Stephen James Drury & Associates

Professional Will Writing & Estate Planning

Your Guide to Estate Planning

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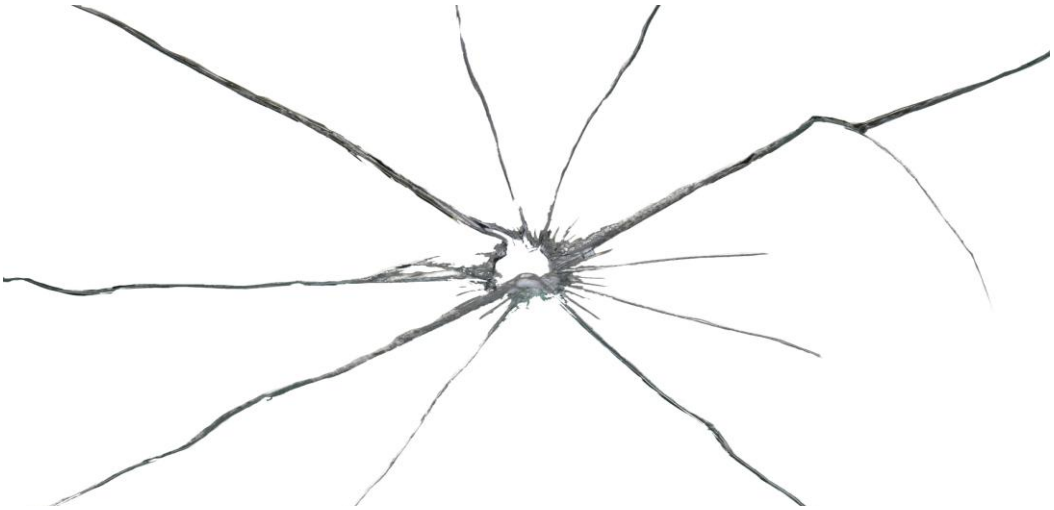
1. What is an Estate?

Your estate is everything that you own, your money, property, land, possessions, car, business, financial plans such as pensions, life insurance, shares, investments etc.

When you die it is your net estate (after Probate) that is passed to your beneficiaries, this is the amount after any debts, loans, mortgages and taxes are paid.

2. What situations could threaten your Estate?



Paying unnecessary Taxes, divorce, the cost of Long Term Care, your spouse or partner remarrying after your death, the Governments Rules of Intestacy (dying without a Will), losing mental capacity, creditors, your future beneficiaries becoming disabled, bankrupt, using illegal substances, alcohol dependant or spendthrifts etc.

3. Wills - Why should you have one?

Government research has shown that only 1/3rd of the adults in the UK have made a Will. The remaining 2/3rds leave behind a legacy of cost, problems, family arguments and stress.

When a person dies intestate (without a valid Will), the distribution of the deceased's estate is governed by a set of legal rules known as the **intestacy rules.**

The Governments Intestacy Rules are unlikely to be the way that you would want your estate to be distributed. Contesting the Governments Intestacy Rules in a Probate Court will result in lengthy legal battles and costs to your family and beneficiaries, and very often with no satisfactory result.

Protecting the family - Making a Will protects your family from the anxiety and expense of intestacy and ensures that your estate goes to the people that you want it to and removing the risk of depriving your spouse or partner of the family home.

Guardians - Parents of minor children should make Wills, so that they can appoint the Guardians of their choice to look after their minor children, rather than the Court of Protection and Social Services.

Unmarried couples - It is very important for unmarried couples to make Wills as an unmarried person is quite likely to receive nothing if their partner dies intestate, regardless of how long they have lived together or whether they have children.

Executors - Making a Will ensures that you appoint the executors of your choice, someone that you trust to carry out your wishes after your death, and to ensure that your beneficiaries receive all that you intended them to.

An executor should be willing to take on the role for you. Most people tend to appoint beneficiaries and family members as their executors.

Beneficiaries – who do you want to inherit your estate and in what shares?

Family treasures – sentimental items, who would value them the most?

Executors - who are the most suitable persons to carry out your wishes?

Monetary Legacies - who would you want to leave monetary gifts to?

