HOW TO GET YOUR AFFAIRS IN ORDER

And create an end-of-life plan to secure your independence in later life, reduce stress for your loved ones and ensure your legacy is protected from the tax man

BY PHIL WESTON

Get Your Affairs In Order

PHIL WESTON

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FOREWORD

I wrote this book to empower readers to be responsible and get their affairs organised before the inevitable happens. By following the guidance in this book, you'll discover:

- ✔ How to arm yourself with legal protection to prevent the state forcing you into a care home against your wishes.
- ✔ How to protect your independence in your later years.
- ✔ How to ensure your wishes about where you live are followed should you suffer ill health or an accident.
- ✔ How to protect your family home, savings and investments from the 'Dementia Tax'.
- ✔ How to protect your legacy from the UK's most hated tax – Inheritance Tax.
- ✔ How to implement simple and effective strategies to minimise the burden and stress on those left behind after your eventual demise.
- ✔ How to prepare for probate and avoid the new probate stealth tax.
- ✔ How to check your Will for common problems that can result in unnecessary and expensive legal bills for your loved ones.
- ✔ How to update your Will or make a new Will from scratch.
- ✔ How to avoid expensive mistakes when putting a plan together to protect your financial security and independence.

Everything you need to implement these strategies can be found in this guide.

This book and accompanying resources will give the reader the knowledge and confidence to implement the critical documentation to ensure minimal estate taxes are paid and matters are left in an organised state for loved ones left behind.

Preparing legal documents such as Wills, Lasting Powers of Attorney and Probate can be made to appear daunting by lawyers pressurising clients to spend several thousands of pounds on legal fees. But, as this book proves, it is possible to avoid these expensive fees by implementing the strategies on a "Do it Yourself" basis.

Prices and fees quoted in this book may be increased without notice and should only be used as a guide.

I sincerely hope you enjoy reading this guide, but more importantly I hope you take positive action to protect your and your family's security and financial well-being.

Warmest regards,

Phil Weston
Leicester
January 2019

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Section I – How to ensure your existing Last Will & Testament is fit for purpose and how to make a new Will

(Please do not skip this chapter if you have already made a Will – it contains important information that you need to know)

This chapter is split into two parts, depending on your circumstances:

1. You have made a Will
2. You haven't made a Will, or you need to update your existing Will

A Brief reminder on Why You Need to Make a Will

- The only way to ensure your wishes are carried out after you die is by having a properly written, legal Will. Only by having a Will can you be sure that the right people inherit at the right time.
- A legal Will reduces the chances of arguments among family members after you've gone.
- If you die without leaving a valid Will, your property, money, and assets, will be divided up according to legal rules drawn up by Parliament. These legal rules may be inconsistent with your personal wishes. In the worst case scenario, all your money and property may be inherited by the Crown.
- Leaving a Will makes things simpler and easier for your loved ones after you've gone. Having to sort out the complicated legal mess as there's no Will only adds to the stress and heartache your loved ones suffer at a time when they will be grieving your loss.
- Leaving a Will means your loved ones won't be faced with the massive legal bills that could be incurred in trying to divide up your estate in accordance with intestacy laws.
- The only way to ensure your children under the age of 18 are raised by someone of your choosing if both parents die is to appoint a legal guardian in your Will. Should the worst happen, and your children are left without a parent, and there is no legal guardian appointed in your Will, Social Services would make this decision.

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Part 1. Things to consider if you have already made a Will

Many people who have made a Will mistakenly sit back and think "job done", I can forget about this unless my circumstances change.

Things may not be that cut-and-dry.

You should spend a few minutes reading this section to make sure your current Will doesn't contain common faults that would leave more problems for your family than if you had died without bothering to make a Will!

And, yes, this does apply even if it has been drawn up by a solicitor (actually more so given some of the underhand self-serving tactics solicitors use to charge extortionate fees later on down the line, as you'll discover).

Things to check:

1. If you have children from a previous relationship

If:

- you have a standard 'mirror' Will whereby everything is left to your spouse/partner on first death and children on second death, **and**
- you or your spouse/partner have children from a previous relationship **and**
- you own a property, then
- your Will could end up potentially disinheriting your children

A standard mirror Will does not provide for more complex family arrangements – **second marriages, children from previous relationships and new children from the second marriage, for example.** These basic Wills simply don't provide for these sorts of complex family arrangements, and the results of using a standard Will in these situations can be catastrophic.

Failure to have a Will that reflects your familial situation (or any potential situation in the future) can result in you unwittingly disinheriting your children.

Here's a real-life example, as reported in the Telegraph:

> *"Just before Stuart Herd's father died in 1997, he had a conversation with him about his will.*
>
> *His father said that he would leave his estate to his second wife, who he had married nine years previously, and the couple's assets would then be split between Mr Herd and his wife's son.*
>
> *The couple had each drawn up wills leaving their estate to each other shortly after their marriage.*
>
> *After his father's death, Mr Herd, an accountant from Southend-on-Sea, Essex, says he kept in touch with his stepmother.*
>
> *But unknown to him, in 2008, she changed her will to leave her whole estate to her son and his family – effectively cutting Mr Herd out.*

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> *She said this was because he had not been in contact with her for ten years – something Mr Herd disputes.*
>
> *He did not find out about the changed will until after her death in 2012.*
>
> *He wrote to his stepbrother's family, who had inherited the entire estate, to explain his position – but got nowhere.*
>
> *Mr Herd, 64, said: "I feel the law hasn't moved on – there is an increase in blended relationships. Relationships are far more complex these days.*
>
> *"My father worked really hard to build that up and losing it feels like you've been mugged. To me, he was very clear in what he wanted. There should be a requirement and an obligation to notify anyone being disinherited so they can challenge it then.*
>
> *"She changed it in 2008 and she lived those four years as if nothing had happened."*
>
> *He said the money might have helped him buy his 27-year-old daughter a flat.*
>
> *Under UK law, Mr Herd's stepmother had a right to leave her estate to who she wanted.*

But his case highlights a common modern problem in "blended" families where wills can be changed after the death of one partner to favour the other's family."

In short, Mr Herd was effectively deprived of the inheritance that his father had earmarked for him, all because the Will that his father had drawn up failed to protect that inheritance.

Unfortunately for Mr Herd, once his father died in 1997, he was at the mercy of his stepmother, and as you read, the worst did happen.

Learning from Mr Herd's experience, here are a few things to consider:

What if – after you pass away – your spouse gets married again?

What if his/her next spouse also brings children into that new marriage?

What if your children fall out with your spouse after your death?

I could go on, but hopefully, you get the point – it simply isn't possible for us to know what's going to happen after we pass away, and it's also not possible for us to control it.

What you can do is ensure that the measures you put in place mean that the people you want to receive your inheritance actually receive it.

Solution:

Create a bespoke Will (rather than a standard 'Mirror Will') to ensure that the inheritance is destined to reach your intended beneficiaries.

Rather than leaving the entire estate to your spouse, as Mr Herd did in the example above, you can instead leave a "life interest" in the property (and any other assets as appropriate).

[1] https://www.telegraph.co.uk/tax/inheritance/i-was-cut-out-of-300000-estate-by-dads-second-wife/

The life interest is dealt with in a bespoke Will, the result of which means that the house is held on trust for future beneficiaries, e.g. children, rather than passing outright ownership to the surviving spouse. The surviving spouse has the right to live their for the rest of their life, and have the option to move to another house on the same ownership basis. When the surviving spouse dies the property is inherited by the children.

Taking Mr Herd's situation as reported above, he would've avoided the contentious outcome by implementing a Will that did not leave his entire estate to his second wife. Instead, if he had left a 'life interest' in the matrimonial home his wife would continue live there for the duration of her lifetime. The difference is that his wife would not have not inherited ownership of the property. Upon her death, the property ownership would've then passed to Mr Herd's son.

It is possible to make this work for other assets such as investments, as well as property.

2. Does your Will appoint the wrong executors?

Specifically, does your Will appoint a solicitor as one of the executors? If so, this arrangement can end up costing your loved ones thousands of pounds in unnecessary legal fees.

I have first-hand experience of this happening on a regular basis through feedback received from readers of my DIY Probate Guide and private clients.

Here is an email I received from William to illustrate the point:

> *"Hello Phil*
>
> *I used your DIY Probate Pack and sent all your template letters off to various organisations to gain date of death values etc for the liabilities and assets inventory.*
>
> *My father has named myself and a solicitor as joint executor. I had planned to do as much work as possible myself although it is a bit complex and I may have to incur inheritance tax. Now I seem to be tied in with a solicitor. I received their fees and terms of business yesterday:*
>
> *They are going to charge 1.5% of the estate value plus a time element of 18 hours at £210 per hour.*
>
> *On the estate of approx. £700,000 (not including shares), this is a significant amount. I have emailed them to say I am not happy with the terms as it states they are fully administering the Will and I also have undertaken some of the tasks already which took several hours.*
>
> *I await their reply but I do not have any options but to proceed at great cost."*

In summary, then the solicitor has issued a terms of business contract saying they are going to charge an extortionate £17,136 (£700,000 x 1.5% + 18 x £210 x 20% VAT).

And this is for a considerable amount of work that William has already done himself, and was happy to continue doing. So, he's found himself liable for a bill of over seventeen thousand pounds for work that he was going to do himself.

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It is simple to avoid: **do not appoint a solicitor as an executor of your Will!**

Action points:

i. Check your existing Will.

ii. Does it appoint a solicitor? If yes:

iii. Change your Will to remove the solicitor as the executor and appoint a replacement instead, such as a close relative or trusted friend.

3. Where is your original Will stored?

I need to emphasise the significance of having access to the original, signed Will. Only the original Will can be admitted to probate. This means that anything other than the original is essentially worthless. We look at probate in depth later on in this guide, but in a nutshell, obtaining probate is the key to unlocking all of the deceased's money and property after death. Without probate, all of these assets are 'frozen' and cannot be passed down to the beneficiaries of the Will.

It is therefore essential that the original Will is easily obtained by your executors after your demise.

When writing Wills, most solicitors are very keen that you store the Will with them at their offices. Often, this is presented as a gesture of goodwill, for no charge.

But, you don't get anything in life for free when it comes to solicitors! Things aren't what they seem; there is an element of self-interest in the solicitor retaining control of your Will as I'll explain below.

In practice, storing a Will with a solicitor can cause two potential problems:

i. Solicitors are very reluctant to release the Will.

Here, I'll reveal another underhand and immoral tactic solicitors use so they can charge the likes of William £17,000 for probate.

This is demonstrated by a recent email I received from Penny, who is a reader of my DIY Probate Guide:

> *"We've just been in contact with [redacted] who are holding the original will. They will not release it without consent signature from the 2nd executor. They offered to do the Probate and to override the 2nd executor by application to the Probate register office. We have told them we already dealing with it."*

The approach here is standard practice by solicitors; they don't want to release the Will and instead are suggesting they deal with the probate work. When clients object to this, they intentionally make life very difficult for the executors to retrieve the Will. In this case, they are insisting on written authority and identity documents from 2 executors. The complication in this example is that the second executor's whereabouts are unknown, so it is not possible to gain any documentation from him. Penny is therefore stuck and cannot proceed any further with her probate application without the original Will.

In many cases like this, the clients simply give in and let the solicitor deal with the probate, a bad result all round except for the solicitor who is now able to charge a five-figure legal bill!

ii. The solicitor loses the Will.

You wouldn't think this is possible, would you? That such a 'reputable' professional could be so incompetent as to actually lose someone's original Will.

Well, judging by the feedback I receive from readers of my DIY Probate Guide, solicitors are constantly losing their clients' Wills, either through incompetence or the solicitor's firm closing. In the latter scenario, arrangements are supposed to be put in place to ensure former clients' Wills are passed on to another firm for safe storage, but in my experience, this often results in the Will going missing. A far better approach would be to simply return the Wills to the clients, but this rarely happens.

The net result of this, of course, is additional stress, hassle, and inconvenience for the family of someone who passes away. It is likely that probate will be required to access money and assets held in the deceased person's sole name. Until probate is obtained, these assets are 'frozen' and inaccessible by the deceased person's family. It is therefore important that probate is obtained quickly and without delay so that the money and property can pass down to the deceased person's chosen beneficiaries in accordance with the Will. Full details about probate are covered later in this guide.

The issue at stake here is that one of the legal requirements for obtaining probate is the submission of the original Will to the probate registry office. If the original is not available, the probate registry office will take the view that the deceased person destroyed the original thus rendering it legally void.

Picture the scenario then; after experiencing a devastating loss, the family are now facing the unfamiliar and stressful landscape of dealing with this unfamiliar "probate" legal procedure. If that's not stressful enough, they later find out that the solicitor has lost the original Will! It would be understandable to feel a wide range of emotions at this point ranging from utter disbelief to anger. After all, it's a catch 22 situation; probate is required to release the money and other assets and the original Will is required to obtain probate. No original Will = no probate = no money released to the beneficiaries.

This is exactly the situation faced by DIY Probate Guide reader Helga and her sister Rosamund following the loss of their father Peter. They had embarked on the journey to deal with probate themselves as they didn't want to spend the £3000 they had been quoted by a firm of solicitors. This firm had supposedly taken over the storage of former clients belonging to a separate solicitors firm that had gone out of business some years previously.

Needless to say, the current solicitor could only find a copy of the will, and not the original, when Helga & Rosamund told them they were applying for probate themselves on a "DIY" basis and needed the original Will.

As if this wasn't stressful enough, inheritance tax was payable by a certain deadline and the unavailability of the Will was holding up the entire process, preventing the

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submission of the tax return and payment of the tax. Late payment of inheritance tax results in fines and interest penalties.

It was at this point of desperation that Helga emailed me to ask for advice on how they should proceed. The only way out of this probate dead-end was to get the solicitor to confess to losing the Will in writing and submit this along with the rest of the probate application paperwork to the probate registry. This by no means is guaranteed to be successful and delays probate being granted, but really it was the only course of action available.

I was delighted to receive this email from Helga out of the blue a month or so later:

> *"Just had to let you know that we received our Grant this week. My mother's solicitor was incredulous when we presented it to him today, especially so as we had only a copy of my late father's Will.*
>
> *Thank you seems inadequate for what you have achieved for us. The service you provided was faultless and incredibly reassuring in what at first seemed such a daunting task. Your wonderfully prompt e-mails and phone calls made us feel that we were your only clients, something very rare these days and so very much appreciated. All this and the fact that you have saved us about £3,000 has been absolutely brilliant.*

Whilst it was very gratifying to receive this, the bottom line is that this extra work and stress could all have been avoided if Peter had chosen to store his Will somewhere other than the solicitor's office.

ACTION POINTS:

1. Arrange to store your original Will somewhere that is easily and readily accessible to your family and executors after your demise. You have the option to use a secure document storage facility with my personal backing for a subsidised rate and "no-quibble" Will release promise.
2. Inform your executors of where your original Will is stored and how they can access it after you've gone.
3. If your Will is stored at a solicitors office, contact them to retrieve it and then store it elsewhere.

Part 2 – If You haven't made a Will, or you need to update your existing Will

In this section, you'll discover how you can draft your own basic 'DIY' Will that is as good, if not better, than one you'll get from a solicitor.

In the resources section of your pack, you can find everything you need to create your Will including a sample Will, practice Will, and a blank Will.

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I wouldn't recommend writing a DIY Will if your situation or needs are more complicated, for example:

- You need to deal with assets held outside England, Wales or Northern Ireland. If this is the case, you need to make a foreign Will to deal with your foreign asset(s). For example, if you own a holiday home in Spain, then you need a Spanish Will to dispose off that asset. Your assets in England, Wales, or Northern Ireland can be dealt with using this guide.
- You own shares in a family business.
- You or your spouse/partner have children from a previous relationship.
- You want to protect your home from being used to pay for future care fees otherwise known as the "Dementia Tax".
- You need to include a Trust clause in your Will.
- You want someone who is incapable of managing their own affairs, because of mental incapacity or disability, to benefit from your Will.
- Either you, or your spouse or civil partner, is foreign domiciled.

If any of the above scenarios apply, you should consider paying for a professionally written Will, as the margin for error is too great for a 'DIY' approach. Experience and expertise is required to ensure that the Will is written in such a way as to achieve the desired outcome when it is needed.

Also, be aware that not all of your property and assets can be bequeathed in your Will. In particular:

- Jointly-owned assets. These automatically pass to the surviving joint owner irrespective of wishes expressed in a Will. For example, a joint bank account would automatically be converted into the survivor's sole name, by the bank, when the first joint account holder dies. It is not possible to leave money held in a joint bank account, to someone else in your Will.
- Property owned as 'beneficial joint tenants.' This is how most couples own their houses (unless a 'tenants in common' arrangement has been put in place). Confusingly, in this context, the word, 'tenants' has nothing to do with renting the property! It means that on the death of the first to die, the property passes to the surviving joint owner under the survivorship laws. In that case, the deceased person's share of the property does not form part of their estate and cannot be left in a Will.
- Property which is situated outside of England or Wales. Assets owned abroad have to be accounted for in a foreign Will. For example, a holiday home in Spain would have to be dealt with under a Spanish Will, under Spanish law.
- Assets held in trust, such as life insurance policies, pension benefits, and death in service payments.

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Dos and Don'ts

The 'Dos'

- Write your Will as simply as possible in plain English. Avoid the use of legal words and phrases if you do not understand precisely what they mean.
- Always use a pen, or type your Will. Don't use a pencil.
- Be specific about any gifts you want to make. For example, "My silver Omega watch," rather than, "My watch."
- First, prepare a practice, rough copy of your Will using the form in this kit. Then make any necessary corrections as necessary. When you are satisfied with your final version, complete the Will form contained in this kit.
- Be specific if you are making a gift to a charity. For example, rather than writing that you want to leave 500 pounds to, 'cancer treatment,' you should, instead, state the full details of the charity concerned, e.g. 'Cancer Research UK, registered charity number 1089464.' Most charities will tell you how to describe them in your Will, and many provide this information on their websites.

(Note that gifts to registered charities are exempt from inheritance tax).

