countrywide
South East LLP

Glossary
Of
Estate Planning Terms

Prepared by

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1. Introduction.

In dealing with Countrywide and their representatives many terms will have been used which you may or may not fully understand. This glossary cannot be considered to be advice, but can at least explain in generic terms some of the terminology that has been used. In the event that you feel that you need advice then you will need to engage Countrywide to provide you with advice based upon your own specific circumstances.

Please do not hesitate to contact us by either telephone or e mail if there are any questions that this glossary have not answered.

2. Deed of Variation.

If it has been confirmed that you have inherited assets within the last 2 years we may consider recommending that you vary the assets to a trust(s). We would require further details of this inheritance to provide a more precise recommendation. We would require sight of:

- ✓ The deceased's will (or confirmation that there wasn't a will);
- ✓ Grant of Probate, if available;
- ✓ Details of the deceased's assets at the time of his death- both solely and jointed owned;
- ✓ A set of "Estate Accounts" if available.

Inheriting assets 'absolutely' serves to increase the value of your own estate and also places those assets potentially at risk from claims on those assets from various parties, for example, a subsequent death or simply the fact the person that you left the assets to then deciding to leave those assets to someone other than you anticipated.

The law allows a beneficiary to 'vary' part or all of an inheritance they have received within 2 years from the date of death. This is known as a Deed of Variation. Any assets received under the terms of a will (or intestacy) can be varied.

The purpose of the variation may be to vary those assets into a trust development, thus avoid those assets forming part of your estate for inheritance Tax purposes. This may also potentially protect the assets from all other possible risks outlined above. The precise level of protection will depend on your specific circumstances.

Critically, as the person who is varying assets, you can of course choose to be appointed as a trustee to the trust(s), so you still maintain control of the assets. Similarly, it is highly likely that you would still want to be able to benefit from the assets and, as such, can also choose to be a beneficiary of the trust(s).

Such planning is very much tailored to your individual circumstances. Multiple Trusts may be of benefit depending on the value of the assets to be varied and where the ultimate beneficiaries, say a number of children may wish to manage any assets they receive independently of their siblings. Costs of such planning would be confirmed once all of the details have been established.

Most people consider that for a DOV to take place all of the beneficiaries of the will must agree. This is not the case if you want to vary the assets left to you in a will you do not need the arrangement of the other beneficiaries. Only the person that has been left assets can vary the will to redirect those assets only, say to another beneficiary of the trust(s).

If you have been left assets absolutely in a will then it is worth considering varying the assets you are due to or already have inherited to a trust for protection claims from various parties, including, of course, HMRC.

3. Single Will.

Everyone should prepare a will. It is only by preparing a will can you direct your assets to whom you want them to go on your death. It is also the best way of appointing Guardians for minor children although it must be remembered your choice of guardians could be overruled by the courts.

If anyone dies without a will, then the law determines the distribution of the estate. These 'Intestacy' laws are quite specific and it is not necessarily the case that a spouse and/or children will automatically inherit as may be assumed. These laws also make no provision for unmarried partners, non-family members or Charites.

Without a valid will the administration of the estate of the deceased can also take a considerable amount of time to complete and the costs of probate (estate administration) will rise. This could cause the beneficiaries financial and further emotional distress due to delay, as the 'inheritances' cannot be distributed and accessed by the beneficiaries until the administration is completed. So, establishing a valid will provides peace of mind that your estate will be directed where you wish. Our advice is normally that the assets are directed by your will and appropriate trust(s).

4. Mirror Will.

Everyone should prepare a will. It is only by preparing a will can you direct your assets to whom you want them to go to on your death. It is also the best way of appointing guardians for minor children although it must be remembered your choice of guardians could be over ruled by the courts.

If anyone dies without a will, then the law determines the distribution of the estate. These 'intestacy' laws are quite specific and it's not necessarily the case that a spouse and/or children will automatically inherit as may be assumed. These laws also make nor provision for unmarried partners, non-family members or charities.

Without a will the administration of the estate of the deceased can also take a considerable amount of time to complete and the cost of probate (estate administration) will rise. This could cause the Beneficiaries financial and further emotional distress as the 'inheritances' cannot be distributed and accessed by the Beneficiaries until the administration is completed.

So, establishing an appropriate will provides an appropriate peace of mind that your estate will be directed to where you wish.

Each individual requires a will. As a couple, it is very common that the content of each individuals will 'mirrors' the other. Each individual still has their own individual will.

