

Legal & Finance

- Finance

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The essential guide to legal planning for older people

There are a number of key legal documents, which are essential for you and your older relative to have in place. In fact, anyone with a partner, spouse or offspring should ensure they have done their legal planning and agreed the following key legal issues.

Wills: Why is it so important to make one?

Well, the simple answer is that if you do not have a legal will, you cannot control to whom you can leave your estate. The only certainty of dying intestate (without a will), is that the tax man will be the main beneficiary. Wills are simple to make. You can do it yourself via the internet or using shop-bought packs, use a solicitor or take advantages of at home services, such as those provided by myageingparent.com

If you are worried that by raising the issue of a will, your relative will think you are after their money, there is a simple reply to this: you don't need to know what is in the will, you just need to ensure they have made one, so that in the event of their death, their estate can be divided as they would wish it to be.

Anyone and everyone should make a will once they are self-sufficient and have income and /or property, yet 30% of over 50s in the UK have not done so.

Power of Attorney : why your older relative should grant one

A Lasting Power of Attorney (LPA) allows you to take decisions on your loved one's behalf if they no longer have the mental capacity to do so.

Many people have heard of a Lasting Power of Attorney (previously an Enduring Power of Attorney), but wrongly believe it is something to be considered only when mental incapacity sets in.

So did you know that:

- If your relative suffers an accident or illness, you have no automatic right to act on their behalf. Without an existing LPA in place, they will be required to apply to the Court of Protection to be appointed as your Deputy – a long, complex, costly and intrusive process.
- A relative cannot simply add their spouse or children to their bank accounts, as banks are guided by the British Bankers' Association to freeze both solely and jointly held accounts where one account holder loses mental capacity.
- If anything happens to your older relative and a decision needs to be made about life sustaining treatment, you can only do so if you have an LPA.

There are two types of LPA: **Property & Financial**, which deals with assets and money affairs and **Health & Welfare**, which deals with medical and care issues. Your relative should grant

both. It costs nothing to draw up a lasting power of attorney, unless you want a solicitor's help to guide you through the correct process, which can be easier and more helpful than drafting it alone. The forms you need are available to download from www.gov.uk/org

Advanced Decisions :Why should your older relative make one?

An advanced decision is a statement explaining what medical treatment the individual would not want to have in the future, should that individual 'lack capacity', as defined by the Mental Capacity Act 2005. Except in the case where the individual decides to refuse life-saving treatment. This statement does not have to be written down, although most are recorded as a written document, as this is less likely to be challenged.

Ideally, everyone should make an advance decision. This is because all of us are at risk of suddenly losing our capacity to make medical decisions for ourselves – if we are unconscious due to a car accident, a fall or a stroke, for example. Advance decisions offer the opportunity to say what you do and don't want if that were to happen and takes a great deal of pressure off your loved ones.

Disputes about what is in an incapacitated person's best interests are often the subject of protracted court proceedings and so it is without doubt that having an advance decision would avoid this problem.

Trusts: Why should your older relative consider making one?

Trusts are worth considering as they provide income to others in specific circumstances.

There are two types of Trust:

1. **Life Interest Trust**, where your older relative might want to provide income rather than capital to a beneficiary:
2. **Discretionary Trust**, which allows the trustees to use their absolute discretion as to whether to benefit a member of a class of beneficiaries. The decision is entirely theirs

DOs and DON'Ts of financial planning for older people

DOs

- **DO** make sure that you AND your older relative have made a will
- **DO** get your relative to agree to Power of Attorney
- **DO** sort it out before they lose mental capacity, or you won't be able to get an Lasting Power of Attorney
- **DO** get both types of Lasting Power of Attorney
- **DO** consider the benefits of making a trust
- **DO** consider the benefits of making an advanced decision

DON'Ts

- **DON'T** delay making a will, or you could find the main beneficiary is the government
- **DON'T** dismiss an LPA as unimportant
- **DON'T** worry about raising these issue... they are vital
- **DON'T** tell anyone what's in your will or Advanced Decision if you don't want to

You can find much more detail about all the financial issues raised here by clicking [HERE](#)

Links to more information

[What Is The Savings Limit For Personal Care?](#)

[Collective Legal Solutions](#)

[PoA Is Not A Panacea – Beware](#)

[Capacity And The Court Of Protection And Emotional Abuse](#)

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