The 'Don'ts

- Don't make personal statements in your Will, such as the reasons why you are leaving a gift to a beneficiary.
- Don't leave any section of your Will blank. If a section does not apply to your circumstances, write "not applicable," or "N/A," or strike through the section.
- Don't try to make a joint Will, e.g., one single Will document to cover a married couple. Both parties must have their own individual Will documents, one for each person.
- Don't cross out or erase anything when writing up the final version of your Will form. If you make a mistake, you should start again and make a new Will. Failure to do so could result in your Will being deemed legally invalid after your death.
- Don't try to change your Will by altering the copy you have. The safest way to change an existing Will is to prepare a new one. Once you have signed a new Will, you should also physically destroy your previous Will and any copies.
- Don't add to, or alter, the wording of your Will. Nor should you change, delete, cross out, or erase any part of your Will once it has been prepared. Do not staple, clip or attach anything to your Will; it must be kept in pristine condition, otherwise, your executors might encounter legal problems implementing your Will after you've gone.
- Don't use your Will to give a detailed account of the type of funeral you want. It is more effective to write your funeral wishes in a letter to your closest family members. In reality, the funeral arrangements are likely to have been made before your Will is read.

You should now be ready to make your Will.

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The Seven Steps You Need to Take to Make Your Will

Step 1 – State Your Personal Details (Compulsory)

The first paragraph of your Will must state your personal details in order to avoid any possible doubt. You must insert your full name and address.

You'll note that the Will forms include a standard paragraph stating that it is your last Will and Testament and that you revoke all previous Wills. This is called a 'revocation clause,' and it is mandatory, even if the Will you're writing is your first.

Example:

I, *Brian John Francis*

Of *3 Oswin Road, Leicester LE3 1HR*

revoke all earlier Wills and declare this to be my last Will.

Step 2 – Appoint Your Executors (Compulsory)

An executor is your legal representative after you die. Executors locate all your assets and arrange for all outstanding debts and taxes to be paid. The executor distributes what is left of your money and assets, according to the wishes expressed in your Will.

- You should appoint between one and four executors to carry out the instructions in your Will. It is usual to appoint two, and the Will forms included with this guide provide for this.
- If you are married with children, it is normal to appoint your spouse as one of the executors, and a child, or children, as joint, or replacement, executors.
- Choose someone who is organised, trustworthy, good at handling money, and capable of completing official forms and paperwork.
- At least two executors must be appointed if the Will contains a gift to children under the age of 18.
- A person cannot act as executor while under the age of 18, or bankrupt.

Example:

I APPOINT as my Executors and Trustees

Simon John Francis	*Susan Deborah Francis*
Of *22 Church View*	*3 Oswin Road*
Hornchurch	*Leicester*
RM11 3KM	*LE3 1HR*

And should one or more of them fail, or be unable to act, I APPOINT to fill any vacancy

Mr John Smith

Of 29 Oakdale Road, Leicester LE12 9FA

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Step 3 – Appoint Guardians of Your Children Aged Under 18 (skip this step if you don’t have children under the age of 18)

If you have children under the age of 18, you must appoint a guardian, or guardians, to care for them in the event of both parents dying.

Where children are left without any surviving parents, an appointed guardian is granted the legal rights and responsibilities to make decisions about your children. Guardians are chosen on the understanding that they will personally look after the children in the event of their parents’ death.

Part of the guardian’s task is to make decisions about where the child lives, with whom, what school they go to, and so on. Since the guardian takes the place of a parent, you should choose someone who can offer the best care for your children, such as a close relative or friend who is willing to accept the responsibility. Always check with your proposed guardian in advance to be certain that he or she is willing to act.

Example:

I APPOINT *Caitlin Jones*

of *Highfield House, Cornwall Road, Leicester LE26 7RF*

as Guardian of any of my children who are minor, under the age of eighteen years, at the date of my death should I be the sole surviving parent at the time of my death.

Step 4 – Make Your Gifts of Specific Amounts of Money and Property (Optional)

Examples of specific gifts:

I. ‘I give my stamp collection to my son, Simon John Francis’

II. ‘I give my silver Seiko watch to my son, Terry Paul Francis’
A gift of a specific amount of money is called a ‘pecuniary legacy.’ Examples:

I. I give £1000 (one thousand pounds) to my niece, Michaela Francis

II. I give £1000 (one thousand pounds) to each of my grandchildren, who should be living as of the date of my death, upon attaining the age of 18

III. I give £1000 (one thousand pounds) to Cancer Research UK, registered charity number 1089464

Points to consider:

- You don’t have to make any specific gifts or pecuniary legacies if you don’t want to – it isn’t compulsory.
- Always indicate clearly who is to receive each item of property. Give names in full, and identify each item of property.
- Avoid making gifts which you may change, or that no longer exist when you die. For example, ‘I give to my son, David Weston, the proceeds of my NatWest bank

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account number 0112345.' In reality, there is a chance this gift would fail as the numbered account may have been changed or closed by the date of death.

- Are there family heirlooms that would have a special meaning to someone? For example, a mother might want to leave jewellery to a daughter or granddaughter. A father may want to leave a watch to a son or grandson. A specific gift may not necessarily have monetary importance but may have personal significance or sentimental value.
- Any assets you do not give as a specific gift forms part of the 'residue of your estate.'

Example:

I give

My stamp collection to my son, Simon John Francis

My silver Omega watch to my son, Terry Paul Francis

£1000 (one thousand pounds) to my niece, Michaela Francis

£1000 (one thousand pounds) to each of my grandchildren, who should be living as at the date of my death, upon attaining the age of 18

£1000 (one thousand pounds) to Cancer Research UK, registered charity number 1089464

Step 5 – Choose Who Should Inherit Your Residuary Estate (Compulsory)

- Your residuary estate is what is left after the payment of specific gifts, pecuniary legacies, debts, taxes, and any expenses incurred in administering your estate.
- It is compulsory to make a residuary gift in your Will, otherwise, your assets will be divided up in accordance with intestacy rules set by Parliament, which may be in conflict with your own wishes, and may cause arguments between family members. This scenario also causes legal complications for your executors which may result in large legal bills.
- It is advisable to nominate replacement residuary beneficiaries so that if a residuary beneficiary dies before you, that gift will pass, instead, to a replacement beneficiary.

Example:

I GIVE all my property, not otherwise disposed of as above, to my Executors and Trustees to hold in trust for sale to pay my debts, funeral and testamentary expenses, and pay the residue to:

My wife, Susan Deborah Francis, all of my residuary estate, but if she redeceases me then I give the residue of my estate to my children, Simon John Francis, Terry Paul Francis, and Helen Susan Flood, in equal shares

Provided that if any of them should die before me, leaving a child or children surviving him or her, then such child or children shall take, by substitution, the share of their parent and, if more than one, in equal shares.

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Step 6 – Sign and Witness Your Will (Compulsory)

Your Will won't be legally valid unless it is witnessed according to strict legal rules:

- You must sign your Will in the presence of the two witnesses who are over the age of 18, and they must both be present when you sign. They don't have to be present while you write your Will, and they don't have to read your Will.
- Neither you, nor any witnesses, should leave the room until your Will is both signed and witnessed, and you should all watch each other sign.
- You must sign first and your witnesses after.
- You must be present when your witnesses sign.
- Each witness should be present when the other witness signs.

If you fail to follow these instructions to the letter, your Will is likely to be deemed legally invalid after you die, and all the hard work you invested in making your Will shall be wasted, not to mention the legal problems that will be caused to your nearest and dearest.

You should also:

- Use your usual signature, write in ink, and date your Will. Be sure the witnesses complete their names, addresses, and occupations, in the space provided on the forms.
- The witnesses should write their names and addresses, in the space provided on the forms.
- Choose witnesses who are, preferably, neither very old nor hard to trace, in case a question should arise later concerning the validity of your Will.
- A blind person cannot witness a Will.
- It is vital that the witnesses to your Will are neither beneficiaries under the Will nor the spouses of beneficiaries. If a beneficiary, or his or her spouse, does witness your Will, the beneficiary will lose the benefit of his or her gift, but the Will, in all other respects, will remain valid.
- An executor can safely act as a witness unless he or she is also a beneficiary, in which case another witness should be found.

Example:

IN WITNESS whereof I have hereunto set my hand this

20th day of April 2017

SIGNED by the Testator in our presence and then by us in his: B Francis

---

FIRST WITNESS **SECOND WITNESS**

SIGNED C Allen

Full Name Catherine Allen

of Cherry Tree

Kantama Lane

Leicester, LE16 4DR

SIGNED T Harlow

Full Name Trevor Harlow

of 8 Manor Close

Leicester, LE12 9HJ

Step 7 - Return your signed Will for safe storage and checking

Will Storage

Your Will is one of (if not the most) important documents you'll ever create, and consequently, it makes total sense that it needs to be properly looked after.

After all, what's the point in creating a Will if it can't be found when needed?

Remember that only the original Will has any validity – photocopies have no authority; it's only the Will with your actual signature, signed in ink, that has any power.

If that Will cannot be easily found when needed, it'll spell significant stress and trouble for your loved ones when they really could do without it.

Furthermore, if your original Will is damaged, then there's a chance it'll be declared invalid by the courts, which means that were a flood or fire to happen, your loved ones would be left without a valid Will, and nothing with legal weight to move forward with.

All of this adds up to the fact you need to look after your Will, and there is a simple solution. As a reader of this guide you are eligible to use the Will storage facility I use for my private clients, administered by Berkeley Weston Legal Services Ltd.

By doing so you are ensuring that your Will is kept safe and secure and that it can be accessed quickly and easily by your Executor(s) after your demise.

This is in sharp contrast to most solicitors, who'll make it very difficult for anyone to get hold of the Will, insisting on multiple forms of ID, and in lots of cases a face-to-face visit; generally with the ulterior motive of securing probate work for their firm.

With the Will Storage service I use for my private clients this doesn't happen – in fact, you'll even get a free copy of my DIY Probate Guide, enabling probate to be obtained without involving a solicitor and the associated costs (which run into multiple thousands of pounds).

So, here's how it all works:

1. You complete the 'Will checking and storage' form that accompanies this guide, and post it using recorded or registered post – together with your signed Will – to:

    Berkeley Weston Ltd
    Business Box
    3 Oswin Road
    Leicester
    LE3 1HR

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2. A legally-trained expert will check your Will and make sure it's legally compliant and there no potential issues with it
3. Your Will is logged and then placed in safe storage.
4. You'll receive a Will storage certificate together with a Will release form
5. The Will can be retrieved by you at any point
6. When your executors need your Will after your demise, it'll be returned to them quickly with no additional fees charged
7. The Will checking and storage service costs just £30 per year, or £9 every quarter. The amount is the same whether the storage is for a single Will or two Wills for a couple.

Will Checking

A big part of completing a Will is achieving peace of mind, and that's why it's absolutely crucial to get your Will checked by an expert. Do this and you can rest assured that your Will is legally valid, that your beneficiaries will get exactly what you want them to get and that there no disputes over your estate.

When you use the Will storage service offered by Berkeley Weston Ltd your Will is checked by a legally-trained expert to ensure that it's legal and valid.

What's the next step?

Go to the 'Will checking and storage' form now and fill it in.

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Section II – How to secure your independence during your retirement years and avoid being trapped in an old people's home against your wishes

You are about to discover the shocking truth of how a law passed by the Blair government gives an Orwellian 'secret court' powers to incarcerate UK citizens into a care home, take control of their finances and sell the family home to pay the care bills - **and what you can do to prevent this from happening to you.**

Without wishing to scare-monger, you do need to be aware that government policy sets out to deprive its citizens of their right to choose where they live, plunder their life savings, order the sale of the family home - and what you can do to avoid this from happening to you.

If, like most people, you want to continue living comfortably in your own home during retirement, then you'll find this section invaluable in helping you maintain your independence - and out of the 'old people's home'.

On April 7, 2005, a big and important change took place in England. On this date, Blair's new law came into effect – officially called the Mental Capacity Act 2005.

Most non-lawyers do not understand this law. Yet this legislation has ushered in dramatic changes that affect your ability to decide on your day-to-day living arrangements and your control over your finances.

The Mental Capacity Act:

- Introduced the ultimate 'stealth tax' - which gives the Treasury the ability to plunder your assets to ease the financial pressure on the NHS, local authorities, and a bankrupt Government.
- Granted extensive and draconian powers to the **Court of Protection** - referred to as a 'secret court' because it judges cases in private. It rules on cases where people have been deemed unable to manage their own affairs by social services and have not drawn up a Living Will or Power of Attorney.

The 2005 law gave the Big Brother State the power to incarcerate you in an institution against your wishes and plunder your wealth

"Where courts are allowed to operate in secret, terrible abuses of justice almost inevitably follow" Christopher Brooker

Dear Reader, please have a crystal-clear understanding about this; The Court of Protection has the power to order your removal from your family home into an institutional care home – even if this is against your most fervent wishes - seize your assets and order the sale of your home to pay for care fees.

Should you fall under the Court of Protection's control, decision making about your day-to-day living and your finances will be taken away from your family and into the

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hands of the state. This means your own fate hangs in the balance of officials who do not know you from Adam, rather than by you or your loved ones. Decisions about where you live, what you wear, how you spend your time, what you eat, what medical treatment you receive, and how your money is spent will be decided by a stranger appointed by the state, rather than someone who is close to you.

You may be thinking that you have more chance of being struck by lightning than the Court of Protection becoming involved in your life. This would be a mistake. In fact, the Court of Protection hears about 23,000 cases a year, and using its vast and far-reaching powers, has so far gained control of more than £3.2 billion of people's assets.

Each year, it takes more than £23million in legal fees directly from the bank accounts of people under its jurisdiction, often without their knowledge or consent.

It has been reported in the press that the billions controlled by the Court of Protection are being used by an arm of the Treasury to offset the national debt.

The Court Funds Office has sent the £2billion under the control of the Court of Protection to the UK Debt Management Office, an agency of the Treasury, where the funds are offset against the national debt.

Equally controversially, Court of Protection judges can authorise what are called Deprivation of Liberty Safeguards, which allow council or NHS officials to restrain someone in a hospital or care home for as long as the state deems it to be "in their best interests".

> *"The evidence suggests that tens of thousands of people are being deprived of their liberty."* Lord Hardie

An official investigation into the operation of the Court of Protection found that tens of thousands of people are being forced into care homes to save cash-strapped local authorities money.

People are being dumped in care homes as a money-saving measure because this is cheaper than caring for someone in their own home. It is worth remembering that people with assets of more than £23,250 have to fund the cost of care home bills, even if this means selling the family home.

The financial burden is, therefore, being passed from the state to the individual, contrary to the promise of free care from "cradle to grave".

THE THREAT TO YOUR INDEPENDENCE

Even if you have the set-in-stone "over my dead body" conviction of not ending up in an institutional care home, the fact is that sometimes the decision is taken out of your hands by the state, irrespective of your wishes.

You can see for yourself just how much power the Court of Protection wields, and the impact it has on ordinary families from the experience of children's author Heather Bateman, featured by the BBC's *One Show* and *Saga Magazine* recently.

Heather had to run the family finances after an accident left her husband Michael in a coma; and thanks to the Court of Protection, three years of pain and misery followed.

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Here's what Heather said in an interview with *Saga Magazine*:

"I shake as a large white envelope slips through the letterbox. My trembling fingers pull at the flap. I'm a grown woman with a family. I have done nothing wrong yet these letters make me feel like a criminal or a helpless child. The letters are from the Court of Protection.

Never heard of it? Lucky you. I hadn't heard of it either until the moment when my whole life fell apart. In September 2003 my husband Michael walked across a quiet country road towards me and was hit by a car. He fell to the ground and never stood up or spoke a word again. In hospital, he collapsed into a coma. The three-year nightmare began.

Before the Court of Protection made her life a misery - Heather with husband Michael

Michael and I were two independent working people. We had been married for 28 years. We had written our Wills, both our names were on the deeds of the house we shared in London and the Norfolk cottage we had renovated over the years. We had separate bank accounts and most of the bills were paid from Michael's account. Now, to continue living in the way we always had done, I needed to access the money in his account.

Michael had been moved to the Intensive Care Unit at Addenbrooke's Hospital in Cambridge. 'You need to get the right forms' the man at the Citizen's Advice Bureau at the hospital told me. 'Where do I get the forms?' I asked. 'From a solicitor,' he replied.

The solicitor's office I chose was Dickensian. The clerk, almost as ancient as the decor, handed me some forms and said, 'Fill these in and get your husband to sign here.'

I burst into tears, the first I had shed since the accident. And, once I started crying, I couldn't stop. The clerk looked at me uncomprehendingly.

'He can't sign,' I sobbed. 'He's in a coma.'

'Then you need the Court of Protection,' he said. I heard those words for the first time, words that represent an institution everyone should know about.

The Court of Protection brought me almost as much anger, grief, and frustration into my life as the accident itself.

The Court of Protection. An alien, intrusive, time-consuming and costly institution which was completely out of tune with what we were going through. For almost three years, it ruled my waking moments and my many sleepless nights.

We are advised to take out this insurance and that insurance but hardly anybody tells us to take out a Power of Attorney, which enables a person to appoint another

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to manage their financial affairs when they may be unable to act for themselves. Yet, in a case like ours, this is the only way to avoid the Court of Protection.

I had to apply to become Michael's Receiver, that is, I had to apply to the court to act on his behalf in carrying out the everyday financial matters of the life we had always lived.

To become his Receiver, I had to fill in complicated forms, detailing every aspect of our lives. I also had to give notice to my children and stepchildren of my application.

A Receiver can be a close family member or – where there is no suitable relative – a stranger or an organisation, such as a solicitors' office. But in its treatment of Receivers, the court does not distinguish between a close family member or a virtual stranger.

Who is the court protecting and from whom? As the weeks and months went by it became clear that the Court of Protection's primary role was to protect my husband from me.

I was doing all I could to look after Michael and to keep our lives in some kind of order. The Court was doing everything possible to place itself like a wedge between him and me, in order to protect itself from any accusations of wrongdoing should he ever 'wake up'.