Our advice is that the assets are directed by your will to appropriate trust(s).

5. Executors.

Executors are the people appointed to deal with the deceased's estate in accordance with the deceased's Will. In their capacity they have no discretion over how the estate is administered and are legally obliged to act in accordance with the terms of it. Amongst other things, the Executors have to:

- ✓ Ascertain the deceased's assets;
- ✓ Notify the appropriate authorities and organisations including HMRC;
- ✓ Locate the Beneficiaries;
- ✓ Settle the deceased's debts, including inheritance tax is applicable; and
- ✓ Distribute the assets accordingly.

If you are considering asking someone to act as the executor of your estate, be sure that both you and they understand the duties and responsibilities of being an executor. Being the Executor of an estate is not really an honour, it's a difficult and time consuming job and carries legal responsibilities, even potential liability.

An Executor will probably work long, hard hours during the period of administration getting your estate settled. They may also receive some hostility from the beneficiaries due to delays which may not be within their control.

It is therefore critical to appoint Executors that can handle these responsibilities. It is strongly recommended to consider appointing Professional Executors, although it is not obligatory.

It is not uncommon to appoint your spouse and/or family members to act as Executors together with a Professional Executor.

As your wills and trusts are being drafted by Countrywide, they are a natural consideration to appoint Professional Executors.

6. Severance of Tenancy Service.

The manner in which property and land are owned is critical. For many of our clients the house or houses they own constitute the largest population of their wealth. It is really important because of this that the will deals with this property and land correctly. Although the house is a large proportion of the estate we often do not understand how the house (and any other properties or other assets) may be owned.

Most couples own their property as "joint Tenants" which means that on the death of one of them, the property passes to the other survivor automatically. It will not pass according to your will. This is similar to how most 'joint' bank accounts and other jointly owned assets are held.

This would then put the assets at risk from potential creditors in the hands of the survivor, especially if the survivor requires long term care at any time in the future.

For the purposes of efficient planning, it is crucial that following the first of you to die, the deceased's "share" of the property should be directed to their trusts as their will should instruct.

By 'Severing the Tenancy' of a joint property, it is declared that the owners in fact each own a proportion of the property which their wills can direct accordingly on their death. The ownership of the property when this is done is called Tenants in common. Very often the property is deemed to be owned 50/50, but it doesn't necessarily have to be. It could be 70/30 for instance, but this would need to be agreed by both owners.

If the deceased's share of the main residence is directed into a trust, it is worth noting that should the surviving owner then require long term care, then it is only the survivors share of the property that should be assessed by the Local Authority.

The assets directed to Trust will also be protected from the potential remarriage, divorce, creditor claims and potential Inheritance Tax (IHT) of your beneficiaries.

The concept of owning property as Tenants in common is applicable to all property, be it the main residence or other properties.

6a. England and Wales

In England and Wales property can be changed from Jointly Owned to Tenants in common by drafting a document called a severance of Tenancy. It is better that this document is recorded at the land registry once signed, then if the Severance of Tenancy is lost, the ownership of your property is known and your share can be directed by your will.

6b. Scotland

Land law in Scotland is different to that in England in Wales. In Scotland the Severance in Scotland is sometimes called an Evacuation of Special Destination and must be done by a full Conveyance. Please see section 7.

7. Conveyance and Declaration of Trust (Land).

The manner in which jointly owned property (and land) is owned is critical, in that you need to ensure that upon the death of one of you, your share of the property should be directed to your trusts as instructed by your will.

Property, of course, can be owned solely, even if two (or more) people live in or benefit from it. Legally, only the sole owner can direct the property on their death by their will, irrespective of the wishes of the other occupiers or people that currently benefit.

The new 'owners' would then be in control of what THEY wish to do with their inheritance, potentially causing difficulties to those why may have expected to benefit or continue to benefit, say if they lived there. Such a position could cause considerable legal battle.

By amending the ownership of the property from sole to joint ownership allows your estate values to be equalised. For example, one partner owns the property, but would like this to recognised that he in fact holds the property for himself and his partner equally, i.e. they are joint owners, but as a tenant in common or in any other proportion.

The process of adding another person onto the title is known as a 'conveyance'. The process is very similar to that when a property is bought or sold. As part of the process, there would be some additional fees that the land registry would charge, but this will not be dependent on various factors, including the value of the property whether it is registered at the land registry or not.

A declaration of trust can also be used, where property is owned by one person, the person on the title, but lives with another (or others) who are not on the title deeds, then that person could declare a Trust, stating that he holds the property for himself and the others equally as tenants in common or in any other proportion.

