Mayo Wynne Baxter
Solicitors

Estate planning:

A guide

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Estate planning: **A guide**

What is estate planning?

Simply put, estate planning is the process of putting your affairs in order so your loved ones are taken care of should you require long-term care, lose mental capacity or die.

Did you know?

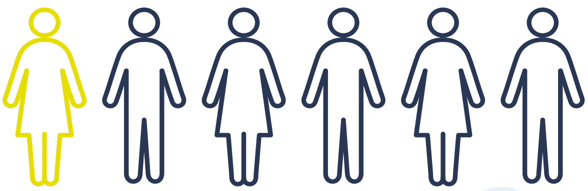
- Fewer than **1 in 6 (14%)** people have formalised their estate plan.
- More than a third **(36%)** of people have not started drafting a will.
- Over **1 in 5 (22%)** people do not know what a lasting power of attorney is.

We appreciate it can be difficult to envisage a time when you are not around to provide for your family, and preparing a will, appointing people to manage your finances while you are in hospital or thinking about where you will live in your retirement can be the last thing on your mind.

Planning who will inherit your estate and how they will do so is vital. Not only does it give you and your family peace of mind so you can enjoy your time together in the present, crucially, it can:

- **Avoid family arguments**
- **Stop assets getting into the wrong hands**
- **Minimise inheritance tax**
- **Prevent expensive and time-consuming disputes**

Only **1 in 6** people have formalised an estate plan



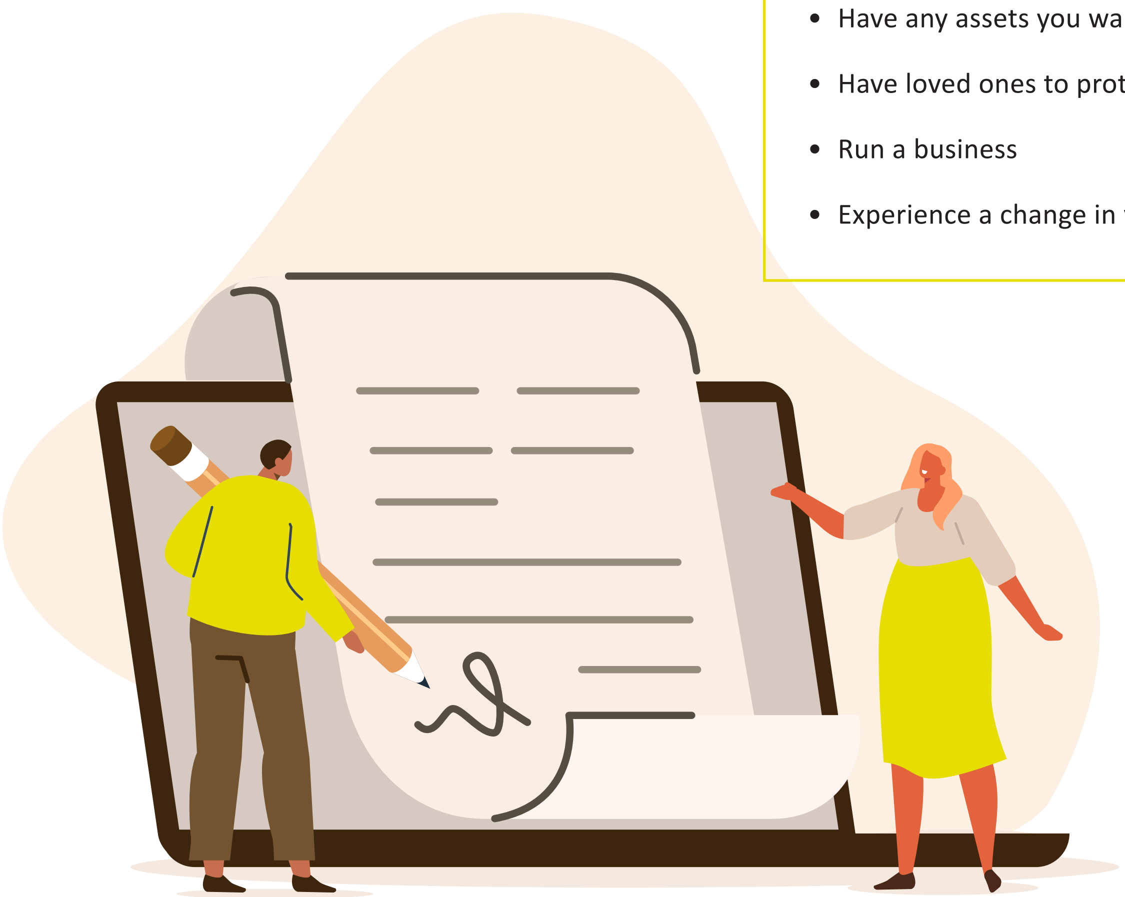
Myths and facts

I'm too young to think about estate planning or making a will

FALSE: Unlike a driver's licence, there is no age that says when you should create an estate plan. Essentially, however, it should be done when you have "stuff" or loved ones to protect.