Your Pets – who will look after them? Will you leave any provision for them?

Protective Property Trust – do you want to ensure that your share of the property will eventually go to your children regardless of what may happen in the future (i.e. mental health issues, remarriage)?

Organ donation – do you wish to donate organs or your entire body for medical research purposes?

Funeral arrangements - cremation, burial, religious ceremonies, music, flowers, hymns, why don't you choose what you would like?

Charitable donations - often requested instead of flowers at the funeral, which charities do you prefer?

Guardians for minor children - who will look after the children if you die before they are old enough to be on their own? Wouldn't you prefer to decide who looks after your minor children rather than The Court of Protection and Social Services?

Inheritance Tax - will your estate have to pay unnecessary taxes?

Safe storage of your valuable documents – where should you keep your Will be kept after it has been signed and witnessed, how safe would it be at home from risks such as burglary, fire, flood, loss, accidental or malicious damage.

4. Probate

If the administration of your estate ends up being complicated, then your executors can always appoint a professional to help with some or all of the probate process. Stephen James Drury and Associates can help your executors to do this, and you can also appoint us as your executors or reserve executors if you wish.

What is Probate? Probate is a legal process that is required when a person has died. This involves dealing with the deceased's estate such as, property, personal possessions, finances, taxes, collecting any monies owed, paying unpaid bills and any debts. A Grant of Probate issued by the Probate Registry (a part of the High Court) is required before being able to deal with the estate.

The deceased's estate will be frozen until probate is granted, including bank accounts, investments etc. The Probate process also legally validates the Will.

Probate may not be required where estates are worth less than £5,000, however financial institutions do differ and it would rely upon their discretion.

5. Signing Your Will

Once your Will has been drafted it needs to be attested correctly (signed, dated and witnessed) **it then becomes a valid and legally binding document.**

Your witnesses (two are required) must be present when you sign. If this is not done correctly then your Will maybe **declared invalid upon your death**, and your assets may then have to be distributed under the **intestacy rules** rather than your intended wishes.

The witnesses must not be beneficiaries, or the spouse of a beneficiary, if this happens any benefit that they may have received from your estate will be lost and become part of your remaining estate.

The witnesses do not need to read your Will. **They are signing to confirm:**

That you are sober and of sound mind when you sign.

That you are signing the Will of your own choice and that there is no outside influence persuading you to sign.

The witnesses must be aged 18 years or over and be UK citizens.

Along with the signatures, **the Will must also be dated**. The date can be written in the following formats: 07/11/2012 or 7th November 2012.

6. Making Changes to your Will

Your Will remains a valid document until you write another one, or **you decide to deliberately destroy it.**

Do not attempt to add to your Will or deface it in any way, this action will invalidate it.

Do not attach anything to your Will by using staples, pins or clips of any kind.

Making amendments to your Will can be done quite **simply and cheaply by us** in this age of technology, codicils are rarely used nowadays.

Advice note: We would recommend that you review your Will about every 2-3 years in light of changing regulations or immediately if there is a change in your personal circumstances.

Clients that store their Wills with us will benefit from our review service.

7. Safe Storage of Your Will

We strongly advise you to store your original Will and Powers of Attorney documents away from your home in a safe and secure vault, **we provide this service at a small annual cost.**

The National Will Archive (Society of Will Writers) provides our clients with a safe, dry and secure Will storage facility.

You have a lot invested in your Will, not just the costs of having it professionally written, but also the fact that **you have made an effort not to have your estate distributed under the intestacy rules.**

For peace of mind it makes sense to use this purpose built storage facility rather than keeping such important documents at home, **where they would, be at risk from:**

- Fire
- Burglary
- Flood
- Being lost
- Falling into the wrong hands
- Destroyed accidentally
- Destroyed maliciously
- Go missing when moving home.
- Etc. Etc.

When documents are stored through Stephen James Drury and Associates you are given:

- A certificate of storage
- Clear retrieval instructions and retrieval cards for your executors
- You will receive certified copies of all documents for your files
- We keep secure copies of everything that we have arranged for you on our encrypted filing systems
- Your Will is also registered with the National Will Archive.

