



Estate Planning

What is it and why is it so important?

**Wollaston
Associates**

Wills | Trusts | Probate | Advice

Peace of
mind and
protection
for you
and your
family.

Now is the time to talk wills, trusts and powers of attorney

Let's talk Wills

2024 has undoubtedly been a year of significant changes, whether that's the ongoing effects of Covid, the cost-of-living issues, the war in Ukraine and, most significantly, the impact of the new government. One or all of these events will no doubt have impacted people's finances, relationships, or business interests in one way or another. As a result, it is important to think about how these changes impact on you and your family's future.

Do you know how many people in the United Kingdom have a Will?

Recent research from Legal & General has recently determined that 53% of UK adults do not currently have a Will. This means that they don't have any control over who receives their assets when they pass away, or perhaps not even know how much their estate may be worth now, or in the future.

This unsatisfactory situation is known as Intestacy.

A better solution is to make your own Will, properly constructed, following consultation with a qualified estate planning consultant who will discuss your wishes and life risks in depth and offer solutions that can address those areas of risk or concern. It is a legal document that allows a person to pass on their assets, family heirlooms, appoint guardians for their children, and include gifts to charities, friends and family. So, if you have children, own property, have savings or investments, or run a business, making a Will is particularly important to ensure that beneficiaries will receive what is wished for by you, as opposed to some unknown Court official giving assets to the wrong people.

The Wills sector is set to grow by 5.2% this year, from a current worth of £2.49 billion. These figures should concern people and is a warning to many to start discussing Wills with a professional estate planning specialist. Both existing and new clients!





Life events that may trigger the need for a Will, or for people to update a Will.

They have recently married or entered into a civil partnership

Even if married or in a civil partnership it is not guaranteed that their spouse will inherit all or any property or assets if there is no Will in place. It will be for the courts to decide, which could be costly and timely. If it is a second marriage then there may be more complexity with children, multiple properties and separate assets.

They have recently become parents

Do they know that without a valid Will in place if something were to happen to them it's not guaranteed who will become the carer for their child. This may have to go through the courts, and social services may have to become involved.

They have moved house

Have they moved to a bigger property? Have they considered what will happen to the property in the future, it's a huge investment that could get taken away from the family if not properly allocated for in a Will.

They have gone through a divorce

If they have a Will then it may need to be updated to cater for the fact they are no longer with their spouse. If they don't have a Will they may wish to secure their children inheriting their remaining assets.

They have had a change of assets over recent years

If they have a Will it may need to be updated to include all relevant assets, any new properties or change in beneficiaries. If they have no Will and have increased their assets or acquired properties, they may need to consider what will happen to them, there is no guarantee they will go to a family member unless it's written into a Will.

Also, maximising tax allowances is essential as assets increase over time and a correctly drafted Will could be the key to ensuring these allowances can be claimed by your estate.

They have retired

At this stage in their life people often feel the need to make arrangements for their estate, expressing clear intentions within their Will that they may be making for the first time or updating an old Will.

They are recently widowed

Perhaps unsurprisingly, those who are recently widowed are likely to wish to put a Will in place. Either because they have gone through a process where there was no Will and experienced how traumatic it can be, or their assets and property status has changed and they need to ensure all is catered for in the future with their family.

Ensure a Will reflects all wishes

If your circumstances have changed, you should talk to your advisor about updating an existing Will (if there is one). In any of the above circumstances, a Will should be updated to ensure it is reflective of the current situation.

Do any beneficiaries or executors need to be changed?

Many people need to change the people that are named in their Will for a variety of reasons. Perhaps a person has outlived the executors or beneficiaries named in a Will, or maybe the relationship has deteriorated. In this case, it's best to update the Will to avoid complications in the future.

Have business interests changed?

The last few years in particular have been very challenging for businesses. With adjustments to rising living costs, some businesses may have struggled. Partners and directors in the business may have changed, business structures may have changed, downsizing may have occurred. So, if business interests have changed significantly, now would be a good time to review both a Will and a succession plan for the business.

