AlderWills

A Guide to Effective Legacy Planning

STEP
ADVISING FAMILIES ACROSS GENERATIONS

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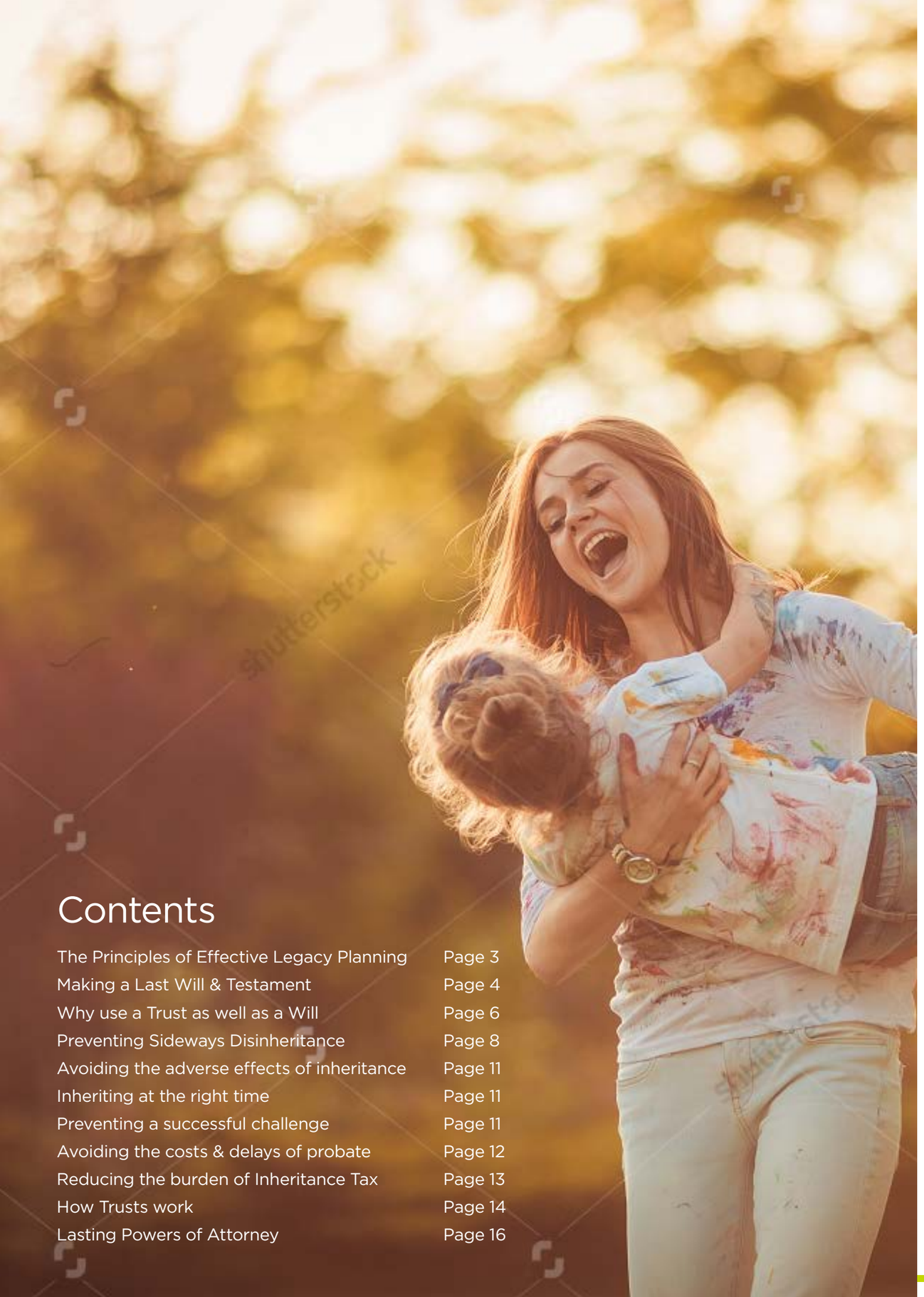
Young or old, for most of us, making plans to ensure that our loved ones are taken care of once we have gone and making sure that they get the maximum benefit from the assets we have managed to acquire through hard work, is one of the most important things we will ever do.

