

Wills and Lasting Powers of Attorney – What are they and what are the differences?



What is a Will?

- A Will is a legal document that states what should happen to your estate (money, property and possessions) after death.
- Your Will generally includes the following
 - Executors – the people who will deal with your estate on death
 - Beneficiaries – the people who will receive your estate on death
 - Guardians – the people you appoint to look after any underage children
 - Specific gifts – sums of money, specific bank accounts or specific items
- A Will takes effect on death. You can change your Will as many times as you like during your lifetime provided you have the required mental capacity to do so.
- Some assets fall outside the terms of the Will and you should take legal advice so you know what assets would pass in accordance with your Will.

What is a Lasting Power of Attorney?

- A Lasting Power of Attorney is a legal document that allows you (“Donor”) to appoint people you trust (“Attorneys”) to make decisions on your behalf whilst you are alive.
- A Lasting Power of Attorney must be registered with the Office of the Public Guardian before it can be used.
- There are two types of Lasting Powers of Attorney: Property & Financial Affairs and Health & Welfare.
- Property and Financial Affairs: Controls your money, bank accounts, paying bills, collecting pensions or benefits, and selling your home. This type can be used while you still have mental capacity, provided you give your attorney explicit permission.
- Health and Welfare: Controls your daily routine, medical care, where you live, and decisions regarding life-sustaining treatment. This type can only be used if you lose the mental capacity to make those decisions yourself.
- Your Attorneys must always act in your best interest and follow the principles of the Mental Capacity Act 2005.

What are the differences between a Will and a Lasting Power of Attorney and why do I need both?

- A registered Lasting Power of Attorney is only valid during your lifetime and appoints Attorneys to deal with your affairs during your lifetime. Upon death, your Lasting Power of Attorney ceases to exist and your Executors take over dealing with your affairs and your Will takes effect.
- By having both a Will and a Lasting Power of Attorney you are ensuring your affairs are taken care of both in your lifetime and after your death.
- If you die without a Will, there are certain rules (the intestacy rules) which dictate how your estate (money, property and possessions) should be allocated. This may not be the way that you would have wished your estate to be distributed.
- If you do not have a Lasting Power of Attorney and lose mental capacity, nobody, not even your spouse or family members, have the automatic right to manage your affairs.

If you would like to discuss Wills and/or Lasting Powers of Attorney in further detail, please do not hesitate to contact the office by calling 01226 733533 or by emailing the Private Client team direct at privateclient@burywalkers.com.