Finura

Chartered Financial Planners

Your guide to wills & LPAs

Why you should make a will

Whatever your age, if you have assets such as a house, savings or a business along with loved ones you would like to look after, it is worth considering making a will. It can also make the lives of those you leave behind a little less daunting at an extremely difficult time.

You may have worries over who would look after your children if you were no longer here. Or you may be concerned about how your family manage your care fee contributions in the future.

You may wish to maximise your tax allowances to ensure your family do not pay more inheritance tax than they need to. All of this can be addressed by making a legally binding will.

In summary, a will can:

- Name your executors (the people who will distribute your estate)
- Name your beneficiaries (those who should benefit from your will)
- Appoint guardians (to take care of your children)
- Include trusts to ensure bloodline inheritance
- Help to maximise tax allowances
- Aid in managing care fee contributions
- Ensure your business can live on after you have passed away
- Enable you to specify your funeral wishes

A valid will is vital to ensure you and your family have control over the money, property and possessions you have worked so hard for after you have passed away.



What exactly is a will?

A will is a legal document that gives you the power to decide what should happen to your estate when you die.

Your estate refers to your individual assets minus any liabilities. Your will clearly expresses your wishes as to how your property and possessions are to be distributed after your death. Some people choose to create what is referred to as a simple will, gifting all of their estate (called the residuary estate) rather than separating it into different amounts or items.

However, others wish to make gifts of property - for example, as a specific gift to a beneficiary (an outright gift) or provide only the right to use the property for a designated period before it is then passed to another specified beneficiary. This is often called a Right to Reside or a Life Interest.

In other cases, rather than specifying particular gifts of money - for example, £20,000 - it is possible to specify the source of the account - i.e. "the contents of my Barclays account 1234567" - to help future proof the will for changing circumstances. Gifts to charity can also be made within your will and are an effective way of reducing Inheritance Tax liabilities.

You may wish to appoint Guardians to provide a loving home for your children but would like to appoint different people to look after your children's financial interests i.e. Trustees.

The important thing to keep in mind is that your will should be a completely personal and unique document for your individual circumstances. Remember too that your will can be re-visited and changed as those individual circumstances change over time.



What type of will do you need?

Commonly you will have heard the terms “single will” and “mirror will”.

A single will

A single will is, as the name suggests, for a single person or a person with solely owned property and assets along with a specific set of wishes and beneficiaries.

A mirror will

A mirror will is usually two wills that mirror each other and are often the result of a relationship between two people with the same shared assets, beneficiaries and wishes around what should happen to their estate. It ensures that the property is distributed on identical terms.

It is worth noting that there is no such thing as a joint will. Each individual has their own will which effectively mirrors the other.

Trusts

A will can also contain trusts to specify what should happen to certain assets and on what terms. For example, you can include a children’s trust within your will to specify at what age you wish for your children to inherit. You could also include a business trust to ensure your business can continue and attract the appropriate tax allowances.

Many consider that trusts are too complicated or believe they do not have enough wealth for them to be relevant. The truth, however, is trusts are woven into the fabric of many of our lives.

Put simply, you can consider a trust (either within a will or alongside a will) as a safety deposit box in which to safely store your assets, protecting your estate and beneficiaries from the threats of divorce, sideways disinheritance, probate costs, remarriage, inheritance tax and more.

How your current circumstances *can affect your decision*

Your personal circumstances should influence the content, structure and format of your will.

People often consider making a will after experiencing a trigger point within their life such as:

- Marriage
- Divorce
- Moving house
- Death of a family member
- Setting up a business
- Receiving an inheritance
- The birth of a child or grandchild
- A family member going into a care home

It is also worth noting some common assumptions around inheritance when there is no will in place.

Without a will it is entirely possible that:

- Your spouse or partner will not automatically inherit all of your estate. Also, there is no such thing as 'common law' husband or wife, regardless of how long you have been together
- Minor children could be taken into care whilst potential guardians are assessed and appointed
- People outside of your immediate family are unlikely to benefit
- Lengthy disputes and delays may be likely that prevent your preferred beneficiaries from benefitting as you would intend

When you make a will, you take control of these situations and ensure your wishes are fulfilled.