But, it's not just how much we are leaving to them that is important. It's crucial that our assets are well protected and secure during our lifetime, so that our loved ones receive the maximum inheritance when we are gone.

Everyone's personal and family circumstances are different and a Will alone might not be sufficient to ensure that your wishes are met. There are many different Legacy Planning options and that's why it is imperative you receive sound advice, tailored for your own personal circumstances, from a trusted, experienced professional.

Alder Wills and Probate Ltd is an organisation that has over fifteen years experience in Estate Planning and has completed over five hundred applications for Grants of Probate and is committed to a professional code of conduct and has members who can assist you personally throughout England and Wales.

Estate Planning Consultants are professionals who have successfully completed the Legacy Planning examinations and a programme of accreditation, and registered for continual professional development.Supported by a team of Barristers and Accountants with a wealth of knowledge and experience in Estate and Legacy Planning, Estate Planning Consultants follow a highly prescribed process to ensure that their clients achieve the protection and certainty they require, so that they can be sure that the ones they care for most will not lose out.



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Effective Legacy Planning

It's about getting good advice, considering everything that could affect your wishes and being aware of all your options, so that you can make your own informed choice.

A Professional Estate Planning Consultant will collect & consider all relevant information in relation to your circumstances, the assets you own and your heirs.

Protection

An Estate Planning Consultant will help you to consider all those potential eventualities in life that could adversely affect you during your lifetime and those that could befall your heirs causing a loss of inheritance or, a reduction in the value of your estate.

Choice

Based on what is important to you and the level of protection you require, an Estate Planning Consultant will ensure that you are aware of all Legacy Planning options and how they measure up in relation to what you want to achieve. They will also make sure you are aware of all production costs and other financial matters that could affect your estate so that you have complete knowledge and the ability to make your own informed choice.

Certainty

When you instruct Alder Wills & Probate Ltd to produce your Legacy Plan. The trust will be undertaken by an experienced Barrister and your instructions will undergo a rigorous quality control process to ensure that your wishes will be met.

In addition, you have the option with all our Legacy Plans to pay an additional fee to provide a Legal Expenses Insurance designed to meet the costs should any person or third party organisation challenge your Legacy Plan and lay claim to some or all of your estate.

Four good reasons to make a Last Will & Testament

Without a valid Will in place, the ‘Laws of Intestacy’ will apply which means that your assets will be shared out in a standard way and not necessarily in the way you would have wished.

It is usually necessary for your estate to go through the process of Probate before your heirs receive any of their inheritance. Your Will appoints your Executor who oversees this process. Without one and with no clear understanding of who is to receive what from your estate, the process will almost certainly become a lot more protracted and bureaucratic.

The amount of Inheritance Tax paid on an Estate depends on who is inheriting. If the ‘Laws of Intestacy’ are applied, it can often be the case that more of your estate will be subject to Inheritance Tax.

If you have young children or vulnerable adults, who are dependent on you, a Will enables you to nominate who is to look after them after you have gone. Without a Will in place this decision will be made by the state.

What to consider next?

Your Last Will and Testament will identify what you want to happen but on its own it is unlikely to provide the level of protection and certainty that most of us would want for our loved ones and ourselves.

We need to consider how to protect against those eventualities in our own life that can put our assets and wishes at risk, such as losing capacity. We also need to consider common eventualities that could befall our heirs that would cause them to lose their inheritance.

We should consider:

Trusts if we want to reduce bureaucracy after we have passed on and if we want to ensure that our loved one’s inheritance is not at risk.

Lasting Powers of Attorney (LPAs) if we want to reduce the burden placed on loved and trusted ones if we suffer a loss of capacity.

Why use a Trust as well as a Will?

Because Life is Full of '**What ifs**'

For most of us, the reason for making a Will is because we want certainty. We want to be sure that the ones we care for most receive exactly what we want them to inherit from our estate with the minimum of delays and deductions after we have passed on.

