foresight
estate planning & will writing

Estate Planning Guide

Who we are and what we do?

Foresight Will Writers are a specialist Will Writing and Estate Planning Company. We help our clients protect their wealth and ensure it is passed down to their chosen beneficiaries. We are fully qualified, insured and regulated by the Institute of Professional Will Writers, and approved by the Trading Standards Institute (formerly the Office of Fair Trading). Our greater strength comes from our association within our group of companies and we are proud partners of Insight Financial Associates who have a wealth of experience in advising clients on their pensions, investments and other financial service needs.

What is an Estate Plan?
An estate plan consists of three elements: -

1) **A Will:** everyone who has children or owns property should have a valid up-to-date Will. If you do not, your Will is determined by statute (the government) and is very unlikely to meet your wishes and in some cases could result in your assets passing to the wrong people.

2) **Lasting Powers of Attorney:** everyone should have Lasting Powers of Attorney "LPA's". There are two types; one that deals with property & finance matters and one that deals with health & welfare. For more information you can request our LPA Fact Sheet.

3) **Trusts:** are used to protect your wealth and ensure it goes to your chosen beneficiaries at the right time. There are two main types; those in your Will (Will trust planning) to give you some basic protection and certainty and one set up now (lifetime settlements) that provide you with the maximum protection and certainty.

An estate plan is something that grows and develops over time. Having a valid up-to-date Will and valid Lasting Powers of Attorney should be seen as the starting point. Our aim is to help you ensure that your estate plan reflects your current position and meets your current wishes and objectives. For example, “I do not want my house and savings to pass to another family if either of us re-married or co-habits in future years”, (bloodline planning).

We have clients who start with something basic and progress to partial or full estate planning later on and clients who proceed with full estate planning immediately. It is your choice – we merely facilitate you being able to make informed decisions about these very important matters.

Why do many people consider estate planning?
It was the MP Roy Jenkins who said inheritance tax is a ‘voluntary tax’. Similarly, family assets sometimes pass to the wrong people through a lack of planning and advice. Moreover it’s the most natural desire in the world – to pass on your hard-earned assets to your family and loved ones. But before that is possible there are legal costs and delays, tax authorities, potential former in-laws, creditors and local authorities eyeing up your estate.

People in general now have far more assets than ever before and at the same time families have become increasingly diverse and complicated and the threats to passing assets down our bloodline have increased; 100 years ago divorce and re-marriage was rare and people retired at 65. This combination of increased personal assets, together with the new threats of modern society means that estate planning should be a vital part of your financial planning toolkit if you own property and / or have children.

Simply having a basic Will is no longer likely to achieve your wishes
You can avoid all of the threats to achieving your wishes by putting in place a bespoke estate plan for you and your loved ones. The foundations are the Will and Lasting Powers of Attorney on top of which you can build your estate planning (to protect and preserve your wealth).

A will ONLY administers what you have WHEN you die and this maybe nothing. If a spouse remarries your will may not even guarantee that your children or beneficiaries will even inherit! If long term care is required, with average fees around the £800-1000 a week a lifetimes possessions and property can be drained to almost zero within 4-5 years.

Remarriage, Care, Alzheimer's or Dementia are all part of everyday life and yet very few people deal with these until they are faced with them at which point it may be too late. Here at Foresight we are urging everyone to consider the impact of how people are living their lives today and how it affects what they can pass on to their children and their bloodline.

In this pack you will find all the information you need to protect yourself if you were to lack capacity, require care or if a spouse remarries. By acting on this advice you will always have who you trust making decisions if you cannot. There will be an estate to leave and that your monies will pass to your chosen beneficiaries not to someone else's.

> In this world, nothing can be said to be certain, except death and taxes.
>
> **Benjamin Franklin**

What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal document that allows you to appoint one or more people to make decisions on your behalf during your lifetime should you lack capacity. The people you appoint to manage your affairs are called the Attorneys. A Lasting Power of Attorney is a completely separate legal document to your Will although many people put them in place at the same time as getting their Will written, as part of wanting to plan for the future.

Why is a Lasting Power of Attorney So Important?