Less than 40% of people have thought about an estate plan, but this needs to change. Decades of rising property prices and the ongoing cost of living crisis is making estates worth fighting for. Probate caveats, a formal legal notice that challenges the validity of a will, have seen a rise since 2019 - showing that the UK is on the cusp of a deepening inheritance crisis.

The biggest mistake is not having one - you never know what can happen, and putting plans in place for how your estate should be handled will protect you and your loved ones if the unthinkable happens.



Broadly speaking, an estate plan is made up of important legal documents like a lasting power of attorney, will, details of financial assets and end-of-life wishes.

As soon as you own anything, you should prepare a will. If you don't, the law will decide who inherits your possessions. This document ensures your assets pass to your chosen beneficiaries and ensures it happens in the most practical and sensible way.

It is also important not to forget to update your will when something changes in your life, such as buying a house, getting married or having children.

At a glance

You should start estate planning if you:

- Own a property
- Move in with a partner
- Have any assets you want to pass down
- Have loved ones to protect
- Run a business
- Experience a change in your life

Myths and facts

If one of my parents becomes ill, I'll be able to access their account to pay their bills

FALSE: The only way someone can manage another person's finances is through an enduring or lasting power of attorney. This is a legal document that lets an individual (known as a 'donor') appoint one or more people to make decisions on their behalf. This could be a temporary situation – for example, if someone ends up in hospital and needs help with paying bills – or a longer-term situation, such as being diagnosed with dementia or losing mental capacity.

Arguably, a power of attorney is one of the most important legal documents a person can make.

Accidents and illnesses can happen to anyone at any time, so it is highly advisable not to leave this exercise until too late. If someone does lose mental capacity without a power of attorney in place, loved ones will have to apply for the right to manage their financial and health affairs through the court, which is a lengthy and costly process.

If my parent gets better, I will maintain control of their finances

FALSE: A power of attorney can be revoked at any time as long as the donor is mentally capable. If someone regains capacity or becomes well again, they can make a written statement – called a 'deed of revocation' – to the Office of the Public Guardian, asking to end the power of attorney and regain control of their finances. If the power of attorney is not revoked, an attorney can still step back and let that person carry on as before until they're needed again.

If I lose mental capacity, my parents will be able to make decisions on my behalf

FALSE: Unless you are under the age of 18, no one automatically has the right to make decisions on your behalf if you lose mental capacity. The only way your parents can do so is if you have appointed them as your attorneys in your power of attorney legal document.

If you lose mental capacity without a power of attorney in place, your parents will be required to apply for the right to manage your financial and health affairs through the court – this is an expensive and time-consuming process.

At a glance

If you are incapacitated, a lasting power of attorney can support you by:

- Ensuring your bills and mortgage are paid
- Buying and selling property
- Investing money
- Arranging property repairs
- Making decisions about where you live and your medical care

Myths and facts

I don't need to worry about paying for long-term care – the state will pay for it

IT DEPENDS: In limited circumstances, the state (i.e. the NHS and social services) will pay for care. The former, however, is generally limited to care in a hospital setting and the latter is means tested. While NHS-funded care is available to those outside hospital, the criteria can be difficult to meet. Social care is paid for only when assets fall below a certain level. In England and Northern Ireland, when your capital falls to £14,250, it will no longer be counted in calculating how much you have to pay towards your care. In Wales, the figure is £50,000 and Scotland is £20,250.

I will have to sell my house to pay for my future care

IT DEPENDS: On average, people believe they can have £51,699 in cash savings before having to pay for their own care. However, the actual figure is less than half of this.

If your long-term needs are ancillary or incidental to the need for accommodation, you will need to fund the cost of your care if your capital is more than £23,250 (in England and Northern Ireland). When calculating whether you should be responsible for paying your own care fees, the value of your home may be considered.

A property will only be disregarded if your placement is temporary; your home is occupied by your spouse, a partner or civil partner; or your home is occupied by a relative or family member who is aged 60 or over, under 16 and a child you are liable to maintain, or incapacitated.

