



# PHOENIX

## ESTATE PLANNING

# Protect, Plan & Pass On...

**It's Innate In All Of Us.**

**Make sure your assets  
are protected and  
passed on to the next  
generation.**



Wills



Inheritance Tax



Trusts



LPAs

[www.phoenixestateplanning.co.uk](http://www.phoenixestateplanning.co.uk)





# My story

My name is Sonny and I am a qualified Will Writer/Estate Planner. My journey towards becoming an empathetic Estate Planner began after I struggled with my father's assets when he was diagnosed with dementia and had no Will or Lasting Powers of Attorney in place. His assets were sold off at a much lower value than they were worth by a court-appointed deputy. The difficulties I experienced motivated me to get qualified and to help others to avoid the difficulties that arise when a loved one passes away.

Phoenix Estate Planning (formally known as Maplebrook Wills Sheffield) was started with the aim of providing affordable and efficient Trusts, Will Writing, Lasting Powers of Attorney, Inheritance Tax and Legacy Planning services that can save you thousands of pounds and ensure your assets are passed on to your loved ones securely and tax-efficiently. Our friendly team is always happy to help you through face-to-face appointments (also available at evenings and weekends), home visits or video calls.

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# Wills

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A Will is a legal document that allows you to decide what should happen to your money, property, possessions and investments, as well stating your wishes for the care of your children, in the event of your passing. You can either have a Single Will just for yourself or a Mirrored Will as a couple with the same distribution. Couples who wish to have separate distributions must have two Single Wills.

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# Things to consider when writing a Will

## **Executors**

These are people whom you would appoint to carry out the terms of your Will.

## **Guardians**

If you have children under 18, your Will allows you to appoint suitable guardians to care for them and can include your wishes on how they should be raised as well as other considerations.

## **Trustees**

The legal age of benefiting from a Will is 18. If at time of your passing away the beneficiaries are below 18, then a trust must be created to hold the gift until the beneficiaries are 18. Name who you would want to be the Trustees of the Trust. .

## **Beneficiaries**

Who would you want to benefit from your lifetime's work? Those who have a legitimate claim on your Estate, according to the Inheritance Act 1975 are: the spouse or civil partner of the deceased, the former spouse or civil partner of the deceased (as long as that person has not remarried/entered into a subsequent civil partnership),

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## Beneficiaries (cont'd)

a person who, for the two years prior to the passing away, was living with the deceased as if they were a spouse or civil partner, a child of the deceased, a person who was treated as a child of the family by the deceased, or any other person who was being maintained, wholly or partly, by the deceased immediately prior to their passing away.

A person is classed as being maintained by the deceased if they were financially supported by the deceased in some way during their lifetime and that maintenance continued until the death. Financial support can include monetary maintenance in the form of regular payments or large gifts. Provision of housing can also be a maintenance, such as the deceased allowing the claimant to live in their property either rent-free or at a nominal or reduced rent.

## Further things to consider

**Specific Gifts** - perhaps you wish to leave a specific piece of jewellery to a named beneficiary. **Charities** - if you are leaving money to charities, do you have the correct title, full address of the chosen charities and their registration number? **Business** - do you have any business interests that you would like to include in your Will? **Funeral** - state your preference regarding your funeral arrangements. **Organ Donation** - In 2020, the law on organ donation in England was changed to all over 18 automatically opting in for organ donation. If you wish to opt out and do not wish to donate, we would advise you to record your wishes with your doctors as well as within your Will.





# No Will in place?

When a person passes away without leaving a valid Will, their property (the Estate) must be shared out according to certain rules. These are called the rules of intestacy. Who inherits under the rules of intestacy?

At the time of passing away, married partners or civil partners inherit under the rules of intestacy.

If you are divorced or if your civil partnership has been legally ended, you cannot inherit under the rules of intestacy. Cohabiting partners (sometimes wrongly called 'common-law' partners) who were neither married nor in a civil partnership cannot inherit under the rules of intestacy. Intestacy may also mean that your children from a previous relationship could miss out on their Inheritance.

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# Lasting Powers of Attorney



Should you lose capacity either through old age, accident or illness, all your assets including joint investments and bank accounts will be frozen until an attorney has been appointed. This can cause severe hardship for your family.

Lasting Powers of Attorney gives your family legal authority to make decisions or do things for you immediately. Without these in place, your family would have to apply for attorneyship via the Court of Protection.

The Lasting Powers of Attorney (LPA) comprises two documents, one for your financial affairs and the other for your personal welfare. These documents are called Lasting Power of Attorney - Property & Finance and Lasting Power of Attorney - Health & Welfare.

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## **Lasting Power of Attorney - Property & Finance**

The Lasting Power of Attorney - Property & Finance deals with matters relating to your property and financial affairs. If, someday in the future, you lack capacity to look after your own financial affairs, this document will entitle your property and financial attorney(s) to do the following types of things:

- Open, close or operate bank accounts
- Claim and receive on your behalf, all pensions, benefits, allowances, services, financial contributions, repayments, rebates.
- Make all tax returns and adjusting and settling any claim for tax
- Pay your household expenses
- Buy, lease or sell property
- Pay for your private medical care and residential care costs

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## Lasting Power of Attorney - Health & Welfare

The Lasting Power of Attorney - Health & Welfare deals with matters relating to your personal welfare, i.e. your social and health care needs. If in the future you lack the ability to look after your own personal welfare, this document will entitle your health & welfare attorney(s) to do the following types of things :

- Decide where you live
- Make day-to-day decisions, what you will eat or what clothes you will wear
- Make decisions about what medical care you will receive, including (if you agree to it in the LPA) whether or not you will receive life-sustaining treatment
- Decide when and where you will go on holiday
- Decide what social activities you might participate in

## Your attorneys will not be able to do the following:

- Consent to place a child up for adoption or consent to the adoption of a child
- Consent to sexual relations
- Give you medical treatment for a mental disorder or consent to you being given medical treatment for a mental disorder if your treatment is regulated by Part 4 of the Mental Health Act 1983
- Decide to vote on your behalf
- Consent to marriage or civil partnership
- Consent to a decree of divorce or dissolution of a civil partnership on the basis of two years' separation



# No LPAs in place?

The Court of Protection alongside social services will make decisions on your behalf until a Deputy/Attorney is appointed. Your family can apply to be your Attorney through the Court of Protection. This will take approximately 9-12 months to achieve and costs, including disbursements, are in excess of £2,500. For a fraction of the cost, put your LPAs in place, keep the control within the family and save your loved ones the heartache of dealing with the courts.

