

TOP TIPS FOR WILLS.

1) In my opinion, it is a false economy to draw up a will personally. I would strongly advise having a solicitor or similarly qualified professional draw up your will.. Firstly lawyers often do wills at a cheapish fixed price as a “loss leader” or have a charity will week where wills are free. So shop around and remember cheapest isn’t always best. Secondly, the rules relating to the validity of wills are highly complex and date back to Victorian times. The smallest irregularity can lead to the will being invalid or difficulties getting it admitted to probate.

2) By contrast if you are administering a will for someone who has died, I would be content to make a personal application for probate and not using a lawyer. The exception of course is if the estate is complicated or there are likely to be difficulties with the administration.

3) The two main decisions you have to make when drawing up a will are: a) who will be your executors? I.e. who will be responsible for carrying out your wishes once you have gone? And b) who will be your beneficiaries I.e. who will benefit from your estate once you have gone?

4) Remember being an executor is a job. It is a burden, not a benefit. Choose a person or people that you trust and who are reliable. Choose people who are good with figures; finances and administering paperwork. Do not think for example I’ve got 4 children; I’ll appoint all four to be executors to be fair. Choose the children who are good at figures; finances etc. Make sure that your executors know: that you have made a will: they have been appointed executors and where the original will is.

5) Do not appoint a professional executor such as a solicitor or a bank unless you have absolutely no alternative. Appointing a professional executor is a very expensive option and in most cases is unnecessary.

6) If you appoint more than one executor be sure that they can work together and will not fall out.

7) Regarding beneficiaries, try and keep everything as clear; simple and as straightforward as possible.

8) You can appoint one or more of your beneficiaries to be your executors. Indeed it is sensible to do so as your executors have an incentive to sort the estate out efficiently and cost effectively.

9) In my opinion, it is not generally wise to leave large numbers of personal items to individual beneficiaries. The key question is: can you be sure that you will still have the item when you pass away? If the item has been sold as for example part of a move into residential care, the gift will fail and the beneficiary will be disappointed.

10) If you leave a fixed sum e.g. £500 to my neighbour Fred, remember the effect of inflation. £500 ten years ago was worth a lot more than £500 now.

11) Please keep your will under regular review and make sure it still reflects your wishes should you die tomorrow.

HOW CAN I PREVENT MY WILL BEING CONTESTED?

1) Your will is a written expression of your wishes but it is important to be fair to your beneficiaries and to recognise people who may properly have an interest in your estate. Be aware of the Inheritance (Provision for Family and Dependents) Act 1975. This provides in outline that you should make “reasonable financial provision” for your family, particularly if they are financially dependant on you or indeed any other person who is financially dependant on you.

Common problems arise if you have an ex or separated spouse particularly if they have an element of financial dependency such as receipt of maintenance or if you have a common law partner particularly if you are living together at the date of your death.

Remember also that marriage revokes a will. So if you marry your common law partner your existing will recognising your children of your first marriage will no longer be valid.

2) Think about anyone who may have an “equitable” claim against you: that is a claim based on fairness; not strict legal rules. A common example arises in farming families where the farmer persuades his oldest son to come and look after the farm during his ill health on the basis that he will inherit the farm. The son gives up a well paid job and home to do so. The farmer dies without remembering to change his will and all the other children and the RSPCA inherit the farm as well.

Another example is if you have bought a property with someone else; both of you making significant financial contributions. However, you are registered as the sole legal owner. Your “co-owner” has an equitable claim against the property. Another difficult area is money paid for example to children to help get on the housing ladder. Was it intended as a gift or a loan? Decide and record your decision.

3) Please get your will drawn up by a competent professional.

4) Do not amend your will informally and/or do not add written instructions about financial gifts separately from your will. They will probably not be honoured.

5) Be sure you have mental capacity when you make your will. If there is any doubt about your mental capacity get a medical report from your GP or consultant and keep it with the original will.

6) Choose sensible executors who you trust and who you are sure will work together.

TOP TIPS FOR LASTING POWERS OF ATTORNEY.

1) You will recall that these are documents appointing a person or persons as your attorney to take decisions for you relating to your property and finances and/or your health and welfare. They are particularly useful if you lose your mental capacity. Confusingly, the document is called an attorney as well as the person appointed. To try and keep it clear I will use Lasting Power of Attorney (LPA) for the document and attorney for the person appointed.

2) The first question to ask is: do I need an LPA at all? What is the risk I will lose mental capacity before I die? If you remain bright as button until your dying day an LPA is to a large extent a waste of time and money. I used to advise that (excluding unwelcome health diagnoses such as Parkinsons) up to age 60, it probably wasn't worth it.

Up to age 70 consider it particularly in the light of your health.

Up to age 80 consider it more seriously particularly in the light of your health.

80 plus. Make an LPA.

I am 63 with Parkinsons and dystonia. I have made an LPA.

3) Please remember you can only make an LPA if you have mental capacity. So if you get a bad diagnosis like Alzheimers don't wait too long before making an LPA. If you've lost mental capacity you cannot make a valid LPA. The Court of Protection will step in and will handle your finances. They are extremely expensive and amazingly slow and inefficient. In my view they are a national scandal and have been for over 30 years. You should avoid them if at all possible.