Once you have a Lasting Power of Attorney (LPA) in place you can have peace of mind that there is someone you trust to look after your affairs if you became unable to do so yourself during your lifetime. This may occur, for example, because of an illness, old age or an accident.

Having a Lasting Power of Attorney in place allows your attorneys to have complete authority to deal with your finances as well as make decisions regarding your health and welfare. Your Lasting Power of Attorney can include binding instructions together with general preferences for your attorney to consider. Your Lasting Power of Attorney should reflect your particular wishes so you know that the things that matter most would be taken care of.

You can only put a Lasting Power of Attorney in place whilst you are of sound mind and capable of understanding the nature and effect of the document i.e. you have the required legal capacity. After this point, you cannot enter into a LPA and no one can do so on your behalf.

Many people are unaware that their next of kin have no automatic legal right to manage their affairs without a Lasting Power of Attorney in place, so having to make decisions on their behalf can become prolonged and significantly expensive and would involve an application to the courts. The best solution is for couples to have ‘Mirror’ (identical) Lasting Powers of Attorneys because these documents would allow them to appoint each other to make decisions about each other’s financial affairs and health issues; should one of them lose capacity to do so.

What Happens Without a Lasting Power of Attorney?

Without a Lasting Power of Attorney (LPA) in place there is no one with the legal authority to manage your affairs, for example, to access bank accounts or investments in your name or sell your property on your behalf. Unfortunately, many people assume that their spouse, partner or children will just be able to take care of things but the reality is that simply isn’t the case.

In these circumstances, in order for someone to obtain legal authority over your affairs, that person would need to apply to the Court of Protection and the Court will decide on the person to be appointed to manage your affairs. The person chosen is appointed your ‘Deputy’. This is a very different type of appointment which is significantly more involved and costly than being appointed attorney under a LPA.

If you wish to have peace of mind that a particular person will have the legal authority to look after your affairs and you want to make matters easier for them and less expensive, then you should strongly consider getting a Lasting Power of Attorney in place.

Types of Lasting Power of Attorney Explained

Two types of Lasting Power of Attorney are available under English law:

- Health and Welfare Lasting Power of Attorney
- Property and Financial Affairs Lasting Power of Attorney

A Health and Welfare Lasting Power of Attorney (LPA) allows you to name Attorneys to make decisions about your healthcare, treatments and living arrangements if you lose the ability to make those decisions yourself. Unlike the Property and Financial Affairs LPA, this document will only ever become effective if you lack the mental capacity to make decisions for yourself.

If you can't communicate your wishes, you could end up in a care home when you may have preferred to stay in your own home. You may also receive medical treatments or be put into a nursing home that you would have refused, if only you had the opportunity to express yourself; and this is when your attorney, appointed by the Lasting Power of Attorney, can speak for you.

A Property and Financial Affairs Lasting Power of Attorney (LPA) allows you to name Attorneys to deal with all your property and financial assets in England and Wales. The Lasting Power of Attorney document can be restricted so it can only be used if you were to lose mental capacity, or it can be used more widely, such as if you suffer from illness, have mobility issues, or if you spend time outside the UK.

LPAs for Sole Traders & Business Owners

- What would happen to your business if you lost the ability to deal with your own business affairs and make decisions?
- What if you have a business bank account in your name as a sole trader or joint bank accounts with other business owners which require the signatures of all the named account holders?
- How would your business finances be managed on a daily basis in the event of an accident or illness?

A number of problems could arise such as the impact on your customers being unable to access your products or staff or creditors not being paid.

Before a Lasting Power of Attorney can be used by your attorney it must be registered with The Office of the Public Guardian (OPG). They charge a registration fee of £82 per Lasting Power of Attorney. However, there can be an exemption for people who receive certain means-tested benefits, and a 50% fee reduction may be available based on the applicant's financial circumstances or a reduction based on the applicant receiving Universal Credit.

Property Protection Trust Wills

When making a Will, it's possible to include a Trust which gives someone a life interest in your property or other assets, without those assets actually leaving your Estate. For example, if you include a Life Interest Trust in your Will and your home is placed into this Trust, then the person with a life interest could continue to live in the property for the rest of their life, but on their death it would then be distributed in line with the terms of your Will. A Life Interest Trust can be an effective way of ensuring that a loved one is provided for during their lifetime, while also protecting the value of your assets for future generations.