It may in fact be that the person on the title holds the property for others and does not live there themselves, say you buy a property for parents or children. The use of a trust in these circumstances can assist Capital Gains Tax mitigation utilising main residence relief and in addition to protect the assets for future generations.

Mortgaged Properties

If the property is mortgaged, then this would not necessarily preclude it from being transferred in this manner, however the lender would have to agree for the additional 'owners' to be added onto the title at the land registry. This may not be acceptable to the lender, but may over complicate matters. So, rather than a full 'conveyance', it is perfectly legal for the sole owner to 'declare' that they are holding the property as a trustee for the benefit of themselves and the other and the other proposed owners as Tenants in Common. A legal document called a Declaration of Trust would be drafted, declaring who 'owns' that proportion of the property.

As part of the process, a restriction is placed at the land registry on behalf of the Trustee, which refers to the Declaration of Trust. The lender does not need to give consent to this – or even need to be involved. This offers more protection for the terms of Declaration of Trust, the other person that is not on title then has his or her interest in the property formally stated and protected. Sometimes this could be a property owned by a member of the family for another, say parents for a child and vice versa.

Capital Gains Tax

Changing a solely owned property to Tenants in Common is a transfer of equity from the sole owner. Technically, they are 'gifting' an asset which could give rise to Capital Gains Tax (CGT). However there is a relief against CGT if the property is the main residence. Additionally, CGT is not applicable for transfers between spouses.

However, CGT needs to be considered with properties that are not the main residence and for transfer of assets between non married individuals.

A Conveyance (or a Declaration of Trust, if mortgaged) would also be the course of action for a property to be transferred to Trustees in your lifetime. (See the Family Probate Preservation Plus Trust).

For properties in England and Wales our in-house Solicitors or Licensed Conveyancer will complete the work.

For properties in Scotland and Northern Ireland we will pass the work to a suitably qualified solicitor in either Scotland or Northern Ireland.

8. Family Trust.

If a will specifies that assets are to pass 'absolutely' to specific Beneficiaries (such as a spouse, partner, children or grandchildren etc.), then those assets would be at risk from a range of possible threats- for example, at the risk from the:

- Beneficiary's marriage;
- Beneficiaries divorce
- Creditor claims like credit or debit card debt or insolvency if one of the Beneficiaries is in business;
- Long term care fees; and
- Future Inheritance Tax.

To provide the protection from these threats, rather than the will directing the assets 'absolutely' to the beneficiaries, our advice would be direct to those assets, instead, to a 'family trust'. This is a Discretionary Trust which has the following features:

- Settlor
    - You, as the person providing the funds.
- Trustees
    - People you choose (including yourself) to 'run' the Trust.
- Potential Beneficiaries
    - People you would like to benefit from the trust

As it is 'Discretionary Trust', the Trustees decide who and by how much the Beneficiaries benefit – if at all. Just because they are all listed as 'potential Beneficiaries' does not mean they are entitled or have a right to anything. This is the basis of the planning and protection offered by a Discretionary Trust.

However, you would want some reassurance that people you would like to benefit actually do and there are two factors which can ensure this:

- Choice of Trustees
    - Ensure you pick Trustees that you trust to carry out your wishes. If necessary, you can appoint Countrywide Tax & Trust Corporation Ltd as a professional Trustee.
- Memorandum of Wishes
    - This is an informal note to the Trustees explaining how you would like the trust to be administered. This states who you would wish to Benefit and when. Also if a Beneficiary were to die, then who should benefit in their place.

Due to the way the Discretional Trusts are taxed by HMRC, our advice is to ensure that no single trust is populated by more than (the current 'Nil Rate Band'). These trusts are taxed 'periodically' every 10 years – the 'Period Charge'. The charge is calculated on the excess on the trust on each 10th anniversary over and above the Nil Rate Band at that time. So if on each 10th anniversary of the Trust value within them is below the Nil Rate Band amount then there will be no periodic change.

If you are an unmarried person and your estate exceeds £325,000 then we would recommend you have multiple family trusts to ensure that the value of assets in each trust is kept below £325,000.

Whilst this would not mitigate the Inheritance Tax on your own death, it would ensure that the administration and ongoing Tax reporting duties are kept to a minimum. You would require further planning if mitigating Inheritance Tax was necessary. Such planning is not covered in this report.