A Will is essential to identify what you want to happen but it doesn't deal with many of the 'What ifs' in life that can affect virtually all families and prevent your wishes from being respected or cause your heirs to lose their inheritance.

In addition, a Will does not address the delays and potential costs caused by Probate, prevent generational Inheritance Tax or the potential burden placed on beneficiaries to pay an Inheritance Tax liability prior to receiving their inheritance.

There are many benefits of using a Trust as part of your Legacy Planning that a Simple Will alone wouldn't provide. These benefits fall broadly into six main categories:

- Prevent Sideways Disinheritance
- Reduce the sometimes adverse effects of inheritance
- Ensure your loved ones inherit at the right time
- Prevent a successful challenge of your legacy wishes
- Avoid the costs and delays of Probate
- Reduce the burden of Inheritance Tax

Peace of mind and financial freedom come from knowing that you have taken care of the ‘What ifs’ in life.

Preventing Sideways Disinheritance

It’s a sad, but all too common fact, that Sideways Disinheritance affects thousands of families every year. Assets meant for children or other beneficiaries are often diverted away from the desired inheritance line due to one of many possible events in life that will affect most families at some point.

What is most frustrating is that it is all so avoidable with some careful planning and by including a Trust along with a Will within your Legacy Planning.

What if you or your spouse remarries after becoming widowed?

Should a surviving spouse remarry following the death of their husband or wife, any assets that were owned jointly, or were inherited by the survivor would typically be shared with their new partner.

The inheritance intended for the beneficiaries of the original married couple would therefore be diluted, especially if the new partner has his or her own children. Original beneficiaries can be disinherited completely if the new partner outlives the original spouse.

What if a beneficiary were to become divorced?

Assets left to a beneficiary via a Will are highly likely to form part of the financial settlement with their husband or wife if they were to become divorced. In fact, even whilst you are still living, the inheritance a beneficiary is to receive in the future can be taken into consideration and a portion handed over when it is received.

What if a beneficiary suffered financial hardship?

If you leave your assets to a beneficiary using just a Will, upon death the ownership of those assets transfers to whomever you have left them to.

If the beneficiary is suffering from, or has suffered financial difficulty, their creditors could seize their inheritance.

What if a beneficiary were to die prematurely?

If, for example, you left assets via a Will to a married son who had children and the son were to pass away whilst your grandchildren were still young, your son’s inheritance would typically pass to your daughter-in-law.

If the daughter-in-law were to remarry, those same inherited assets would normally be shared with her new partner. The grandchildren’s inheritance would be diluted further if the new partner had their own children. If the daughter-in-law did not outlive her new husband, the grandchildren could be completely disinherited.

Including a Trust within your Legacy Planning can prevent sideways disinheritance, protecting your beneficiaries and ensuring that inheritance remains solely with your heirs for generations to come.

Reducing the adverse affects of inheritance

What if a beneficiary is, or becomes reliant on state benefits?

If assets are inherited via a Will, they are classed as the beneficiaries’ capital. This will have a dramatic effect on any means tested state benefits and could ultimately lead to the complete loss of the benefits that your heirs may rely on.

If your heirs receive the benefit of their inheritance via a Trust, the capital should not form part of their own estate and therefore should not be considered during means testing.

Inheriting at the right time

What if a beneficiary isn’t ready to receive their inheritance?

Sometimes it isn’t always best for a beneficiary to receive their inheritance in one go. If they are young, a vulnerable adult or struggling with drug, alcohol or gambling addictions for example, it might be preferable for their inheritance to be released in stages and under the supervision of a trusted friend, family member or professional.

A Trust provides the flexibility to accommodate this arrangement.

Preventing a successful challenge.

Who can make a Challenge?

Strictly speaking, anyone can challenge your inheritance wishes and lay claim to part, or all of your estate but not all will be taken seriously.

Those that will be taken seriously are any person who you have excluded but who would have been in line to receive a portion of your estate under Intestacy Laws had you not made a Will. Also, those who claim to have evidence that you made them a promise.

