

The Will Protect Estate Planning Guide



This guide is designed to provide you with the information that you need to consider what will happen to your assets and property after you pass away. Who you will leave assets and possessions to, consider risks like sideways disinheritance, and consider how to reduce any inheritance tax liability.

What is Estate Planning?

Estate planning, quite simply, is the process of planning what happens to your estate after you die. You may have only a few assets, or you may own property, own a business perhaps, and have children or stepchildren.

Everything that is you and your assets and money are considered during the process and documentation is drawn up that outlines how you wish your estate to be shared out, between who, and how your assets will be structured to reduce risks and inheritance tax liabilities.

Estate planning requires specialist knowledge of complex legal structures like trusts, considerations for children, tax and other elements that must be brought together to form an effective estate planning document in the form of a will.

Your Estate Planning To-Do List

1. Research

Read this guide and take a look at the information on our website

1. Get a notepad. No really!

There's a lot to consider, understand and record. So keep it all in one place

2. Record your assets

Make a record of everything that you have including money, property, business interests, pension, stocks and shares and so on.

3. Make a note of who you might want to leave things to

Keep a note of family members, friends and so on

4. Consider your children

Consider who you would want to take care of your children if you die. If you don't, they may go into care.

5. Take professional advice

Estate planning can be complex. If not completed properly it can leave beneficiaries with inheritance tax liabilities and legal challenges

6. Record your wishes for guardianship

Ensure that this and any financial provision for your children is recorded

7. Take advice on tax efficient structures like trusts

These are complex legal structures and must be set up correctly.

8. Consider and include your business assets

This could include shares, your own business or other interests

9. Think about the here and now

Consider what would happen if you were incapacitated. What would your wishes be and who would you want to take care of your interests.

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Risks to Consider in Estate Planning

Taxation

Depending on the value of your estate, your beneficiaries could be left with an inheritance tax bill to settle. This could result in the need to sell assets like property to settle this liability.

Sideways Disinheritance

This is a complex area where a surviving spouse remarries. The surviving spouse becomes the recipient of the estate, and the children are disinherited when the surviving spouse dies. The estate moves sideways rather than down a generation

Legal Challenges

There are occasions where a will may be the subject of a legal challenge. This could include part of the will, like a trust, or all of it. To mitigate this risk, taking professional advice and employing the services of a professional is crucial. A professional can advise on the best legal instruments to use to safeguard your estate and protect it for your beneficiaries.

Intestacy

If you do not go through the estate planning process and write and store your will, your estate will be the subject of intestacy rules. Your assets will be divided according to legal requirements with no consideration for what your wishes may have been.

Establishing Mental Capacity when you Write your Will

Establishing your mental capacity when you write your will is possibly not something that you would naturally consider. Particularly if you're writing your will in your younger years (which we firmly believe that you should, by the way) Thoughts of diminishing mental capacity and any thoughts of dementia are a long way off. Even in your later years, you may not consider your mental capacity.

But the fact is, if your mental capacity is diminished, you are unlikely to be aware of it.

For will writers, establishing the mental capacity of their client and being sure that they meet the requirements of writing a valid will are the most important part of their role. And of course, this is often more important when a client is elderly or seriously ill.

To protect a will against challenge on the grounds of diminished mental capacity the Banks vs Goodfellows test can be conducted during the process of writing a will. Including the test in a will means that should a challenge be made, the person contesting a will, upon whom the burden of proof falls under Banks vs Goodfellows, must prove that the test that established mental capacity in the first place is invalid, and would prove to be exceptionally difficult to do.

Inheritance Tax Liability

Protecting your estate from taxation when you die can be complex. But reducing your inheritance tax liability isn't impossible, and there are steps that you can take to mitigate the risk.

Inheritance tax is a tax on the estate of someone who has died. Payment is arranged and made by the executor of the estate. That person or persons would have been named during the estate planning process and named in the deceased person's will.

It is paid at a rate of 40% on the value of an estate above the inheritance tax threshold, currently £325,000.

However, if you give your home away to your children including stepchildren, adopted, fostered or grandchildren, your inheritance tax threshold could increase to £500,000.

There are only two reasons why you couldn't pay inheritance tax. These are:

1. The value of your estate is less than £325,000
2. You leave everything over the £325,000 threshold to your spouse, civil partner, charity, or a community sports club

You can reduce your inheritance tax liability, or mitigate its impact in a number of ways.