Currently there is an ongoing consultation with HMRC regarding some aspects of the Taxation of Pilot Discretionary Trusts. This was explained to you when instructions were taken. If you have any further questions on how this change of legalisation may affect you please contact Countrywide Tax & Trust Corporation LTD.

Planning for married couples is discussed in the next section.

9. Family Interest in Possession Trust

For a married couple with an estate value in excess of two 'Nil Rate Bands', the recommendation would be to use:

- A Family Trust or two Trusts for assets up to the Nil Rate Band (as per the last section); and
- A Family Interest in Possession (IIP) Trust for the excess.

As the 'income Beneficiary' of the IIP Trust would be each other, so the spouse for the others trust, this allows the IIP Trust to benefit from 'Spousal Exemption'- thereby ensuring that following the first of you to die, there would be no IHT to pay.

Estate of the Survivor

The value of the assets in the IIP Trust is included (deemed) in the estate of the survivor (as though they 'owned the assets') for IHT Purposes. So, further planning would be required to ensure that the amount of IHT payable on the survivor's death is reduced as much as possible. This planning is very individual and is beyond the scope of report. You should contact the Advanced Estate planning team for further guidance.

Of course, the assets that are settled into the IIP Trust will still give maximum protection against the surviving spouse's remarriage, divorce, creditor claims and long term care fees

Furthermore, the trust assets will also be better protected against all the other potential Beneficiaries' divorces, creditor claims, long term care fees and Inheritance Tax, so clearly the Trusts continue to provide significant generational protection.

IIP Trusts are taxed differently (as mentioned above) and, as such, are not subject to periodic changes. As a result it does not need to be limited to receiving up to the value of the Nil Rate Band only.

10. Family Business Trust

Establishing Family Business Trusts to receive business assets on death is the most protective and tax efficient means of dealing with such assets. 'Business Assets' are those that meet the HMRC criteria for 100% Business property Relief (BPR) for Inheritance Tax. Tax. That is, at the date of death, the value of the business assets would be relieved of being subject to any Inheritance Tax.

However, just because they qualify for BPR, does not mean that they will continue to do so in the future, for example, the assets may be sold or the business may change what it does.

Consequently, our advice is to ensure they are directed by the will to Business property Trusts, this makes maximum advantage of the relief, especially if the business assets were later sold or that the business property relief legalisation was changed.

For example, your shares in your business are left to your spouse absolutely, the business is then sold. The cash proceeds re now in her estate for IHT upon her subsequent death and so subject to tax at 40%. Had the shares been left to the family business trust, the cash sale proceeds would still be available to the spouse and family, but not subject to the 40% Tax upon her subsequent death.

The protection afforded by Business Trusts is similar to those mentioned above for Family trusts.

Similar to Family Trusts, if the business assets are valued at more than £325,000, we would recommend multiple business trusts.

Business Clause.

A separate clause is required within the will to ensure that the appropriate business assets are directed to The Family Business Trust.

11. Family Agricultural Trust

Establishing Family Agricultural Trusts to receive agricultural assets on death is the most protective and tax efficient means of dealing with such assets. 'Agricultural Assets' are those that meet the HMRC criteria for 100% Agricultural Property Relief (APR) for Inheritance Tax. That is, at the date of death, the value of the agricultural assets would be relieved of being any subject to any Inheritance Tax.

However, just because they qualify for APR, does not mean that they will continue to do so in the future, for e.g. the assets may be sold or HMRC could change the rules.

Consequently, our advice is to ensure that they are directed by the will to Agricultural Property Trusts, so that they continue to be Tax efficient, especially if the land benefitting from agricultural relief was later sold or that the Agricultural Property Relief legalisation was changed.

For example, your shares in your land are left to your spouse absolutely, the business is then sold. The cash proceeds are now in her estate for IHT upon her subsequent death and so subject to Tax at 40%. Had the land been left to the Agricultural Trust, the cash sale proceeds would still be available to the spouse and family, but not subject to 40% Tax upon her subsequent death and so subject to 40% Tax upon her subsequent death.

The protection afforded by Agricultural Property Trusts is similar to those mentioned above for Family Trusts.

Similar to Family Trusts, if the agricultural assets are valued at more than £325,000, we would recommend multiple Agricultural Trusts.

Agricultural Clause.

A separate clause is required within the will to ensure that the appropriate agricultural assets are directed to the Family Agricultural Trust.

