

MONTPELLIER GUIDE TO WILLS & POWERS OF ATTORNEY



When we discuss financial affairs with our clients we always take the time to understand their longer term aims and objectives.

One of the first questions we ask is whether you have a Will. The answer is often yes but it has not been updated for some time. The second question which we now ask is whether you have a Power of Attorney in place and the answer is generally no!

While a Will is the obvious point of discussion we find that a Power of Attorney is actually in many circumstances a more important element for a client as the Power of Attorney relates to them during their lifetime!

In this guide we will highlight the importance of keeping a valid Will and also the relevance of a Lasting Power of Attorney.

Wills or Intestacy?

A Will is a direction of how your assets are to pass to your estate on death. If you do not make a Will there is a very strict method by which your assets will be distributed following your death that you will not have any control over.

Under the rules of intestacy for a married couple with children, your spouse will receive all chattels and the first £250,000 of your estate. The rest of your assets will be split; with half put into a life interest trust for your spouse. This means your spouse will benefit from the income on the capital only but they will not be able to benefit from the capital. Your children's interest will be held in trust for your children until they reach age 18 by which point they may benefit from all of the trust fund.

Example

Mr and Mrs Humphries have a combined estate of £2,000,000. The main residence is owned 50:50 but the assets are held with Mr. Humphries.

	Mr Humphries	Mrs Humphries	Joint Asset
Main Res	£0.00	£0.00	£650,000
Cash	£250,000	£5,000	£15,000
ISAs	£150,000	£30,000	£0.00
Investments	£500,000	£100,000	£0.00
Buy to Let	£0.00	£0.00	£300,000
Total	£900,000	£135,000	£965,000

With a Will in place the full value of Mr. Humphries assets or his share of the joint assets could pass directly to Mrs. Humphries without any liability to tax and she would be able to maintain her standard of living without any delay or inconvenience.

Under the rules of intestacy however the following would happen

- The Main residence and buy to let will pass to Mrs. Humphries
- The cash will pass to Mrs. Humphries as referenced above, this will satisfy the £250,000 to which she is entitled.
- The remaining £650,000 held in ISA's and Investments will be split in half.
- £325,000 will be held in trust for Mrs. Humphries and any income from the £325,000 alone will be paid to her.
- The other share of £325,000 will be held in trust for their children until they reach age 18 at which point they will be able to access the capital.

There are variations to this depending on the actual circumstances of the family. It illustrates the point however that the rules are particularly restrictive and in this example a total of £650,000 has been taken away from the widow and instead she has been left with annual income of something in the region of £10,000 per annum.

The additional complication to this is that there are inheritance tax consequences to the future estate where the assets are not passed tax efficiently on death.

In financial planning a Will is hugely important in ensuring that your assets pass as efficiently as possible to your beneficiaries on death.

Powers of Attorney

Under the Powers of Attorney Act 1971, a person can give power to another to act on their behalf. This will be either a general power or specific to one or more areas. An ordinary power of attorney only gives power whilst the donor of the power is mentally capable, and capable to handle and check on their own affairs. Mental incapacity removes the attorney's power to act on behalf of an individual when it is most needed. An EPA only gives the attorney's power to deal with property and financial matters of the individual.

While there are many EPA's still around it is not possible to establish a new EPA as it has been replaced with the Lasting Power of Attorney.

Lasting Powers of Attorney (LPA)

The Mental Capacity Act 2005 came into force on 1 October 2007 and replaced the EPA with Lasting Powers of Attorney.

It is not possible to change an existing EPA but they remain valid and an existing EPA can be used by registering it with the Court of Protection.

An LPA gives 2 options allowing the attorney's to make decisions about the individual's 'Health and Welfare' and 'Property and Financial' affairs. To cover both requires 2 separate documents.

- An LPA must be registered with the Office of Public Guardian (OPG) at outset.
- To be valid an LPA must have a certificate from a prescribed person (Certificate Provider)
 - who has known the donor for at least 2 years or a relevant professional (doctor, solicitor, social worker)
 - who must confirm that the donor has understood the LPA (has mental capacity) and that it has not been fraudulently completed or done under pressure.

A donor with capacity can revoke an LPA. It is also revoked on the:

- Donor's bankruptcy (financial only i.e. health and welfare can remain)
- Death or bankruptcy of the attorney
- Dissolution of marriage or civil partnership between donor and attorney or attorney's incapacity.

If an individual loses their capacity and has no LPA or EPA then the Court of Protection will appoint a deputy with limited powers to take care of the individual's affairs.

Wills and Lasting Powers of Attorney are hugely important in ensuring that your financial affairs can be dealt with in a way that limits additional future costs and time delays.

We hope that you have found this brief guide useful. If you would like to find out how this may affect you or if you would like to learn how to implement elements of this planning within your financial affairs then please contact us on the details below.