Typically, the grounds for making a challenge would be that someone exerted undue influence on you when making a Will, that you lacked capacity when making your Will and that your Will was old and that your wishes had changed since making it. However, under the ‘‘Provision for Family and Dependants Act 1975’ a person who has either been disinherited entirely or left only ‘unreasonable’ provision, can make a challenge against a person’s estate for greater financial provision.

The greatest danger exists during the period when ownership of assets is in the process of being transferred after you have passed on.

A Trust is without doubt the most robust way to ensure that any challenge would be unsuccessful, not least, because it removes the need for inheritance in its literal sense.
The Trust survives you and the control passes to the Trustees you appointed. There is no need to change the ownership of assets in a Trust and only those named as Beneficiaries are entitled to the benefit of those assets.

Avoid the need for Probate

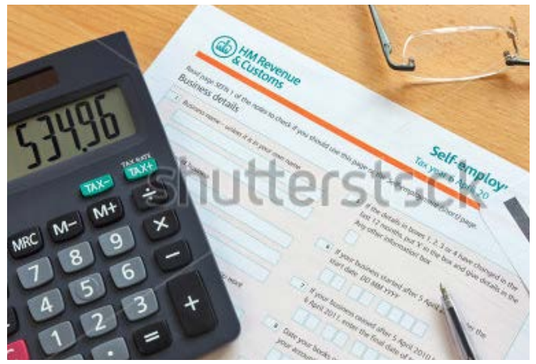
Avoiding Probate provides instant access to inheritance & mitigates cost.

Typically, assets left to a beneficiary will have to go through the process of 'Probate' before your heirs will receive them. Probate is the legal process of transferring ownership from the deceased to the beneficiary via the Executor. It is a fairly bureaucratic process and usually takes several months to complete.

In addition, it is often the case that a Solicitor or legal professional will be engaged to complete Probate and it would be reasonable to expect their fees to be in the region of 2% of the Estate value including any property such as the family home.

Furthermore, beneficiaries cannot access their inheritance until the Grant of Probate has been acquired but, they may have to pay certain bills such as the probate fees and funeral costs to name but two.

As a Trust survives even after you have passed on, those assets within the Trust will not be included within the probate process and therefore the beneficiaries will receive the benefit as you have stipulated immediately and without cost.



The burden of dealing with Inheritance Tax

How will Inheritance Tax be paid?

If the value of your estate exceeds the Inheritance Tax threshold, HMRC will expect that any tax due is paid before they will allow the Grant of Probate. In other words, the tax has to be paid before your beneficiaries receive their inheritance.

If liquid funds are not available and the Inheritance Liability is not paid within 6 months of the deceased's death, interest will be charged.

HMRC will often allow the tax liability to be paid in instalments over a period of time (often 10 years). However, that agreement has to be maintained regardless of whether funds have been released from assets that need to be sold.

Assets placed into Trust won't necessarily avoid Inheritance Tax but, they are not subject to Probate and the Trust beneficiaries can access them immediately.

Mitigating generational Inheritance Tax

It is not unusual for assets to create an Inheritance Tax liability more than once.

Assets that exceed the Inheritance Tax threshold will be subject to taxation on the death of the owner. Once the assets have been inherited, they will form part of the beneficiary's estate. If the value of their own estate, or with the addition of their inheritance, exceeds the Inheritance Tax threshold, the inherited wealth will be subject to Inheritance Tax again along with their own assets once they have passed on.

Leaving assets to someone via a Trust can prevent those assets ever forming part of the beneficiary's estate, therefore avoiding a next generation Inheritance Tax.

Extracts from HMRC Website Sept 2014:

"You must pay some or all of any Inheritance Tax due before you can get a Grant of Probate."

"In most cases, you must pay Inheritance Tax within 6 months of the end of the month in which the deceased died. After this, interest will be charged on the amount outstanding."

"You can pay in yearly instalments over 10 years if the value of the estate is tied up in property such as a house"

How do Trusts work?