8. What Are Personal Chattels?

You may think of them as the contents of your home i.e. items such as furniture, paintings, photographs, jewellery, and collectables etc.

Chattels also include things like vehicles, garden effects and also domestic animals. Amongst this wide definition usually there will be items with a sentimental value that far outweighs their monetary worth.

It could well be that your most sentimental and important items are your pets. Have you thought about their welfare upon your death? If you have gifted them as part of your Will, have you left provision in your Will for their continued upkeep?

9. Inheritance tax

Inheritance Tax will have to be paid if the value of your estate exceeds the threshold set by the Government (your Nil Rate Band) currently this is:

Single person (NRB) = £325,000

Married couples or civil partnerships (NRB) = £650,000.

Inheritance Tax is paid at the rate of 40% on the amount that exceeds this threshold. So, out of every £1 over the threshold your beneficiaries will only keep 60p, 40p will go to Her Majesties Revenue and Customs.

Gifts to charities are generally exempt from Inheritance Tax. If you leave a charitable gift it will be deducted from your estate before the Inheritance Tax liability is calculated.

What is subject to inheritance tax?

When you die, the Government systems (such as probate) assess how much your estate is worth (everything that you own), then deducts your debts from this to give the value of your estate. Your assets include:

- Cash in the bank
- Investments
- Personal Possessions (Chattels)
- Any property or business you own
- Vehicles
- Payouts from life insurance policies

If you estimate your estate to be liable to IHT then have you made any gifts? As these could be liable to tax upon your death.

10. The Residential Nil Rate Band (RNRB)

The Residential Nil Rate Band (RNRB), which has also been referred to as the Main Residence Nil Rate Band, was announced in the Summer 2015 Budget and will take effect from **6 April 2017.**

The RNRB will be **an additional allowance** to the current nil rate band (NRB) which currently stands at £325,000 and will be frozen at this figure until the end of 2020 to 2021 tax year.

The RNRB will be introduced in stages until it reaches the full amount of £175,000 after 6 April 2021. From this point onwards it will rise each year in line with the Consumer Prices Index.

The new allowance will be phased in as follows:

- £100,000 for 2017 to 2018
- £125,000 for 2018 to 2019
- £150,000 for 2019 to 2020
- £175,000 for 2020 to 2021

This will mean that by 2020-21 married couples and civil partners may pass on up to £1 million worth of assets to their children and grandchildren free of inheritance tax.

The RNRB may be transferred in the same manner as the NRB on the death of a surviving spouse or civil partner.

The property must be **"closely inherited"** by Will or under the rules of intestacy. "Closely inherited" means that the property must be inherited by your children, grandchildren or other direct lineal descendants. This also includes your step-children, adopted children, children of whom you have been appointed a guardian of, and also fostered children.

11. Protecting Your Home with a 'Protective Property Will Trust'

Most people wish to leave their home or the sale proceeds to their loved ones when they pass away. Unfortunately **there can be events that may prevent** this from happening.

One event is where the surviving spouse or partner remarries and then either:

Dies before the new spouse leaving no valid Will, then everything passes by the Laws of Intestacy to the new spouse effectively disinheriting your children or loved ones.

Or, dies leaving everything to the new spouse or partner by Will effectively disinheriting your own children or loved ones.

Or, divorces, losing 50% or more of the estate (and your children's inheritance).

Another possible event is similar where:

The surviving spouse or partner owns property jointly (usually by selling the existing property and using the proceeds to purchase a new property) with a new spouse or partner and dies first. The property passes automatically to the new spouse/partner disinheriting your children.

The third possible event is:

Your surviving partner suffering a physical or mental illness with 1 in 2 men and 1 in 3 women spending their last years in care there is a strong likelihood that you too may be affected.

Should the surviving spouse or partner need care home facilities in the future, then the assessment by the local authority is likely to take the survivors share of the property into account, **as per the ruling in the 2014 Care Act.** Therefore if your property is owned **jointly** then the surviving spouse or partner will **become the sole owner**, this means that **100% of the property may be taken to pay for the survivors care**.