1. Start gifting assets to children and grandchildren (making use of allowances and potentially exempt transfers – 7-year rule)
2. Set up a joint life second death life insurance policy with a sum assured matching the value of the inheritance tax debt
3. Make sure that the Residential Nil Rate Band is being utilised properly
4. If widowed make sure that any nil-rate band from the previous spouse is being carried over
5. Spend the money

Sideways Disinheritance and Blended Families

Sideways disinheritance is a scenario where your beneficiaries miss out on their inheritance when you die because generational inheritance steps sideways through the remarriage of the surviving spouse. What does that mean exactly?

The commonest form of will for married couples is a mirror will. Essentially you both write the same will, mirrored for each person. On the death of one, the will is executed, and vice versa. So when the surviving spouse dies the will that they leave is the same as the will of the first spouse to die.

That's fine as long as nothing is changed after the death of the first spouse. You would expect the remaining spouse to honour their partner's wishes, leave their assets to their children and other beneficiaries, and so on. And that all seems fine on paper.

But consider two events that are commonplace today that could create the risk of sideways disinheritance.

1. You divorce
2. Your spouse remarries after your death.

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In the case of divorce, it's not inconceivable that you forget to rewrite your will. You may remarry, or your spouse may remarry. When a **blended family** is formed your estate is more at risk of sideways disinheritance. Let's assume that your former spouse remarries, and that person has children too. You are likely to have divided your assets during your divorce in some way so the assets that you had agreed to leave to your children or other beneficiaries are no longer owned equally.

Your former spouse writes a new will. Let's say that they write a mirror will with their new spouse, leaving everything to their new spouse on the understanding that your will, set up as a mirror will is reflected in their will. Here's the risk. If your former spouse dies, there is nothing to prevent their spouse from rewriting their will and leaving everything to their own children. Your children have just been disinherited.

In scenario two, your spouse remarries after your death. We've alluded to this already, but in essence, the scenario is very similar. Your spouse remarries and changes the will to reflect their larger blended family so your children and other beneficiaries won't receive what you had intended. And in a similar scenario to divorce, if your former spouse dies, inheritance could move sideways and people who you never met and probably didn't know existed could inherit what you had intended for your children.

Considering trusts in your will can remove much of the risk of sideways disinheritance, and a number of other risks too like bankruptcy and divorce. There is a huge number to choose from. But the right trust put in place correctly can protect your assets in the event that some of the risks like sideways disinheritance become reality.

Second Marriages

Sometimes marriages fail and end in divorce, or you might lose a spouse. Getting married for a second time might feel like a fresh start, but there are things that you need to consider together as a newly married couple. A second marriage could affect your own financial plan, and that of your new spouse, so putting the correct financial arrangements in place early on should be a priority.

When you remarry you could well be creating a blended family. That is to say, a new family which includes children from previous relationships, and possibly your own children together in the future. There are, of course, many complexities besides estate planning to consider including day-to-day finances, and bringing your respective children together in a way that recognises each individual, their thoughts, feelings, and expectations. It can be a stressful, challenging time, as well as a happy time for the new marriage.

You will need to consider your own children, your stepchildren, the assets you both bring to the relationship, and the assets you might acquire during your second marriage. And of course, treasured possessions and who you wish your benefactors to be.

A key point to remember is that any marriage, whether it be a first marriage or a fourth marriage, will invalidate any Will that you had in place prior to that marriage (unless the Will was made in anticipation of marriage and clearly states this within the Will). Estate planning and second marriages are a complex combination. Putting the right measures in place is best achieved with professional advice and support.

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It's often the norm in a first marriage for a couple to create mirror wills. Where there aren't complex, high-value assets this can be a tax-efficient way for a couple to pass assets to one another when one spouse dies.

Mirror wills, as the name suggests, are a mirror image of each other. There may be minor differences, but for the most part, they are identical.

The main benefit of a mirror will is that you can pass your [Nil Rate Inheritance Tax Band](#) to your spouse. The current Nil Rate Band is £325,000 per person. So your spouse can transfer their Nil Rate Band to you if it is not used on their death. That increases your Inheritance Tax threshold to £650,000 for the surviving spouse. So upon the death of the second spouse, if your estate is valued at less than £650,000, there will be no Inheritance Tax to pay; clearly a big benefit to lots of families.

The risk to mirror wills is that the surviving spouse can change their will to suit their own circumstances such as benefitting a new partner and their children rather than their children from their first marriage which was likely the intention when setting up the mirror wills.

Plans that a married couple put in place can be changed. Not only that but the family assets could be left to new family members like a new spouse or stepchildren, who the deceased spouse is unlikely to have even known.