Using a Trust is without doubt the most flexible yet robust method to ensure that your assets are protected during your lifetime, your wishes will be respected when you are gone and your loved one's inheritance will not be lost or reduced.

In a general sense, a Trust is nothing more than an arrangement whereby one person agrees to hold property for the benefit of another. They create an alternative way for a family or group of people to own assets and one that should remove the risk of those assets being exposed to an individual's personal liabilities.

For example, parents may decide to place their assets into a Trust for the benefit of their children. This would make the parents the 'Settlors' and the children the 'Beneficiaries'. The management of the assets in Trust would be the responsibility of the 'Trustees' who would need to be appointed and whose responsibility is to always act in the best interest of the beneficiaries.

For most families, it will be family members who fulfil all the roles. Quite often it would be the Settlors who are setting up the Trust that would be the initial Trustees, appointing others such as the eldest children, aunts or uncles for example, to take over after they have passed on. In this example, it is often the case that children and grandchildren will be the named Beneficiaries.

The advantages of a family owning assets in this way are many because whilst assets are owned by the Family Trust, Beneficiaries can receive all the benefit of those assets but they are protected from their own personal liabilities.

In addition, Trusts eliminate the need for 'inheritance'. If assets have been settled into a Trust, there is no need to transfer ownership from the deceased to the Beneficiary. It is often simply a case of appointing new Trustees. As a result, there is no exposure to challenges or generational taxation and the heir's ability to receive the benefit of the assets is not delayed by Probate nor will it be liable for the legal costs of that process.

Furthermore, Trusts can provide the same level of protection and certainty along with the cost saving and delay reducing benefits for several generations.

Frequently asked questions

Who can produce a Trust?

Unlike a Will, the production of Trust Deeds is a 'reserved legal activity', which means that it has to be completed by either a Solicitor or a Barrister who are in practice.

Will I automatically lose control of my assets?

NO. As the person placing the assets into a Trust, you set the rules. You can retain control; either by being a Trustee who manages the assets, or by giving yourself a 'life interest' so that during your lifetime your needs are prioritised.

If I place my home into a Trust, will I be able to move?

YES. The principles will be the same as if your home were outside of a Trust. The only difference is that the Trust will be selling the property and then using the proceeds of the sale for the Trust to buy a new home.

Can new beneficiaries be added to the Trust?

YES. The purpose of the Trust is it can adapt as your family grows. Unlike a Will, which has to set out finite inflexible rules, a Trust can evolve as wishes and circumstances change.

Can I take assets back out of the Trust?

YES. If you give yourself a 'life interest' they are your assets.

What sort of Trust would be best for me?

The best Trust for you is one which has been drafted to match your specific needs and has taken your personal circumstances into account. Remember this isn't a "one size fits all" option.

When should I set up a Trust?

If you feel that you require the protection and certainty a Trust provides, the short answer is that the sooner you set it up, the sooner you will be protected. However, there are two main ways to include a Trust in your Legacy Planning.

Lifetime Trusts

The Trust is set up during your lifetime for maximum protection for you and your heirs. Assets settled into Trust during your lifetime will also be protected against challenges from individuals and organisations and avoid the need for probate.

Last Will & Testament Trusts

This is when rather than setting up the Trust during your lifetime, you leave instructions to your Executors to settle assets into Trust after you have passed on. This method will provide much of the protection against things like sideways disinheritance and eventualities that are likely to affect your heirs but, it won't protect against a challenge nor will it avoid the costs and delays of Probate.

Who would produce my Trust?

If you give your instructions to an Estate Planning Consultant then we outsource the drafting of any trust to an experienced Barrister who will produce your Lifetime Trust. In addition, your instructions will undergo a rigorous quality assessment to ensure that the documents that are to be produced accurately reflect your wishes and will provide the protection and certainty you require.

You will need a Lasting Power of Attorney if you want it to be your choice.

We are now living longer than ever before and as a consequence, the likelihood of us losing capacity at some point whether through dementia, illness or accident is far more prevalent.

It is often assumed that if we were unable to look after our own affairs that those closest to us would simply take over and make decisions about our finances and health care.