4) The second question is: Do I make a property and finance LPA or a health and welfare LPA or both?

This is very much a personal decision depending on individual circumstances. A property and finance LPA is the most widely used and most popular. It is used to manage the patients bank account; sell their house; make investment decisions etc.

If you don't have a property and finance LPA the Court of Protection will step in with the consequences in 3 above.

A health and welfare LPA appoints a person or persons as your attorneys to take decisions relating to your health and welfare e.g what medical treatment you should have; which care home should you live in etc.

Many people don't bother with such an attorney and rely on the good sense and professionalism of the medical and social care professionals to make correct

decisions when the time comes.

Other people have clear ideas about what they want to happen when the time comes and express this in a health and welfare LPA. For this reason I have made a health and welfare LPA.

5) The third question is: who do I appoint as my attorney(s)? I.e. the people to act for you under the LPA.

The key issue is that you must absolutely and completely trust your attorneys quite literally with your life. They will be taking really important decisions for you e.g. selling your house ; consenting to medical treatment. It must be someone you completely trust. If you have doubts about someone, do NOT appoint them as your attorney

6) Is it necessary to have a lawyer to draw up an LPA? The answer is no. The Office of the Public Guardian has a website which can be found by Googling Office of the Public Guardian. This has on it all the forms which can be completed on screen interactively. Go to the section: Lasting Power of Attorney forms and guidance. I warn you it is not very user friendly but it is a good way to test whether you need advice or not. If you can get your head round the website and can use it you probably don't need a lawyer. If you can't you probably do. Even if you instruct a lawyer filling in the forms before seeing the lawyer will help collate all the necessary details and clarify for you some of the issues you need to consider.

7) It is sensible to appoint at least two attorneys or even 3 or 4. The reason for this is that if you appoint just one and they die before you the LPA fails and you go back to the Court of Protection see 3 above. The key point as always is who do you trust absolutely and completely. You can appoint people as main attorneys and others as replacement attorneys. Main attorneys act immediately. Replacement attorneys step in if the main ones die; fail to act etc.

8) If you appoint more than one attorney you need to decide whether they act jointly I.e. they all have to make any decision or jointly and severally I.e. only one can take any decision. From a practical perspective it is much better to appoint attorneys jointly and severally. This makes it easier if a decision has to be taken quickly and one of the attorneys is abroad for example.

9) You have to decide whether to add conditions and/or guidance to the attorney. For a property LPA, I would be very cautious about adding too many conditions and guidance to the LPA. Remember you have chosen people you completely trust. Why limit their power? You cannot foresee what decisions they may have to take in 5 or 10 years time.

The only condition I would consider is one preventing your attorneys from acting until they have reason to believe that you are becoming mentally incapable.

For a health LPA, your attorneys would I think welcome guidance from you on later life issues such as : continuation of medical care; living independently in

your home; choice of residential home etc.

10) You have to notify someone that you have made an LPA. This person will be someone independent of you and your attorneys. Their role is to notify the Office of the Public Guardian if they think you are acting inappropriately or being taken advantage of. Other than that all they have to do is receive a notice through the post saying that you have made an LPA.

11) Someone who knows you well must certify that you have mental capacity when you made the LPA. If you have instructed a lawyer the lawyer will do this for you.

12) You don't have to register the LPA immediately once it has been made. But I would advise doing so particularly if you have drawn it up yourself as it will not be registered if it contains major errors.

PS ENDURING POWERS OF ATTORNEY

Before LPAs came in on 1 October 2007 Enduring Powers of Attorney EPAs fulfilled a similar function. They have been abolished in the sense that you cannot now make one. But if you already have an EPA it can still be used as a property LPA. It is highly doubtful if in modern times it can be used as a health LPA. If you do have an EPA note that different rules apply particularly relating to registration. It would probably be worth having it checked especially if you are at risk of losing mental capacity in the short to medium term.

NB IMPORTANT DISCLAIMER

This talk and the documents in this pack are intended as a general overview of a complex subject. They are not intended to be, nor should they be used as, a substitute for seeking proper professional legal advice on your own particular circumstances.

ADVANCE DECISIONS

1) The basic law is that medical professionals have to their very best to keep you alive in virtually all circumstances. Fairly obviously therefore if you are happy with that you don't need an Advance Directive/Advance Decision

2) They only really apply if you wish to have a less interventionist approach to later life medical care. In other words, in certain circumstances you would like nature to be allowed to take its course.

3) I wouldn't go to the expense of hiring a lawyer to draw up such a document. Websites such as Compassion in Dying and NHS Choices have forms you can complete yourself. The NHS Choices website is particularly good.

4) There is clearly an overlap between a health and welfare LPA and an Advance Decision. Certainly if these issues are important to you I would draw up a health and welfare LPA as well as a Advance Decision. It is obviously important that your LPA does not conflict with your Advance Decision.

5) Tell your attorneys that you have made an Advance Decision and give the completed document to one of your attorneys. Carry a card saying that you have made an Advance Decision and tell your GP that you have made an Advance Decision.

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