



Resource Library

Silvertime Legal Awareness Event Wills & LPA September 2024



01332 228777



carers@citizensadvicemidmercia.org.uk



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Who are Silvertime Legal

Silvertime Legal specialise in estate and later life planning. They operate in various locations across the UK and provide advice on estate and funeral planning in the comfort of your home.

Silvertime Legal also work with local communities throughout the country to raise awareness of some important issues that affect families every day with their Group Community Talks.

For more information on Silvertime Legal you can visit their website: www.silvertimelegal.co.uk, email them at help@silvertimelegal.co.uk or phone them on 024 7693 9940.



Why you should plan ahead

WHAT IS ESTATE PLANNING?

Estate planning is the process of arranging the management and distribution of your estate, both during your life and after your death. It is a way of controlling how your assets are distributed and express further wishes such as naming your children's guardian(s) in the event of your early death.

6 REASONS TO PLAN NOW...

- Give you and your family peace of mind
- Remove stress and worry
- Make it clear what you want to happen if you become unable to make decisions for yourself
- Protect your home and savings for future generations
- Make sure you can leave as much as possible to your loved ones
- Remove financial burden from your family

Wills

WHAT IS A WILL?

A *Will* is a legally binding document that allows you to decide how your estate will be handled and how your assets are distributed upon your death. It helps ensure that the people you love get what you want.

HAVING A WILL MEANS YOU CAN...

- Set out what you want the people or charities you care about to receive after your death
- Legally appoint people you trust to deal with your property and possessions when the time comes; things like cashing in assets, paying debts and giving what's left to the right people
- Protect assets for future generations

DO I NEED A WILL?

Yes, a *Will* is a basic estate planning tool that almost everyone needs, even if you think you are not wealthy enough. Furthermore, if you do not create a *Will*, your estate will still be distributed, but you will not have the option to choose who gets what. Instead, it will be distributed in accordance with a specific set of government rules.

Wills

WHAT WILL HAPPEN IF I DIE WITHOUT A WILL?

Whoever you are and whatever your circumstances, if you die without a *Will* in England and Wales, then legal rules called 'The Intestacy Rules' will decide who benefits from your estate. In many cases, this means your loved ones are not guaranteed to benefit in the way you would have hoped.

EXAMPLES OF HOW THE RULES OF INTESTACY WORKS

- If you are not married, but in a relationship then your partner has no automatic right to benefit from your estate. This is true even if you are engaged or living together
- If you are married and you have children, your spouse is not necessarily entitled to all of your estate
- Step-children have no automatic entitlement to your estate
- The Intestacy Rules don't care about what is or is not inheritance tax efficient - often tax is charged when it needn't have been

Lasting Powers Of Attorney

WHAT IS LASTING POWERS OF ATTORNEY?

Lasting Powers Of Attorney (LPA's) are documents that let you choose people to look after your affairs if you are not able to do so yourself - whether due to dementia, stroke, accident, or perhaps simply being unable to get out and about.

WHY IS IT IMPORTANT?

An LPA ensures that, should you be unable to manage your own affairs, the people you have appointed can start making decisions on your behalf immediately. This can save a great deal of money and distress, and will ensure that as a vulnerable person, your affairs will be handled correctly and quickly.

DIFFERENT TYPES OF LPA'S

There are two types - Health and Welfare or Property and Finances. It may be recommended to prepare both types so that you have everything covered, but you do have the option of preparing just one or the other. In addition, if you have a business, you may wish to prepare a separate LPA appointing special attorneys who can take over your business interests if the need arises.

Lasting Powers Of Attorney

WHAT IS PROPERTY AND FINANCE LPA USED FOR?

- Bank or building society accounts
- Renovations or maintenance on your property
- Payment of bills
- Pension and or benefits
- Re-mortgaging or selling your home

This type of LPA can be used by your Attorney or Attorneys as soon as it is registered at the Office of the Public Guardian. Alternatively, it is possible to restrict the LPA so that it can only be used if you become mentally incapable.

WHAT IS HEALTH AND WELFARE LPA USED FOR?

- Where you live
- What you eat, how you dress, how you are cared for daily
- Who you have contact with
- Your medical care and end-of-life care

This type of LPA can only be used if the Donor becomes mentally incapable of making their own decisions.

In both cases, you must have Mental Capacity when making the Lasting Power Of Attorney.

Trusts

WHAT IS A TRUST?

Sometimes, having a basic *Will* just isn't enough to protect your estate once it is passed on to your loved ones. A *Trust* is a way of managing your assets, either during your lifetime or after you've gone, and can often play a key role in your estate planning if you are looking to add an extra layer of protection.

A great way to describe a *Trust* is like a chest, or safety deposit box.

When you set up a *Trust*, you decide who holds the key now and who can hold it in the future, you can also decide what type of assets can be placed into the chest, such as your main residence, an investment, a life policy, how and when they can be altered and distributed, and who to (the beneficiaries).