What about inheritance tax?

Dying intestate (without a will) can result in an unexpected and avoidable bill for inheritance tax.

If you have substantial assets and are married with children, remember that the rules in England and Wales award the first £322,000 to your spouse and half the remainder to your children. Unlike your spouse, who is exempt, your children will have to pay inheritance tax if the total estate is above your nil rate band.

At its simplest, inheritance tax is the tax payable on an estate when a person dies if it exceeds a certain amount. The estate value is essentially the net value of everything a person owns i.e. all of the assets minus any expenses and debts.

Currently, inheritance tax is charged at 40% on the value of the estate above the threshold of £325,000 (subject to any exemptions or relief available at the time). Therefore, anything over the value of £325,000 is potentially taxable at 40%.



In addition, a residence nil rate band (RNRB) of £175,000 now applies for deaths occurring on or after 6 April 2017 where all or part of a qualifying residential interest is left to direct descendants of the deceased (or their spouses/civil partners). Full RNRB applies if the estate of the deceased does not exceed £2m. If the estate value exceeds £2m, the RNRB is tapered, or reduced, by £1 for every £2 over that limit.

Like the standard IHT nil rate band of £325,000, the RNRB is transferable between spouses/civil partners to the extent it is not used on the first death. This means that where none of the standard rate band or RNRB is used on the first death, and the second death occurs on or after 6 April 2020, married couples/civil partners with a main residence worth at least £350,000 will be able to leave a total estate of £1m to children/ grandchildren before any IHT is payable. This will have a significant impact on IHT planning strategies for anyone with children and an estate in excess of £325,000 (or £650,000 in the case of a married couple/civil partners) who will undoubtedly want to structure their affairs to make the most of this important opportunity.

The nil-rate band is currently £325,000 and the residence nil-rate band is £175,000. These thresholds are currently set to remain frozen through to the 2030/31 tax year. This means that a growing number of people will be facing tax liabilities and without careful planning, many will unknowingly fall into the inheritance tax net.

It is really important that your will and any trusts are carefully structured to ensure tax allowances are maximised to ensure that beneficiaries receive as much as possible from your estate.

Who are the key people to consider when making your will?

There are important decisions to make when creating your will, not least the naming of the key people within your document.

Executors

These are the people who are charged with administrating and winding up your estate to make the distributions to your chosen beneficiaries.

Being an Executor is a demanding legal appointment and can involve large sums of money, so you should ensure the people you choose are happy to take up the role. You can appoint a family member, a beneficiary or close friend to act by themselves, jointly or as reserve Executors.

Whilst you do not have to appoint professional Executors, should your will contain a trust or be a little complicated, it could be worth having a professional as a reserve executor at least.

Beneficiaries

A beneficiary is a person who has been named to inherit in a will. This person may be left property, land, money or possessions within a will. A beneficiary could also be a charitable cause or political party.

If you have disabled children who are likely to require specialist support, a trust may be required to ensure your children's standard of living is maintained. It is a good idea to seek professional advice on aspects such as this.

Guardians

You will only need to appoint guardians if you have minor children (under the age of 18 years) and there is no person with parental responsibility alive at the date of your death. You should choose your guardians carefully and ensure the people you appoint are willing to take on the role.

Trustees

A trustee is a person who takes responsibility for managing money or assets for the benefit of someone else.

Whilst an executor's role ends when the will has been administered, the role of trustee can extend for many years - for example, until a child is old enough to inherit. Executors and trustees can be the same people or Trustees can be other family members, friends or professionals.



Different ways to make your will

There are many different ways to make a will, such as by a professional will writer, a lawyer or via charities and banks. You can also find online "DIY" will services.

The key consideration is to ensure any will you make is legally valid in line with the requirements of the Wills Act 1837. A will is a legal document, so needs to be written and signed correctly. If you decide to make your own will, it is best to seek advice first.