To perform this unwanted task, this unwieldy organisation stepped into my life and took away my independence. The tone of the letters and the restrictions on how much and in what way our money could be spent undermined my freedom and self-respect. And if I did not do everything I was told to do, I could lose the right to be the Receiver. An unknown person could step in and take over our accounts and the running of our lives.

To deal with the forms and additional accounts, I needed the help of an accountant, whose fees also had to be paid. Over the course of two and a half years, more than £3,000 was used up on the Court of Protection.

As Michael's Receiver, I now had access to our accounts. But I was dismayed by the restrictions on my spending. I could write as many cheques as necessary up to £500. But if I needed to access more than that at any one time, I had to get permission from the Court – even to pay our daughter's university fees and accommodation.

Similarly, when I needed building work done, I had to submit two estimates and justify my choice of builder; I then had to wait several weeks for the Court to give permission and release the funds.

The nerve-racking experience was exacerbated by the fact that each time I phoned the Court, I spoke to a different clerk. I had to explain my distressing situation anew and then wait at least two weeks for a reply. I visited Michael daily. The court also sent a representative to visit him.

I found it humiliating. I was dealing with doctors, nurses and carers on a daily basis yet I could not help feeling that I was the one being checked up on.

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After almost three years, Michael died. When I eventually received probate, I cried with grief. A few months later, when I finally closed the Receiver's account, and my independence and self-respect returned, I cried with joy. At last, I was free.

Yet all this could have been avoided - if only I'd known how."

You can read more examples of people who have suffered at the hands of the Court of Protection online at:

http://www.factuk.org.uk/

As Heather said, all of the pain and misery she endured whilst at the mercy of the Court of Protection was *avoidable*.

- It **is** possible to avoid the Court of Protection taking over control of your life and finances.
- It **is** possible to ensure your wishes about where you live and how your money is spent are honoured, no matter what happens to you in the future.
- It **is** possible to achieve financial security and independence even when you are at your most vulnerable

Losing your independence to Blair's secret court IS NOT INEVITABLE...

But you need to take ACTION.

Do nothing and you are leaving yourself and your loved ones at great risk should your health fail in the future and social services come knocking at your door. Then it is only a short time before you lose your independence to the Court of Protection.

It's time to build an impenetrable fortress, built on the strongest legal foundations so that you can continue to live your life as you want.

Should you suffer a change in circumstance – ill health or injury – in the future, you will have everything in place to reduce the chance of unnecessary stress on you and your family.

The fact is that if you do not take safeguarding action now, you could end up in a situation like Heather Bateman; whereby all the important decisions are out of your hands.

If you were to fall ill and lose mental capacity, or social services, decide that it is in your 'best interests', a third party will be appointed by a Court of Protection judge to make decisions on your behalf.

If you make arrangements now, YOU get to choose the person, or people, making decisions for you – about where you live, your life, medical treatment, your hard-earned money – when your health inevitably starts to decline, or you suffer a sudden illness or accident.

You'll be protected from the Court of Protection and social services interfering and controlling your life.

Clearly, it makes sense that you choose someone to look after you when your health starts to fail or you suffer a sudden illness or accident; someone who you can trust, who knows

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you well, cares about you and will act upon your wishes, rather than a stranger appointed by an ‘Orwellian secret court’.

If you want to protect your independence and prevent the Court of Protection from running your life, there is a very simple and straightforward solution...

HOW TO PROTECT YOUR INDEPENDENCE AND PREVENT THE COURT OF PROTECTION TAKING OVER

The solution is actually very simple and easy to implement; having a correctly drafted specific legal document in place will secure your independence and prevent the Court of Protection taking control of your life.

The legal document concerned is called a **lasting power of attorney.**

If you aren’t aware, a lasting power of attorney (LPA) is a legal document that lets you choose trusted people (known as ‘attorneys’) to make decisions about your finances or health and care decisions on your behalf.

This gives you control over what happens to you if, for example, you have an accident or an illness and can’t make decisions at the time they need to be made.

If you don’t have a lasting power of attorney in place and are deemed incapable of making decisions yourself, then the Court of Protection will appoint someone to make these decisions for you.

There are two types of LPA:

1. **A LPA concerning your health and welfare.**

   It is critical to set this up if you want to avoid the Court of Protection deciding where you live, and whether you go into a care home or continue living independently in your own home.

   If you don’t set this up and lose the capacity to make these decisions in the future, or social services decide that it is in your ‘best interests’, then the Court of Protection will step in and make these decisions for you.

   Implementing a health and welfare LPA means that you are creating a legally binding document that gives you control over issues such as staying in your own home, giving or refusing consent to health care and day-to-day matters such as your diet, dress and daily routine.

2. **A LPA concerning your money, property, and finances.**

   This is crucial if you want to retain control over decisions about your finances and property. If you don’t set this up then you are at risk of the Court of Protection taking control over your finances.

   This covers practical financial matters such as using your bank and building society accounts, paying bills, making and selling investments and buying and selling your home.

When set up correctly, the lasting power of attorney will:

- Give you legal protection from the Court of Protection taking control of your life.
- Protect your independence.
- Prevent you from being forced into a care home against your wishes.
- Ensure your wishes about where you live are followed should you suffer ill health or accident.
- Ensure that your instructions about how your money is managed and spent are followed.
- Make sure that a person(s) of your choosing is appointed to look after you, rather than strangers chosen by the state.

Once this arrangement is in place, you have the full backing of the law to ensure you retain your independence and keep the Court of Protection out of your life.

How does this work?

If you recall, the Court of Protection gets its powers from a law passed by the Blair Government – The Mental Capacity Act. This law states that the Court of Protection does not have the legal jurisdiction to make orders over people who have a valid LPA in place.

The Court of Protection only has the power to intervene where there is no LPA in place, or where there is a LPA in place but it has not been set up correctly.

This means the Court of Protection only gets involved with people who haven't put this legal arrangement into place, people like Mr and Mrs Bateman.

The bottom line is that all of the stories you have read about could have been avoided if this straightforward and inexpensive arrangement was implemented – as Heather Bateman said:

> *"… all this could have been avoided - if only I'd known how."*

The LPA has to be set up well in advance - it can't be done 'after the event', for example after you lose capacity and a referral is made to the Court of Protection.

One of the legal requirements for the LPA is that the person must have 'mental capacity' at the time they make it.

'Mental capacity' means the ability to make a specific decision at the time it needs to be made. A person with full mental capacity understands the decision they need to make and why they are making it.

A person who lacks mental capacity (someone with advanced dementia for example) cannot make a valid LPA.

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How to create your Lasting Power of Attorney

Below is a summary of the steps required to make a 'Do-it-Yourself' LPA. These steps should be read in conjunction with the LPA forms, which can be downloaded from the official government website:

https://www.gov.uk/government/publications/make-a-lasting-power-of-attorney

When considering the DIY approach it is important to complete the LPA paperwork in strict accordance with the legal requirements, otherwise, the Court of Protection can rule it invalid and you are back to square one.

Step #1 - Make your Health and Welfare LPA

You must follow these instructions if you want to avoid the risk of the Court of Protection sending you to a care home against your wishes. It is the only way to ensure that your wishes about where you live are followed.

This LPA covers decisions such as:

- Where you live, for example, staying in your own home rather than in a care home.
- Giving or refusing consent to health care.
- Day to day living such as what you eat and your daily routine.

Complete Form LP1H and follow these steps:

1. **Complete Section 1: The 'donor'.**

   The person making the LPA is the donor. If you are completing the form for yourself, then you complete your details in section 1. If you are helping someone else complete the form, the details for the person you are helping should be entered.

2. **Complete Section 2: The 'attorneys'.**

   Attorneys are the people you choose to make decisions for you. They should be people you know and trust well, for example, your spouse, partner, children or close friends. The people you choose will be responsible for making decisions about your finances and care should you lose the capacity to make these decisions for yourself.

   You need at least one attorney. If you are married then your spouse would be the natural choice for your main attorney, although this isn't compulsory.

   Your attorneys must be at least 18 years old, have the mental capacity to make decisions and not bankrupt or subject to a debt relief order.

3. **Complete Section 3: How should your attorneys make decisions?**

   If you are appointing more than one attorney or replacement attorneys, you need to decide whether:

   - they should make decisions unanimously ('jointly') or

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- whether they can make decisions on their own or together ('jointly and severally') or
- some decisions can be made unanimously but can make other decisions on their own ('jointly for some decisions, jointly and severally for other decisions'). If you choose this option, you'll need to list the decisions your attorneys should make unanimously and on their own on continuation sheet 2.

4. **Complete Section 4: Replacement attorneys**

   This is optional but recommended.

   Replacement attorneys are a backup in case your main attorney can't make decisions for you; for example, if they die before you, lose capacity or no longer want to be your attorney.

5. **Complete Section 5: Life-sustaining treatment**

   You must choose whether to give your attorneys the power to refuse or give consent to life-sustaining treatment on your behalf if you need medical help to keep you alive and you no longer have the mental capacity to make the decision yourself, for example:

   - Surgery such as a heart bypass or organ transplant.
   - Cancer treatment such as chemotherapy.
   - Artificial nutrition or hydration if you are unable to feed yourself (food or water given by other means other than the mouth).

   Life-sustaining treatment therefore means care, surgery, or medicine to keep you alive.

You have two options:

1. **Option A:** I give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.
2. **Option B:** I do not give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf. Choosing this option means that these decisions will be made by doctors.

You must sign either option A or option B.

You can express your wishes about life-sustaining treatment in section 7 of your LPA document, for example:

"My attorneys must not agree to life-sustaining treatment if I am in a persistent vegetative state".

6. **Complete Section 6 (optional): People to notify when the LPA is registered.**

   You can choose to notify up to five people that you are going to register your LPA. This adds an extra layer of security because these people can raise concerns, for example, if they think that you were under pressure to make your LPA or that fraud was involved.

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The person applying to register your LPA must send a notice to each nominated 'person to notify'. These people can object to the LPA, but only for certain specified reasons and within a set timeframe. After this timeframe has expired they are no longer involved in your LPA.

You should choose someone who knows you well and who would be willing to speak up if they thought something was amiss.

You can't choose your attorneys or replacement attorneys as a 'person to notify'.

Completing this section is optional. You do not have to choose any people to notify if you don't want to.

7. **Complete Section 7 (optional): Preferences and instructions**

   You can set out your preferences in your LPA in respect of how you would prefer your attorneys to make decisions. They are not binding on your attorneys but they should consider them when making decisions for you. For example "I would like to donate £250 per year to Cancer Research".

   When completing the preferences section use words such as 'prefer' and 'would like' rather than 'must' and 'shall'.

   If your attorneys **must** do something, include it in the **instructions** section. Your attorneys must follow your instructions exactly. Use words such as 'must' 'shall' and 'have to'.

   Instructions should be specific and not in any way vague, for example, "My attorneys must not sell my home, unless, in my doctor's opinion, I am no longer able to live independently" or "my attorneys must consult a financial advisor before making any investments over £20,000".

   Care is required when completing this section because if it is not completed correctly it could mean that your LPA is null and void.

   It is therefore advisable to take legal advice over your proposed wording in order to avoid potential problems further down the line - remember, the Court of Protection is kept at bay only when you have a valid LPA in place.

8. **Read Section 8: Your legal rights and responsibilities.**

   Everyone signing the LPA must read and agree to the conditions in this section.

9. **Complete Section 9: Sign your LPA**

   It is important to sign the LPA in the correct order, otherwise, it won't be valid and your attorneys won't be able to use it.

   Bear in mind that by signing your LPA you are entering into a binding legal agreement with your attorneys.

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Signing instructions:

i. You (the donor) should sign before anyone else. You must sign:
   - Continuation sheet(s) 1, if used.
   - Continuation sheet(s) 2, if used.
   - Section 9 of the LPA.

     Enter the date you signed the LPA in section 9.

ii. Your witness should sign next

    There must be an independent witness present who watches you sign your LPA. The witness must then sign immediately after you.

    Your witness can't be aged under 18, one of your attorneys, or one of your replacement attorneys.

10. Complete Section 10: 'Certificate provider'.

You need to nominate someone to confirm that you aren't being pressured into making your LPA and that you understand what you are doing.

Your certificate provider should either;

(i) have relevant professional skills, for example, be a registered healthcare professional such as your GP, a solicitor or barrister, a registered social worker or an independent mental capacity advocate.

OR

(ii) have known you well for at least two years, such as a friend, neighbour or colleague. They must know you well enough to have a conversation with you about making your LPA.

Who you can't use as your certificate provider:

- Your attorneys or replacement attorneys
- Members of your family
- Members of your attorneys' family
- An unmarried partner, girlfriend or boyfriend of yours or any of your attorneys
- Your business partner or one of your attorneys' business partners
- Your employee or one of your attorneys' employees
- An owner, manager, director or employee of a care home where you live, or a member of their family

The certificate provider's role is to sign your LPA to confirm that:

- they've discussed the LPA with you;
- you understand the significance of the LPA;
- you have not been pressurised to make it; and
- there has been no fraud involved in making the LPA

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Note – Your certificate provider can also:

i. act as your witness when you sign section 9
ii. be a 'notified person' in section 6

Your certificate provider needs to sign and date section 10 of your LPA after you have signed section 9.

11. Complete Section 11: Signature - attorney and replacement attorney.

Your attorneys and replacement attorneys must write their names in section 11 and sign and date the LPA.

Their signatures must be witnessed. The witness should sign, and then write their full name and address. You, as the donor, cannot act as a witness, but your other attorneys and replacement attorneys can act as each other's witnesses.

This section **must** only be completed after you have completed section 9, and the certificate provider has completed section 10, otherwise, the whole LPA will be invalid.

How to Register your LPA (optional)

Once you have completed the above steps and created your LPA, it must be registered with the Office of the Public Guardian (OPG) before it can be used.

It is not necessary to register an LPA immediately after it is created but it cannot be used in any way before it is registered.

An application to register the LPA may be made by the donor or by one or more of the attorneys.

The OPG is responsible for registering LPAs and will check to make sure that:

- The LPA is legally correct
- The LPA has no errors
- People have had the opportunity to object if they have any concerns, for example, fraud or undue influence.

If there are no valid reasons for objection, and no problems with how the LPA has been prepared, the OPG will stamp the LPA, register it and then post it back. The LPA is then ready to use.

Registration of a LPA by the OPG will take at least four weeks (the 'statutory waiting time'); the actual time taken for registration will depend on workflow through the OPG, and will typically be seven weeks.

The advantage of registering the LPA straight away is that any potential errors or problems with the LPA can be picked up by the OPG now and rectified. Mistakes can only be corrected while the donor has mental capacity.

If you delay registration and the donor loses mental capacity, it won't be possible to rectify any mistakes, possibly rendering the entire LPA invalid. The donor would then be at the mercy of the Court of Protection.

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12. **Complete Section 12: The applicant**

    Either the donor or an attorney(s) can apply to register the LPA.

    The person who is applying should complete their details in section 12.

13. **Complete Section 13: Who do you want to receive the LPA?**

    Complete this section to notify the OPG to whom they should send correspondence, or address queries about the LPA.

    This person can be the donor, an attorney or someone else (for example, a professional who has helped you complete your LPA).

14. **Complete Section 14: Application fee**

    At the time of publication, a fee of £82 must be paid upon the registration of each LPA. The fee must be sent along with the application for registration. Payment may be made by credit/debit cards, or by cheque. Cheques should be made payable to 'The Office of the Public Guardian' and the donor's name should be written on the reverse of the cheque. Please note that fees are subject to periodic change. The OPG staff can confirm the current fee via telephone: 0300 456 0300.

    In some circumstances, there may be an entitlement to an exemption, remission or postponement of the fee. If the donor's income is low or is entitled to any means-tested benefit, there is very likely to be a fee exemption or remission.

15. **Complete Section 15: Signature**

    The person applying to register the LPA should sign this section.

    Complete the checklist and then send the LPA to:

    Office of the Public Guardian

    PO Box 16185

    Birmingham

    B2 2WH

Step #2 Make your Property and Financial Affairs LPA

This LPA covers decisions about your money, finances, and property, for example:

- Opening, closing and using your bank and/or building society accounts.
- Paying your bills.
- Making or selling investments.
- Buying or selling property, including your home.

Complete Form LP1F to make your Property and Financial Affairs LPA:

To complete form LP1F, follow the same 15 steps as listed above for the Health and Welfare LPA, with the exception of step 5, which should be replaced with the following:

- **Complete Section 5: When can your attorneys make decisions?**

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You need to choose whether you want your attorneys to either:

a) Make decisions for you as soon as your LPA has been registered.

Most people choose this option because it's the most practical.

While you still have mental capacity, your attorneys can only act with your consent. If you later lose capacity your attorneys can continue to make decisions for you without the need for any further action.

OR

b) Make decisions for you only when you have lost mental capacity (i.e. you are no longer capable of making decisions for yourself).

Choosing this option can cause potential problems for your attorneys, for example, banks and other financial institutions may require written proof that you do not have mental capacity before they act on the LPA.

A financial LPA can be used as soon as it has been registered by the Office of the Public Guardian. Once it has been registered, your attorneys have the legal authority to make decisions on your behalf.

A 'done for you' LPA service is available to my private clients, ensuring the paperwork is completed to the letter of the law for the minimal amount of time and effort. If you would like to apply then complete the private client application form that accompanies this guide. Or, if you have any questions then email phil.weston@berkeleyweston.co.uk or schedule a telephone appointment with me by calling my PA on 0116 2795044.

SECTION III - How to stop the Government from plundering everything you own over £23,250 to pay for the 'Dementia Tax'

If you own assets worth over £23,250, your local authority can target your income, life savings and family home to pay for care fees if you need to move into residential care.

Making the move into residential care may be the only viable option if you decide that you are no longer able to live independently in your own home.

Or, this decision may be taken out of your hands if you fail to make a Lasting Power of Attorney and the Court of Protection makes the decision that residential care is in your "best interests".

Either way, everything you own over £23,250 is targeted by the state to pay for your care in your old age – commonly referred to as the 'Dementia Tax'.

