

A SIMPLE GUIDE TO

# WILLS

AND LASTING POWERS OF ATTORNEY



**HODKIN**  
& COMPANY  
SOLICITORS & NOTARY PUBLIC



## A little about Hodkin & Company

A friendly and effective team of local lawyers, Hodkin & Company was founded in 1994 with the philosophy that they were there to help clients with whatever legal services they required.

They have extensive experience in many areas of law, providing not only all of the services one would expect from a high street solicitor, including wills, administration of estates, conveyancing of property, contracts and business services, as well as dispute resolution and court work, including divorce, employment, neighbour disputes, and commercial disputes of all kinds, but also services normally found in more specialist firms ranging from charity law to bringing international cases in the European Court of Human Rights.







The purpose of a Will is to enable you to determine what will happen to your property and children if you die.



The purpose of a Lasting Power of Attorney is to enable you to determine what will happen to your property and affairs should you become incapacitated.



Of all the things you could do to protect your loved ones, or yourself, making a Will or a Lasting Power of Attorney could be the most important. Yet over 60% of the UK's adult population neglects to make a Will.



This is very unfortunate, because it is not complicated or expensive to make a Will or a Lasting Power of Attorney.



This guide provides some basic information so that you can make informed decisions on what you need to do to put your affairs in place.





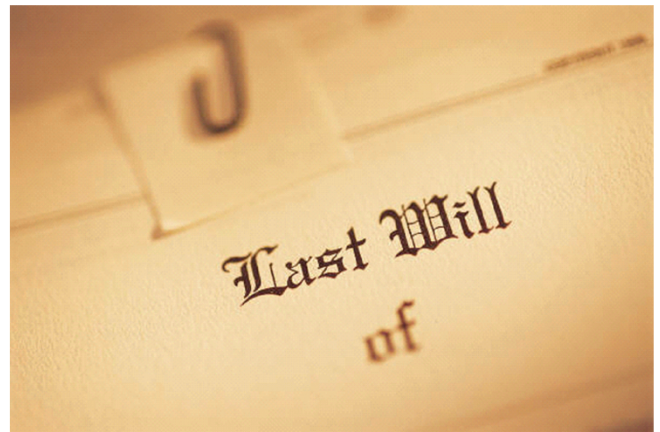
# Making a Will

Making a Will allows you to leave your possessions (your estate) to those you choose and ensure that your children are properly cared for. People who die without leaving a Will are said to die intestate. Special rules apply to intestate estates which are different to what you might expect – for example, often not all of your estate will automatically pass to your spouse. There are also no automatic rules as to who should look after children if both of their parents die whilst they are still under the age of 18. This is why making a Will is so important.

The most usual Will, for someone with a family, directs that everything be given to the person's spouse – or if their spouse is no longer alive, be divided equally between their children. There are many possible variations on this. A Will also often directs that some specific gifts of property or money be given to a few individuals (such as other relatives, friends or godchildren) or to charities.

The person responsible for ensuring that the terms of your Will are carried out is known as your Executor. You can have more than one Executor. It is usual to appoint your partner as your Executor, whilst making a provision for alternative Executors if your partner dies before you. You can also appoint a professional Executor, such as a solicitor. However, if you do not, your Executors are always free to instruct a solicitor to assist them in their duties if they wish to do so.

You can appoint a Guardian, or Guardians, in your Will who will be responsible for looking after your children until they are 18. This appointment is only effective if at the date of your death no other person with parental responsibility for them is still alive.



Where a gift is made to someone who is a minor the law requires that the property be held in trust until they reach the age of 18. Usually your Executors would act as Trustees in this instance, although you are free to appoint different people to act as Trustees if you prefer.

You should be aware that, whilst you can leave your property however you wish in your Will, it is possible that this could be challenged after your death by your spouse, or a dependant, if they do not believe that you have made adequate provision for them.





Many people are concerned about inheritance tax and how that will affect their estate and intended gifts upon their death. Presently there is no inheritance tax on gifts to spouses or civil partners or to charities. However, if the rest of what you leave (which can include gifts made up to 7 years before your death) is worth more than the tax free sum then everything above that sum is taxed at 40%. At the present time the tax free sum is £325,000. If your spouse dies before you, the tax free sum can be higher in certain circumstances. From April 2012 you will be able to reduce the rate of inheritance tax to 36% if you give a legacy to a charity equal to 10% of your net estate.

You can change your Will at any time that you choose, providing you still have mental capacity. A Will is automatically cancelled by a subsequent marriage unless the Will specifies that it is made with the marriage in mind. Upon divorce, gifts made to your former spouse or civil partner in an earlier Will are automatically cancelled.

There are certain legal requirements to make a valid Will, including that it must be signed by you in front of two witnesses, who must also sign it. Those witnesses cannot benefit from your Will, or be the spouse of someone who benefits.

#### 5 THINGS TO REMEMBER

- 1) Only by making a Will can you decide what will happen to your property, or who will look after your children.
- 2) Choose your Executors and Guardians carefully.
- 3) Be sure to make adequate provision for your spouse.
- 4) There is no inheritance tax on gifts to spouses or civil partners.
- 5) You can change your Will any time you need to.







# MAKING A LASTING POWER OF ATTORNEY

A Lasting Power of Attorney is a legal document under which you appoint somebody you trust to make decisions on your behalf should you ever become incapable of making those decisions yourself, or if you need assistance to manage your affairs.

There are two different types of Lasting Power of Attorney, and you can decide whether to make one or both.

The *Property and Financial Affairs* Lasting Power of Attorney gives the person, or persons, you appoint power to make decisions regarding, for example, the management of your bank accounts or the sale of your property. In the document you are able to place restrictions on what your attorney can do, give guidance, or simply allow your attorney to act in your best interests in the manner they see fit.

The *Health and Welfare* Lasting Power of Attorney allows your attorney to make decisions of a more personal nature, for example, where you will live, what you eat or what sort of medical attention you receive. You can also direct whether or not your attorney is to have the decision regarding accepting or refusing medical treatment on your behalf.

Lasting Powers of Attorney must be registered with the Office of the Public Guardian before they can be used. In the case of the *Property and Financial Affairs* Lasting Power of Attorney, once registered, it can be used straight away by your attorney to assist you. In other words, he or she can do things for you even while you are still capable of doing those things yourself if you have to. The *Health and Welfare* Lasting Power of Attorney, on the other hand, once registered, can only be used by your attorney when you are no longer able to make these decisions yourself.





Hodkin & Company solicitors can help you to make a professionally prepared Will, or Lasting Power of Attorney, that meets your requirements. If you are not sure about your requirements, we can provide you with impartial and confidential advice. Our emphasis is on making the experience as uncomplicated and stress free as possible.

We are happy to see you at our offices, or if you prefer an evening or weekend appointment, we can come to your home. In suitable cases, appointments can be by telephone. We also provide a Will storage service should this be required.

If you wish to make an appointment please call us, send us an email or visit our website. The details are below. Please note that we have plenty of free parking at our offices if you are travelling by car.

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