In addition, choose who draws up your will wisely. Any firm should be regulated by one of the following organisations to ensure you, as a consumer, are protected:

- Institute of Professional Will Writers
- Institute of Paralegals
- Society of Will Writers
- Chartered Institute of Legal Executives
- Solicitors Regulation Authority

You can conduct a search with each of these organisations to confirm that the professional you are considering using is an approved member. This process will also ensure the firm you are dealing with is a specialist in their field.

Costs of making a will

It is important that when you make the decision to make a will, the costs are made clear to you at the outset.

As well as the cost of preparing your document, there may be additional costs such as Land Registry fees or other disbursements and your chosen professional will be able to clearly outline these to you.

Here is an outline of what you can expect to pay for a professional and personal service:

○ Single will	£200 to £500
○ Mirror wills	£350 to £700
○ Will trusts	£500 to £1,200+
○ Lasting Power of Attorney	£200 to £600 per LPA, plus registration fee

Keep in mind that this is one of the most important investments you will ever make. You are preserving your estate as a legacy for your loved ones to benefit from so it is important that you get it right and choose your approach wisely.





Registering and *storing your will*

Once you have made your will and had it correctly signed and witnessed, it is important that you keep it in a safe place.

It is important that the original signed will is stored securely, so it does not get damaged and your executors know where to find it. If the original cannot be located after your death, this can create additional complications when administering your estate.

A number of professional services offer a document safe custody service, which is worth some serious consideration to protect your will from damage, loss or malicious destruction.

A professional should also register the will with Certainty, the National Will Register, to ensure your will can always be found in the future by your Executors.

As well as physical documents, do not forget your digital assets. Using an online digital inheritance vault such as Keylu is another useful way to record the personal, legal and financial information you hold digitally. All of this information is held securely and provided to your trust contacts (executors) after death.

Keeping your will up to date

In recent years, we have seen a rise in clients in wanting to make changes to their will and get their affairs in order.

A will should be thought of as a living document. As much as you try to ensure it is future proof when initially created, your will should be reviewed at regular periods or at any point when there is a significant change to your personal circumstances.

There are a number of circumstances when you should consider reviewing your will, such as:

- If someone named in your will passes away
- If you wish to change who inherits and is a beneficiary
- You have children or the children reach legal age
- You get married or divorced
- You personally inherit various assets
- You start a business
- There is a significant change in your assets such as a second property

However, it is important to note that a will should never be physically altered or amended. This creates a risk that it will not be deemed acceptable by the Probate Registry as they may consider it has been fraudulently tampered with. For example, if a name is crossed out and replaced with another name, this would raise suspicions as to whether it was amended by yourself or someone else.

A codicil can be used to change a will - it is a separate document that amends part of an existing will and should be stored with a will. Historically, when wills were handwritten or typed with a typewriter, a codicil saved considerable time as it meant that an entire document would not have to be re-drafted for a minor change.

However, there are a few risks to be aware of when making a codicil:

- As the codicil is an individual document, there is a risk that the codicil may be separated from the will itself. In this case, the change stipulated is lost and will not be implemented
- The codicil could be purposefully ignored or destroyed, with the unaltered will subsequently standing
- Where the change is perceived to be minor, there may be a temptation to make a 'homemade' codicil. However, it should be remembered that a codicil should still comply with the formalities of the Wills Act 1837
- The Codicil could contradict wider aspects of the original will, creating the potential for disputes later on

Due to updated processes and procedures, it is often just as quick (and safer) to simply create a new will with a clause that automatically revokes all former wills.

What is a Lasting Power of Attorney?

Whether it is making temporary arrangements to pay bills whilst you are in hospital or appointing someone you trust to manage your affairs for the long term, this guide will give you all the information you need about what you need to consider when making your Lasting Power of Attorney.

Dealing with money and paperwork can be difficult if you become unable to manage your own affairs for any reason and in ill health it may be impossible. Before that happens, it is advisable to appoint a trusted representative, known as an attorney, who can look after your finances and welfare for you should the situation arise. The Lasting Power of attorney (LPA) is the legal document which allows you to do this.