Otherwise, you may have up to 12 weeks to decide how you want your house to be dealt with – either rented out or sold, for example. During this time, the local authority should pay your care home fees until your property sells or a tenant is found.

There are ways you can protect your home from care fees. However, this will need to be sorted out many years before you may need care to avoid falling foul of deprivation rules. Therefore, it is always best to speak to an experienced legal professional before you act.

Case study:

David and Carol, who have lived in Retirement Villages for 17 years:

"Despite getting more and more frail, my mother did not want to move out of her own home. She ended up in hospital and we moved her into sheltered accommodation near us. After six months, she said 'why didn't I listen to you years ago?' She knew she would have been in better health had she done it sooner, but there is a stigma attached to living in a care environment."

Case study:

Brian and Moreen, who have lived in ExtraCare for 11 years:

"After becoming carers for both our parents, we wanted to control our own destiny. Talking to people here, we have found that those who made the decision themselves have settled in more quickly. If that decision is taken away from you and you are forced to start estate planning through ill health, you cannot enjoy the community to its fullest."

Myths and facts

I can gift my house to my children to avoid inheritance tax

TRUE, IF: Your children can reduce or avoid paying inheritance tax if you gift your property to them and live for another seven years. This is as long as you have not lived or benefited from the property as a primary householder might. So, for example, after you have gifted the property, you will not be able to live there rent-free and you must pay a market rent (whatever a third party would be expected to pay for living in the property) for the duration of your occupation. For every passing year, up to seven years, the amount of tax tapers off. If you die between three and seven years after gifting your property, your children will still have to pay tax, but possibly not the full **40%.**

I can gift my house to my children to avoid care fees

FALSE: Deliberately avoiding care fees by gifting your property or putting a house in trust is known as deprivation of assets. When an application for care funding is received, the local authority will conduct a thorough financial assessment. If they believe your actions amount to an intentional deprivation of assets, they can take the value of the property into account and refuse financial support. There are options you can consider. However, we strongly recommend speaking to a trust specialist to ensure the trust is valid and you are not doing it simply to avoid paying care fees.

If I die, my partner will automatically inherit my assets

FALSE: If you die without making a will, your money, property and possessions will be shared out according to the rules of intestacy. Unless you are married or in a civil partnership, your partner will not inherit anything under these rules – regardless of how long you have lived together for, and you may have to go to court against their relatives to receive anything. The only way to ensure your partner inherits your assets is to prepare a will, get married or enter into a civil partnership.

It is too much effort to estate plan

FALSE: Improper or no planning can lead to family disputes, assets getting into the wrong hands, long disputes and excess money paid in taxes. With this in mind, we would always advise you to take expert guidance to ensure the process is simple and much less stressful than you anticipate.

At a glance

Estate planning is easy if you:

- Start early
- Take proper advice

Real-life examples: Lessons in being prepared

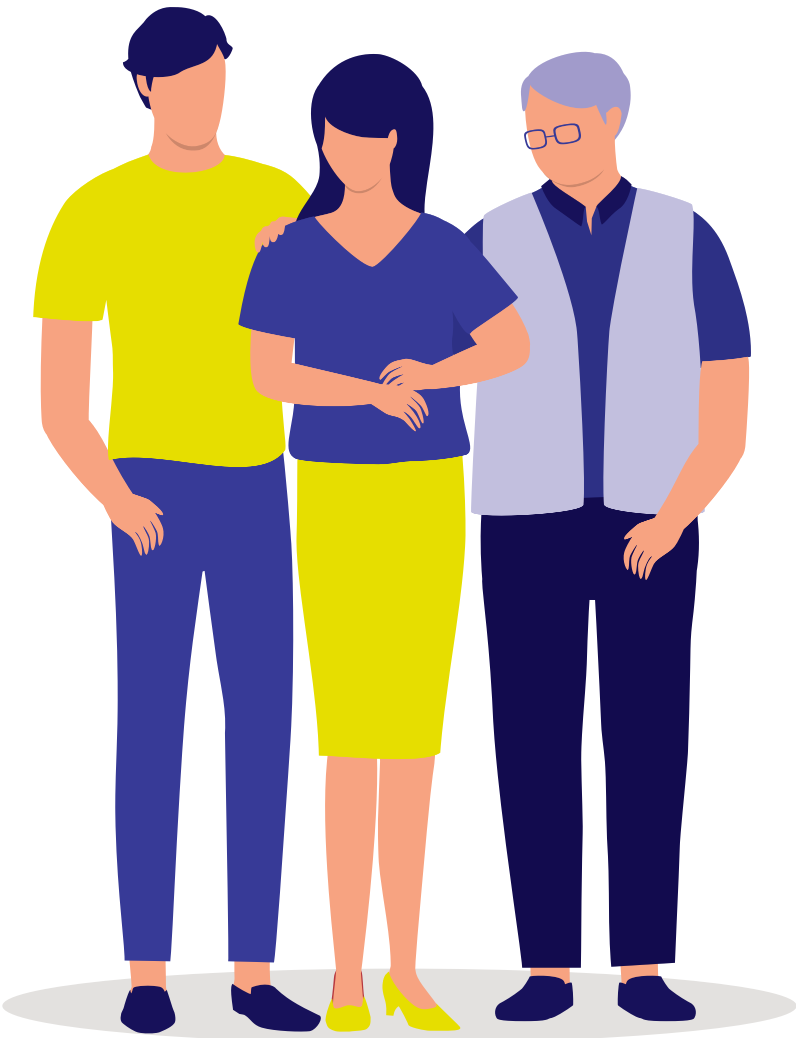
Scenario one:
Dale's missed opportunities