What Are Life Interest Trust Wills Used For?

When making their Wills together, many couples will leave everything they own to the other person, with it then passing on to their children when the second person dies. This is fine in theory, but can potentially cause issues in the future, and result in the Estate not being distributed in the way that they had hoped.

For example, if one person dies and the other then goes into care, then the value of their collective Estate could easily be swallowed up in care fees. Alternatively, if the second person goes on to remarry and fails to make a Will (or makes a Will leaving everything to their new spouse) then the children could end up with very little, or nothing at all. This is called the sideways disinheriting. A Life Interest Trust Will can help to protect your assets against care home fees and the sideways disinheriting.

Protecting Your Assets from Care Fees

In England and Wales, if everything a person owns is worth less than £23,250, then the Local Authority will offer financial support to help with the cost of care fees. If they own assets that are worth more than this, then they will be responsible for covering their own care fees. Let's use an example to illustrate how a Life Interest Trust can help to protect wealth from being swallowed up in care fees:

Mr and Mrs Smith are married with one daughter. They have made Mirror Wills which leave everything to the other person, with it then passing to their daughter on the second person's death. Their only substantial asset is their home, which they own outright and is worth £400,000.

When Mrs Smith dies, everything passes into Mr Smiths' sole name. Mr Smith becomes unwell and moves into a residential care home, where he stays until he passes away 12 years later.

The care home fees come to £40,000 per year. As Mr Smiths' Estate is worth £400,000, he is responsible for covering these fees himself. Over the 12 year period, his Estate is completely swallowed up by care fees. In the tenth year of his care home residency, his Estate drops below the £23,250 threshold and the Local Authority steps in to offer financial support.

In the end, Mr Smiths' Estate drops below £14,250, at which point he becomes eligible for the maximum financial support from the Local Authority. When he dies, this £14,250 passes to his daughter, as the sole beneficiary of his Estate.

If Mrs Smith had included a Life Interest Trust in her Will, she could have ring-fenced her 50% of the property value by placing it into a Trust, while giving her husband a life interest in the property. This would entitle Mr Smith to continue living in the property for the rest of his life, or sell it to buy a new property to live in, or receive all of the property or sale proceeds outright if required.

	Average weekly UK care home fees			
	Residential care		Nursing care	
	Frail older	Dementia	Frail older	Dementia
North East	£563	£575	£674	£697
North West	£519	£530	£792	£820
Yorkshire and the Humber	£561	£572	£761	£787
East Midlands	£589	£601	£754	£780
West Midlands	£577	£589	£854	£883
East of England	£670	£684	£980	£1,014
London	£721	£736	£922	£954
South East	£732	£747	£1,017	£1,052
South West	£662	£676	£955	£988
Wales	£574	£586	£767	£794
Scotland	£674	£689	£823	£851
Northern Ireland	£519	£530	£669	£692

In this scenario, when Mr Smith moves into the care home his personal assets amount to 50% of the property, at a value of £200,000. The other 50% of the property is held in a Trust. In the fifth year of Mr Smiths' residency in the care home, the value of his assets drops below £23,250 and then falls to £14,250. For the final 7 years of his life, the Local Authority provides financial support for his care home fees.

When Mr Smith dies, the £200,000 value of the property that is held in Trust is passed on to his daughter, as the sole beneficiary of this Trust. She also inherits the remaining £14,250 in Mr Smiths' Estate. So by including Life Interest Trusts in their Wills, Mr and Mrs Smith would pass on £214,250 to their daughter, as opposed to £14,250.k

Avoiding the Sideways Disinheritance Trap

Understandably, many couples like to keep things straightforward when it comes to making a will. Typically they will want to just leave everything to their spouse or partner when they pass away. This is so they can make sure that their partner can continue to live in their house and access their finances. They probably consider everything they have to be jointly owned with their partner, even if some of the assets only belong to one of them. Sideways Disinheriting occurs when someone who has children from a previous relationship remarries after the death of their partner or spouse, inadvertently disinheriting their children.

