep my Will?

**A:** Given the importance of your Will, it should be kept in a fire-proof location. We are pleased to offer a free storage facility, which enables you to access your Will at reasonably short notice

**Q:** How often should I review my Will?

**A:** As a general rule, you should review your Will every 3 to 5 years. You should also review your Will if there is some significant change in your life or those of your beneficiaries, such as an intention to marry or divorce, the birth of children, the death of one of the main beneficiaries, or a material increase or decrease in the value of your estate.

**Q:** How do I alter my Will if my wishes change in the future?

**A:** If the change is fairly minor it is possible to sign a supplementary document called a Codicil. But if the changes are substantial, a new Will is recommended.

## Powers of Attorney

**Q:** I've heard that I can make a Power of Attorney but I don't know what this means. Is it the same as a Will?

**A:** A Power of Attorney is a legal document whereby you formally give power to individuals called your attorneys. There are different types of Power. Two Powers you will commonly hear reference to are Enduring Powers of Attorney ("EPA") and Lasting Powers of Attorney ("LPA").

**Q:** I have an Enduring Power of Attorney ("EPA"), but I've heard these are no longer valid. Is this correct?

**A:** The Mental Capacity Act 2005 came into force on 1 October 2007, introducing the Lasting Power of Attorney. Any valid EPA made before 1 October remains so but it is no longer possible to make an EPA. Instead you would need to make a Lasting Power of Attorney ("LPA").

**Q:** So what is an LPA?

**A:** There are two types of LPA: [Property and Affairs LPAs](#) deal with financial matters and replace Enduring Powers of Attorney; and [Personal Welfare LPAs](#) cover health and welfare issues such as where the donor (the person making the LPA) should live, arrangements for day-to-day care and consenting to or refusing medical treatment.

**Q:** My wife and I made EPAs appointing each other as sole attorney. She is sadly now losing mental capacity. Do I need to take any action?

**A:** You have a duty as your wife's attorney to register the EPA with the Court of Protection. We can help you with the registration and the formalities to which you will need to adhere. You should also make an LPA to ensure you are not left without an attorney to help you, as your wife will no longer be able to act using the Power.

**Q:** I have an EPA, so does this mean I don't need to make an LPA?

**A:** You may still want to think about making a Welfare LPA. This would complement an existing EPA and mean that your attorneys can help you with your financial or property affairs and your health and welfare decisions if help is ever required.

**Q:** I have an EPA but I've changed my mind about the people I've named as my attorneys. Can I just change that without making an LPA?

**A:** No. You will need to make an LPA appointing new attorneys. Ideally you should sign a Deed of Revocation to cancel the EPA. If you do not wish to make an LPA but wish to end the Power given by the EPA, at the very least you should sign a Deed of Revocation to cancel the EPA.



**Q:** Can I appoint more than one person to act under an LPA?

**A:** You can appoint more than one person (an attorney) to help you using the LPA. For example, attorneys can be appointed to act either together or independently or even together in relation to some decisions and independently in relation to others; it is possible to appoint replacement attorneys; and a register of LPAs is maintained with the aim of limiting the scope for abuse of power by attorneys.

**Q:** Can I provide for replacement attorneys in case my first choice is unable to act when the time comes?

**A:** Yes, the LPA form provides for replacement attorneys who can take over in the event your main attorney becomes incapable of acting for you or dies before the LPA is needed.

**Q:** Once I've made an LPA, can it be used straightaway to help me?

**A:** Before an LPA is used it must be registered with the Office of the Public Guardian, either by the donor or by the attorneys. A Property and Affairs LPA can be used at the request of the donor while he has capacity, with the attorneys taking complete control if he subsequently loses capacity. A Personal Welfare LPA can only be used when the donor

lacks mental capacity to make their own decisions, and the Act requires that an individual be given every reasonable opportunity to make a decision for themselves before they are considered to lack capacity

**Q:** Why should I make an LPA?

**A:** By making an LPA as well as a will, you will ensure appropriate management of your estate during your lifetime as well as on death. Should you become either physically or mentally incapacitated in the future, you will already have taken all possible steps to make an emotionally difficult time easier for yourself and your family.

## Property questions

**Q:** I live on my own and am shortly moving into a residential care home. Is there anything I should be doing immediately before I leave the house vacant?

**A:** Yes, you should contact your Household Insurance Company and notify them that the property will be vacant. Most policies have conditions about how long the property can be vacant for before it affects the cover. If the property is going to be vacant long term it is also possible to take out special insurance specifically for this.

**Q:** I'm moving into a home. Can I give my house away to my children so it is not taken into account in the care home fees assessment?

**A:** Local Authorities can look at such gifts and if it appears this was made purely to avoid it being taken into account for the assessment they can completely disregard that transfer and it will still be treated as yours.

**Q:** I'm moving into a home and I either want to rent my house out or sell it. Can you help?

**A:** Yes, we have experienced lawyers who can deal with both arrangements and they can help you with rental agreements or the sale of your property.