Take advantage of Inheritance Tax planning?

It is always advisable to review a Will and estate planning regularly in line with current tax legislation, reliefs, and opportunities to save on Inheritance Tax thresholds.

In today's world it is no longer only the super-rich whose families face high tax bills on death. Property prices, although slowing, are high and tax reliefs are not always keeping pace with inflation, so now is a great time to start looking at ways to create a tax efficient Will and estate plan to ease any tax burden later.

Reviewing affairs can be a great way to start the future on the right foot for confidence in future planning. It allows you to understand where you are financially, and to effectively make plans for the future.



*Over
£6.5
billion in
Inheritance
Tax was
received by
HMRC in
2024*

The difference between Wills and Trusts



Whilst Wills and Trusts do have a lot of overlap, there are also several differences between the two. Ultimately, both are ways to say who will receive a person's assets, they just do it in different ways, and each has its own advantages and disadvantages.

A Will is a legal document that comes into effect from the point at which a person passes away. It cannot be implemented whilst alive.

A Trust can be created either in a Will or during a lifetime. If it is in a Will, it will only become operative at the time the administration of the estate is complete. If it is in a lifetime document, it can take effect immediately.

Wills

A Will is about the distribution of assets after your death, whereas a Trust is about the control of your assets and money. More specifically, control is handed over to a Trustee, who manages the asset on behalf of your beneficiary.

When creating a Will, there are multiple things to consider:

What assets are there to give?

Common assets of a person's estate include property, investments, jewellery, cars, etc. It is important in the early stages of preparing a Will to clearly state which assets are intended to pass on.

Who will be the beneficiaries?

Identifying who will be the beneficiaries is the most important part of the Will. Clearly stating who are the beneficiaries and what they are to receive is vital to the execution of a Will.

Will there be any special circumstances?

It is not uncommon for an asset to be held for a loved one in situ for a time before being passed to the beneficiary. This can often be due to their age or mental capacity. The process is completed via a third party who will take care of the asset before passing it on to the intended beneficiary.

Who is the executor?

The appointment of the right executor can be the difference between wishes being followed to the letter or not at all. The executor is the person responsible for distributing the assets. An executor can be a loved one, a friend or somebody trusted who has a more thorough understanding of the law and the procedures to follow.

Trusts

A Trust is also commonly used, and is an effective estate planning method that can be put in place. They are often associated with the extremely wealthy but this is a misconception. A Trust can be beneficial for anybody, no matter their net worth. The purpose of a Trust is to leave assets behind for a loved one in a more controlled environment.

A Trust allows a party to set aside their assets and funds for loved ones/friends/charities, while being freely able to state how, where, when, and why they wish for them to be distributed in that way. During the purpose, one or more persons will be appointed by the party providing the funds (the grantor) to the position of trustee.

The trustee is the person responsible for the assets held within the Trust, to make sure that the wishes of the grantor are followed.

There are multiple different types of Trust - depending on the situation and stipulations the grantor wishes. The most common are:

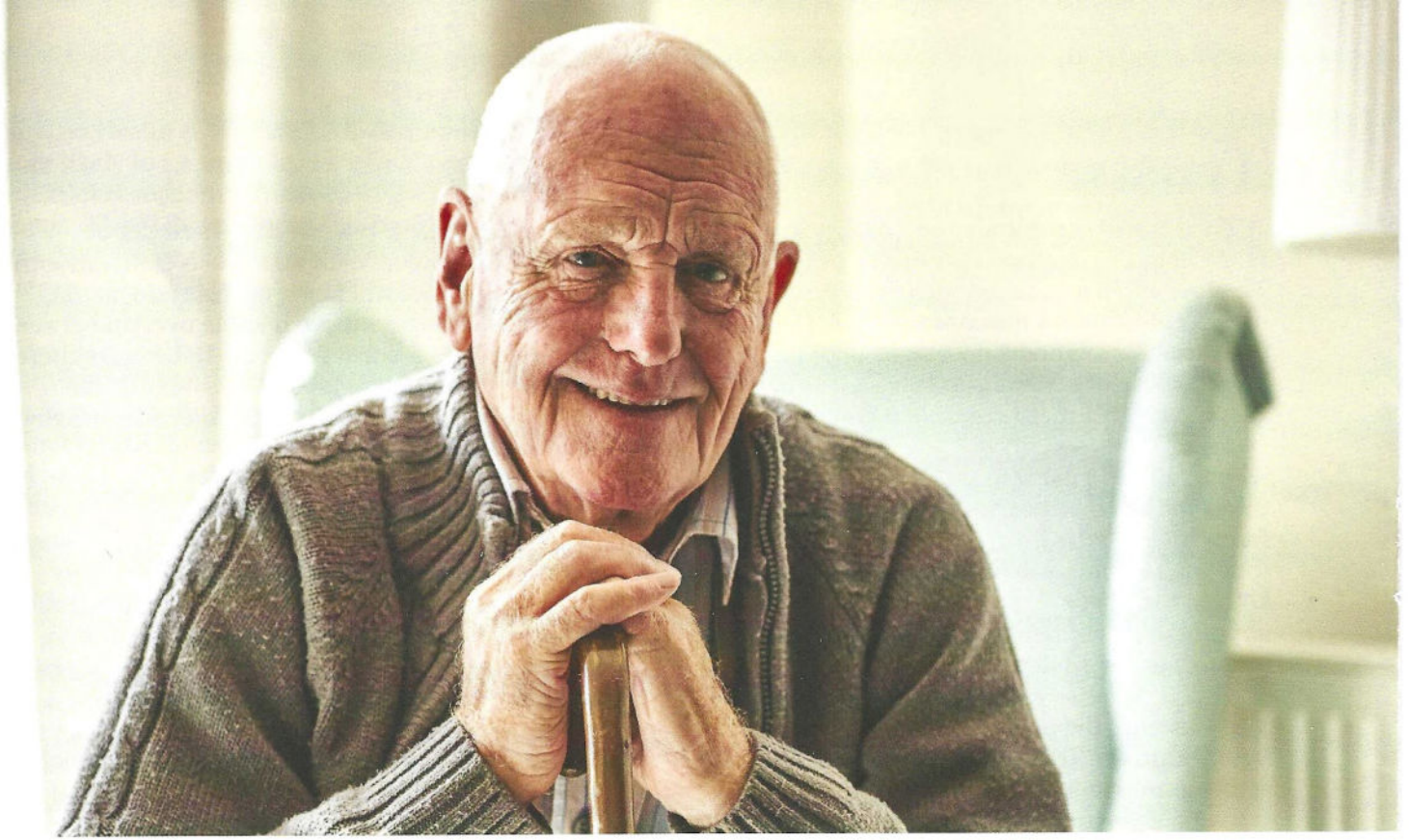
- Asset protection
- Family
- and property protection Trusts.

One of the biggest reasons that there can be confusion between Wills and Trusts is that in some key areas - whilst still being distinct and having several differences - there is some overlap between the two. When it comes down to it, both are there to protect and benefit loved ones, it is just the method and circumstances of protection and the total package that differs.

Some of the key differences between the two is that Wills don't go into effect until you pass away, whereas a Trust can go into effect immediately upon it being signed. Additionally, in Wills, unlike Trusts, arrangements can be made for children and pets, with the opportunity to also specify final arrangement wishes.

Conversely, Trusts are more complicated fiduciary agreements, meaning that more detail can be added into any wishes, with more stipulations and conditions than in a basic Will.





Which is better; a Will or a Trust?

Both Wills and Trusts have their own distinct advantages. They are both different in so many ways (despite having some similarities) that one can never be definitively seen as better than the other - they are both essential forms of estate planning, and both offer protection and peace of mind for you and your loved ones.