By careful planning of your estate and having the **correct Wills in place**, then the potential pitfalls listed could be avoided, ensuring that your children or loved ones still receive what you would wish them to and at the same time retaining control and protecting each other whilst you are alive.

Own the property as **(tenants in common)** equal owners (50/50) or in certain shares where appropriate, would mean that on first death the **deceased's share could be put into a Trust** and does not belong to the survivor.

The deceased leaves **a 'life interest'** in their share of the property so that the **surviving spouse or partner** can continue to live in the property as normal **until the death of the survivor (2nd death).**

This means that the property share of the first deceased is **looked after by the Trustees** appointed in the deceased's Will, one of the trustees is very often the surviving spouse!

Should the **survivor need care home facilities** in the future, then the assessment by the local authority can only take the survivors share of the property into account, as per the ruling in the 2014 Care Act, because the **first deceased's share is protected by the trust.**

Should the **survivor remarry**, the new spouse or partner **cannot** get their hands on the first deceased's share of the property because it is **protected by the trust.**

Recap

The trust, used in conjunction with a severance of tenancy deed, places the deceased's share of the property into trust for future beneficiaries and grants a life interest to the surviving spouse. The nature of the trust allows the survivor to remain in the property, often with a power to sell and purchase alternative accommodation. **(Please note that this type of trust does not come into force until first death).**

12. The Asset Protection Trust (Home Protection Scheme)

The Home Protection Scheme differs to the Protective Property Will Trust as it is set up **during your lifetime**, and is totally separate to your Will.

It is designed for homeowners (normally the elderly), and involves **transferring your home into a trust**. This trust gives you the guaranteed benefit of knowing that whatever happens to you in the future, your home which you have paid for over the years **will pass to the people of your choosing and no one else.**

You would set the trust up, and **give yourself a 'life interest'** in the property, so that you may continue to **live in the property for the rest of your life,** or until you decide not to reside there anymore.

So, even though the Trust now owns the property you still **retain the benefits of home ownership** (trustees are very often the ultimate beneficiaries). If in the future you wish to move to a smaller property for instance then, you would also retain **all the residential rights in the new property.**

The benefits:

- Passing control of your home to the trustees, which can also include you
- Ensuring that your home will pass to the individuals that you choose to benefit from it upon your death or sooner if you wish
- Enabling your home to be held for individuals that cannot hold it for themselves – for example, children or disabled persons
- Prevents any claim on your estate under the Inheritance (Provision for Family and Dependants) Act 1975 and prevents beneficiaries challenging your wishes upon your death
- Protects the trust assets from passing to a future spouse or partner before or after your death
- Protecting your home from spendthrifts, creditors, and bankruptcy

- Keeping the ownership of the home private and secret
- Allows the trustees to rent the property immediately after your death or if you no longer live in the property
- Provides the trustees with means to manage the trust assets should you lose the mental capacity to manage your own affairs
- Protecting your home from the effects of old age and associated illnesses
- Your wishes are specifically set out during our lifetime
- Speeding up the administration of your estate and avoiding the need of a grant of probate on the property

The advice given by us is fully compliant with the Care Act 2014, and **we will not** set up these trusts for clients whose sole intention is to deliberately deprive Local Authorities of their assets.

13. Lasting Powers of Attorney (LPAs)

Over 2.5 million people in the UK lack the mental capacity to make decisions for themselves due to dementia, mental health difficulties, brain injuries or other illnesses. With an ageing population the numbers continue to increase daily.

Even when we are young we can find ourselves incapacitated owing to illness or injury and it can be invaluable having a reliable, trustworthy person, who is able to make decisions about your financial affairs and your health and welfare when you cannot.

If you haven't appointed a power of attorney specifying who can look after your affairs then, **the Court of Protection will have to become involved** when you cannot make decisions for yourself anymore, this involvement is costly, unpleasant and timely.

What is a Lasting Power of Attorney?

In effect it is the only legal document that enables you to appoint a person or people that you trust the most to look after your affairs.

There are 2 Lasting Power of Attorney Documents:

Property and Financial Affairs
Health and Welfare.