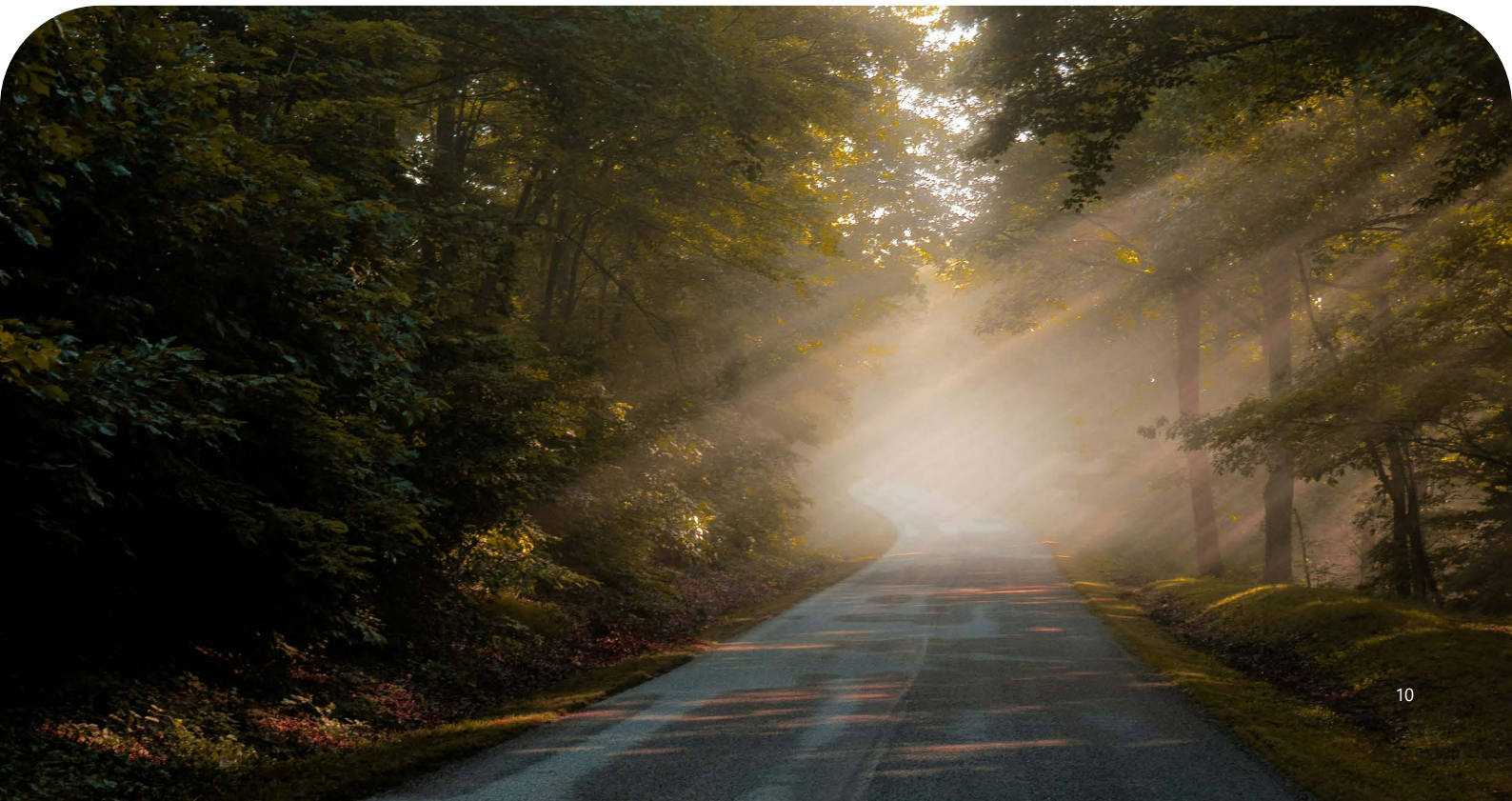
To make an LPA you must be over 18 years of age and you must still have the mental capacity to make the decisions involved in setting up the LPA. You must make the LPA as an individual and no one can make it on your behalf.

What does the term 'mental capacity' mean?

If someone cannot understand information relating to a decision they need to make, keep that information in their mind, make a decision based on that information or communicate their decision (by talking, sign language or other means), they are said to be unable to make that decision.