12. Family Life Assurance Trust

The sums assured of life assurance policies, unless they are appropriately established and assigned to Trust(S), will either form part of the deceased's estate for IHT purposes or pay out directly to an individual and thus be at risk from their possible remarriage, divorce, creditor claims, long term care fees and Inheritance Tax again.

By assigning your life policies to a Family Life Assurance Trust, you can protect the proceeds from the risk noted above.

However, if the policy is a joint life, first death policy, this will pay directly to the survivor and form part of their estate. If this is an issue then it may be necessary to review such policies to ensure they are appropriately established to avoid such a problem. Our own financial advisers would rarely recommend a joint life First death policy, even for mortgage protection. Such a review is not covered within this report.

In addition Life Assurance Policies assigned to Trust will not increase the estates of potential Beneficiaries and hence not be subject to Inheritance Tax on their deaths.

Similar to Family Trusts, if the policy or policies are valued at more than £325,000, we would recommend multiple Family Life Assurance Trusts.

The Trusts would be established on different days so that they do not breach the related settlement – s62 Inheritance Tax Act 1984.

Repayment of Debts

Even if the policy is assigned to an appropriate Trust, there are still risks if these trusts are not managed properly. For example, following recent changes to legalisation and HMRC'S guidelines, if the policy proceeds are used to pay off a mortgage, that 'debt' may not be deductible for IHT purposes from the deceased's estate. It may be natural to want to pay off the mortgage, but this could have unintended consequences to the rest of the estate. It may be natural to want to pay off the mortgage, but this could have unintended consequences to the rest of the estate. With a little more thought documentation, the same object and security for Beneficiaries can be achieved, but with greater Tax efficiency and asset protection.

So whilst it is wise to ensure the appropriate Trust is established into which life policies are assigned, it would be worth considering appointing Professional Trustees to the Trust(s). Countrywide Tax & Trust Corporation Ltd can act as either.

If this is not administered correctly you could be paying good money for premiums only then for 40% of these Benefits to HMRC as opposed to your intended Beneficiaries.

Deed of Assignment – Life Assurance or Investment Bonds

To assign life assurance policies or other possible investments (except ISA's and some National Savings Products) to a Trust, there is an administrative process required to do so.

The individual placing assets to a trust (the Settlor) is transferring the assets from their personal ownership to the ownership of the trustees of the trust. To settle such asset to the trustees requires a 'Deed of Assignment' for each Policy or Investment.

13. Family Pension Death Benefits Trust.

Invariably, lump sum Death Benefits from Pensions are nominated by the individual to be directed to specific individuals. Commonly these will be a surviving spouse, partner, children or other family members.

As the Death Benefits are paid at the discretion of the Pension Trustees, they are not part of or do not increase the deceased's own estate for their Inheritance Tax purposes (note that in exceptional circumstances the lump sum can form part of the deceased's Pensions member member's estate, but only for certain policies that have not been written since 1986).

Furthermore, the lump sum death benefit will also be at risk from the recipient's remarriage, divorce, creditor claims and long term care fees.

This also applies to most Death in service scheme benefits, where an employee's family may receive a multiple of an employee's salary upon his death.

It is recommended that to protect such lump sum death benefits from these risks then the individual should nominate the death benefits to appropriate Pension Death Benefit Trusts.

14. Family Probate Trust.

A probate trust, like a family trust, is a discretionary trust. The fundamental feature of a Probate Trust is that you, the settlor can also be a potential Beneficiary. As a result, this would not assist in reducing your Inheritance Tax liability.

However the use of Family Probate Trusts in invaluable where you want assets to be controlled and managed by Trustees whilst you are still alive. You can also be a Trustee if you choose. Inevitably, you would also chose other people who would also be potential Beneficiaries, such as your spouse or children and grandchildren.

Following your death, access to the assets within a family probate will not be delayed by the administration of your estate and therefore remain immediately accessible (at the discretion of the trustees) to the potential Beneficiaries.

15. Family Probate Preservation Plus Trust (PPPT)

The PPPT is used where you wish to pass all or part of your main residence to be controlled and managed by Trustees whilst you are still alive. This would require a conveyance in transferring the asset to the Trustees.

The fundamental feature of the PPPT is that you are one of the 'potential beneficiaries' and so can continue to live in the property as you wish. You can also be a Trustee so you maintain full control of the asset. As such if you wish to move home, you can still chose to do so in your capacity as a trustee. It would be advisable to have a professional Trustee to assist with any move to ensure that the new property is also protected in the same manner as the original property.