The pros of a Will include:

- Considerations for children/pets can be included.
- Avoid assets being distributed according to the laws of intestacy.
- Avoid large inheritance tax implications.

The pros of a Trust are:

- Due to its status as a contract, terms of a Trust are more private.
- Your heirs are able to avoid probate.
- More control over what happens to your assets than a Will.

Ultimately you have the opportunity, as a client of an advisor, to have a full discussion with them about your future planning and wishes. Only through this conversation can you identify what a Will can help fulfil and if a Trust is also needed.

About Lasting Power of Attorney

A survey carried out by Which? has revealed that, although most of the public understand what a Lasting Power of Attorney is, there is confusion as to how the documents operate.

A Lasting Power of Attorney (LPA) is a document that allows a person, called the Donor, to appoint a person or persons (Attorneys) to stand in their shoes when making decisions relating to their finances and health.

An LPA is one of the best ways a person can protect themselves and their wishes should they become unable to make financial or health decisions for themselves at any point in the future, but, all too often people fail to make an LPA because they are unsure about what it involves and why it is needed. It's important to understand something of the misconceptions surrounding an LPA and why they should consider getting one now.

Common misunderstandings of LPAs

The powers under an LPA can only be granted by a person who has the mental capacity to make their own decisions, and as such, the Donor may have to consider preparing an LPA before it is needed, as it could be too late to do so afterwards. If a person has already lost the capacity to make their own decisions, the only option will be to make an application to the Court of Protection to be a Deputy; this process is considerably lengthier and more expensive than the process for preparing an LPA.

An LPA must be registered before it can be used. 16% of those surveyed by Which?, believed that once this registration has taken place, the Donor will lose access to their assets, but this also is not true.

Registration of an LPA does not raise any presumption that the Donor has lost capacity, and in fact, as the registration process can take several months, it is usually wise to register the LPA early to ensure that it is available should it need to be used.

Next of kin can make healthcare decisions

According to research by the Public Guardian nearly 75% of people think that their partners or close family members can automatically make decisions for them if they're not able to. As next of kin, many people expect that making medical decisions or future planning for loved ones is straightforward. Next of kin is a title usually given to the nearest blood relative. But that title does not confer any legal authority to make health or medical decisions for an incapacitated adult.

Even if your loved ones all agree on how best to look after your finances and health (and this often isn't the case), it can be hugely stressful for them if they don't know what your wishes are. An LPA reduces the likelihood of disagreements between those closest to you and gives them the confidence that they are doing what you would wish. For example, a donor can decide whether an attorney has the power to accept or refuse life-sustaining treatment.



With no Health & Welfare LPA, decisions are more likely to be made by a medical professional or the local authority involved in the care of the person. They will be bound by law to make what they deem to be the best decision for the person's interests. This will override any family requests.

A Health & Welfare LPA is the only way to ensure a family member or appointed attorney can make decisions regarding future health decisions for a person - the 'donor'. They can talk to doctors and health professionals and make the necessary decisions about treatment, where a person should live and any ongoing care and support required.

LPAs are only for the elderly

It is a common view that being unable to manage your affairs is due to disease such as dementia, which is commonly associated with the elderly, but what happens if there is an accident or a person is rendered unconscious through an illness. Who then legally makes the big decisions about health and welfare? This can happen at any age, we just prefer not to consider that as a possibility, as it is our human nature to focus on the more positive rather than the 'what if'.

Using an LPA to plan for the unknown is as important for young families as it is for those in retirement, particularly if there are children. When we become parents many often look at how to plan for their child's future, often forgetting that by planning for our own future we are indeed supporting them later down the line.

If there are limited assets, a Property and Financial Affairs LPA is not needed

In today's modern world whereby most of our daily lives include a financial decision or payment, you do not need to have significant savings or own a property to consider an LPA.