Mental capacity is different to everyone and it can change from day to day and support is available to correctly (and if needed, independently) assess mental capacity. Taking time to understand or communicate a decision should not be mistaken for lack of mental capacity. In addition, having a condition such as dementia for example, doesn't necessarily mean you can't make any decisions.

If there is any doubt about mental capacity, a professional opinion should always be sought.

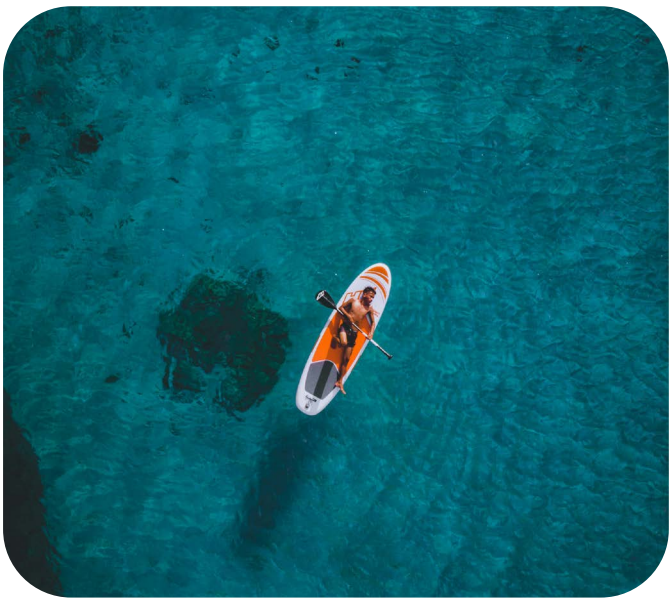


Why should I make a Lasting Power of Attorney?

If you become unable to make decisions for yourself and have not appointed another person as an attorney, your personal affairs would become the responsibility of the Office of the Public Guardian and it may be necessary for the Court of Protection to become involved. The Court will appoint a person (called a Deputy) to make decisions on your behalf.

The major disadvantages of not having a Lasting Power of Attorney in place are firstly the delay in dealing with your affairs and, secondly, the cost of making a Deputyship application which is likely to be much more expensive than making a Lasting Power of Attorney. There are also ongoing yearly costs payable to the Court of Protection and the person appointed as your Deputy may not be someone you would have chosen i.e. a professional deputy rather than a family member.

People can lose mental capacity because of illness, accident and conditions such as dementia and this can happen at any age. In addition, the Property & Financial Affairs LPA can be very useful for people who need extra help with managing their household finances from time to time. It can also be restricted to business interests only which is often helpful for business owners who may travel and require a responsible person to act in their absence for example.



Choosing an attorney

An attorney is simply someone you choose to make decisions for you should you become unable to. They should be someone over the age of 18 who you trust.

They do not need to be a partner or relative and could be a close friend or even a professional. It can be a good idea to appoint more than one attorney, but you need to decide whether they will need to make decisions jointly or not. Also think about appointing replacement attorneys in case someone cannot act on your behalf anymore.

Think about who you believe would be able to make decisions in your best interests and make sure you give them time to think about their role in advance.

What are the different types of Lasting Power of Attorney?



There are two types of Lasting Power of Attorney (LPA).

Property & Financial Affairs LPA

This type of LPA can be used to make decisions about your property and financial affairs, and can be used both whilst you have capacity or once you have lost mental capacity should you choose.

With this type of LPA your attorney can make decision on aspects such as:

- Paying bills
- Collect pension or welfare payments on your behalf
- Arranging repairs to your home
- Selling your home

Key Facts:

- You decide when you want this type of LPA to start i.e. before or after you lose mental capacity
- You can choose if your attorney can make all or only certain types of financial decisions on your behalf
- You attorney has to keep your money separate from theirs and keep accounts to show this
- You can ask for regular details of how much money you have or that has been spent. You can ask for these be sent to your solicitor or a family member

Health & Welfare LPA

A Health and Welfare LPA allows you to choose who will make decisions about your health and personal welfare; this can only be used if you no longer have mental capacity.