Who would you prefer to make decisions on your behalf when it comes to things like:

- Where you live
- Who can visit you
- The type of care you receive
- Giving or refusing consent to particular types of health care and medical treatment
- Giving or refusing consent to Life-sustaining treatment
- Day-to-day things, like your diet, dress, or daily routine
- Your property maintenance
- Your financial affairs
- Running your bank and savings accounts
- Making or selling investments
- Selling your property
- How your money is spent
- Input into your care and treatment towards the end of your life.

Please note that **relatives are not automatically entitled** to make financial or health and welfare decisions if a loved one lacks capacity without Lasting Power of Attorneys.

So which do you prefer?

The people of your choice **or** The Court of Protection and Social Services?

Please note: Your attorneys can only use your Lasting Power of Attorney documents once they have been registered with the Office of the Public Guardian.

14. General Power of Attorney

Not to be confused with a Lasting Power of Attorney, a General Power of Attorney is a more temporary measure to enable someone to look after your Property and Finances whilst you still have mental capacity.
It does not continue in the event that you lose your mental capacity.

Typical use would be empowering someone to deal with your affairs if you were to take an extended holiday or a long stay in hospital.

A General Power of Attorney cannot be used for your Health and Welfare.

15. Living Wills (Advance Directives)

In the majority of cases when an individual is ill, they are able to discuss with their doctor the course of treatment they would like to take and mutually reach a decision about that treatment.

It is a vital point of law that a mentally competent adult has to consent to medical treatment, it cannot be forced upon them.

However, there are times where an individual maybe unable to communicate their wishes to their doctor or a medical team. For example, being unconscious or where the individual is unable to process information or be able to understand the implications of certain procedures, in other words, they are lacking the mental capacity to be able to categorically agree or disagree to any treatment that maybe rendered.

In these circumstances, a statement of that individual's wishes with regard to medical treatment is extremely important and is known as an 'Advance Directive' or a 'Living Will'. The primary purpose of an Advance Directive is to set out your wishes and views in relation to medical treatment.

The statement allows you to specify the kind of treatment you would or would not prefer if, at any time in the future, you are unable to communicate your wishes or be able to decide for yourself.

Certain requests **CANNOT** be made in an Advance Directive and these are;

- Ask for anything illegal such as euthanasia or help to commit suicide.
- Refuse the use of measures solely designed to improve comfort, such as pain relief.
- Demand care that the healthcare professionals and doctors consider inappropriate in the circumstances of your case.
- Refuse the offer of food and drink by mouth.
- Refuse basic nursing care which serves to maintain reasonable comfort such as washing, bathing and mouth care.

Once drafted and signed a regular review of the Advance Directive should be made. This will help the medical professional involved in your care to be clear that you have not changed your mind.

The statement should be signed and dated after every review, (we would advise that the document is **reviewed every year** whilst possible). It is advisable that the statement is kept with your medical records and your GP informed of its existence.

16. Guaranteed Funeral Plans

Funeral expenses are one of the first debts upon your estate, but settling your estate may take some time, and the funeral director will **expect to be paid** long before Probate is granted and your executors or your family will be expected **to pay.**

Due to **inflation and the rising costs of funerals** a deposit in a Bank or a Building Society is simply money, and if put aside purposely for your funeral it **does not guarantee that it will be enough** when the time comes, especially with today's low bank interest rates.

You can have peace of mind with a Prepaid Guaranteed Funeral Plan knowing that your family will have **none of the financial worries** that funeral arrangements often bring, they will know exactly what you would like at your funeral and that **the funeral director's services have been paid for in advance.**

Are Funeral Plans arranged by Stephen James Drury & Associates **safe t**o put your money into?

Our Funeral Plans are underwritten by Funeral Planning Services Limited a specialist company provider, all plans are regulated by The Funeral Planning Authority, and all funds are deposited into The Funeral Planning Trust. The Independent Funeral Planning Trusts accounts 2015 show the Funeral Plans Fund at £158.7 million pounds.

Funeral costs are just as likely to rise in the future as anything else but a funeral plan, once purchased, **guarantees that the funeral director's costs will be met,** however far into the future they may be required.

Please note that legislation often changes, but this guide was correct at the time of writing.