Here, we explore various scenarios that highlight the significance of estate planning and how it could have made a substantial difference in the lives of those involved.

Father-of-two and widower Dale, 76, owns a very successful multi-million-pound manufacturing **business**. He has a son, Adam, 48, who has worked for the family business his entire adult life, and a 44-year-old daughter, Jacqueline, who is a teacher. When Dale gets **remarried** to 46-year-old Kelly, he updates his will, leaving the manufacturing business to Adam and splitting the £15 million balance 50/50 between his new wife and Jacqueline. When Dale dies, there is a £2,870,000 inheritance tax bill in relation to the portion Dale left directly to his daughter. Adam also suffers an **inheritance tax** liability in relation to the manufacturing business as a consequence of the company having substantial investment assets, which jeopardises the inheritance tax relief he was expecting.

Business owners should have:

- Taken early, specialist tax advice
- Properly structured his will



How it could have been solved:

While Dale had kept to his promise of leaving his son the manufacturing business, he did not take tax advice and incorrectly assumed that inheritance tax relief would be available. Adam, therefore enduring significant issues as regards the funding of the liability, was forced to downsize the business. Dale should have taken tax advice as, with proper and timely planning, inheritance tax relief could have been captured and maximised.

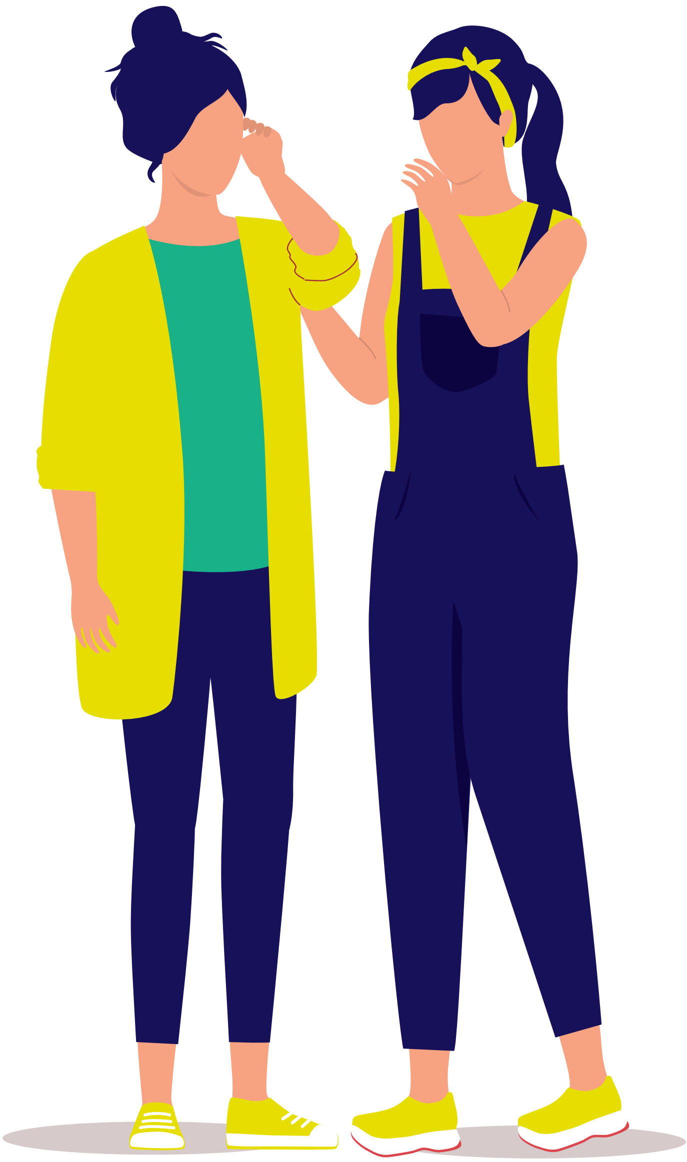
Dale could also have structured his will in such a way that maximised the chances of passing assets to Jacqueline without inheritance tax, as well as considering other tax planning such as lifetime gifts. To ensure as much wealth as possible passed to his beneficiaries rather than HMRC, Dale should have taken early specialist advice.

