



MSB Solicitors Limited

Private Client Department

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Wills

Definition – a legal document which sets out your wishes in terms of whom you want to receive your assets and whom you want to deal with the distribution of those assets

Testator – the person making the Will

Executor – the person appointed to deal with the estate and distribute the assets

Beneficiary – the person receiving a gift under the Will

Legacy – a gift within the Will

Residue – the remainder of the estate after legacies have been paid and expenses have been paid



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Reasons to Make a Will

- **Choose who benefits from your Estate**
 - Avoid the intestacy rules

- **Appoint Guardians**
 - Appoint people to look after your children
 - Godparents are not guardians

- **Protection for Unmarried Partners and Step-Children**
 - Unmarried partners do not automatically benefit from their partners estate



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Reasons to Make a Will (Cont.)

- **Provide for Children where you have Re-married**
 - Spouse not obliged to leave anything to your children on his/her death
 - Can leave an outright gift or set up a trust for your children

- **Marriage and Divorce**
 - Marriage automatically revokes a Will (unless it contains a contemplation of marriage clause)

- **Inheritance Tax**
 - Spousal Exemption
 - Charity Exemption
 - Rate of Tax – reduction from 40% to 36% where 10% of estate left to charities

Assets passing Outside of the Estate

- **Survivorship:**
 - Joint Bank Accounts
 - Property – Joint Tenants vs Tenants in Common
- **Other:**
 - Life Insurance Policies
 - Pensions
 - Death in service and other discretionary payments



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Choosing Your Executor

- **Professional Executor**
 - Expertise
 - Element of independence where conflict is possible
 - Professional Executor will charge a fee

- **Family Members/Friends**
 - Likely to be someone you implicitly trust
 - They may also be the main beneficiaries giving them further control
 - May not have the expertise, particularly if the estate is large
 - Can create conflict between family members

- **Mixture**

Trusts

Trusts - an arrangement where one person can hold and manage an asset for the benefit of another

Usually created by deed, in wills or by law

Settlor (or Testator for Wills) - creates the trust

Trustee – looks after and manages the trust

Beneficiary – receives the benefit of the trust

Why Make A Trust

- Do not want to give an outright gift
- Not sure what will happen
- Beneficiary may be vulnerable or not be able to manage their affairs
- Want to provide flexibility – discretion

Types of Trust

- Life Interest
- Minor's Trust
- Contingent Trust
- Charitable Trust
- Discretionary Trust
- Vulnerable/Disabled Person's Trust

Discretionary Trust

- Beneficiaries are not legally entitled to the trust fund they just have an expectation so trust fund is not treated as belonging to the beneficiary
- Allows flexibility
- Letter of Wishes gives guidance
- Unattractive tax treatment (as for most trusts)
- Lack of certainty

Vulnerable/Disabled Person's Trust

- Need to meet definition to qualify
- To qualify for beneficial tax treatment usually need to be exclusively (or in part) for the benefit of the qualifying individual
- Not automatic trustees need to make election
- Can be a discretionary trust

Trust Other Considerations

- Responsibilities and duties on trustees
- Trustee choice
- Costs, Tax, Advice
- Complexity
- Cannot usually benefit from own trust or change mind once set up
- Alternatives



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Lasting Powers of Attorney (LPAs)

Definition – A legal document whereby you appoint people to act on your behalf when you are unable to do so in the future.

- **Donor** – the person making the LPA
- **Attorney** – the person appointed to act on the donor's behalf
- **Certificate Provider** – the person who confirms that you can make the LPA

There are two types of LPA: property & finances and health & welfare.



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Property and Finances LPA

- Provides the Attorney with the authority to:
 - Buy and sell property on your behalf
 - Pay bills on your behalf
 - Manage your bank accounts, savings and investments
 - Pay for the upkeep and repairs to your property
 - Withdraw money for you
 - Manage your tax affairs
- Can choose to allow Attorneys to act whilst you still have capacity or can restrict its use to when you have lost capacity.



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Health and Welfare LPA

- Provides the Attorney with authority to make decisions relating to:
 - Where you live
 - Day to day care you receive, such as the food you eat
 - Giving and refusing of medical treatment on your behalf
- Cannot be used whilst you are able to make decisions for yourself
- Must decide whether to authorise your attorneys to make decisions about life-sustaining medical treatment



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LPAs – General Provisions

- Who can act as an Attorney?
- Replacement Attorneys
- How should your Attorneys act?
 - Jointly
 - Jointly and Severally
 - Jointly for some decisions/jointly and severally for others
- People to notify (optional)
- Preferences (optional)
- Instructions (optional)

Registration

- Document signed by donor, attorneys, certificate provider and witness
- Document sent to Office of the Public Guardian (OPG)
- OPG registration fee of £82 per document (can be a reduced fee in certain circumstances)
- Registration process takes approximately 6-8 weeks

Why make LPAs?

- Must have capacity to make LPAs
- If you lose mental capacity, your chosen Attorneys can continue to manage your financial affairs for you
- If you do not have an Property and Finances LPA in place you may need to apply to the Court of Protection for a Deputyship Order – potentially costly
- Often fall to Local Authority to make decisions about the care you receive if you do not have Health and Welfare LPA in place

Court of Protection

- whether someone has the mental capacity to make a particular decision for themselves
- appoint deputies to make ongoing decisions for people who lack mental capacity
- give people permission to make one-off decisions on behalf of someone else who lacks mental capacity

Deputyship

1. **Property and financial affairs deputy** – similar to LPA but limitations are as contained in the Court Order
2. **Personal welfare deputy**

The court will usually only appoint a personal welfare deputy if:

- there's doubt whether decisions will be made in someone's best interests, e.g. the family disagree about care
- someone needs to be appointed to make decisions about a specific issue

Deputy Application

- Who should be the Deputy
- Capacity Assessment - COP3
- Court application longer and more steps than LPA



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What Does a Deputy Do?

- What you can and cannot do is stated in the court order
- If not allowed in the order you may have to apply again for specific permission
- More scrutiny than LPAs
- Annual Report explaining decisions
- Accounting for each year's finances
- Visit from a court officer
- Supervision Fees and Bond

Appointee



- Is able to deal with the benefits of someone who cannot manage their own affairs because they're mentally incapable or severely disabled.
- Application through DWP and less formal
- Appointee will be responsible for making and maintaining any benefit claims and must spend the benefit in the recipient's best interests
- Authority is limited compared to an LPA or Deputyship

Considerations

- Do I need Solicitor?
- Speak to the people that matter
- Holistic Approach
- Prioritise
- Review



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Any Questions?