The amount you may have to pay will be worked out by a means test assessment carried out by the local authority, which is based on nationally set regulations and statutory guidance under the Care Act 2014.

If you have worked hard, made savings and bought a home then you will have to cough up for your care fees, like it or not, unless you take preventative action to ring-fence your assets. More on this in a moment.

For those who've lazed about, made the most of what the state has had to offer throughout their lives and failed to contribute to society can expect to continue to do the same well into old age.

Those people who haven't built up a nest egg will get their care fees to be paid for them by the state via hard-working peoples' taxes. I'm sure this doesn't come as a surprise – it's the same old story – the prudent who contribute their entire working lives by paying into the system subsidise those who haven't paid in a penny!

CASE STUDY: ANNIE KENNEDY WORKED HARD ALL HER LIFE... THEN PAID THE PRICE

Despite paying taxes all her life, grandmother Annie Kennedy was forced to sell her house to pay for care.

She had to move into a care home after developing Alzheimer's. But no sooner had the former greengrocer from Margate moved in, than her daughter Pauline was landed with a huge bill from Kent County Council.

Pauline was told that because her mother had assets of more than £23,250, she would have to meet the care home bills in full.

Her mother had little cash, so she was told she would have to sell her home. The bungalow went on the market for £175,000 but because of the recession, the family had to accept £140,000. Straight away, £10,000 in care home fee arrears had to be handed to the council.

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To add insult to injury, Mrs Kennedy's pension credit of £50 a week was stopped because she had money from her house.

Her daughter claimed she had been "harassed" by council officials threatening legal action if she spent the money raised by the sale of her mother's house.

Pauline told the Daily Mail: *"Mum and Dad worked hard all their lives and went without in order to buy their own home, which in those days was very hard to do."*

She said the state had created an *"appalling boundary" where nursing care was free but social care is means tested "at the equivalent of a 100% tax rate".*

"It seems that NHS managers have a vested interest in offloading patients into social care," she said. "Why should those of us who have paid tax and national insurance all our lives be treated like this?"

Source: **http://www.dailymail.co.uk/news/article-1327898/20k-year-sell-homes-fund-care-Families-struggling-pay-soaring-fees.html**

How Your Finances Are Treated If You Need Residential Care

In summary, the care fees funding regulations work like this; once you are admitted into care, your local authority will conduct an examination of your finances. If your income is insufficient to pay for the care fees, then the shortfall will have to be made up from your assets.

Your bank accounts, savings, and investments (including your share of any jointly owned assets) will be targeted first until they dwindle down to £23,250.

Then they will come after your family home.

The good news is that your Local Authority can no longer force a sale to pay for care fees. The bad news is the care fees mounting up will be secured against your home by way of a 'legal charge' (similar to a mortgage) so the debt will be repaid when the house is eventually sold.

This means that potentially all you'll have to show for a lifetime's hard work, paying taxes and being responsible is a paltry £23,250 legacy to leave behind after you have gone.

This is yet another example of official government policy punishing people like you for all your hard work, tax and national insurance contributions over your lifetime.

They want to make you sell your home or use up all your savings in order to pay for your care in your twilight years.

This means that those who have worked hard and have their own property and some savings are paying for their own care and are also subsidising those who have never bothered to save. I'm sorry if this is 'politically incorrect' but it's the truth. As usual, those who try and do the right thing all their lives and pay their taxes up front lose out yet again.

Question: Why should people who have paid tax and national insurance their entire working lives have to sell their house to pay for care when they were promised to be taken care of from "cradle to grave"?

To rub salt into the wound, people who have paid in nothing will get it for free.

You know, it's a familiar story. Those that work hard throughout their lives pay their way and buy their own home end up paying for care that they have already paid for in taxes! And those who have not worked hard to pay off a mortgage or built up a nest egg get it all for free, paid for by the government. And where did the government get the money to pay for their care? Oh, that's right, from those who worked all their lives and paid taxes!

Just imagine for a moment that you do need to spend some time in a residential care home. The person in the next room to yours is someone who has been feckless and wasted everything they've ever earned or more likely been handed by the government, and they aren't paying a penny towards their care home bills, while you are being robbed of your life savings and family home!

The bottom line is that ordinary hard-working families like Mrs Kennedy's end up funding their own care fees when other less scrupulous people have a free ride – not for the first time in many cases – which their taxes have helped to pay for!

Government U-Turn on Care Fees Cap

You may think that all of this is irrelevant given the Government's promise to place a lifetime "cap" on care fees of £72,000.

Well, you may not be all that surprised to learn that the Department of Health decided on 17th July 2015 that the cap is unaffordable for the nation's finances, and has therefore been shelved indefinitely.

This is despite the fact that it was a key pledge in the Conservative general election manifesto published just months before. Most commentators in the care sector believe the plan has been abandoned and will never be implemented.

This means the current situation, in which anyone with assets of more than £23,250 must pay the full cost of care, will continue indefinitely.

That being the case, let's look at some strategies that you could implement to protect your life savings and family home from being used to fund care fees.

HOW TO PROTECT YOUR LIFE SAVINGS FROM BEING PLUNDERED TO PAY FOR CARE FEES

We'll start by looking at a way you can protect your life savings, as these will be used up before the value of your family home. If you recall, your savings are at most risk because they will be used to pay for your care bills before the local authority turns to your property.

It is possible to ring-fence savings and investments from being used to pay for care fees due to a legal loophole in the law governing the payment of care fees - Schedule 2 of The Care and Support (Charging and Assessment of Resources) Regulations 2014.

The above regulations affirm that a certain type of financial asset must be disregarded when assessing a person's finances for the purposes of paying care fees, providing certain conditions are met.

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The asset we are concerned with is called an **investment bond**. This is a specific type of investment product provided by insurance companies.

The reason investment bonds are exempt is that they are technically classified as a life insurance asset. The care charging regulations specifically exclude the value of life insurance policies from being used to pay for care fees. Therefore, if you have money invested in an investment bond then it should be excluded from being used to fund care fees.

It should be noted that an investment bond is an investment product, rather than insurance in the general sense. The reason it qualifies as life insurance is due to the fact it pays out an enhanced surrender value upon death. For example, if you had an investment bond valued at £100,000, upon death it would typically pay out £101,000, with the additional £1,000 being the life insurance element. Because of this minor amount of life insurance element, the whole value of the bond is protected from care fees.

Investment bonds are usually designed to provide benefits for different types of investors but a common element is that they aim to produce long-term capital growth and provide a tax-free income.

The usual warnings should be noted - the value of your investment in a bond can fluctuate and you may not get back the full amount of your original investment. Early cash-in charges may apply on some investment bonds.

In summary, investing money into an investment bond is an effective way of ring-fencing and protecting some of your capital, while still retaining access to those assets if you ever need to go into residential care.

You'll need to take professional advice from a suitably qualified professional adviser who specialises in this area. Only certain types of investment bond qualify for the exemption so it is important to speak with an expert in this field.

It's also important to get professional advice in order to avoid falling foul of the 'deliberate deprivation' rules. This subject is addressed in the final section of this guide, but in summary, if money was invested into an investment bond with the sole purpose of avoiding care fees, when a need for care was foreseeable, then the local authority has the power to claw back the funds.

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HOW TO PROTECT YOUR FAMILY HOME
FROM BEING USED TO PAY FOR CARE FEES

Jointly-owned property

What follows is a proven, non-contentious and simple way to protect up t0 100% of the value of a family home from being used to pay for care fees. This strategy only applies to jointly-owned property, and not to property owned in a person's sole name. For a property owned in a sole name please skip this section and move on to the section headed 'property owned solely'.

I'll explain precisely what steps you need to take in a moment. But first I need to explain these two different scenarios; 1. The situation you are in now and; 2. A scenario where your property is protected from being used to fund care fees.

Scenario 1: The situation now – where your property is vulnerable to being used to pay for care fees:

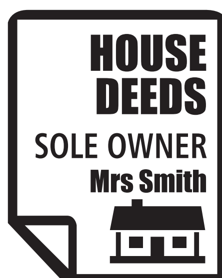
The following scenario illustrates how a jointly-owned property will be used to fund care fees, using the example of Mr and Mrs Smith.

1. Mr & Mrs Smith own their home jointly as 'joint beneficial owners'

2. Mrs Smith becomes incapacitated and enters residential care

3. The house is exempt from care fees whilst Mr Smith lives there

4. Mr Smith dies



5. Ownership of the house passes to Mrs Smith and she is now the sole owner.

6. Up to 100% of the agreed property value will be used by the local authority to pay for Mrs Smith's ongoing care fees, once her savings have been used up

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It is important to note that the local authority can only target the property once it becomes empty, for example, upon the death of one of the owners, or if both owners went into care at the same time. The property is exempt from being used to pay for care fees while the spouse continues to live there.

Scenario 2: Where a property is excluded from being used to pay for care fees

In this scenario, the joint owners create a situation where the amount of their property's value that can be used towards care fees is assessed at £NIL.

To do this we must change what happens at stage 5 of the example illustration when Mr Smith died and ownership of the property passed to Mrs Smith.

In scenario 2 we change what happens so that upon Mr Smith's death, his share of the property (i.e. 50%) does NOT pass to Mrs Smith, but is instead held on trust in a 'Tenants in Common Will' - for the next line of beneficiaries (e.g. their children).

This means that Mrs Smith continues to own her 50% share of the property in her name, but does not inherit Mr Smith's 50% share.

This differs from scenario 1, where Mrs Smith inherited her late husband's share of the property, which enabled the local authority to target the whole value of the property to fund her care fees.

If we use a property value of £500,000 for Mr & Mrs Smith's property, we can see that by changing to tenants in common has saved Mrs Smith at least £250,000, or 50%, which otherwise would've been available to pay for her care fees.

The advantage of scenario 2 can be seen at stage 6 of the illustration when the local authority assesses the value of Mrs Smith's share of the property for the purposes of paying for her care fees.

Taking this a step further, it is possible to reduce the remaining 50% or £250,000 in Mrs Smith's case even further by using case law to her advantage.

When entering care, the local authority is required by law to assess the value of Mrs Smith's ownership share in her property. This is called the **open market value** figure. In other words, what would a willing buyer pay for Mrs Smith's share of the property if it was placed up for sale in the normal way?

This is straightforward to calculate in scenario 1, when Mrs Smith owns 100% of the property and can be valued by a surveyor or estate agent based on current market conditions. For example, if the current valuation by an estate agent is £500,000, then it follows that Mrs Smith's 100% share is also worth £500,000, and the entire value of the property can be used to pay for her care fees.

It is not so straightforward for the local authority to assess the value of a 50% share in a property, which you can use to your advantage.

In a legal case heard in the Court of Appeal, Chief Adjudication Officer and Another v Palfrey, and later confirmed in Local Government Ombudsman (Complaint 03/C/09384), it was upheld that the open market value of the house in question was

£NIL for the purposes of paying for care fees.

This is actually a logical approach when you think this through when we ask ourselves what would a willing buyer pay for a half share of a property if it was placed up for sale in the normal way on the open market? In other words, what is the value of just half of a property when the remaining half is owned by someone else? In these circumstances, the new buyer is unlikely to ever own the entire property. Who would buy “half a house”?

The Court of Appeal decided this was in effect an artificial market and there wouldn’t be a willing buyer on the normal open market, therefore the value of the half share should be Nil, or close to Nil.

In practice, when this occurs for the purposes of paying for care fees the Local Authority can put a case forward that a property investor might actually be found to purchase this interest in the property. Even so, this figure would be a lot less than the 50% half share of the value, typically in the low tens of thousands.

Applying this to Mrs Smith’s case she has protected close to £500,000 from being taken away from her and her family to pay for “dementia tax” payments for her care fees.

This legal principle has subsequently been enshrined in the Care Act 2014, which came into force on 1st April 2015 (and was also an accepted principle prior to 1st April 2015). The Care Act is supported by new rules, referred to as the ‘charging regulations’.

Your Local Authority must follow the wording of the Care Act 2014 and the charging regulations when assessing your property and other assets for the purposes of paying care fees.

When assessing jointly-owned property, Part 5 of the charging regulations, entitled ‘Treatment and calculation of capital’, states that:

> *(1) Where the adult and one or more other persons are beneficially entitled in possession to any capital asset except an interest in land - (a) unless paragraph (2) applies, each person is to be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest; and (b) that asset is to be treated as if it were actual capital.*
>
> *(2) This paragraph applies where the local authority is satisfied that the adult is beneficially entitled in possession to a share which is less than or, as the case may be, more than an equal share of the whole beneficial estate.*
>
> *(3) Where paragraph (2) applies, the adult’s share of the whole beneficial interest will be the actual share (as determined by the local authority) and is to be treated as if it were actual capital.*

The charging regulations go on to say that where a care home resident is a joint owner of a capital asset, for example, property, the local authority has to base its valuation on the sale value of the resident’s interest to a **‘willing buyer’** on the **open market** at the time of the means test.

The local authority should not, therefore, simply assess the value of a property as a whole, divide it up into the shares owned (e.g. 50% each), and then assert that this half share is the true value of the beneficial interest.

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In summary, changing to tenants in Common and having this reflected in a bespoke Will is a tried and tested method of removing up 100% of the value of your family home from the clutches of local authority means test assessments when it comes to residential care fees.

To illustrate how Scenario 2 works:

1. Mr and Mrs Smith put into place an arrangement where they each own a defined 50% share of their house ("tenants in common")

2. Mrs Smith enters residential care

3. The house is exempt from care fees assessment whilst Mr Smith is the occupant

4. Mr Smith dies

5. Mr Smith's 50% share held under the terms of a 'Tenants in Common Will'. The local authority have to assess the open market value of Mrs Smith's 50% ownership share – this has to be declared as £NIL as there is no open market to buy half a house.

6. The entire value of the property is ring-fenced from being used to fund Mrs Smith's ongoing care fees

If you would like to know more about how to set this up for your situation then complete the private client application form that accompanies this guide or schedule a no-obligation telephone appointment with me by calling my PA on 0116 2795044, or get in touch by emailing me at phil.weston@berkeleyweston.co.uk

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Property owned solely

The tenants in common approach discussed above is only available where a property is owned jointly.

Where a property is owned by a sole owner, it may be possible to protect the property from being used to fund care fees by implementing (i) a 'lifetime discretionary trust', or (ii) taking out an equity release mortgage.

These approaches can also be implemented for homeowners who don't want to implement the tenants in a common approach.

(i) lifetime discretionary trust

Setting up a 'lifetime discretionary trust' and placing your home (and other assets) into the trust can protect and ring-fence those assets from being used by the local authority for future care home fees.

For this approach to work, the trust must be set up well in advance of any future need for care of being identified. If moving into care is on the horizon then the trust may not work due to the 'deliberate deprivation' rules.

This approach means that the trust becomes the legal owner of the property, and is therefore excluded from the individual person's assets as part of the care fees assessment by the local authority, providing the trust it was set up for reasons other than avoiding future care bills, for example for inheritance tax and estate planning.

Care should be taken when considering setting up this type of trust for the following reasons:

1. Deliberate deprivation. If the local authority can prove that the trust was set up with the main intention of avoiding future care fees then it could be overturned, and the person treated as though he or she was still the owner of the property.
2. The tax treatment of trusts. You are only allowed to place a certain amount into the trust before incurring punitive tax surcharges. It is therefore important to seek professional advice when considering setting up this type of trust.
3. The trust deed must be drawn up by a qualified lawyer for it to be legally valid – this isn't something you can implement yourself.

(ii) Equity Release ('Lifetime mortgage')

Equity release allows you to access the equity (cash) tied up in your home if you are over the age of 55. You can take the money you release as a lump sum or, in several smaller amounts or as a combination of both.

It works by taking out a mortgage secured on your property provided it is your main residence while retaining ownership. You can choose to ring-fence some of the value of your property as an inheritance for your family. You can choose to make repayments or let the interest roll-up. The loan amount and any accrued interest is paid back when you die or sell the property.

Equity release could be considered if you need more capital or income in retirement. It shouldn't be contemplated if you have sufficient income and capital already, due to the negative effects of the accrued interest on the amount borrowed.

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The Equity Release Council describe it aptly when they say an increasing number of people are using equity release as a “living inheritance” to release money tied up in property wealth and pass it down to their descendants while they are still alive.

How equity release could work in practice:

1. Spend the borrowed funds!
2. Invest the borrowed funds in a trust or investment bond. The advantage with this option is that you can retain control and access to the funds, and take income/withdrawals.

INEFFECTIVE STRATEGIES - WHAT NOT TO DO

When faced with the prospect of losing their assets to pay for care fees, many people believe they can simply transfer assets (e.g. the family home) into someone else’s name in order to avoid care fees. The thinking goes that if your name isn’t on the house deeds then it can’t be used to pay for care fees.

Why gifting assets away does not work

If assets have been gifted by the person requiring care to someone else, then the local authority can use ‘deliberate deprivation’ regulations to recover the asset. It is important to note that there is no limit to the deliberate deprivation rules, even if the gift was made more than seven years ago (see below).

Deprivation of assets is an important concept to understand when considering how you can shield your assets from being claimed by the local authority. If you deprive yourself of an asset (e.g. by gifting it to someone else), then the local authority can treat that asset as still belonging to you for the purposes of assessing your entitlement to care fees.

This means that if a house was gifted to a child, for example, the local authority could still recover the care fees by initiating a claim through the courts and placing a legal charge (similar to a mortgage) against the property. The care fees debt would then be paid to the local authority when the property is eventually sold.

The Care Act 2014 states that deprivation of assets occurs where a person has intentionally deprived or decreased their overall assets in order to reduce the amount they would be charged towards their care and support.

The term deprivation covers a broad range of ways in which the owner of an asset might transfer it out of his or her possession, for example:

- a lump-sum payment to someone else, for example, as a gift;
- substantial expenditure that has been incurred suddenly and is out of character with the previous spending;
- the title deeds of a property have been transferred to someone else;
- assets have been converted into another form that would be subject to a disregard under the financial assessment, for example, personal possessions;
- assets have been reduced by living extravagantly, for example by gambling;

When is deprivation 'deliberate'?