Real-life examples: Lessons in being prepared

Scenario two:
Unmarried and unprotected

Danielle and Jasmine are an **unmarried, childless, cohabiting couple** in their 30s who have been in a relationship for more than 12 years. Due to Jasmine having long-standing debt issues, Danielle is the only person named on the mortgage of their two-bedroom home in Northamptonshire. They had planned to add Jasmine onto the **mortgage** in two years' time when they were due to remortgage. However, Danielle was killed in a car accident before this took place and she **did not have a will in place.**

As a result of this, the property followed the rules of intestacy, meaning it was shared equally between Danielle's living parents, despite them not speaking in years due to them not agreeing with their daughter and Jasmine's relationship. As Jasmine cannot afford to buy the property off them, she has been forced to move out and leave the home behind.



Cohabiting couples should:

- Make a will
- Put a declaration of trust in place
- Make a cohabitation agreement
- Take out life insurance

How it could have been solved:

While there is no legal requirement to make a will after a property purchase, it should be done to ensure your estate is distributed according to your wishes. This is even more important if you are not married or in a civil partnership. Often, cohabiting couples assume their estate will automatically go to their partner if they die. However, under the rules of intestacy, unmarried couples have no right to inherit when someone dies without a will in place – regardless of how long they have been in a relationship for. Jasmine could, however, go to court and make a claim for a share of Danielle's estate, but this will cost both her and the estate in time and money, which could have been avoided with a will. Furthermore, a declaration of trust could have been put in place if Jasmine was contributing to the property or family finances in other ways. Taking out life insurance could have also provided further financial protection.

Real-life examples: Lessons in being prepared

Scenario three:
Duleep's family dilemma

Background:

Father Duleep, 86, died after a short battle with liver cancer. He has left behind his wife Parvati, 82, and his **two children** – son Krishna, 52, and daughter Meera, 48, who has been living at the family home her entire life to **care for her parents**.

Issue one:

Krishna moved out and got married in his 20s, and his parents gave him £20,000 towards a house deposit 25 years ago. As Duleep **died without putting a will in place**, his £500,000 estate has been distributed in accordance with the rules of intestacy and the current Statutory Legacy, which means Parvati has been given a 75% share, with the remaining 25% split evenly between his two children. Meera was expecting to **inherit more** of her father's estate to take into account the house deposit Krishna was **gifted** so she is seeking to make an Inheritance Act claim.

How issue one could've been solved

Putting a will in place would have ensured Duleep's estate was distributed according to his wishes and could have taken into account the money that was given to his son for a housing deposit.

Issue two:

While this is happening, Parvati **loses mental capacity** due to Alzheimer's disease and needs to go into a **nursing home** for specialist, round-the-clock care. As there was no **power of attorney** in place, Meera is unable to access Parvati's finances to pay for house bills and must go through the Court of Protection. In order to fund Parvati's **care fees**, Meera has been given 12 weeks by the local authority to sell the family home, which puts her at risk of being homeless.

How issue two could've been solved

If Parvati had made a power of attorney, someone would have been able to manage her finances and pay the bills when she moved into care – avoiding the lengthy and costly process of applying for deputyship under the Court of Protection. There are ways the family home could have been protected from being used to pay for care fees. Duleep and Parvati should have spoken to an experienced legal professional, who could have helped them put steps in place that prevented the house from being sold. A will could also have helped Meera remain in the family home.

Parents should:

- ☑ Make a will
- ☑ Make a lasting power of attorney
- ☑ Speak to an experienced legal professional

How to get started

While in a perfect world, everyone should be estate planning regardless of their life stage or situation, we recognise life sometimes gets in the way and appreciate it can be a minefield to get started. Based on your current circumstances, here are some things you should prioritise to get you started.