Everyday decisions such as paying bills, rent, or the mortgage will need to be made with authority to make those payments on behalf of a family member if they are unable to do so themselves. An attorney may also need to claim benefits and allowances on behalf of the donor. What if an inheritance is received? A Property and Financial Affairs LPA will help ensure the inherited funds are managed appropriately and in the best interests of the donor.

Jointly held assets/accounts are not affected by mental incapacity

This is a very common misconception. Unfortunately it is normal for high street banks (and online banks) to freeze a joint account if they discover a person has lost mental capacity, making it impossible for a spouse or partner to withdraw funds until it is proven that they have the authority to act on that persons behalf. The consequences of not having someone who can act immediately can be disastrous. A spouse may be unable to meet their financial obligations and needs during this period or pay for any care expenses.





A Will covers the position if mental capacity is lost

An LPA and a Will never operate at the same time. This is because a Will only comes into force upon death. An LPA is to be used in life if and when required according to circumstances. As such, they are very different documents that deal with very different circumstances. Both are needed to protect an individual and their assets.

There is no oversight of LPAs

An LPA must be registered with the Office of the Public Guardian before it can be used. This means there is a public record of the appointments made in an LPA. The OPG is responsible for maintaining this record and investigating reports of abuse by attorneys. If the OPG suspect financial abuse, they will take steps to apply to the Court of Protection to cancel or revoke the LPA.

An LPA is already in place, another is not needed

This is dependent on the circumstances of the individual. There are two kinds of LPA: a Property & Financial Affairs LPA and a Health and Welfare LPA. Both deal with very different matters and having just one will not cover all the different decisions that may need to be made. For example, an attorney for a Health & Welfare LPA may make a decisions around care, but if there is a cost attached, then an attorney for Property and Financial Affairs needs to be involved. The two can often overlap. So it's important to assess if both LPAs may be more beneficial.

The executors in a Will can help

Your Will deals with your affairs after your death and not before. By appointing an attorney, you are choosing somebody to assist you during your lifetime as and when you need it. Your attorney can be the same as your Executors but they must be appointed by way of an LPA.

An LPA can be created when it's needed by the individual

Preparing an LPA at any stage in life is sensible, however, leaving it until a person actually needs one is often too late. A person will be unable to have an LPA prepared if they lack the capacity to understand the nature of the document or give clear instructions. If it is unclear whether clear instructions can be provided, a doctors report may be required which can lead to further uncertainty.

Creating an LPA and getting it registered for the donor is easier than you think and gives them solid planning and security for the future. No matter how complex a scenario may be, our team will help ensure you can fully support your donor's need effectively and efficiently.



Benefits of Nil Rate Band Trusts

A nil rate band Trust is a flexible Trust contained within a Will that allows the testator to leave their available nil rate band into Trust under the terms of the Will.

Prior to the Finance Act 2008, it was not possible to transfer the nil rate band allowance between spouses and civil partners on death. If a nil rate band Trust was not included in the Will, the nil rate band of the first to die would be lost therefore the inclusion of nil rate band Trusts within Wills of spouses and civil partners was useful for inheritance tax planning.

The introduction of the Finance Act 2008 introduced transferable nil rate bands which allows the transfer of any unused portion of the deceased spouses nil rate band to the surviving spouse. Then when a surviving spouse or civil partner dies, their nil rate band will be increased by the portion on the nil rate band that was not used on the earlier death of their spouse or partner.

So where does this leave nil rate band Trusts? Well, they are still extremely useful in many situations and of course, also ensure assets within the Trust are protected.

Second Marriages of Widows/Widowers

In marriages where one of the spouses has been married before and widowed, there is the potential for more than two nil rate bands to be used. However, under current UK legislation only one nil rate band can be transferred. As the pre 2008 way of estate planning, the use of nil rate band Trusts can ensure that potentially three nil rate bands can be taken advantage of.