TYPES OF TRUSTS

There are many types of different *Trusts*, depending on your aims and objectives. However, the most commonly used are:

Trusts

- Discretionary *Trusts*
- Bare *Trusts*
- Life Interest

These *Trusts* mainly vary in flexibility - whether the beneficiaries set in stone once named or do the Trustees have full discretion over who the beneficiaries are; whether the beneficiaries are entitled to the asset at an exact age or not; or even whether the beneficiary is even ever entitled to the asset at all, or just the income it produces.

These *Trusts* can also be set up now - Lifetime *Trusts*; or on death - *Will/Testamentary Trusts* i.e. only coming into effect on your death.

WHY ARE TRUSTS USED?

- PROBATE - *Trusts* can be used to avoid the need to obtain probate altogether allowing the assets to be accessible immediately. Probate can be time consuming and expensive.
- INHERITANCE TAX - If the estate is over the IHT threshold, there is quite a high price to pay in inheritance tax (40%) which drastically reduces the amount inherited. *Trusts* can drastically reduce or even remove the tax altogether.

Trusts

- **DIVORCE** - By holding their inheritance in *Trust* your beneficiaries ensure that once you pass away, if they are subject to divorce proceedings their inheritance is protected from divorce settlements.
- **MARRIAGE AFTER DEATH** - Following your death, you may wish for all your assets to pass to your spouse. But what if they remarry? The entire estate (including your share) passes to their new spouse. The new spouse may choose to disinherit your children/grandchildren and family in favour of their own. Assets in *Trusts* are protected from marriage after death - the surviving spouse can still use the assets, but eventually they would pass to your beneficiaries only.
- **LONG TERM CARE** - Assets in a *Trust* may not be assessed for care; if held in a *Trust* they could be deemed as owned by the Trust, not the individual - meaning they are protected from care costs.
- **PROTECT YOUR DISABLED BENEFICIARIES** - A *Trust* can ensure that your assets pass onto your beneficiaries in a safe environment. Your trustees would ensure that any inheritance is looked after until minors are of reasonable age; and ensure beneficiaries that are unable to make decisions for themselves are well looked after. Importantly, most benefits are means tested, a *Trust* will also ensure that disabled beneficiaries benefits can continue.

Trusts

HOW DO I DECIDE WHICH TRUST I SHOULD CREATE?

The *Trust* you require is largely dependent on your aims and objectives. Trusts primarily differ in the way in which they are created and commence, how they are taxed, who can benefit and when.



Inheritance Tax Planning

WHAT IS INHERITANCE TAX?

Inheritance Tax (IHT) is levied against a person's estate upon death. If you are single, then the current threshold before you pay Inheritance Tax (known as the *Nil Rate Band*) is £325,000 and for married couples (or civil partnerships) this is £650,000. In many cases, on the first death of a spouse, no tax will be due, and the *Nil Rate Band* will be transferred to the surviving spouse and can be used on their death. Anything over these amounts will be taxed at 40%.

HOW DOES THE RESIDENCE NIL RATE BAND WORK?

The *Residence Nil Rate Band* will only apply if you own, or have previously owned a residence, which is or has been passed down to your children or grandchildren (including step, adopted, or foster children).

Please note that if you have an estate of over £2million then your *Residence Nil Rate Band* will be reduced therefore increasing your inheritance tax liability and if your estate is worth more than £2.7million then all your *Residence Nil Rate Band* allowance will be lost. Consequently, IHT is becoming an issue for more and more families, largely due to house prices increasing at a high rate over the last few years.

Inheritance Tax Planning

HOW AND WHEN IS INHERITANCE TAX PAID?

After the passing of an individual, the executors will have to administer the estate and calculate if the estate is liable for IHT. Your Executor will be liable to pay the IHT at 40%. Only when this has been paid can the Grant of Probate be issued, which allows the Executor to bring together all of the assets and distribute them as per the wishes of the *Will*, or if no *Will* then assets will be distributed as per The Law of Intestacy.

Many parents/grandparents give some of their assets to loved ones whilst still alive. These are called ‘potentially exempt transfers’. For these assets to be excluded from your estate and be tax free, you must live for seven years after passing them to your loved ones. You can make gifts of up to £3,000 per annum which would immediately come out of your estate and not be liable for IHT. If you would like to know how to reduce or avoid IHT on property then you need to speak to an expert.

Inheritance Tax Planning

WHAT CAN I DO TO MINIMISE MY IHT LIABILITY?

Use your gift allowance of £3,000 each year.

- Put assets into a *Trust*
- Life Assurance to cover any IHT liability
- Make a gift to charity in your *Will*
- Certain investments can be used to take assets outside of your estate
- If you receive income surplus to your requirements, you can make regular gifts from your income which will be free of IHT