With this type of LPA your attorney can make decisions on aspects such as:

- Where you should live
- Your medical care
- What you should eat
- Who you should have contact with
- What kind of social activities you should take part in

Key Facts:

- You can give your attorney permission to make decisions about life saving treatment
- If you lose mental capacity and do not have an LPA in place, any decisions about your healthcare will be made by doctors. They will consult your family but final decisions rest with them



Ways to make a Lasting Power of Attorney

You can make your LPA by using the templates on HM Governments website and fill out the forms yourself. However, taking professional advice could prevent problems later on, especially if you are unsure of the process or if your affairs are complex.

You will need to have your LPA signed by a "Certificate Provider". This must be someone you know well or a professional such as a doctor, social worker or professional adviser but it cannot be a family member. It is the Certificate Providers' job to confirm that you understand what the LPA is and that you have not been put under any pressure to sign it.

Your LPA cannot be used until it has been registered with the Office of Public Guardian, currently charges £92 to register each LPA, meaning the fee is £184 if you register both a property and financial affairs LPA and a health and welfare LPA. Registration currently takes around 8 to 10 weeks, provided there are no mistakes in the application, so this is another reason to get your LPA in place well in advance of needing it. If you are on a low income (under £12,000) you may be eligible for a 50% remission while certain means-tested benefits can qualify for an exemption. Universal Credit is treated differently and is assessed for remission rather than exemption and if you are receiving certain benefits you may not need to pay for registration at all.

Costs of making a Lasting Power of Attorney

It is important that when you make your Lasting Power of Attorney you are clear of the process and costs at the outset.

If you choose to engage the services of a professional adviser, they will be able to outline the cost of preparing the document as well as any additional costs such as registration with the Office of Public Guardian.

You can expect to pay between £200 and £400 for a professional Lasting Power of Attorney service. Fees will vary based on the complexity of your personal affairs, any business affairs and any specific preferences or instructions you may wish to include within your LPA.

Remember, this is one of the most important documents you will ever make as you safeguard your affairs and personal welfare and entrust another person to make key decisions in your best interests.

Your will & Lasting Power of Attorney

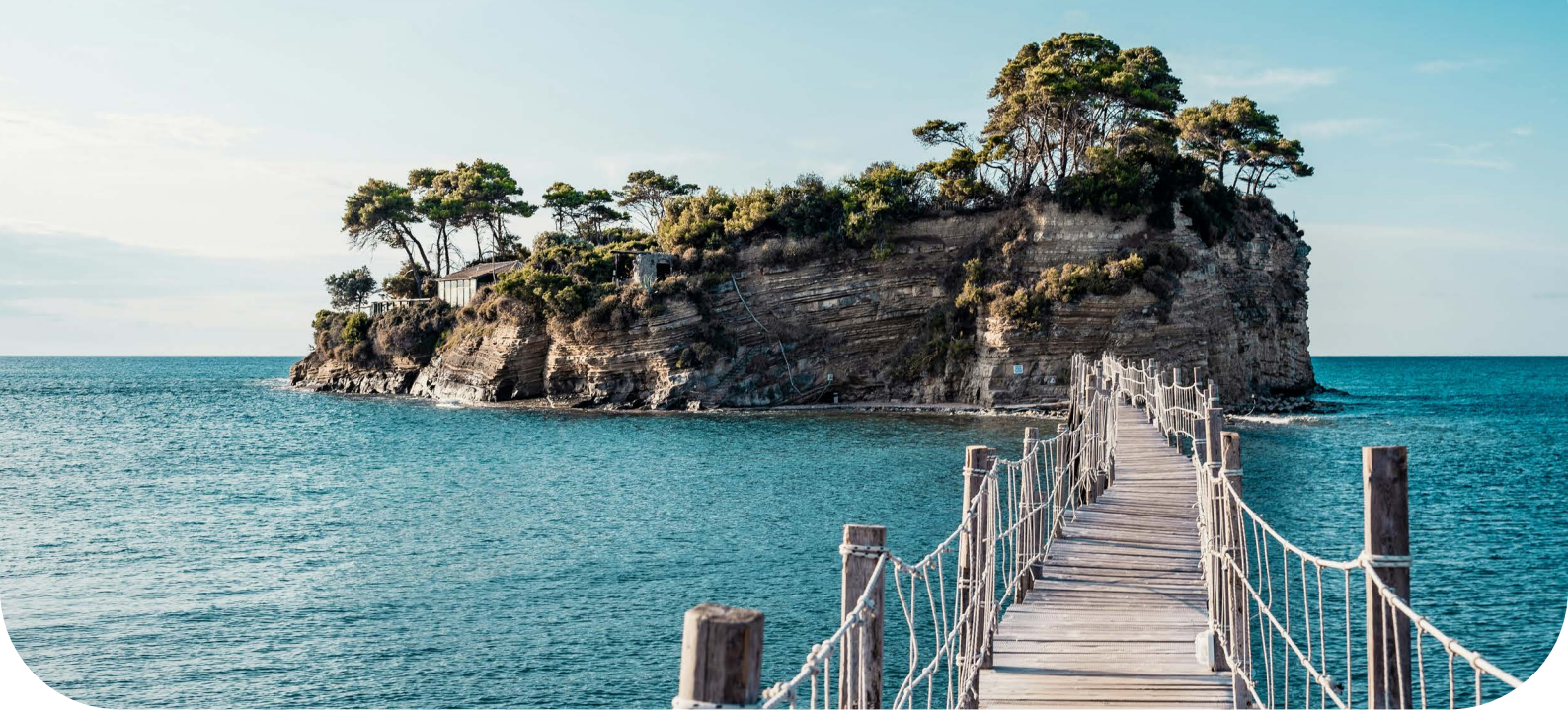
This document is designed to help ensure you are prepared for the questions that come as part of writing your will.