For example:

Mr and Mrs Brown are married. Mrs Smith was previously widowed and can therefore benefit from her own and her deceased husbands nil rate band. Mr Brown also has a nil rate band available to his own estate. If Mrs Brown dies first and leaves her estate outright to Mr Brown then on Mr Browns death, he can claim his own nil rate band and Mrs Browns nil rate band but the nil rate band of Mrs Browns first husband would be lost.

However, if Mrs Brown leaves her estate on a nil rate band Trust then the maximum amount she can leave into that Trust will be her nil rate band and that of her first late husband. On Mr Browns subsequent death, he will also be able to claim his own nil rate band. Therefore, their joint estates will have benefited from all three nil rate band allowances.

Unmarried Couples

James and Sarah are married and own £300k each. They have no children together but James has children from a previous relationship.

James dies first leaving his estate to Sarah outright. On his death no IHT is due thanks to the spousal exemption and his unused NRB (and RNRB) which are transferable to Sarah. On Sarah's death, she passed her estate of now £600k to James' children. As her estate benefits from her own NRB and James' unused NRB, no IHT would be payable on her death. Whilst her estate does not need RNRB, stepchildren are classified direct descendants for the purpose of RNRB.

Let's look at his scenario again but imagine that James and Sarah are not married. On James' death no IHT would be payable as his estate is below the NRB. On Sarah's death however, her estate will only benefit from her own NRB. This would mean that £275k out of her £600K estate would be taxable at 40%. Her estate would also not qualify for RNRB as her late partners children would not come under the definition of direct descendants for RNRB purposes.

If James and Sarah had used NRB discretionary Trusts, on James' death no IHT would be payable as his estate is below the NRB. All his assets would pass on Trust. On Sarah's death, she will only own £300k worth of assets. As this is below the NRB, it will pass IHT free to James' children.

RNRB Taper Threshold

For a married couple who individually have assets below the RNRB taper threshold (£2 Million) but combined have assets above the taper threshold, there may be a benefit of using a nil rate band discretionary Trust on first death.

In this situation, if the spouses gift each other outright the whole estate, this would place the surviving spouses taxable estate over the taper threshold and the RNRB on second death would begin to be reduced.

Anything that passes into the nil rate band discretionary Trust would be outside of the surviving spouses taxable estate which could keep them below the taper threshold or perhaps ensure they benefit from more of the RNRB.

What is a nil rate band discretionary Trust?

- A discretionary Trust that takes assets up to the value of the nil rate band.
- Is a relevant property Trust and therefore their own legal entity for IHT purposes.
- Assets held in Trust are seen as owned by the Trust and not by the Trust's beneficiaries.
- The Trust will commonly name the surviving spouse and others (usually children and remoter descendants) as potential beneficiaries of the Trust.
- The trustees allow the surviving spouse access to capital often by way of a loan that is repaid on the survivors death and could also provide for a childs education welfare.

A letter of wishes should be drafted alongside the will to guide the trustees on how they should act.



Who are Wollaston Associates?



My name is Martin Wollaston and I am a professional Legal Estate Planning Consultant and proprietor of Wollaston Associates.

Wills, Trusts and Deeds can vary enormously from quite simple and straightforward, to very complex issues, very much depending on your wishes and needs. In either case, it is always preferable to consult face-to-face with a qualified professional who can discuss the details and options with you to ensure the Will or Trust meets your requirements.

The meeting is also required in order to comply with my regulatory bodies' requirements and the relevant Acts of Parliament that govern estate planning. It is not acceptable to self-assess your own capacity.

If you would like to know a little bit more about me, check out my profile on wollastonassociates.expert, then perhaps we might have a chat to arrange a convenient time to meet.

There is no charge for visits and no obligation is implied. It is entirely your choice.

Your peace of mind and the protection of your family and assets are my prime concern.

Get in touch

Should you have any queries or more explanation of what and who we are, please do not hesitate to contact me on [07757 546893](tel:07757546893) or email martin@wollastonassociates.expert

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