We'll use Mr and Mrs Smith again to illustrate how this could happen and how a Life Interest Trust can help. Again, Mr and Mrs Smith have made Mirror Wills, leaving everything to each other, with it then passing to their daughter on the second person's death.

In this scenario, after Mrs Smith dies, Mr Smith remarries and he and his new wife, Ms Goldigger, live in the property that Mr Smith owns outright. He is aware of the fact that remarriage revokes a will, so he makes a new Mirror Will with his new wife, in which they again leave everything to each other and then evenly between his daughter and his wife's two sons (from her previous marriage).

When Mr Smith dies, his entire Estate passes to his new wife, Ms Goldigger, in line with the terms of his Will. She then makes a new Will which disinherits Mr Smiths' daughter, leaving everything instead to her two sons. Mr Smiths' daughter inherits nothing from her parents' Estate.

An increase in blended families has highlighted this issue, with a growing number of children being born to parents not legally married and the high proportion of marriages ending in divorce. If you are in this situation, you'll probably want to leave something to your children when you die but this can be complicated if you also want to provide for your new spouse if you die before them.

You can protect your children simply by making a new Will once you remarry. This simple action can help you to avoid the situation where you disinherit your children but in reality the majority of people will forget to write this New Will or will trust the new partner to do the right thing but unfortunately the Law does not recognise Love or trust. After someone has died monies can change an individuals reasoning.

There are legal solutions you can put in place to protect your new spouse or civil partner. Using your Will to leave your assets into a Trust can be a great way to protect your children and also help to protect your new partner.

One option is to include a Life Interest Trust in your Will which means that when you die, all of your assets go into a Trust instead of being directly given to your spouse or partner. This Life Interest Trust, managed by Trustees that you appoint, will ring-fence your assets and name your 'Life Tenant'. The person you name as your as Life Tenant will be allowed to live in your property and gain any income generated by your ring-fenced assets for the rest of their lifetime or, if you prefer, until they remarry.

Once your spouse dies or remarries, all your assets held in the Trust will be passed to your children. A Life Interest Trust in your Will can help to protect your children from accidental or enforced sideways disinheritance. If Mrs Smith had included a Life Interest Trust in her Will, she could have ring-fenced her share of the property in a Trust, giving her husband a life interest in it. This would mean that he could continue living in it for the rest of his life, but on his death, Mrs Smiths' share in the property would still pass down to her daughter.

Asset Allocation Trust (AAT)

Many clients ask us if they should transfer 100% ownership of their property to their children in order to ensure it passes to them and to avoid the property going through probate. It is always against our advice to make an outright gift of your home. The receiver may find themselves in financial difficulty or going through a divorce which can put the home at risk or they could even predecease you.

You can pass assets to a Family Trust established in your own name and for your own benefit whilst you are still living, this is known as a Lifetime Trust or **Asset Allocation Trust**. It may help you to think of the trust as a 'safety deposit box' to keep your assets in. Placing assets into this lifetime trust will ensure that they pass to the people you want them to after your death, according to the terms of the Trust. Inheritance due to any unreliable beneficiary can be protected by the Trust and then be passed to them at a more appropriate time.

The AAT is set up during your lifetime and you can protect your assets in the same way as using trusts in your Will, but with the advantage of protecting the assets on BOTH deaths, rather than only on first death by only using Will Trusts. Assets over the nil rate band pass under a person's Will in the normal way so property trusts are still used in the Will to deal with any excess assets held on bare trust.

Assets held in trust for over six years are also not able to be contested when a person dies if some beneficiaries are being favoured over others. The initial transfer into the AAT:

1. The value of property being held in the Discretionary Trust portion of the AAT is limited to the normal Nil Rate Band ("NRB"), anything OVER the NRB is held on Bare Trust for the Settlor. This means that the transfer into trust is for tax purposes limited to the NRB, so the Chargeable Lifetime Transfer ("CLT") is limited to the NRB, so no Inheritance Tax ("IHT") is due on the initial transfer. CAUTION: If the clients have made other CLTs within the previous 7 years an IHT issue could arise.
2. The value of the ongoing Discretionary Trust fund is limited to the current NRB, so on the Ten-Year Anniversary the value of the trust remains pegged at the NRB, meaning no tax is due (normally 6% on the value above the NRB). Any value held by the trustees OVER the NRB is deemed to be held on Bare Trust for the settlers.