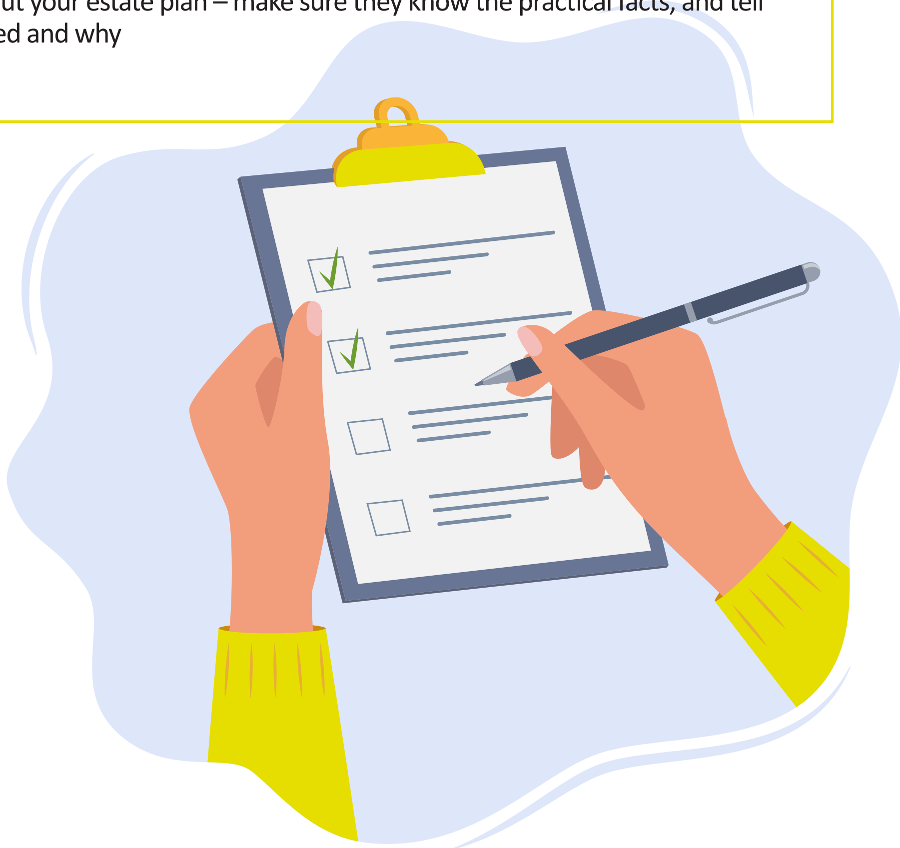
	Make or update a will	Make a lasting power of attorney	Consider tax planning	Look into gifting	Leave a charitable legacy in your will	Consider your end-of-life wishes	Make plans for your future care	Contact a tax specialist
Are you alive?	✓	✓	✓	✓	✓	✓	✓	✓
Are you a homeowner?	✓	✓	✓	✓	✓	✓	✓	✓
Are you a parent?	✓	✓	✓	✓	✓	✓	✓	✓
Are you in an unmarried relationship?	✓	✓	✓	✓	✓	✓	✓	✓
Do you have more than £23,250 in savings?	✓	✓					✓	
Do you have assets over £325,000?	✓	✓	✓	✓	✓		✓	
Are you a business owner?	✓	✓	✓	✓	✓			✓
Do you have a second home or rental properties?	✓	✓	✓	✓	✓			✓
Do you have a blended family?	✓	✓	✓	✓	✓	✓	✓	✓
Have you done tax planning in the past?	✓	✓	✓	✓	✓		✓	✓
Have you ever put your house into trust?	✓	✓					✓	✓
Have there been any recent family events (birth, marriages, deaths, divorces)?	✓	✓	✓			✓	✓	✓
Do you have an in-law you don't like?	✓	✓	✓			✓	✓	✓

Checklist

As this guide has highlighted, estate planning goes well beyond simply drafting a will. Thorough planning means accounting for all your assets.

