

Our clients often have lots of questions about the work the Private Client Department does and the process. Here are some of the most common questions and their answers.

### Making a Will

What happens if I don't make a Will?

Your property will be divided according to certain legal inflexible rules. Some of these may surprise you and your spouse/civil partner may receive less than you think. If you cohabit, the person you are living with may not get anything.

What is a Will?

A Will is a list of instructions telling your Executors what to do with your property when you die. If you make a Will, it is your choice who will benefit from your estate and not the Law's.

Can a letter be as legal as a Will?

Very unlikely. A Will has to be prepared, signed and witnessed in a particular way to be valid.

What can I do in a Will?

You can say what you wish to happen to your property. You can make gifts of money, personal belongings, gifts to charity and appoint guardians of your young children. You can choose who you wish to be the Executors and Trustees and decide who inherits the rest of your estate.

Can I change my Will?

Yes, at any time, by making a new Will or a document additional to it (a Codicil) changing only the appropriate parts of your Will.

Can I cancel my Will?

You can cancel your Will by making a new Will, or tearing it up or burning it.

What if I marry/enter into a civil partnership?

A Will is usually cancelled automatically if you marry/enter into a civil partnership after you have made it. If you get divorced or your civil partnership is dissolved after your Will is made, any provisions made in favour of your spouse/civil partner will be cancelled unless the Will says otherwise. You can make a Will prior to any marriage/civil partnership, expressed "in contemplation of that relationship", so your Will is not cancelled automatically.

Can my Will be altered after my death?

Yes, in whole or just partly provided that the beneficiaries concerned agree. There may be problems if any of the beneficiaries are under age 18 or do not have full mental capacity.

What happens if I leave someone out of my Will?

Your Will may be challenged, if reasonable provision is not made for certain dependents or your spouse/partner. We can advise further concerning this.

#### What are Executors?

Executors are the people named in your Will to carry out your instructions and administer your estate in accordance with the law.

#### What are Trustees?

Trustees are the people named in your Will to look after your assets, after the Executors have finished administering your Will, if the assets cannot be paid outright to the beneficiary, e.g. until a child is old enough to inherit. Executors and Trustees are usually the same people.

#### How many Executors can I appoint?

You can appoint up to 4 Executors, but should appoint at least 2.

#### Who should I appoint as Executors?

The people you trust most to carry out your wishes. This can be your spouse/partner, a relative or close family friend, or you can appoint professional Executors.

#### Do Executors get paid?

Only if the Will says so. Solicitors' fees are usually around 1% of the value of the estate and a bank's fee may be more than this. Our fees are usually calculated on a time spent basis.

#### What do Executors do?

Executors value your assets, pay your debts and any tax liabilities, and then they pay any gifts of money, transfer any gifts of personal belongings and deal with the remainder (residue) of your estate, in accordance with your Will. Usually, the Executors ask a solicitor to do the work for them, particularly if the matter is complex, or inheritance tax is payable.

#### Should I appoint guardians?

If you have children under age 18 who may be left with no parents, you should appoint a guardian if you know anyone suitable.

#### What happens to property in joint names?

People who own property jointly hold it either as "joint tenants" or as "tenants in common".

If ownership is joint tenants, when one owner dies, the other automatically becomes owner of the whole property. A joint tenant thus cannot make a gift in a Will of his share of any assets.

If assets are owned as tenants in common, then each owner has a separate share in those assets, which can be left by Will whether to the co-owner or to someone else.

#### What about inheritance tax?

If the value of your estate is more than the nil rate amount (currently £325,000) after payment of your debts and any gift to your spouse/civil partner/charity, inheritance tax will be payable (currently at 40%) on the value over this amount. We can advise you further on this and whether your estate should qualify for complex agricultural/business property reliefs.

What is a gift made "free of inheritance tax"?

A gift is free of tax, when any inheritance tax due is paid out of the rest of your estate and not taken out of the gift.

When should I review/alter my Will?

Your Will should be kept under regular review by you, particularly if there is a change in your personal or financial circumstances, or you receive an inheritance.

What if I own foreign assets?

We will discuss this with you, but your Will may need to relate to UK assets only, with a separate foreign Will covering your foreign assets.

What should I do with my Will?

You should leave it in a safe place. We will be happy to store your Will for you and your Executors will need the original if anything happens to you.

## Trusts

What is a Trust?

This is a legal arrangement where the Trustees hold assets for stated beneficiaries, who are not entitled to them outright.

Should I create a Trust?

This will depend upon your individual circumstances and finances, which we will discuss with you and any tax implications.

What are the types of Trust?

This is a complex area, which we will discuss with you. You will need to consider whether you wish beneficiaries to become entitled outright at a specified age, whether you wish to give the Trustees discretion as to who receives income and capital, or whether you wish to give beneficiaries income only. We will discuss this in detail with you.

What are the tax implications of a Trust?