This will help ensure your will accurately reflects your wishes and will be a document that is difficult to contest. Please read carefully and tick your answer as appropriate and send back to your financial planner.

	Yes	No
Last Will and Testament:		
You will need to appoint one or more persons to act as executor/s. Have you thought about who you would appoint to carry out your wishes as expressed in your will?	○	○
If you have children under the age of 18, have you thought about suitable guardians to care for them if you could not?	○	○
Have you made a list of exact names, addresses and phone numbers of those you wish to include as beneficiaries/executors?	○	○
Have you thought about what should happen if a beneficiary should die before you?	○	○
If you wish to leave specific bequests of money, have you decided on amounts and to whom?	○	○
Have you thought about family heirlooms, jewellery, paintings etc, and to whom you would like to bequeath them?	○	○
Do you wish to arrange care for any pets so they can continue to be looked after by those you feel will be suitable carers?	○	○
Do you have any business interests that you would like to include in your will?	○	○

	Yes	No
Lasting Power of Attorney:		
Have you considered the effect of not having a will on your savings and investments?	○	○
Would you like to know how you could protect assets ensuring that your chosen beneficiaries actually receive what you want them to?	○	○
Do you want to give members of your family the legal authority to look after your financial affairs if you become unable to do so through illness, accident or old age?	○	○
Do you want to express your preferences to your doctors and family about medical treatment in the event of not being able to make any decisions yourself due to severe illness or accident?	○	○

	Yes	No
Other considerations:		
Have you considered the effect on the value of your family home if you had to go into care through an accident, illness or old age and had to pay care fees?	◯	◯
Are you concerned about the possibility of your family paying Inheritance Tax? Would like to know how this tax can be mitigated to your family's advantage?	◯	◯
Are you in an unmarried relationship? Would you like to know how to safeguard the long-term interests of you and your partner?	◯	◯
Do you have any specific requests concerning your funeral arrangements?	◯	◯
Have you considered how you will safeguard your will, a very important document, so to ensure that the right person at the right time can retrieve it according to your wishes?	◯	◯



How can we help you?

If you would like to discuss making a will, updating an existing will or setting up a Lasting Power of Attorney, please get in touch with your financial planner directly or a member of our support team and we will be happy to introduce you to a professional who can assist.

Get in touch

We are delighted to take questions and enquiries and any initial conversations or meetings are on us. Reach out and start a conversation today.

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