The Care Act 2014 lists factors that the local authority should take into account:

- whether avoiding the care and support charge was a significant motivation;
- the timing of the disposal of the asset. At the point the capital was disposed of could the person have had a reasonable expectation of the need for care and support?
- whether the person had a reasonable expectation of needing to contribute to the cost of their eligible care needs?

The statutory guidance also confirms that, for example, it would be unreasonable to decide that a person had disposed of an asset in order to reduce the level of charges for their care and support needs if at the time the disposal took place they were fit and healthy and could not have foreseen the need for care and support.

What happens where deprivation of assets has occurred?

Recovering charges from a third party. Where the person has transferred the asset to a third party to avoid the charge prior to the means test, the third party is liable to pay the local authority the difference between what it would have charged and did charge the person receiving care at the time of the means test.

As with any other debt, the local authority can use the County Court process to recover debts.

There is no time limit for 'deliberate deprivation'

If the local authority has suspicions about the motive behind a past transaction, it can investigate it, whenever it took place and it has wide powers of investigation.

Having said this, the longer between a transaction and the need for care arising, particularly if the person making the gift was in good health and not considering a foreseeable need for care, the more unlikely it is that the local authority can prove 'deliberate deprivation'.

The 'seven-year rule'.

A common misconception is that anything given away seven years or more ago is exempt from care fees assessment - this is confusing Inheritance Tax (IHT) with the care fees regulations. Under IHT rules a qualifying gift of an asset is excluded from any IHT calculation on death - providing it was made in the seven years before death. The seven-year rule is ex-plained in detail in the next section about inheritance tax planning.

No equivalent seven-year rule exists in respect of the care fees regulations.

Other reasons why gifting your property away is a poor strategy

Transferring assets, particularly the deeds to your home, to another person may have significant consequences. Once an asset has been transferred out of your name, you no longer have control over it, and the beneficiary becomes the legal owner. It is not always possible to rely on the new owner acting in accordance with your wishes. You should consider how you might be affected if the person receiving the gift has a change of circumstances, for example:

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Divorce; the value of your home would most likely be included in the divorce settlement. This could lead to a forced sale of your home, leaving you out on the street.

Financial difficulties; the value of your home could be repossessed by creditors in the event of the beneficiary falling into financial difficulties, leaving you homeless.

Death; the home would form part of the beneficiary's estate and would pass down to their heirs either in accordance with the Will or the intestacy laws if there is no Will. This again could lead to a forced sale of the property in order to meet the legal responsibilities and obligations of the deceased person's estate.

In summary, gifting away assets should be avoided because:

a. It probably won't work for the purposes of avoiding care fees; and
b. You could find yourself homeless if the beneficiary's circumstances change for the worse.

What *does* work:

1. Investing money into investment bonds
2. Putting tenants in common arrangement and supporting the Will in place to protect a jointly-owned property.
3. Setting up a lifetime discretionary trust or take out an equity release mortgage for a solely-owned property.

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Section IV – How To Protect Your Legacy From Inheritance Tax

The UK's most hated tax?

Benjamin Franklin famously once said the only two certainties in life are death and taxes.

We in the UK can add tax on death as a third certainty. As we shuffle off this mortal coil, the Government will have one final taxation card up its sleeve with the immoral intention of extracting up to 40% of what you have accumulated during your lifetime.

It's easy to understand why inheritance tax is dubbed the most hated tax when we consider that the money we have earned has already been taxed, and so to tax it again on death is unfair and immoral.

The purpose of this chapter is to establish:

i. Whether you have an IHT liability based on your current circumstances and if so;

ii. What options you have to reduce or eliminate the inheritance tax liability.

When inheritance tax, then called legacy, estate and succession duties, was introduced in 1796, it was with the aim of protecting the poor and interrupting the legacy of inherited wealth. A very Robin Hood-esque objective of taking money from the rich and redistributing it to the poor. The duties evolved into death duties in 1894 and did have a significant role to play in breaking up large estates in the UK. In this sense then, the original aim of the tax had the desired effect.

This fiscal ideology is now outdated largely due to the fact that the population at large is now a great deal wealthier nowadays than in 1796. This means that it isn't exclusively the very wealthy who get taxed. The people who are likely to be hit hardest (in relative terms) are those who are moderately well-off, but not sufficiently wealthy to take advantage of advanced IHT planning. People in this bracket may be unable to give away large sums without impacting their own quality of life. They probably don't even think of themselves as being especially wealthy and their wealth may have rather 'crept up' on them so that by the time they realise IHT might be a problem, it's too late to make a long-term plan.

In reality then, inheritance tax often hits those who just meet the threshold hardest; they may have spent their whole lives building up a financial nest-egg to pass on to their children, only then to have it hugely reduced upon death. In this instance, the revolutionary vision of redistribution of wealth fails spectacularly.

Adding to the inequality of IHT is that – to a great extent – it's easy to avoid if you have the resources to do so. The very wealthiest people can ensure they own assets, such as agricultural land, that can be passed on without incurring IHT. They can also afford to pay for the best advisors to organise their affairs in such a way as to minimise their tax exposure. And they can afford to gift away far more of their wealth (a useful IHT planning strategy as we'll come on to) without having an impact on their day-to-day existence. In short, if you're wealthy and well-organised, you can make sure that the taxman's final bite of your wealth is relatively insignificant.

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It's this fact that IHT is effectively optional for those who are wealthy enough and canny enough to avoid it that makes it a particularly unfair aspect of the tax.

Inheritance tax can be avoided reasonably easily as long as you do some advanced planning.

Levelling the playing field

The silver lining to this ominous taxation cloud is that you will discover the strategies employed by the very wealthy in this guide. You won't have to pay tens of thousands in fees for elite advisers normally only available to ultra high net worth individuals.

The latest, most effective, tax mitigating strategies are all covered in this guide.

Please read on to put yourself in an informed position about how you can stop the government from taking their final attempt to take 40% of what you leave behind.

Before we look at IHT planning in detail, consider what Lord Jenkins had to say:

"Inheritance Tax; - it is, broadly speaking; a ***voluntary*** *levy paid by those who distrust their heirs more than they dislike the Inland Revenue"*

Are you happy to volunteer to pay this immoral tax?

If not, you can avoid this unnecessary Inheritance by implementing burden with early, strategic planning.

How to work out if you have an inheritance tax problem

Inheritance tax is due if the value of your estate is more than the inheritance tax allowance set by HM Revenue and Customs when you die. Everyone has a tax-free inheritance tax allowance of £325,000, called the nil-rate band.

The inheritance tax rate is 40% of anything over the £325,000 threshold.

Your estate is the combination of your property, savings and investments, other assets, and any gifts you gave away in the seven years leading up to your death. The tax must be calculated and paid by the executor(s) of your Will within 6 months of the date of death.

The following assets can be **excluded** from your estate for inheritance tax purposes subject to certain conditions being met:

1. Pensions
2. Assets qualifying for 'Business Property Relief' (e.g. shares listed on the AIM stock market)
3. Assets held in Trust
4. Life insurance policies written in trust

Full details of the above 4 asset classes and why they are exempt are covered in detail later in this chapter.

In addition to the standard nil-rate band allowance of £325,000, you may be eligible to claim additional inheritance tax exemptions that could increase the amount you can leave tax-free up to a maximum of £900,000 (2018/19).

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1. The spouse exemption and transferable nil rate band

Married couples and civil partners are allowed to pass their possessions and assets to each other tax-free. In other words, Inheritance Tax is not payable on your assets that pass to your spouse.

Please note this does not apply to "common law" partners.

For a married couple, once both spouses have died, the heirs are allowed to use both tax-free allowances, which means that there is £650,000 (£325,000 x 2) potentially to leave tax-free. This effectively doubles the amount a married couple can leave behind tax-free without the need for special tax planning.

Example

Roy and Gillian have been married for 60 years. Roy died on 1st May 2007 leaving his entire estate worth £400,000 to Gillian upon his death. No tax is payable on this amount due to the spouse exemption.

Gillian dies on 1st September 2018 leaving an estate valued at £620,000 and is entitled to her own nil rate band plus a further £325,000 transferred from Roy. Her total nil rate band allowance is thus as follows:

Own nil rate band: **£325,000**

Nil rate band transferred from Roy: **£325,000**
(the amount of the nil rate band at the time of the widower's death is used)

Total nil rate band available: **£650,000**

In the above example, Gillian's estate worth £620,000 would pass free of inheritance tax to the beneficiaries of her Will.

Utilising the full amount available is worked out on the basis that the first spouse to die leaves everything to the surviving spouse in the Will. Leaving gifts to anyone other than the surviving spouse may reduce the transferable inheritance tax allowance.

It is the **percentage** of the nil rate band unused on first death which transfers, rather than the amount. This means that the surviving spouse subsequently benefits from any increase to the nil rate band. The sum available to claim, however, is based on the amount of the nil rate band at the time of the widow or widower's death.

2. The Residence Nil Rate Band (RNRB)

For deaths occurring after 5th April 2017, the RNRB allows an additional inheritance tax ex-emption where the deceased leaves a residential property to his or her direct descendants. This is in addition to an individual's own nil rate band allowance.

The RNRB started at £100,000 in 2017/18 and will increase by £25,000 each tax year until 2020, as follows:

- £125,000 in 2018-2019
- £150,000 in 2019-2020
- £175,000 in 2020-2021

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The RNRB can be claimed provided the following conditions are met:

- The deceased died on or after 6 April 2017
- The estate includes a residence owned by the deceased. Only one residential property will qualify. A property which was never a residence of the deceased e.g. a buy-to-let, cannot be nominated.
- The residence in the estate is inherited by the direct descendants of the deceased.

As with the nil rate band, the RNRB will be transferable between spouses and civil partners on the second death. For example, when combined with the full RNRB of £175,000 in 2020/21 this would provide a married couple with a possible £1,000,000 nil rate band if they left their estate to each other on the first death and then on the second death to their children (2 x £325,000 + 2 x £175,000).

The RNRB will be reduced by £1 for every £2 that the deceased's net estate exceeds £2,000,000. This will mean that on its introduction there will be no RNRB available if the deceased holds assets of more than £2,200,000. This will rise as the RNRB rises.

The family home doesn't need to be owned at death to qualify for example a person may have downsized or sold their property to move into residential care. Downsizing or the disposal of the property has to have taken place after 8 July 2015.

Example #1

Jeanette, who is unmarried, dies on 4th July 2018 leaving a house worth £350,000 and savings worth £75,000, making a total estate value of £425,000, to her son Donald and daughter Audrey. The inheritance tax position of the estate is thus:

Nil rate band allowance:	**£325,000**
Residential nil rate band allowance:	**£125,000**
Total nil rate band allowance:	**£450,000**

There is no tax to pay on the estate as the total value of Jeanette's estate (£425,000) is within the available allowance.

Example #2

Barry died on 3rd August 2012 leaving his entire estate to his wife Shirley.

Upon Shirley's death on 2nd February 2018, she leaves her house worth £600,000 and savings/investments worth £225,000 equally between her 3 children. The total nil rate band available is as follows:

Own nil rate band:	**£325,000**
Nil rate band transferred from Barry:	**£325,000**
Own residential nil rate band allowance:	**£125,000**
Residential nil rate band allowance transferred from Barry:	**£125,000**
Total nil rate band allowance:	**£900,000**

There is no tax to pay on the estate as the total value of Shirley's house and savings (£825,000) is within the available allowance.

Example #3

Brian died on 30th September/August 2014 leaving his entire estate to his wife Leigh.

Upon Leigh's death on 2nd February 2018 she leaves her house worth £800,000 and savings/investments worth £275,000 equally between her 3 children. The IHT calculation is as follows:

Own nil rate band:	**£325,000**
Nil rate band transferred from Brian:	**£325,000**
Own residential nil rate band allowance:	**£125,000**
Residential nil rate band allowance transferred from Brian:	**£125,000**
Total nil rate band allowance:	**£900,000**
Tax liability: (£1,075,000 - £900,000 x 40%)	**£70,000**

<u>Summary: The spouse exemption and transferable nil rate band</u>

- A single person (**not** a widow or widower) can pass £325,000 a tax-free, or £450,000 (rising to £500,000 in 2020/21) if your estate includes your home which you are leaving to your direct descendants.
- A widow or widower can pass a tax-free amount of £650,000 or £900,000 (rising to £1 million in 2020/21) if your estate includes your home which you are leaving to your direct descendants.

Now that we have addressed these exemptions that you may be able to utilise, it seems logical at this point to work out your own potential inheritance tax liability.

<u>Action Point - Work out whether you have an inheritance tax liability</u>

Use the assets & liabilities worksheet provided to work out the net value of your estate (gross assets minus liabilities).

Dos and Don'ts:

- Don't include the value of your pension (subject to the criteria laid out later in this chapter)
- Don't include life insurance policies written in trust
- Don't include the value of assets which qualify for 'Business Property Relief' (full details explained later in this chapter)
- Do include any gifts of money or valuable items that you have made within the last 7 years
- Do deduct any charitable bequests in your Will

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Once you have calculated the net value of your estate, then you should decide whether you are able to use the following exemptions:

i. Spouse exemption (Remember; If you are currently married, there is no inheritance tax to pay on the value of your estate left to your surviving spouse, regardless of the amount involved).

ii. Transferable nil rate band allowance

iii. Residential nil rate band allowance

If you do have a potential inheritance tax liability, then please continue reading the rest of this chapter to discover 7 ways that you can reduce or even eliminate your inheritance tax liability.

Ways to reduce your inheritance tax liability

1. Gifting

If you can afford to give money away without leaving yourself short then doing so can reduce your inheritance tax bill drastically.

Each individual is entitled to take advantage of the following exemptions:

i. The annual exemption

Each tax year you are allowed to gift £3000 to anybody you choose. You can also gift any unused allowance from the previous tax year. Married couples have an annual exemption of £3000 each.

ii. The small gifts exemption

In addition to the annual exemption, you are also allowed to gift up to £250 each tax year, provided you haven't already made other gifts to the same person during the same tax year. In other words, it is not permitted to make an exempt gift totalling £3250 to the same person by combining both exemptions.

iii. Gifts in contemplation of marriage

You can give your children up to £5,000, your grandchildren up to £2,500 and anyone else £1,000 when they get married.

iv. Normal expenditure out of income

You are allowed to give away as much as you want from your income each year just as long as it doesn't detrimentally affect your lifestyle. Putting this into practice, you can give away ordinary excess income or look at a way of converting your capital into income and hand it over that way.

You cannot give income away and live off your capital.

Gifts out of income need to meet the following criteria in order to be exempt:

a) They are part of the normal, habitual, or typical expenditure of the person making the gift,

b) They are made out of income (rather than capital), and

c) The person making the gift is left with sufficient net income to maintain his or her usual standard of living.

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The amount being gifted does not have to be the same every year, as long as it is part of a regular pattern over time. For example:

- Giving your son your share dividends every year
- Giving your daughter £10,000 every year
- Paying your grandchildren's school fees every year
- Paying monthly life insurance premiums in favour of your children

This is an incredibly powerful strategy for reducing inheritance tax given that there is ***no limit*** to the amount that can be gifted.

You'll need to keep records of the gifts in order to satisfy HMRC. You should make a separate document to record this information and let the executors of your Will know of its whereabouts, as they will be responsible for claiming this exemption after you've died. A gift out of income template is included in the resources section of your pack for your convenience.

v. To UK-registered charities or political parties

Any donations to these organisations are free of IHT, whether made in your lifetime or in your Will. If you leave at least 10% of your net estate to a charity in your Will, the rate of inheritance tax payable on the rest of your estate is reduced from 40% to 36%.

vi. Potentially Exempt Transfers (PET) "The '7-year rule"

You are allowed to make gifts of unlimited value which will become free of inheritance tax if you survive seven years after making the gift.

If you die within 7 years inheritance tax is payable on the gift. The amount of tax payable could be reduced if the gift qualifies for 'taper relief', which I'll come onto in a moment.

The gift must be to:

- another individual or
- to bare trusts, where the beneficiary is absolutely entitled to the trust fund with no conditions attached, or
- to a disabled person's trust

Transfers into discretionary trusts do not qualify and instead, are taxed as a 'chargeable transfer'.

Example

John makes the following gifts:

- £170,000 to his son, Joseph, in September 2015
- £170,000 to his daughter, Mable, in January 2016

John dies with an estate worth £275,000 in November 2018 when the nil rate band is £325,000.

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The gift to Joseph absorbs £170,000 of the nil rate band at date of death. No tax will be due on this failed gift.

The gift to Mable will use up the remaining NRB of £155,000, which means that the excess of £15,000 becomes chargeable in its own right, and is also added to the value of John's estate to calculate the IHT payable.

IHT is therefore payable on a cumulative estate total of £290,000 (Gifts of £340,000 + estate on death of £275,000 – nil rate band of £325,000). IHT payable by the estate is therefore £116,000 (£290,000 x 40%).

Mable is also liable for £6000 IHT due (£15,000 x 40%) on the failed gift (no taper relief will be due as death occurred within 3 years)

Taper Relief

Gifts made 3 to 7 years before your death in excess of your nil rate band (currently £325,000) are taxed on a sliding scale known as 'taper relief', as follows:

Number of years after gift before death occurs:	**Proportion of IHT payable**
Not more than 3	**100% (IHT = 40%)**
More than 3, but not more than 4	**80% (IHT = 32%)**
More than 4, but not more than 5	**60% (IHT = 24%)**
More than 5, but not more than 6	**40% (IHT = 16%)**
More than 6, but not more than 7	**20% (IHT = 8%)**

Note that these reduced rates only apply to tax due on the gift itself and not the remaining estate. A saving can therefore only be made where the deceased made lifetime gifts in excess of the nil rate band.

Example

Betty made the following gifts to her children: £125,000 to John on 1 February 2008, £150,000 to Millie on 1 June 2009, £175,000 to Tania on 1 May 2010.

Betty died in January 2015, leaving her £200,000 estate to her husband.

All 3 gifts become taxable, assessed in chronological order.

John's and Millie's combined gifts fall entirely within the available nil rate band of £325,000, so they have no IHT to pay. The remaining nil rate band isn't sufficient to cover Tania's gift and she does have an IHT liability.