This will depend upon your personal circumstances and the type of Trust you wish to create. We will need to consider with you the potential income tax, capital gains tax and inheritance tax implications of you creating the Trust and the tax changes which will fall on the Trust during its lifetime.

Will Trust Tax Returns be needed?

This will depend upon the type of Trust created, its value and its investment strategy but commonly, yes.

What is the role of the Trustees?

The Trustees will manage the assets concerned in accordance with the terms of the written Trust Deed/Settlement. They have fiduciary duties to act in the best interests of the beneficiaries and in accordance with the terms of the Trust.

#### How will the Trust be run?

The Trust will be run by the Trustees during its existence (maximum 125 years for a new Trust), but the Trustees may need advice from an accountant or stock broker/financial adviser as to the investment of the Trust funds.

#### Can a Trustee retire?

The Trustee can retire at any time, provided a minimum of 2 Trustees remain. If need be, then a new Trustee or Trustees can be appointed, either under the terms of the Trust, or under the general law.

#### Can I be a Trustee if I set the Trust up?

Generally, you can be a Trustee, but you will have duties as a Trustee and you can no longer treat the assets as belonging to you personally.

#### Can I benefit my family from a Trust?

A Trust may be set up to benefit family members, but care needs to be taken that you are not "reserving a benefit" in the Trust for tax purposes or creating a "Parent's Trust" for income tax purposes. We can advise concerning this.

## Powers of Attorney

#### What is a General Power of Attorney?

This legal document enables your finances to be managed on your behalf by the Attorneys, but only while you have sufficient mental capacity to manage your finances yourself.

#### What is a Trustee Power of Attorney?

If you are Trustee of a Trust, then you can give power to enable your Trustee functions to be carried out on your behalf. This type of Power of Attorney can also be used by Executors of a deceased person's estate. The rules are complex and we can advise further.

#### What is an Enduring Power of Attorney (EPA)?

An EPA was a legal document created before 1st October 2007, enabling your finances to be managed for you. Such EPAs are still valid, but no new ones can be created after this date.

#### How do I use an existing EPA?

Certified copies can be made available to the Attorneys to lodge with the bodies concerned, so they may sign on your behalf. Your EPA will need registering with the Court, if you, as the person giving it (the Donor) are or are becoming mentally incapable. The rules for registration are strict and we can assist with this.

#### What is a Property & Affairs Lasting Power of Attorney (LPA)?

This is a legal document giving power to Attorneys to manage your finances for you, if you are physically or mentally unable to do so. You need to be mentally capable at the time the

LPA is given and if need be, medical evidence as to this can be obtained. The LPA will need registering with the Office of the Public Guardian prior to use.

### What is a Health & Welfare Lasting Power of Attorney (LPA)?

This legal document enables healthcare decisions to be made on your behalf by the Attorneys, but only when you are unable to make such decisions yourself. The LPA needs registering with the Office of the Public Guardian before use.

### Who can make an LPA?

Anyone over the age of 18 can make an LPA, provided that they have sufficient mental capacity to do so and understand and agree the content of the LPA. There will need to be a Certificate Provider (which can usually be a Taylor Walton solicitor if desired) to confirm this.

### Who should be Attorneys of an LPA?

We will discuss this with you, but this can be family members or friends you trust fully or professionals such as a solicitor.

### How is an LPA used?

If the LPA needs to be used, then certified copies can be made available to your Attorneys. The original should be kept in a safe place.

### Why should I make an LPA?

It may be difficult managing your finances in the future, if you are physically or mentally unable to do so, e.g. it may not be possible to pay your bills or sell your house. If you were not able to make healthcare decisions yourself (e.g. medical treatment or where you should live) then you may wish to choose who makes these decisions on your behalf.

### How much does it cost?

A Court fee of £110 per LPA is charged for registration, but once the LPA is registered there are no further charges.

## Deputies

### What is a Deputy?

If someone is mentally incapable, then they can no longer give a Lasting Power of Attorney. If they have finances to be managed, or a property to be sold, then a Deputy needs to be appointed by the Court of Protection to make such decisions.

### Who should be a Deputy?

This can be a family member or friend (usually just one person is appointed), but can be a professional. The person/s appointed must be trustworthy and reasonably businesslike.

### How is a Deputy appointed?

An application is made to the Court of Protection, using their complex forms. The procedure is cumbersome and can take a minimum of 3/6 months and medical evidence will be needed that the person concerned lacks mental capacity.

### How much does it cost?

We will discuss our fees with you, but there will be a Court fee of £400 to appoint a Deputy, together with an annual fee for the Deputy Insurance Bond and annual fee payable to the Court. It is thus better to have a Property & Affairs Lasting Power of Attorney in place.

#### What does the Deputy do?

The Deputy will manage your finances on your behalf and has to act in your best interests. The Court requires annual accounts to be kept and an annual Return made to the Court.

#### Can I retire as Deputy?

Yes, but a new Deputy would need appointing to replace you, which will incur an additional fee. Your role ceases if the person concerned dies.