As the Settlor who's set up the trust and placed assets in, you continue to have the absolute control of the asset in your lifetime. You decide which house the trust holds, who can live in it or how long you wish the Trust to last (should you want to end it and spend the money or release equity).

The Asset Allocation Trust can help you and your family as follows:

- Passing assets early helps with Probate later
- Ensuring your assets pass to those who you wish during your lifetime
- Protection from remarriage of a spouse
- Protecting your children's inheritance against life's uncertainties
- Inheritance tax & Bloodline Planning benefits

Generational Trust Planning
To underpin the wealth acquired by our clients, Foresight can provide a range of trust solutions designed to meet a variety of client needs to ensure generational planning, asset direction and wealth protection for families. Bloodline Planning ensures that your assets reach your children, grandchildren and other relatives, rather than ending up in the wrong hands!

When assets are distributed via your Will (if you have one) to your chosen beneficiaries, these assets are then considered to be part of the beneficiary's estate and would be at risk of attack from any future divorce settlements, creditors and/or taxation. With the strategic use of Trusts, you can ensure that your children and grandchildren are able to benefit completely from the inheritance you want them to receive and at the same time offer protection of the family home and other assets from being lost to attack from any future divorce settlements, creditors, taxation and the costs of Long Term Care.

Beneficiary Protection Trusts
This type of trust has been specifically designed to deliver lifetime and residual estate wealth preservation benefits to families for estate values typically from £400,000. Importantly the planning is effective in dealing with the new Residential Nil Rate Band ("RNRB") tax allowance in an effective, flexible manner. Clients who plan to gift assets to their children and/or leave their assets directly to a spouse and then to their children when they die may benefit from this planning.

Additional Settlements (Trusts) can be added for individual beneficiary groups (children). The trusts may hold lifetime transfers as well as residual estate legacies. The plan addresses the shortfalls of most common wills which leave assets to each other and then to children directly. The framework can protect assets on the death of the first spouse and delivers next generation control and protection. Additional trusts for specific beneficiaries are recommended.

In order to realise the full benefits of this planning continuity of advice is essential. Therefore periodic reviews are required and on death we encourage clients to consult their financial adviser and use Foresight to assist with probate and/or post probate administration.

The key advantages of the planning include:
- Optional protection of the assets of the first to die from social impact.
- Avoids generational erosion of wealth - legitimately avoids next generation inheritance tax equating to £40,000 for every £100,000 directed to the trust.
- Potential protection of trust assets given to beneficiaries from social impacts e.g. their children divorcing.
- Flexible approach to claiming any required RNRB tax allowance where applicable.
- Protection of assets gifted during lifetime, creating additional next generation tax and protection benefits.
- Funds can be retained within the trust for up to 125 years providing benefits for generations to come.

The planning delivers a high level of flexibility and does not require a client to lose control of assets. Most assets only pass on death. The trusts used are developed and maintained in conjunction with Solidus and Mills & Reeve LLP, the largest private client legal group in England and Wales. The plan always includes one or more pilot trusts (established as part of the planning and does not rely on the actions of a probate solicitor on death). Our Trusts have been comprehensively designed to cover the requirements of most family circumstances and are regularly updated.

The Benefits of Bloodline Planning
If assets and wealth are protected in a bloodline trust then they remain within the family unit. Without a bloodline trust assets are vulnerable to:

- Divorces in future generations of a family
- Bankruptcy or other financial issues
- Generational Inheritance Tax
- Other taxes

Bloodline trusts ensure that money can only be accessed and used by your children, your grandchildren or other generations directly related to you – those who have married into a family have no access to funds. You work hard to build up your wealth and it is important to think equally hard about protecting it from erosion through the generations because of unnecessary tax payments. We believe inheritance should be a 'True Legacy' allowing each generation to benefit not just one.