Your Business Interests and Estate Planning

Business continuity planning is often set aside with the rest of the "it probably won't happen" jobs, but the fact is that if something happens in your business, it may stop you from operating. You might have a fire, be subject to a burglary, robbery from vehicles, cyberattack and data loss, or something else.

Even the smallest businesses can be driven under by a disaster that they can't recover from. But putting plans in place means that should the unspeakable happen, your business will be able to cope.

And it's no different for estate planning for business. What happens if you or one of your business partners or directors are incapacitated, or dies?

Your business may not be able to access your bank accounts to pay bills, your staff, and tax liabilities. It could mean that your contracts are rendered invalid and you lose business. And your business could lose the confidence of your clients if a key person disappears and it is clear that you don't have a plan.

Remember that your share of your business will have value to your estate. What happens if you die, and your beneficiaries are left with a business that they own a share of but have no access to or rights to manage it? You could also leave an inheritance tax liability as well that they would have to pay. Or your business contributes to the value of your estate reaching above the IHT threshold.

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Whether you are considering estate planning for sole proprietorship, limited company, or partnership, the liabilities will still be there and could impact your beneficiaries. You should also consider estate planning when selling a business. You could be adding value to your estate in the form of cash which could affect the IHT liability considerably.

Mortgage Protection, Insurance and Estate Planning

All assets must be considered as part of your estate planning so that you can mitigate any inheritance tax liability, and so that they reach your beneficiaries. And life insurance is no different. You should consider this to be an asset. If you don't have a mortgage on your home it will count as an asset at the value it pays out. If it pays off a mortgage, your property will, obviously, have a higher value.

The high value of house prices means that whichever of these applies, your estate could be valued above the £325,000 threshold based only on your family home.

Trusts

Trusts can be used for a number of reasons, but for the purposes of estate planning they are used to pass assets on after death. These assets include money, investments, property, or land. Other assets could also be included like life insurance or pensions.

There are three key positions involved in a trust:

1. The settlor: the person/people who set up the trust
2. Trustee: the person/people who manage the trust
3. Beneficiary; the person/people who benefit from the trust.

A trust is governed by the Trust Deed. This is the document that is created by the Settlor when the trust is set up. It lays out clear instructions for who the Trustees are, the Beneficiaries, which assets are to be included, and how the trust and its assets are to be managed.

The Trustees manage the trust on a day-to-day basis, pay any tax due and in a discretionary Trust, decide which Beneficiaries are to benefit from the Trust and in what amounts.

Trusts, when set up properly, protect your assets and ensure that they go to your chosen Beneficiaries. They protect from sideways disinheritance, and changes in relationships like divorce and remarriage. The risk is that assets could be redistributed in a way that you would not wish. In short, the wishes of the deceased spouse are protected.

They also protect from the risk of generational inheritance tax. This is a scenario where an estate could be subject to inheritance tax every time a will is executed. Assets are not ring-fenced for tax purposes once IHT has been paid on them. A trust, if set up correctly, protects against this.

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Lasting Powers of Attorney and Estate Planning

Lasting Powers of Attorney are documents where people can be appointed to act on your behalf regarding property and finance, health and welfare of business either once mental capacity has been lost or when you reach a point where you are unable to deal with these aspects of your life for yourself. Lasting Powers of Attorney are for use during your lifetime, so are not the same as a Will and cannot be used after you have passed away. They are granted and overseen by the Office of the Public Guardian.

There are three types of LPAs and you will require a separate LPA for each aspect. Firstly, Health and Welfare which gives your appointed Attorneys the power to make decisions regarding your care, diet, dress and routine.

Secondly, a Property and Finance LPA gives your appointed Attorneys the power to make decisions regarding any property that you have any financial accounts that you may have. Finally, a Business LPA gives your appointed Attorneys the power to make decisions as you would with your share of business ownership.

You have the choice when making an LPA as to whether you would like your Attorneys to be able to act on your behalf only when you've lost capacity or whether you would like them to have the power to act on your behalf as soon as the LPA has been registered with the OPG.

How Will Protect can Help you with your Estate Planning

Our expert team takes a holistic approach to [estate planning](#). We'll work with you to understand your wishes, the assets that you wish to leave, and to whom. We understand that contemplating your wishes after you have passed away can be difficult.

We'll work through the estate planning process with you to develop a structured plan that will protect your interests, ensure that your final wishes are carried out, and manage the exposure of your estate to inheritance tax and other risks.

Contact Us

Estate planning support and services for you and your family. Helping you communicate your wishes is at the heart of what we do. Our aim is to help you express your wishes should you need additional support, and when you're gone

[Learn more](#)