- Gift to John £125,000
  Available nil rate band £325,000
  Remaining nil rate band £200,000
  No IHT for John to pay

- Gift to Millie £150,000
  Available nil rate band remaining £200,000
  Remaining nil rate band £50,000
  No IHT for Millie to pay

- Gift to Tania £175,000
  Available nil rate band (£50,000)
  Amount taxable £125,000
  IHT @ 40% £50,000
  Apply Taper @ 60%
  IHT payable by Tania £30,000

As Betty died more than 4 but less than 5 years since she made the gift to Tania, only 60% of the IHT is payable. This also leaves no nil rate band available to Betty's estate. Because she makes an exempt transfer to her husband, no IHT is due.

However, no transferable nil rate band remains available from her estate for her husband's executors to claim on his death.

Tip:

When making gifts it would be a good idea to cover any tax liability arising from death within the 7-year qualifying period by taking out a life insurance policy to cover the amount of IHT that would be payable. The policy should be arranged in trust so that it does not form part of your taxable estate on death. Otherwise, the sum insured would be liable to IHT!

Warning about 'Gifts with reservation of benefit':

HMRC do not allow an individual to make a gift and then still use the asset given away for the purposes of reducing inheritance tax. For example, if you transfer ownership of your property into a child(s) name but continue to live there without paying full market rate rent, HMRC deem that you are still enjoying the benefit of that asset and it remains part of your estate for IHT purposes on your death. The full value of the gift with the reservation will be taxable, irrespective of whether you survive 7 years or more.

I have experienced the consequences of individuals falling foul of this rule when helping private clients who seek out my help to sort out the inheritance tax situation of a family member who has died.

A recent example concerned the estate of Mr Mian, who gifted ownership of his property worth £450,000 to his 3 sons 4 years before he died. Mr Mian continued to live in the property and paid all of the upkeep and bills, but paid no rent. As such, HMRC deemed this a gift of reservation of benefit which resulted in an inheritance tax bill of £88,000 for his 3 sons.

To say they were not expecting this tax bill would be a grave understatement. The shocking twist to this tale is that Mr Mian and his 3 sons had taken professional advice at the time of changing ownership of the property and had been given the all-clear by their financial advisor!

Points to consider:

- Are you comfortable with the idea of making outright gifts? The downsides are an immediate loss of control of the money you are giving away and the unpredictability of what the future holds – might you need access to this capital at a later stage in your life?

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- Are you in a position to use the annual exemptions of £3000 and £250 per annum away without going short?

If so, use the annual exemption and keep a record of the date, amount and recipient of the gift.

- Do you have surplus income you can give away without it detrimentally affecting your lifestyle?

Remember, gifts out of surplus income can be made completely free of inheritance tax immediately (you do not have to survive 7 years).

If you are going to use this exemption, you need to keep meticulous records and ensure that the gifts satisfy HMRC requirements; otherwise, they will be taxable on your death.

- Do you have surplus capital that you could give away without leaving yourself short?

If so, consider making a lump sum gift. If you survive 7 years then the gift should be free of inheritance tax. Take out a 7-year term life insurance policy to cover the potential tax liability that would arise if you died within 7 years.

As with most things, it is important to consider gifting with care and put into place an effective strategy, rather than making random ad hoc gifts. The risk of the latter approach could be to land one or more of the beneficiaries with a future tax bill should the PET fail

- Do you want to leave a gift to a UK charity in your Will?

If done effectively this would reduce the overall amount of inheritance tax that would otherwise have been payable.

2. Pensions

Since April 6th 2015, pensions have become one of the best ways to avoid IHT. Money held in a 'defined contribution' type pensions, (where you save up a pension fund), do not attract inheritance tax subject to the conditions below being met.

If you have a defined benefit (or 'final salary') pension, this doesn't affect you, as typically the pension or annuity dies with you.

The inheritance tax situation depends on whether the individual dies before or after age 75.

i. If death occurs before attaining age 75:
   - The pension fund is passed on as a tax-free lump sum to the beneficiaries.
   - The beneficiaries can spend it when they want without incurring a tax bill — as long as they take it within two years.

ii. If death occurs after attaining age 75:
   - If the beneficiaries take the money as a lump sum or as income, the withdrawals will be charged at their income tax rate (0%, 20%, 40% or 45%).
   - if they simply leave the money in the pension, it will continue to roll up tax-free. This means that the beneficiaries are not paying any more tax on the pension than they'd have had to if they'd saved that money into a pension themselves.

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It will then be taxed at their own individual income tax rate when they start to draw the money.

For example, Alfie dies at the age of 73, with £500,000 in his pension pot. His beneficiaries can both inherit the whole £500,000 entirely tax-free and take a tax-free income from it. If Alfie died 3 years later with the same pot, at age 76, his beneficiaries still get the £500,000 pot. The difference is that when they access it, they'll have to pay tax on it at their marginal income tax rate – but that's no different to what they'd have to pay to access their own pension pot.

Note that pensions can lose their IHT exempt status in the following circumstances:

- Where contributions are made to the pension when the individual is in ill health, or the contributions are made to someone else's pension. HMRC would argue that was deliberate avoidance, especially if death occurs within two years of making the pension contribution.
- Where pension scheme trustees have no discretion over the payment of the death benefit and the funds are therefore paid to the deceased's estate. IHT would be paid on the funds in the normal way. It is therefore important to check the terms and conditions of the pension contract to ensure it qualifies for IHT exemption.

Action points:

1. Do you have a defined contribution or defined benefits pension? If it's defined benefits pension, IHT planning through pensions doesn't apply to you.
2. If you have an existing defined benefits pension, check with your pension provider to make sure that it allows you to pass the pension pot free of inheritance tax to your beneficiaries.
3. Consider topping up your pension if you want to shelter some of your capital from inheritance tax. You can contribute up to £40,000 a year, as long as you earn at least that much, into a pension. However, you may be able to contribute more than this if you haven't used allowances from previous years. You can carry forward allowances from up to three previous years.

3. Business Property Relief

If you own assets that qualify for Business Property Relief, there is absolutely no limit to the amount that can be left tax-free, providing certain conditions are met.

Assets which qualify for BPR are therefore totally exempt from IHT

Simply put, the assets that qualify for BPR are:

1. shares listed on the Alternative Investment Market (AIM) or
2. family businesses

The asset must have been owned for at least 2 years before death to qualify for BPR. Therefore, this IHT strategy needs to be implemented in advance, it's not something that will work when the end is nigh.

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Looking at the two types of assets in more depth:

Shares listed on the Alternative Investment Market (AIM)

AIM is a sub-market of the London Stock Exchange launched in 1995 for smaller or growing companies from around the world to gain a listing on a recognised stock exchange.

By 2017, there were approximately 950 companies quoted on AIM with a combined market value of over £100 billion.

Inevitably, there is a degree of risk involved in owning AIM-listed shares as they tend to be more volatile with a higher risk/reward profile than, say, FTSE100 companies.

You can reduce the risk substantially by investing in a portfolio of shares and there are financial products offered by professional fund managers who will choose AIM investments for you. You don't have to do the stock-picking yourself.

Let's look at the risk element from a different angle. If you lose, say 10% of your investment, but save 40% inheritance tax, you are still 30% better off than if you kept the investment in a "safe" investment.

If you want a 'belt and braces' approach, then you could eliminate the risk altogether by investing in a life assurance policy to cover the downside of a potential investment loss and to cover the potential IHT liability should you die within 2 years of making the investment.

Example:

Brian, a widower, has an estate comprised of the following assets:

House:	**£800,000**
Cash in bank accounts, ISAs	**£120,000**
Stocks & Shares ISAs	**£145,000**
Shares	**£35,000**
Total Estate:	**£1,100,000**

Own nil rate band:	**£325,000**
Nil rate band transferred from wife:	**£325,000**
Own residential nil rate band allowance:	**£125,000**
Residential nil rate band allowance transferred from wife:	**£125,000**
Total nil rate band allowance:	**£900,000**
Tax liability: (£1,100,000 - £900,000 x 40%)	**£80,000**

Brian wants to eliminate the inheritance tax liability of £80,000 so decides to invest £200,000 in a BPR qualifying investment portfolio with built in protection cover:

House:	**£800,000**
BPR investment portfolio:	**£200,000**
Cash in bank accounts, ISAs	**£100,000**
Total Estate:	**£1,100,000**

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Own nil rate band:	**£325,000**
Nil rate band transferred from wife:	**£325,000**
Own residential nil rate band allowance:	**£125,000**
Residential nil rate band allowance transferred from wife:	**£125,000**
Total nil rate band allowance:	**£900,000**
BPR Relief (after 2 years):	**£200,000**
Tax liability:	**£NIL**

Pros and cons of investing in assets which qualify for BPR

Pros

- The entire amount invested is free of inheritance tax after 2 years. Whereas making a gift or putting assets in trust means they take seven years before they become exempt from inheritance tax, shares in a BPR-qualifying company or investment become exempt from inheritance tax after being held for just two years, provided the shares are still held at the time of death.
- Access and control of the capital. As opposed to making a gift, you retain control over the investment and can and get the proceeds back if you need to in the future. This makes it an attractive option if you want to save IHT without actually giving the money away. Note, however, shares sold or money taken out of the investment will no longer be exempt from inheritance tax.
- Simplicity. Buying shares or an investment in BPR-qualifying companies is relatively simple compared to some other IHT planning such as setting up a trust.
- The option of built-in protection to cover a potential IHT liability should death occur within 2 years, and the downside protection to cover a loss of up to 20% upon death.

Cons

- For managed investments, the fund managers charges can be quite expensive.
- Potential for volatility and risk to capital (although this can be mitigated by 'downside' insurance)

If you are considering investing in AIM shares or funds then it would pay to get a second opinion from an adviser who can ensure that the IHT qualification rules are met.

Family businesses

It must be a 'qualifying business' which basically means that it should be run with a view to making profit and does not consist wholly or mainly of dealing in stocks, securities, shares or land, and buildings, nor of making or holding investments.

Broadly speaking, these conditions exclude property investment and lettings businesses, but may include a property development business. Borderline businesses where it is unclear whether HMRC would allow BPR included Residential care homes, caravan parks, and Hostels, guest houses or hotels with long-term residents.

If you own or part-own a family business, then you should check with your accountant to establish whether the business qualifies for BPR on your death.

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4. Woodland Relief and Agricultural relief

Woodland relief and agricultural relief are similar to BPR in that inheritance tax is not chargeable after 2 years of ownership provided certain criteria are met.

The following types of property are eligible:

- Agricultural land or pasture
- Buildings used for the intensive rearing of livestock or fish
- Stud farms
- Farmhouses, cottages, and other farm buildings
- Woodlands

To qualify for inheritance tax relief, the land or buildings must have been occupied (i.e. used) by the owner for agricultural purposes for a period of at least 2 years.

5. Trusts

A 'trust' is basically a legal arrangement where someone is given legal ownership of an asset (e.g. cash, shares, property) and is 'trusted' to hold that asset on behalf of one or more beneficiaries. They originated in the 12th Century when crusaders would entrust their assets to another person before heading off to the Holy Land.

- A trust is essentially just a legal document and can be as simple as to fit on a single side of A4 sized paper.
- The person setting up the trust is called the settlor.
- The persons responsible for managing the trust are called the trustees.
- The persons entitled to receive the trust assets are called the beneficiaries.
- A settlor can also act as a trustee, but should not be a beneficiary if it is being set up for IHT planning purposes.

Trusts at a glance:

1. The trustees choose where to invest the money. Depending on how the trust is set up it is possible to build in some flexibility of future access to capital and regular withdrawals or income
2. The seven-year gifting rule applies to any money paid into the trust. If the person making the gift into trust survives the 7-year period then the amount should be excluded from inheritance tax. If death occurs within 7 years tax will be charged in accordance with the standard rules.
3. If the amount of the gift exceeds the nil rate band allowance (£325,000 2018/19) then an immediate tax charge of 20% is incurred.
4. Gifts can be made as a one-off, ad-hoc or regular payments
5. The trust fund may be liable to 10-yearly and exit charges of up to 6%, depending on the value of the fund.

The big advantage trusts have is the element of retaining some control over the asset being gifted into trust. The settlor decides when setting up the trust when and how much

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the beneficiaries receive. This differs from making an outright gift to a beneficiary, where control is lost as soon as the gift reaches the beneficiaries.

A word of warning – gifting your main residence into a trust does NOT work! This would fall foul of the 'gift with reservation of benefit rule' whereby you are forbidden from gifting an asset away and then continue to derive benefit from the said asset, e.g. gifting property ownership to children but still living in the house. The value of the house on death would be fully liable to IHT.

Setting up a trust can be broken down into 2 stages:

#1 - Bring the trust into existence by setting up the trust document. This can be done through a solicitor or financial advisor and can be as simple as filling a template form in.

The terms of the trust are set out, e.g. when the beneficiaries can access the capital, whether you are giving up access to the capital or whether you want to keep the option of accessing it in the future, whether you want to take regular withdrawals/income, and so on.

#2 - Transfer assets (e.g. money) into the trust, typically via the solicitor or financial advisor.

When it comes to considering using trusts to save inheritance tax, careful planning is required to take into account the following inheritance tax pitfalls:

- For most types of trust Inheritance Tax is due when you make transfers that total more than the nil rate band allowance of £325,000. Inheritance Tax is due immediately at a rate of 20% on the amount above the threshold.
- Assets held in trust are subject to a 10-yearly inheritance tax payment up to a maximum of 6% of the total value of the assets that are in excess of the nil rate band.
- If assets are transferred out of a trust (known as 'exit charges') or the trust ends, inheritance tax is charged at a maximum 6% of any excess above the nil rate band.
- If you die within 7 years of making a transfer into a trust, your estate will have to pay Inheritance Tax on the amount gifted into trust.
- Gifts with reservation of benefit will still attract full IHT irrespective of whether the asset is held in trust.

6. Equity Release – IHT planning for the family home

Equity release, also commonly known as a lifetime mortgage, is available if you are aged over 55 and own your own home.

It allows you to draw a proportion of the value of your home as a cash lump sum. Typically there are no monthly repayments as the interest simply accumulates at a compound rate until the house is sold and the mortgage repaid. There are guarantees to ensure that a 'negative equity' scenario cannot happen, so the total repayment cannot exceed the value of the home.

Equity release could be considered to mitigate an IHT liability if you need more capital or income in retirement. It shouldn't be contemplated if you have sufficient income

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and capital already, due to the negative effects of the accrued interest on the amount borrowed.

When you die, the outstanding loan amount plus accrued interest is repaid from the sale of your home. The value of your estate is reduced accordingly, therefore reducing the amount of inheritance tax payable.

The Equity Release Council describe it aptly when they say an increasing number of people are using equity release as a “living inheritance” to release money tied up in property wealth and pass it down to their descendants while they are still alive.

The family home conundrum

For many of us, the family home is our main asset. It therefore follows that is can also be the main cause of an IHT bill. With average house prices increasing by over 46% since 2009, more people than ever could be affected by an inheritance tax (IHT) charge.

The tax net has been widened since 2017 however, with the introduction of the residence nil rate band. Added to the main nil rate band allowance this means that a married couple can leave £1million tax free from April 2020, for a single person this is halved to £500,000.

This still leaves a potential IHT exposure if you fit one of the following profiles:

- Married couples with a home worth £1million.
- Single, divorced or unmarried couples with an estate including property worth more than £500,000.
- Those with estates worth in excess of £2million and a home worth in excess of £650,000.
- Those who do not intend to leave their family home to direct descendants. If you do not leave your home to direct descendants, then you aren’t entitled to the residence nil rate band. This will leave your home exposed to IHT if your estate exceeds £650,000, or £325,000 if you never become a widow or widower.

How equity release could work in practice:

i. Spend the borrowed funds!

ii. Give the away the borrowed funds and survive 7 years, or 3 years and benefit from taper relief.

iii. Invest the borrowed funds in a trust and survive 7 years, or 3 years and benefit from taper relief. The advantage with this option is that you can retain control and access to the funds, and take income/withdrawals.

Note that it isn’t recommended to borrow funds and invest the proceeds in BPR-qualifying shares (AIM), as any liabilities incurred to directly or indirectly to purchase qualifying AIM shares must be deducted from the value of the shares for business property relief purposes, rendering the approach of borrowing and then investing the proceeds ineffective.

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Example:

Dianne is a divorcee aged 70 with a house worth £600,000 and savings in a mixture of cash ISAs and bank accounts worth £100,000, producing £1,500 pa interest which Dianne uses as income to top up her pension income of £12,500 pa.

Nil rate band allowance:	**£325,000**
Residential nil rate band allowance: (assuming Diane dies after tax year 2020/21)	**£175,000**
Total nil rate band allowance:	**£500,000**
IHT liability: (£700,000 - £500,000 x 40%)	**£80,000**

How Diane could mitigate her IHT liability and increase her income:

Dianne borrows £150,000 using a lifetime mortgage (equity release) at a rate of interest of 5.2% pa.

Dianne invests the £150,000 in trust, with the proceeds invested in an investment bond is-sued by a UK life insurance company, and takes 5% per year as regular income withdrawals. This boosts Dianne's income by £7,500 pa and is paid free of income tax due to the favourable tax treatment of investment bonds.

Upon Dianne's death 12 years later, the amount of interest accumulated has grown to £125,600. Added to the initial capital borrowed of £150,000 means the total amount repay-able is £275,600.

The value of the investment held in the trust is passed free of inheritance tax to Dianne's beneficiaries as she has survived the 7-year qualifying period.

The value of Dianne's estate on death is therefore:

House value:	**£600,000**
Less lifetime mortgage repayment	**£275,600**
House equity (£600,000 - £275,600)	**£324,400**
Cash in bank accounts	**£75,000**
Net estate liable for inheritance tax	**£399,400**

The inheritance tax position is thus:

Nil rate band allowance:	**£325,000**
Residential nil rate band allowance:	**£150,000**
Total nil rate band allowance:	**£475,000**
Net Estate value:	**£399,400** (no tax to pay)

Dianne has eliminated the inheritance tax liability of £80,000. However, she has incurred interest amounting of £125,600 on the lifetime mortgage. This needs to be balanced against the tax-free income totalling £90,000 (£7,500 pa x 12 years) from the investment bond held in the trust, funded by the initial amount borrowed of £150,000 and subsequent investment returns paid by the investment bond.