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# Trusts

Trusts are considered the gold level of Estate Planning. A Trust is a legal document that securely holds assets for your beneficiaries. There are a number of Trusts that can be used in Estate Planning - our consultant will discuss the most appropriate Trust for your requirements. In general, Trusts fall into two categories: Living Trust, also known as a Lifetime Trust, which comes into effect immediately in your lifetime and a Will Trust which mostly comes into effect upon passing away. Trusts are incredibly useful and flexible; they can help to protect your assets; reduce probate costs; mitigate tax and simplify the distribution of your assets after you have passed away.

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## Living Trust

A Living Trust, such as our Family Asset Trust, involves the settlor (the person establishing the Trust), the Trustees (the persons who will look after and manage the assets in Trust), and the beneficiaries (who will benefit from the assets held in Trust). Trusts enjoy a special status in the Law and assets placed within them are protected or 'insulated' from life's unfortunate events such as:

- **Divorce**
- **Bankruptcy**
- **Sideways dis-inheritance**
- **Care fees**
- **Probate**
- **Inheritance Tax (IHT)**

As well as holding the asset securely, a Living Trust allows you to stipulate when the beneficiaries may receive the asset after your passing away. You retain full control of assets within the Trust whilst you are alive and have capacity. You are free to move home, change beneficiaries or trustees at anytime.

Furthermore, placing your home into a Living Trust will avoid Probate, therefore saving 2%-5% on Probate fees. For example, if your home is valued at £300,000 upon second passing away, the saving on Probate fees equates to £6,000 - £15,000. Most properties that become part of the Probate process end up being sold as distressed assets, usually fetching 20-30% lower than the market value.

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## **Living Trust (cont'd)**

In layman's terms, a Living Trust is designed specifically to protect any assets you own during your lifetime. These types of Trust give you the peace of mind that your Estate can be passed on securely and intact to your spouse, your children, and their bloodline, or other named beneficiaries after your passing away.

It also saves your family money on Probate fees and the asset can be sold immediately upon second passing away, thus avoiding a distressed sale scenario.

## **Will Trust**

A Will Trust is a Trust that is written into a Will, it gives guidance to your executors who must create the Trust upon your passing away. The cost of creating the Trust, is paid from your estate. This may be useful if you wish to create a Trust for either a child or vulnerable person. It is important to note that, any Will Trust does not protect your assets from life's unfortunate events such as divorce, bankruptcy, sideways disinheritance, care fees, probate, inheritance tax and so on.

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# Threats if no Trust Planning in place

Although a Will is sufficient to distribute your lifetime's work, it does not provide any protection from life's unfortunate events such as, bankruptcy, divorce, sideways disinheritance, care fees, probate etc. Only a Living Trust can provide protection and alongside a Will, can ensure that your lifetime's work is safely distributed as you wish it to be.

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# What is Sideways disinheritance

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Sideways disinheritance occurs when beneficiaries (most often children of first marriage) do not inherit their intended share of an Estate due to remarriage.

Take as an example, a situation where you pass away and your partner re-marries and then passes away without making a Will (intestate). Your children's intended inheritance is likely to pass to the new spouse's family, leaving your children from your first marriage with nothing.

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# What is Inheritance Tax (IHT)

**Inheritance Tax is a tax on the estate (the property, money, and possessions) of someone who has passed away. There is normally no Inheritance Tax to pay if either**

- the value of your estate is below the £325,000 threshold
- you leave everything above the £325,000 threshold to your spouse, civil partner, a charity or a community amateur sports club

If you give away your home to your children (including adopted, foster or stepchildren) or grandchildren, your threshold can increase to £500,000. This is because there is a £175,000 Residential Nil Rate Band (RNRB) which is applicable to the home only. The standard Inheritance Tax rate is 40%. It's only charged on the part of your estate that's above the threshold. If your Estate has to pay IHT, Probate will not be granted until it is paid - this can lead to severe hardships for your loved ones.

During our meeting, we will inform you if you have an IHT issue and we can look at ways of negating it.

## **What is Probate**

Probate is the method by which your estate is legally transferred after you pass away. Any Estate worth in excess of five thousand pounds will have to apply for Probate. During the Probate period you are not allowed to take ownership of, nor are you allowed to sell any assets. HMRC will not grant Probate until all taxes due on the estate are paid.

Assets placed within certain Trusts will bypass the Probate process.

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# Business Owners

Any business owner should consider how their business would be run and the knock-on effects for their business were they unable or unavailable to make decisions. Whether you're running a sole trader, limited company or partnership, putting a Will & LPAs in place for your business ensures that you have a continuity plan and say over who would assume control of the business (either temporarily or permanently), leaving your business exposed to less risk. Give us a call to discuss further.

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# Notes:

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Please scan the following QR codes with the camera of your phone:



**Website**



**Contact  
Details**

# Let's talk



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# Let's talk



Wills



Inheritance Tax



Trusts



LPAs

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