Sadly, without LPAs in place, the reality is considerably more complicated and the burden placed on loved ones can be physically and emotionally devastating.

If we are considered to have lost capacity, Social Services will consider us to be vulnerable and they have a duty to inform financial institutions.

Financial Institutions such as your Bank, Building Society and Insurers have a fiduciary responsibility to protect vulnerable clients. They do this by freezing all your assets preventing any access to funds, making any changes or the ability to renew your insurances.

The British Banking Association.

"Even if you are the joint account holder and the other joint account holder becomes mentally incapable, you do not automatically have the right to access the account unless you have a Lasting Power of Attorney, Enduring Power of Attorney or an order from the Court of Protection."

Medical & Welfare decisions.

Without LPAs in place, those closest to you do not have the right to make decisions about your medical treatment and welfare, including whether or not you need long term residential care and where that should be.

How your finances would be affected.

Again, if you are considered to have lost capacity and don't have an LPA, you and those closest to you would not be able to gain access, take action or make decisions in relation to any of your financial matters including:

- Current & savings accounts.
- Investments.
- Insurances (such as life & buildings & contents).
- Payment of bills.
- Collecting pension payments.
- Making mortgage payments.
- Business decisions.

The Court of Protection would appoint a Court Deputy to look after your financial affairs and make decisions on your behalf. This will typically be someone that you have never met and their responsibility is only to you and your welfare. They will not be able to take care of those who rely on you or who share your assets.

Furthermore, fees are charged for a Court Deputy, which are often significant.

The cost and burden of deputyship.

If you lost capacity without LPAs in place, it is possible for a family member or trusted person to take over. To do this they would need to make an application for Deputyship.

However, this is a notoriously bureaucratic process that often takes in excess of 12 months and attracts **significant costs which regularly exceed £2,000.**

Also, it has to be remembered that as your assets would be frozen, the person applying would have to pay the necessary fees themselves.

It is also important to note that a high percentage of deputyship applications are rejected in favour of maintaining the Court appointed Deputy.

Fees are not refunded for failed applications.

Lasting Powers of Attorney

Lasting Powers of Attorney are made whilst you have full capacity and they set out who it is that you want to look after you and your affairs should you suffer a loss of capacity. There are two types of Lasting Power of Attorney.

- Property & Affairs
- Health & Welfare

Having these LPAs in place and registered prior to a loss of capacity will mean that a person, or persons, that you trust to look after you will be able to control your finances and make decisions about your medical treatment and general welfare.

Someone you trust will be able to take over without cost or delay and without the need of a Court Deputy or Deputyship Order.

Jack Straw, former Lord Chancellor.

"Having a Lasting Power of Attorney in place should be as common and natural as making a Will. It ensures that a person of your choosing will be able to manage your affairs should you lose capacity, be it as a result of dementia, mental illness or an accident."

Important Information

About this brochure

This brochure has been produced for general information purposes only and is not designed to provide complete and exhaustive advice.

It is based on our understanding of the prevailing rules and legislation at the time of print.

Legacy Planning Process

Legacy Planning should be undertaken in consultation with an accredited Estate Planning Consultant to ensure that your personal circumstances are properly considered and accounted for.

An Estate Planning Consultant will follow a highly prescribed process, to ensure that any and all relevant information that could affect your Legacy Plan is addressed. This process will also identify other matters, such as taxation, types of assets and domicile, for example, that could influence and affect your decisions.

Your Estate Planning Consultant will make you aware of all applicable costs both in relation to Alder Wills & Probate Fees and any third party disbursements, if applicable.

Any instructions given to an Estate Planning Consultant will undergo a rigorous quality control process by Alder Wills & Probate Ltd.

Production of the Legacy Plan

Your Legacy Planning Documents will be produced by an experienced Barrister.

Insurance

All Estate Planning Consultants of Alder Wills & Probate are automatically covered by our Professional Indemnity Insurance in relation to the advice and assistance they provide to a client.

Each Barrister producing the Legacy Planning documents will have their own Professional Indemnity Insurance in place.

Alder Wills & Probate Ltd

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