The real cost of the borrowing is therefore £35,600 (£125,600 - £90,000)

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Dianne's estate is, therefore, better off to the tune of £44,400 (IHT saving of £80,000 – the real cost of borrowing £35,600)

7. Life Insurance

There are two ways life insurance can help in reducing a future inheritance tax bill:

Scenario 1 – Where there is a risk of IHT payable on a gift

We are addressing the scenario where an individual makes a gift but does not survive the 7-year exemption period, thereby triggering IHT of the value of the gift.

Example

Patricia makes a gift of £250,000 to her daughter Eleanor 3 years before her death. No taper relief is applied as the value of the gift is below £325,000. The value of this gift, therefore, becomes taxable given that Patricia did not survive 7 years after making the gift,

Her estate on death amounts to £900,000.

The inheritance tax position of the estate is as follows:

Estate value:	**£900,000**
Add failed PET gift:	**£250,000**
Subtotal:	**£1,150,000**
Minus own NRB:	**£325,000**
Minus transferable NRB from late husband:	**£325,000**
Minus own Residential NRB:	**£175,000**
Minus transferable Residential NRB from late husband:	**£175,000**
Amount remaining liable to tax:	**£150,000**
IHT due: (£150,000 x 40%)	**£60,000**

In this scenario, Patricia could take out a 7-year life insurance policy to cover the IHT liability of £60,000.

The policy should be written in trust to avoid the policy proceeds themselves being liable for inheritance tax. This way, the proceeds of the policy wouldn't fall into Patricia's estate but will instead go to Eleanor free of IHT.

Scenario 2 – covering an IHT liability in full

If all else fails, or none of the IHT planning strategies appeals, you have the option of insuring against a future IHT bill.

Many advisers use this as their default way of dealing with a client's IHT problem. My own view is that this is a somewhat lazy approach given that it doesn't reduce the amount of IHT payable. It simply involves taking out a life insurance policy to pay out on death an amount equivalent to the amount of IHT due on death.

Normally, this would be done with a whole-of-life insurance policy, which remains in force until the policyholder's death, provided their premiums are fully paid.

As you will see from this table, the monthly premiums can be expensive:

Policyholder	Sum assured	Sample Monthly premium
Aged 65 (non-smoker)	£200,000	£432
Aged 65 (smoker)	£200,000	£609
Aged 80 (non-smoker)	£200,000	£1,085
Aged 80 (smoker)	£200,000	£1,499
Couple, aged 65 & 60	£200,000	£261
Couple, aged 70 & 65	£200,000	£330

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Section V – How to prepare for probate and save your loved ones a big headache after you've gone

This section is going to address the following three topics:

i. What probate is, why it's required, and how to obtain probate?

ii. How to avoid probate.

iii. What can be done in advance to prepare for probate?

What is "Probate"?

There are a number of legal and financial duties to complete when a person dies.

These tasks are collectively called 'administering an estate' and one of the requirements is to obtain 'probate'.

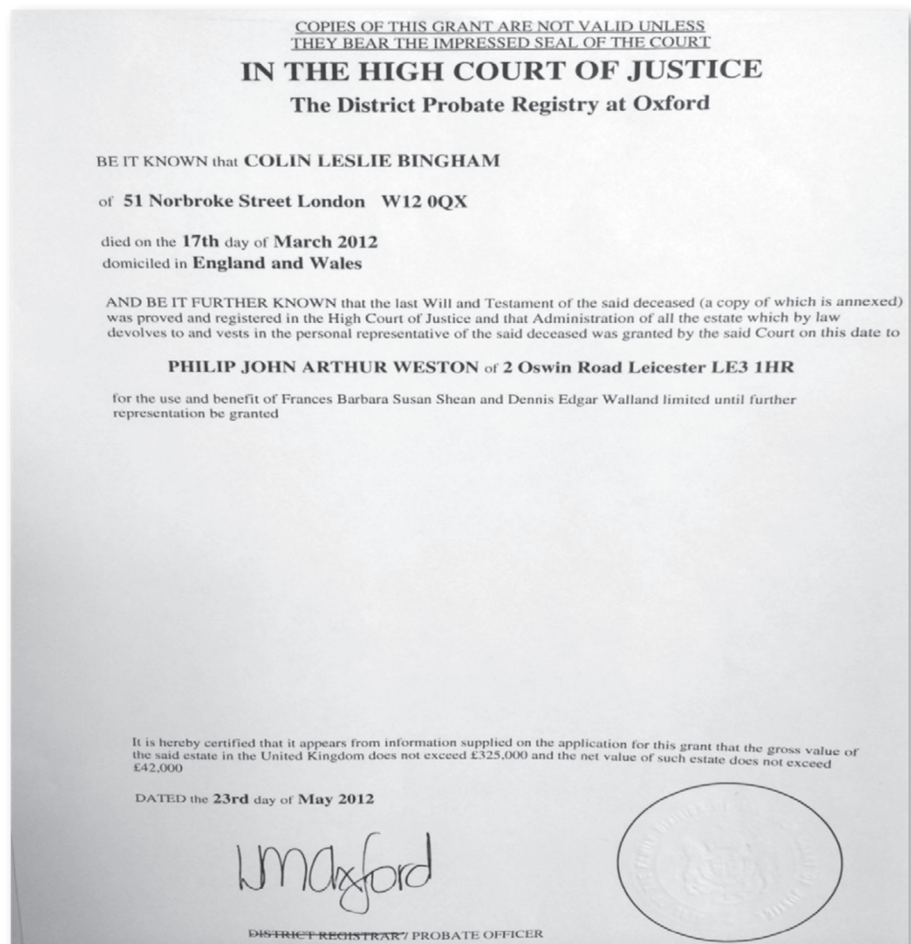
Obtaining probate is the responsibility of the Executor(s) of the Will, or the next of kin if there is no Will. The Executor(s) do not have to use a solicitor to obtain probate.

It is not possible to obtain probate in advance of someone dying, but a great deal of the groundwork can be put into place to make life easier for those we leave behind.

A 'Grant of Probate' is the official authority to deal with the deceased's estate, issued in the form of an official legal document. Probate is granted by the Probate Registry, which is a part of the High Court.

Probate is also used as a general term to describe the legal processes involved after a person has died. This involves dealing with a deceased person's finances, property, general assets and debts (together these form the deceased's 'estate') and ensuring the inheritance money ends up in the right hands.

This is what a grant of probate looks like:



COPIES OF THIS GRANT ARE NOT VALID UNLESS THEY BEAR THE IMPRESSED SEAL OF THE COURT

IN THE HIGH COURT OF JUSTICE

The District Probate Registry at Oxford

BE IT KNOWN that **COLIN LESLIE BINGHAM**

of **51 Norbroke Street London W12 0QX**

died on the **17th** day of **March 2012**
domiciled in **England and Wales**

AND BE IT FURTHER KNOWN that the last Will and Testament of the said deceased (a copy of which is annexed) was proved and registered in the High Court of Justice and that Administration of all the estate which by law devolves to and vests in the personal representative of the said deceased was granted by the said Court on this date to

PHILIP JOHN ARTHUR WESTON of **2 Oswin Road Leicester LE3 1HR**

for the use and benefit of Frances Barbara Susan Shean and Dennis Edgar Walland limited until further representation be granted

It is hereby certified that it appears from information supplied on the application for this grant that the gross value of the said estate in the United Kingdom does not exceed £325,000 and the net value of such estate does not exceed £42,000

DATED the **23rd** day of **May 2012**

~~DISTRICT REGISTRAR~~ / PROBATE OFFICER

Why is probate needed?

Probate is required to gain legal authority to handle a deceased person's assets, such as bank accounts, investments, property and so on.

These assets are 'frozen' after a death until probate is granted.

Organisations such as banks need to see the Grant of Probate before they will release the deceased person's money to the Executor(s).

Probate gives the Executor(s) the legal authority to handle the deceased person's estate and put into effect the terms of the Will. Think of it then as the 'passport' the Executor(s) need to handle the deceased person's finances and other assets.

Probate also legally validates the Will. Strictly speaking, the Will isn't legally valid until probate has been granted.

Who should deal with probate?

The responsibility of obtaining probate and handling the deceased person's estate rests with the Executor of the Will.

Anyone can act as an Executor provided they aren't aged under the age of 18, lacking in mental capacity as defined by the Mental Capacity Act, or bankrupt.

The Executor(s) can choose to deal with probate personally (DIY Probate) or appoint a legal representative/solicitor.

How to obtain probate

Below is a summary of the steps required to complete Probate:

1. **Obtain the original Will and identify the Executor(s).** It is essential the original Will is located as it is almost impossible to get probate with just a copy. The Executor(s) of the Will should be identified as soon as possible as it is their responsibility to handle probate.
2. **Notify interested parties of the deceased's death** e.g. employer, social services, financial institutions, utility companies, and insurance companies. This should be done in writing, enclosing an official copy of the death certificate, as soon as possible after the death has occurred.

   Use the pro-forma contained in section 7 to record the contact details for your own circumstances
3. **Value the deceased person's estate.** Assets owned by the deceased person solely in his/her sole name and assets owned jointly with someone else need to be valued and recorded.
4. **Complete the inheritance tax paperwork and pay any tax due.** It is a mandatory requirement to complete an inheritance tax return (HMRC form IHT205 or IHT400) before probate can be issued, even if the estate is of a modest size and well below the inheritance tax threshold (currently £325,000).
5. **Complete the probate application paperwork.** Once the estate has been valued and the correct inheritance tax return completed, finalise Probate Application Form PA1 and any accompanying documents.

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6. **Send the probate application paperwork to the Probate Registry.** To include the Probate Application Form, the original Will, three A4 photocopies of the original Will, a cheque for the correct probate fee, an official copy of the death certificate and the correct inheritance tax paperwork.

Once probate has been granted, the executor of the Will needs to complete the following tasks to finalise the estate:

7. **Check the Grant of Probate has been issued correctly.** Any errors, such as misspelled names, need to be rectified immediately.
8. **Register the Grant of Probate with interested parties.** A court sealed copy of the Grant of Probate should be sent with a covering letter to all interested parties.
9. **Close bank accounts, sell investments and transfer or sell ownership of the deceased's property.** The closure forms will be sent to the Executor by the financial organisation concerned. A solicitor or licensed conveyancer should be used to handle property ownership matters.
10. **Settle debts, liabilities, and expenses.** Priority creditors need paying first. A letter or notice should be obtained from the creditor confirming that the debt has been settled in full and final satisfaction.
11. **Finalise the deceased's Income Tax and Capital Gains Tax positions.** According to the deceased person's own personal tax situation. Check there are no outstanding returns from previous tax years.
12. **Notify the beneficiaries.** Provide a copy of the Grant of Probate and Will and tell them when they can expect to receive their inheritance.
13. **Pay pecuniary gifts and legacies.** For example a gift of a specified amount of money to a named individual which does not form part of the 'residuary estate'.
14. **Obtain inheritance tax clearance from HMRC.** Required where an inheritance tax account (IHT400) has been submitted to HMRC.
15. **Prepare the estate accounts.** A formal record of estate money that has been handled by the Executor which is forwarded to the residuary beneficiaries.
16. **Distribute the residuary estate.** Payment of the inheritance money to the residuary beneficiaries in accordance with the Will.

*Completion of steps 4, 5, 6 and 7 are included in the Assisted DIY Probate Service, details of which can be found on the next page.

ASSISTED DIY PROBATE

"DIY Probate Done Properly"

Help is available in obtaining probate through the Assisted DIY Probate Service, administered by Berkeley Weston Ltd Legal Services. As well as ensuring probate is obtained in the shortest possible time, one of the main functions of this service is to **ensure correct completion of the forms and legal paperwork**, to reduce the prospect of the Executor of the Will making a mistake.

This is **a Fast Track method of obtaining probate** with full help and support.

Another important factor is to give Executor(s) **priority access to one-to-one help and support throughout the probate process.** Clients can access help over the telephone or by email. There are no restrictions on the number of times clients can access the help and support service.

It assists individuals who want complete a successful DIY Probate outcome by taking care of the complicated legal and inheritance tax forms, which is often the biggest stumbling block for individuals doing probate themselves. This leaves the Executor free to concentrate on the straightforward tasks such as dealing with banks, building societies and other interested parties.

Service is provided in a highly confidential and speedy manner. Upon receipt of signed forms, the probate application paperwork is usually filed with the Probate Registry Office the same day.

It is designed to achieve a swift, stress-free and inexpensive DIY probate outcome for clients.

Potential savings when you use the Assisted DIY Probate Service typically add up to £3,000 or more.

To qualify for the Assisted DIY Probate Service the person applying must be a named Executor in the Will, and the estate must not be disputed.

Applying for the Assisted DIY Probate Service is **quick and easy**. All it requires is that a signed confidential information form be completed by the Executor and emailed or posted to Berkeley Weston Ltd.

The Assisted DIY Probate Service includes the following services to its clients:

1. Identifies the correct inheritance tax form(s) to complete.
2. Checks the estate information is present and correct.
3. Checks the Will for any possible errors or problems.
4. Checks Land Registry records to establish whether a jointly owned property is owned as 'Joint Tenants' or 'Tenants in Common'.
5. Completes the 'Return of estate information' form (IHT205).
6. Completes the 'Claim to transfer unused nil rate band' form (IHT217), if required.

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7. Completes the Probate Application Form (PA1).
8. Forwards the probate application paperwork to the executor(s) with instructions for signing.
9. Prepares checks for payment of probate fees to Her Majesty's Courts and Tribunal Service (HMCTS).
10. Forwards the probate application paperwork and fee for filing at the correct Probate Registry Office.
11. Orders certified court sealed copies of the Grant of Probate, if the option is desired by the client.
12. Places the Statutory Trustee Act Notices on behalf of the Executor(s) after probate is granted.
13. Access to preferential conveyancing services to transfer ownership of property.
14. Unlimited help and support by phone and email throughout the entire probate process.

Berkeley Weston Ltd has been in business for over 10 years and has helped more than 5,000 clients with their probate requirements.

If you'd like to apply for the Assisted DIY Probate Service, complete the "confidential information form" in the accompanying resources section to this guide. Or, if you prefer or have any questions, call 0116 2795165.

The fee for the Assisted DIY Probate Service is currently £495.00 + VAT (£594.00 including VAT).

This amount can be reclaimed from the estate after probate is granted as a valid expense.

Beware of the new inheritance stealth tax!

The Government has announced that is going ahead with controversial plans to dramatically increase the amount of the official probate application fee from £215 currently up to a maximum of £6,000.

This fee is payable by the executors at the time they apply for probate. The fee is payable to Her Majesty's Courts and Tribunals Service and is payable on top of lawyers' fees.

The new fee structure is based on the value of the deceased person's estate and is charged as follows:

Value of estate (before inheritance tax)	New Probate Application Fee
£50,000 - £300,000	£250
£300,000 - £500,000	£750
£500,000 - £1m	£2,500
£1m - £1.6m	£4,000
£1.6m - £2m	£5,000
Above £2m	£6,000

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Estates valued below £50,000 are exempt from paying the fee.

This dramatic and unfair fee increase has been labelled as another stealth tax on an individual's wealth when they die.

How to avoid probate

Avoiding probate has the following benefits:

i. The beneficiaries will receive their inheritance earlier.

   If you recall, most assets such as bank accounts and other investments are frozen after death until probate is obtained. This means that the terms of the Will cannot be implemented until probate is obtained and the assets unlocked. If a solicitor is involved, probate usually takes 6-12 months to complete.

ii. Expensive legal fees are minimised and the beneficiaries will, therefore, receive a greater inheritance amount.

There are 2 different fees payable:

(a) Probate Application Fee. From April 2019, this will be between £250-£6,000 depending on the value of the deceased person's estate (see above).

(b) Lawyer's fees. A solicitor typically charges 1% of the value of the estate and an hourly rate of between £200-£300. This often leads to a five-figure legal bill for the deceased person's family, thus diminishing the amount of their inheritance.

It is not compulsory to use a solicitor to handle probate.

Over half of all probate applications are now submitted on a "DIY" basis by the executor without involving a solicitor. In my experience, probate do-it-yourselfers finalise probate a lot faster than when a solicitor is involved. Maybe this isn't so surprising when the solicitor is charging £300 per hour, you can understand why they want to drag it out for as long as possible.

Comprehensive guidance and instructions on how to complete a successful DIY Probate can be found in the DIY Probate Pack. Readers who use my Will storage service receive a complimentary copy. Alternatively, it is available to buy online at amazon.co.uk and direct at www.diyprobateforms.co.uk

There are two ways by which we can avoid probate:

1. Own assets owned jointly

Probate is not required to deal with assets owned jointly, e.g. a joint bank account or jointly-owned property. The exception to this is property owned as 'tenants in common'.

Where this is the case, upon the death of one of the joint owners, the asset passes to the surviving joint owner without the need for probate.

Even if there is one asset that does necessitate probate (e.g. an ISA, as these cannot be owned jointly), the benefit of having the majority of assets held in joint names are two-fold:

i. All of the jointly-owned assets will transfer immediately to the surviving joint owner without having to wait for probate. It is only the solely-owned asset that is frozen until probate is obtained.

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ii. The amount of the probate application fee payable is reduced. The probate fee scale as outlined above is based on the value of assets subject to probate. It doesn't include the value of joint assets.

2. Arrange assets so that they do not form part of the estate for probate purposes.

Probate is not required to deal with any assets that do not form part of the deceased's estate. The most common example of this would be assets held in trust. In this case, the assets held in trust would be distributed to the beneficiaries straight away without the need for probate.

Putting assets into trust may have inheritance tax implications so it is vital to seek professional advice first.

<u>How to prepare for probate</u>

Ensure the original Will is readily accessible

It is essential that the ***original*** Will is located, as it is very difficult to get a photocopy of a Will through probate.