Not sure how to get started? Complete this checklist to get your affairs in order and ensure you have covered all basis:

- [ ] Write down your assets and roughly what they are worth
- [ ] Document any non-physical assets, such as bank accounts, insurance policies, pensions, and properties
- [ ] Assemble a list of debts and open credit accounts, including account numbers
- [ ] Make a list of who you want to benefit from your estate
- [ ] Check if you will have to pay inheritance tax
- [ ] Update the beneficiaries of your insurance policies
- [ ] Choose a responsible estate administrator
- [ ] Draft your will
- [ ] Create a lasting power of attorney
- [ ] Regularly review all your documents – at least once every two years and after any major life-changing event
- [ ] Talk to your loved ones about your estate plan – make sure they know the practical facts, and tell them what you have decided and why



Important words you need to know

- **Administrator**: A person who has been appointed to manage someone's estate when they either die without a will in place or if there is an issue with their will. They are responsible for collecting in assets, paying liabilities, and distributing the estate in accordance with the terms of the intestacy rules or, in some cases, the will

- **Assets**: Something that is owned, such as property, a vehicle or investments

- **Attorney**: Someone you appoint via an enduring or lasting power of attorney to make decisions on your behalf if you lose the mental capacity to do so in the future

- **Beneficiary**: Someone who benefits from a will, trust or insurance policy

- **Bequest**: Something that is given in a will

- **Collecting in assets**: This includes closing any bank accounts in the name of the person who has died, selling or transferring shares that they owned, and selling or transferring any property held in their sole name

- **Enduring power of attorney**: A legal document, made before 1 October 2007, that allowed you to appoint one or more people to handle your financial affairs. This was replaced by a lasting power of attorney, but any signed before 1 October 2007 are still valid today

- **Estate plan**: A process to determine how someone's assets will be managed and distributed after their death and can include making a will, as well as tax planning

- **Executor**: A person responsible for applying for the grant of probate, collecting in assets, paying liabilities and distributing the estate in accordance with the terms of the will

- **Grant of probate**: A document that confirms the executor of a will has the authority to deal with someone's assets once they have died and act on behalf of their estate in relation to tax and other matters

- **Inheritance tax**: A tax on the estate (including property, money and possessions) of someone who has died. Inheritance tax starts at 40% (reduced to 36% in some circumstances) where the estate is valued at more than any available allowances. Also payable on some lifetime transfers into trust

- **Intestacy**: Occurs when a person dies without leaving a valid will

- **Intestate**: A person who dies without leaving a valid will

- **Lasting power of attorney**: A legal document that lets you appoint one or more people to help make decisions on your behalf, if you are unable to do so

- **Legacy**: A cash gift within a will

- **Letters of administration**: The type of probate issued to an administrator where there is either no will (intestacy) or someone other than the named executors within the will has applied for probate

- **Long-term care**: When you may need paid assistance with activities associated with daily living

- **Probate**: The legal right to deal with someone's property, money and possessions when they die either under a grant of probate or letters of administration

- **Statutory legacy**: The amount a spouse or civil partner is entitled to receive when a person dies without a will (intestate). The figure is currently £322,000 for deaths occurring on and after 26 July 2023, along with 50% of the remaining estate. The remaining 50% will go to any children and, if no children, the surviving spouse

- **Trust**: Assets are held in a trust and managed by a person or people (trustees) to benefit another person or people

- **Will**: A legal document where you declare your intention as to what happens to your assets after your death.