It is advisable therefore to ensure that the executors of the Will know where it is located and how they can access it when the time comes.

Based on feedback from readers of my DIY Probate Pack, my recommendation is to avoid storing the Will at a solicitor's office, as experience tells me they have a habit of making life as difficult as possible for the executors in retrieving the Will, with the objective of securing the probate work for themselves. If you have a Will currently stored at a solicitor's office then I recommend that you retrieve it and make alternative storage arrangements.

You are eligible to use my own safe Will storage facility, ensuring that it is kept safe and secure and that it can be accessed quickly and easily by your loved ones when they need it at short notice.

This is in sharp contrast to most solicitors, who'll make it very difficult for anyone to get hold of the Will, insisting on multiple forms of ID, and in lots of cases a face-to-face visit; generally with the ulterior motive of securing probate work for their firm.

With my Will Storage service, this doesn't happen – in fact, you'll even get a free copy of my DIY Probate Guide, enabling probate to be obtained without involving a solicitor and the associated costs (which run into multiple thousands of pounds).

So, here's how it all works:

1. You complete the 'Will checking and storage' form that accompanies this guide, and post it using recorded or registered post – together with your signed Will – to:

   Berkeley Weston Ltd
   Business Box
   3 Oswin Road
   Leicester
   LE3 1HR

2. We'll check your Will and make sure it's legally compliant and there no potential issues with it
3. I'll store your Will in my high security vault, and send you a certificate together with a Will release form
4. Should you ever need to update your Will, just let us know and we'll send you a free blank Will template for you to complete and return
5. The Will can be retrieved by you at any point
6. When your executors need your Will, we'll return to them quickly with no additional fees charged.

What's the next step?

Go to the 'Will checking and storage' form now and fill it in!

Make a schedule of assets document

Keeping a record of our assets and liabilities on one document to make life easier for those we leave behind. It is also an essential part of the probate process as this financial information has to be filed at HMRC in the form of an inheritance tax return before probate can be obtained. This is a mandatory legal requirement irrespective of whether inheritance tax is payable on the estate.

Failing to create a document now can create a tremendous burden on the family and the executors of the Will. Picture the scene of trawling through boxes and files of old financial statements and correspondence trying to make sense of it all!

I have had personal experience of this in my private practice where I have had to literally sift through bin liners of years-old paperwork trying to extract the relevant paperwork and information. Now imagine how upsetting and frustrating it would be having to do this task following the loss of a loved one.

There is a sample spreadsheet included in this guidebook. I cannot emphasise enough how important it is to create this document, keep it updated and print off a hard copy to keep with your Will.

You should also use the pro-forma contained in section 6 to keep accurate contact details for the various organisations that you have a financial relationship with. This will make life easier when the time comes for your executor(s) to notify these organisations of your demise as part of the probate requirements.

Start by making a list of all the assets you hold in your sole name, and also any jointly-owned assets.

Once you have obtained the value of an asset record, the details on the Assets and Liabilities Form

The type of assets that you should establish a value for are as follows:

- Bank and building society accounts
- Property and land
- Shares
- Life insurance
- Endowment policies

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- Employer benefits, e.g. death in service benefit
- Pensions
- Investments such as ISAs and unit trusts
- Investment bonds taken out with a life insurance company
- Motor vehicles
- Art
- Jewellery
- Business assets
- National Savings & Investments products, e.g. Premium Bonds
- Interest in trusts

You should also keep a record of any gifts made that exceed £3,000 in any tax year. This information will be required in order to complete the inheritance tax paperwork.

Valuing Property and land

When valuing property it is essential to first establish how the property is owned:

- If the property is owned in a sole name. If so, probate will be required in order to sell or transfer ownership of the property.
- If the property is owned jointly as 'tenants in common'. If so, probate is required. In this situation when one of the joint owners dies, his/her share of the property, e.g. 50%, is included in their estate. The deceased person's share passes to their beneficiaries named in the Will, but typically the surviving joint owner acquires a legal right to live in the property for the rest of his/her lifetime. This arrangement is typically set up to protect the property from long-term care fees, or where there are children from a previous relationship.
- If the property is owned jointly as 'beneficial joint tenants'. If so, probate isn't required. In this scenario when one of the joint owners dies, his/her share of the property passes to the surviving joint owner under survivorship laws. In this case, the deceased person's share of the property does not form part of the estate and cannot be left in a Will.

You can find out whether a property is owned as beneficial joint tenants or tenants in common online by downloading the Title Register from the Land Registry website at:

http://www.landregistry.gov.uk/public/property-ownership

Download and check the "title register" (there is a small fee, currently £3). Find the "proprietorship register" section and look for the following clause:

'RESTRICTION: No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.

This clause indicates that the property is owned as tenants in common. In short, this means that the deceased share of the property should pass in accordance with the Will. If this clause isn't present, you can presume the property is owned as beneficial joint tenants in the absence of any evidence to the contrary.

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ASSETS & LIABILITIES FORM

ASSETS & GIFTS

Bank Accounts	**Description**	**Sole or Joint?**	**Amount**
Building Society Accounts	**Description**	**Sole or Joint?**	**Amount**
			Total:
Other Savings & Investments	**Description**	**Sole or Joint?**	**Amount**
ISA			
ISA			
ISA			
Investment Bond			
Investment Bond			
Investment Bond			
National Savings & Investments			
National Savings & Investments			
National Savings & Investments			
Premium Bonds			
Unit Trust			
Unit Trust			
Unit Trust			

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Endowment Policy			
Endowment Policy			
Endowment Policy			
Life Insurance			
Life Insurance			
Life Insurance			
Shares			
Shares			
Shares			
Shares			
			Total Other Savings & Investments
Properties	**Address**	**Owned solely or jointly?**	**Value**
Main residence			
Land			
Other			
Other			
			Total Property Value
Personal Effects	**Details**	**Owned solely or jointly?**	
House Contents			
Jewellery			
Works of Art			
Motor Vehicles			
Furnishings			
Other			
			Total Personal Effects
			Grand Total - Assets

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Financial Gifts by the deceased	**Date of gift**	**Name of recipient**	**Relationship**	**Amount of Gift**
			Total	

LIABILITIES / DEBTS

Creditors	**Description/Ref**	**Amount**
FUNERAL		
	Total Liabilities	**£**

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Section VI -
How to get your paperwork organised in advance

No doubt, the last thing your nearest and dearest will want to do is trawl through masses of paperwork trying to make sense of the practical details of your life after you've gone. An additional stress and immensely time-consuming chore they can do without at an emotional and upsetting time.

It's safe to say that they would much rather have all the paperwork and records in one, organised place.

This section, then, is designed to achieve just that; to serve as an easy-to-use and safe method of recording the practical details of your life in advance of your day of reckoning. It will enable you to record and find important information about your life, without those you leave behind having to sort through file after file.

One of the formal duties following a death is to notify interested parties of the deceased's demise e.g. employer, social services, financial institutions, utility companies, and insurance companies. This should be done in writing, enclosing an official copy of the death certificate, as soon as possible after the death has occurred.

It will, therefore, be extremely helpful to have details of all of your important official contacts recorded in one place, rather than scattered around in various diaries and address books etc. These contacts are typically those we deal with on a formal basis, rather than social contacts.

If you run out of space in any of the sections, simply enter the details in the 'additional information' section at the end.

Health contact (1)

(E.g. Doctor, Pharmacist, Optician, Local Hospital, District Nurse, etc.)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Health contact (2)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

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Health contact (3)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Health contact (4)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Home contact (1)

(E.g. cleaner, home help, meals on wheels)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Home contact (2)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Home contact (3)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

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Traders (1)

(E.g. Milkman, Plumber, Electrician, Gardener, local businesses or shops where accounts are held)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Traders (2)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Traders (3)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Traders (4)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Professional advisers (1)

(E.g. Accountant, Financial Advisor, Solicitor)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

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Advisers (2)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Advisers (3)

Contact type: ....

Name and Address: ....

....

....

Telephone Number: ....

Financial

This is where you can put all your financial information together in one place. It will allow you to keep track of your different financial arrangements and also help your family or trusted person to look after your affairs should the need arise.

Here you can record details of your financial assets such as bank accounts, savings accounts, ISAs, National Savings etc. This section should coincide with the information you have entered on the assets and liabilities spreadsheet.

(1) Name & address of Organisation:

....

....

....

Account number: ....

Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

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(2) Name & address of Organisation:

....

....

....

Account number: ....

Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

(3) Name & address of Organisation:

....

....

....

Account number: ....

Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

(4) Name & address of Organisation:

....

....

....

Account number: ....

Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

(5) Name & address of Organisation:

....

....

....

Account number: ....

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Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

(6) Name & address of Organisation:

....

....

....

Account number: ....

Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

(7) Name & address of Organisation:

....

....

....

Account number: ....

Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

(8) Name & address of Organisation:

....

....

....

Account number: ....

Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

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(9) Name & address of Organisation:

....

....

....

Account number: ....

Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

(10) Name & address of Organisation:

....

....

....

Account number: ....

Telephone number: ....

Name(s) in which Account held: ....

Type of asset (bank account, ISA, bond etc) ....

....

<u>Other Financial e.g. pensions, shares etc</u>

Organisation: ....

Type e.g. shares: ....

Account reference: ....

Address/phone number: ....

Organisation: ....

Type e.g. shares: ....

Account reference: ....

Address/phone number: ....

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Organisation: ....

Type e.g. shares: ....

Account reference: ....

Address/phone number: ....

Organisation: ....

Type e.g. shares: ....

Account reference: ....

Address/phone number: ....

Organisation: ....

Type e.g. shares: ....

Account reference: ....

Address/phone number: ....

Organisation: ....

Type e.g. shares: ....

Account reference: ....

Address/phone number: ....

Organisation: ....

Type e.g. shares: ....

Account reference: ....

Address/phone number: ....

Organisation: ....

Type e.g. shares: ....

Account reference: ....

Address/phone number: ....

Organisation: ....

Type e.g. shares: ....

Account reference: ....

Address/phone number: ....

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Credit and store cards

	Issuer	Telephone number
Card 1:	....	....
Card 2:	....	....
Card 3:	....	....

Notes of other regular payments

(E.g. standing orders, direct debits, membership fees, charity donations)

Organisation		Telephone number
1	....	....
2	....	....
3	....	....
4	....	....

Utility and Key suppliers and accounts

Water

Supplier Name: ....

Account/Customer Reference: ....

Gas

Supplier Name: ....

Account/Customer Reference: ....

Electricity

Supplier Name: ....

Account/Customer Reference: ....

Telephone

Supplier Name: ....

Account/Customer Reference: ....

Mobile Phone

Supplier Name: ....

Account/Customer Reference: ....

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Internet/broadband

Supplier Name: ....

Account/Customer Reference: ....

Cable/satellite TV

Supplier Name: ....

Account/Customer Reference: ....

Council Tax

Local Authority Name: ....

Account/Customer Reference: ....

Landlord/rent

Supplier Name: ....

Account/Customer Reference: ....

Insurance Policies

Note: Life Insurance policies which pay out a lump sum on death should be recorded in the assets and liabilities section above

Home buildings & contents

Provider Name ....

Policy Number/Reference ....

Renewal date ....

Motor

Provider Name ....

Policy Number/Reference ....

Renewal date ....

Motor breakdown cover

Provider Name ....

Policy Number/Reference ....

Renewal date ....

Other

Provider Name ....

Policy Number/Reference ....

Renewal date ....

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Location of Documents

As you go through life, you might collect a large number of legal documents along the way, such as birth, marriage, civil partnership certificates, and a will.

In this section, you can record the existence of these documents. Knowing where these can be found will be essential for your family or executor in the future if they need to manage your affairs.

Document Location

Birth certificate ....

Marriage certificate ....

Deeds to your property ....

Passport ....

Will ....

Power of Attorney ....

Living Will ....

Executor(s) attorney/nominated person

As named in the appropriate document

Will ....

Power of Attorney ....

Living Will ....

Additional Information ....

....

....

....

....

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How to make an effective funeral plan

A pre-paid funeral plan helps you to organise and pay towards your funeral in advance. It enables you to fix the cost at today's prices and specify precisely what funeral you'd wish for, as opposed to leaving your next of kin trying to second-guess which send-off you would have liked.

They can be taken out by making a direct payment to a funeral plan provider of between £2,000 - £5,000, depending on the type of funeral you select. There are arrays of different options, including eco-friendly "green funerals", enabling a tailor-made funeral of your choosing.

Funeral plans are designed to:

3. Provide peace of mind by lessening the financial burden and stress on your loved ones at an emotional and difficult time, and
4. Offer financial protection against steeply-rising funeral costs by locking-in the cost at today's prices.

The average cost of a funeral in 2017 was £4,078 and is projected to rise to £4,944 by 2022, and £7,200 by 2022, according to the 'Cost of dying report 2017' published by SunLife. Compare this to the average cost of just £1,920 when Sun Life started tracking the costs back in 2004.

Why are funeral costs rising?

There are many reasons for a funeral to cost more and more each year. Key factors include:

- Local authority cuts which lead to a rise in cremation costs and reduced subsidies for burials.
- Wage rises for all parties involved.
- An increase in funeral director fees.
- Rising fuel prices.
- A shortage in space, as well as a rise in cost for burial sites.
- Improvements and investment to cemeteries and crematoriums.

Further information about funeral plans is included in the resources part of your pack, kindly donated by my friends at Golden Leaves Funeral Plans, whose service I am pleased to endorse through personal experience.

Some pointers to consider when making your funeral wishes:

- Preference for funeral director
- Whether you have bought a pre-paid funeral plan. If so, where is the documentation stored?
- Burial or cremation?
- Whether you have an existing burial plot.

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- Where you would like to be buried?
- Where you would like your ashes to be scattered?
- If you have any preferences about the coffin type
- Music to be played
- Preference for readings e.g. poems, eulogy, religious words, prayers
- If you would like any specific family members or friends to be involved in the funeral e.g. as a coffin bearer or reader
- Whether you have any preferences regarding flowers or donations
- Arrangements for the wake
- Any preferences for the headstone
- Any requests, cultural or religious requirements, and customs not already covered

My funeral wishes

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About the Author

Legal Expert Phil Weston is an award winning author, speaker and legal practitioner. He is the founder of Berkeley Weston Ltd, a publishing and legal services business.

His best selling DIY Probate Pack has enabled thousands of readers to successfully complete a DIY Probate, saving readers over £20 million in legal fees.

Phil studied Law at De Montfort University, Leicester. During his corporate career he acted as a consultant for Bradford & Bingley Building Society, Britannic Insurance and The Law Society.

Phil started his legal practice Berkeley Weston Ltd in 2004, specialising in Probate and Wealth Protection Advice.

If you are interested about becoming a private client you can contact Phil and his team on 0116 2795044 or by email to phil.weston@berkeleyweston.co.uk.

Recent client feedback for Phil:

"I really cannot thank you enough for the excellent hard work you did dealing with Probate and my mum's estate. Nothing was too much trouble, you gave endless superb support and did a lot of extra work to make sure we weren't under any additional pressure. I cannot recommend you highly enough. Your future clients can be totally assured from day 1 that using your probate service is not only fantastic value but does everything your website says it does! I am so pleased we used you. You are truly a gentleman professional who really cares about his clients and produces that special level of service that is needed in times of difficulty and stress. Please pass this on to your future clients."
John Eckersall, Cheshire.

"I started using Phil's company in 2009 so as to assist us in helping families make the right decisions & choice of company in dealing with their loved ones estate at a time of need. I have always found Philip to be very attentive to my clients' wishes and afforded them the time to go through the process of understanding fully the legalities of Probate. If you are looking for someone with these qualities then Philip & his company are the right choice."
Gary Clugston, Harold White Funeral Directors, London

"Hi Phil, I would like to say how pleased I have been with your service. You have acted quickly and accurately to ensure a fast efficient conclusion to my late father's affairs. Additionally your communication has been first class. Thank you."
Mike Pitson, Guildford

"Phil, many thanks for all your support during my application for Probate. Your comprehensive collection of example letters and pre-filled application form examples were a great help, & I must say one of the best investments I have made. The whole process took around 4 relaxed weeks to completion. Kind regards."
Patrick J Donovan, London.

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GET YOUR AFFAIRS IN ORDER

HOW TO CREATE AN END-OF-LIFE PLAN TO SECURE YOUR INDEPENDENCE IN LATER LIFE, REDUCE STRESS FOR YOUR LOVED ONES AND ENSURE YOUR LEGACY IS PROTECTED FROM THE TAX MAN

In this guide you'll be shocked to read about how UK citizens have had:

- The indignity of being forced into a care home against their wishes by a secret court introduced by the Blair government.
- Their assets seized and bank accounts taken over by state officials and raided to pay for ongoing legal fees.
- Their family home sold and life savings plundered to pay for the 'Dementia Tax'.
- Their legacies decimated by a 40% death tax.
- Their inheritance being settled in Court due to them having the 'wrong' Will.

Most importantly, you'll discover how to prevent this from happening to you and your family.

What you'll discover in this guide:

- ✔ How to arm yourself with legal protection to prevent the state forcing you into a care home against your wishes.
- ✔ How to protect your independence in your later years.
- ✔ How to ensure your wishes about where you live are followed should you suffer ill health or an accident.
- ✔ How to protect your family home, savings and investments from the 'Dementia Tax'.
- ✔ How to protect your legacy from the UK's most hated tax – Inheritance Tax.
- ✔ How to implement simple and effective strategies to minimise the burden and stress on those left behind after your eventual demise.
- ✔ How to prepare for probate and avoid the new probate stealth tax.
- ✔ How to check your Will for common problems that can result in unnecessary and expensive legal bills for your loved ones.
- ✔ How to update your Will or make a new Will from scratch.
- ✔ How to avoid expensive mistakes when putting a plan together to protect your financial security and independence.

"An outstandingly helpful guide and real eye-opener. I devoured every single page of material in this book which has served me very well in making sure I've done everything I can to prepare the groundwork as much as possible and relieve the future burden on my family."

Robert Ingham