Meet your estate planning team

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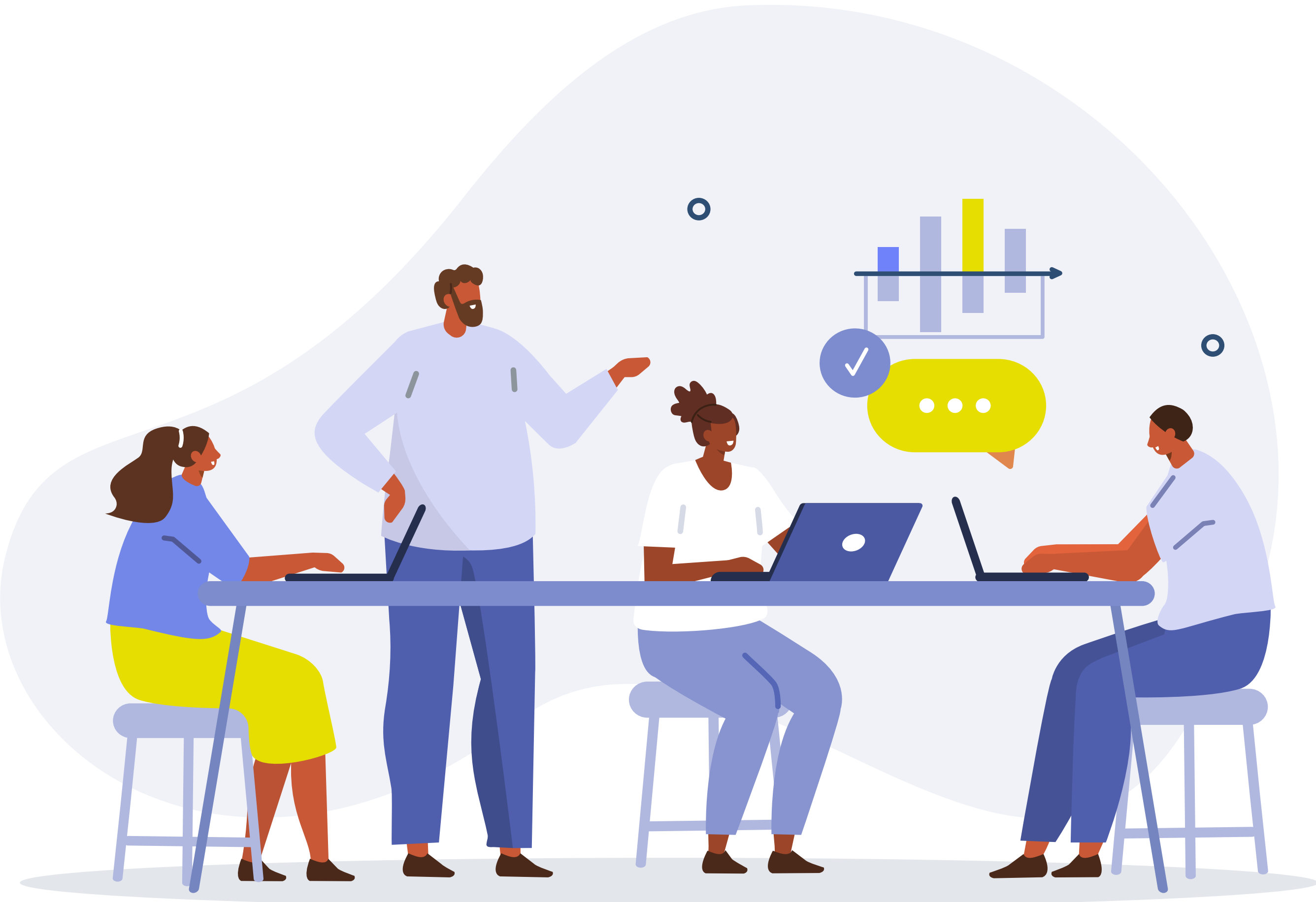


Where to go for further information

The Law Society

www.lawsociety.org.uk

020 7242 1222)

STEP

www.step.org

020 3752 3700

Solicitors for the Elderly

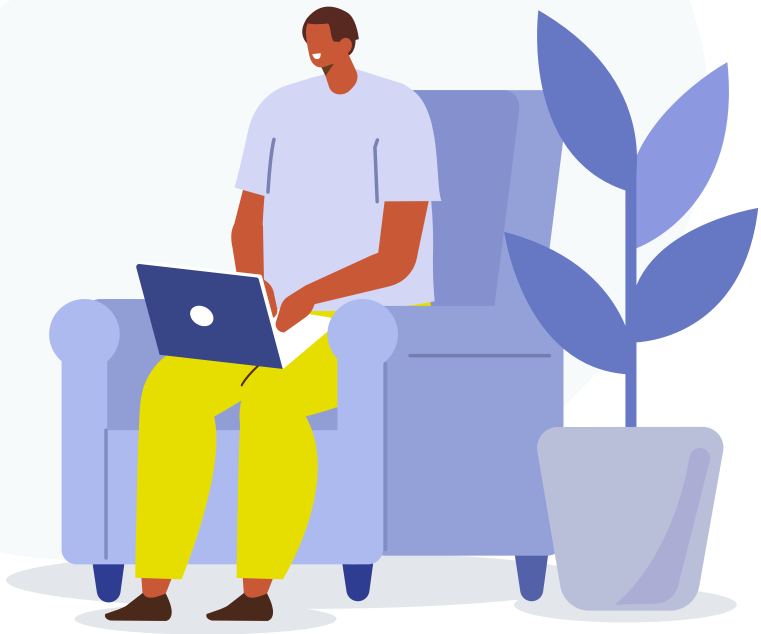
www.sfe.legal

0844 567 6173

Society Later Life Advisers

societyoflaterlifeadvisers.co.uk

0333 2020 454



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