The purpose of the PPPT is to ensure that any dealings with the house will not be delayed on your death by the probate process. Hence, the assets remain immediately accessible (at the discretion of the Trustees) to the potential Beneficiaries. These would include your surviving spouse or partner, children and grandchildren.

Furthermore, if you lose the mental capacity to manage your affairs, then the two remaining trustees can continue to manage the trust assets on behalf of the beneficiaries. This can avoid the necessity for Attorneys to deal with the trust assets and the involvement of the court of protection.

As with the Probate Trust, the PPPT would not assist in reducing any Inheritance Tax liability, if one exists, although the trust assets wouldn't increase any other Beneficiary's estate for IHT.

Even more importantly, the assets may also be protected against potential claims on the remaining potential beneficiaries, such as divorce, separation, creditors and long term care fees.

16. Trust de Minimus.

It is recommended that all of the Trusts discussed above are established 'now' whilst you're alive, although many, if not all, will generally not be populated until one of you dies and the will directs assets into the trust. As discussed above, the trusts are established now to reduce the impact of Periodic Charges. However, to create the trusts now, it is legally required to 'populate' them with assets. This is achieved by virtue of settling £10 into the trusts. This settlement is known as the 'Trust de minimus'.

17. Trustees.

Trustees are the persons appointed to manage the Trust assets. They need to be people you trust to carry out your wishes. Trustees need to be:

- Aged 18 or above;
- Have mental capacity; and
- Not be bankrupt.

Trustees' responsibilities and duties include:

- being legally obliged to manage the Trust assets on behalf of the Beneficiaries;
- All Trustees should familiarise themselves with the terms of trust Deed;
- All dealings with the 'trust fund' by the trustees must be for the benefit of the Beneficiaries.
- The Trustees must use their utmost diligence to avoid any loss. If they are negligent and a loss arises they may be personally responsible for that loss to the Beneficiaries;
- In England and Wales all Trustees must act unanimously – Trustees' decisions cannot be made by a majority of Trustees. This is not the case in Scotland where Trustees must be allowed the majority of the decision.

- Responsible for calculating and the payment of any tax.

As a result of the responsibility that rests with the trustees, it is highly recommended to appoint Professional Trustees.

Appointing a professional Trustee, such as Countrywide Tax & Trust Corporation, will ensure that a totally unbiased approach is taken when dealing with the deceased's assets and that the settlor's wishes are completely upheld.

Countrywide Tax & Trust Corporation Ltd gives consideration to the Tax status, financial status and marital situation, of the intended Beneficiary (i.e. if the Beneficiary were undergoing financial difficulties or entering into divorce proceedings). This ensures that the assets would not be lost to creditors or future ex-spouses.

Our advice can be crucial in preserving assets and ensuring as much as possible is received by the intended Beneficiaries and is not lost to Tax, divorce or in settlements to creditors.

Not choosing a professional Trustee could mean your Beneficiaries lose out. For example, where trustees are also named as Beneficiaries, this can often lead to a conflict of interest and disputes with those Beneficiaries that are not Trustees.

The benefits of having Countrywide as a professional Trustee is that, as authors and creators of the trusts, we are best placed to recommend any amendments that could be necessary to ensure the maximum efficiency of the trust. We can make the best use of Tax legalisation, optimising Trust efficiency both before and after first and second death.

Due to our experience, we can provide a variety of advice in relation to the ongoing administration of the Trust, for example, in respect of:

- Appointment and retirement of Trustees
- Appointing assets to Beneficiaries
- Making loans to Beneficiaries
- Appointing income to Beneficiaries

Furthermore, whilst you would then have the reassurance of professional expertise behind you, there is no compulsory annual fee levied. We only charge for work undertaken as agreed with yourselves or, after your deaths, your trustees.

Initially, we would recommend that you appoint each other together with Countrywide Tax & Trust Corporation Ltd to provide an all-round balance of involvement and expertise. You can suggest that your children are subsequently appointed following your death(s).

18. Lasting power of attorney

If you are unfortunate enough to lose the capacity to manage your affairs during your life time, the only means of ensuring that your financial affairs are looked after by those of you're choosing is to have established the lasting powers of attorney before you lose the capacity to do so.

If you do not appoint appropriate Attorneys and then lose the capacity to manage your affairs, then your next of kin will not **automatically** be entitled to deal with your affairs on your behalf.

Should they wish to gain the power to deal with your affairs, then they would have to apply to the court of protection in the relevant country. **This is a lengthy and costly exercise.**

Some couples think they will be able to manage if one loses capacity because their assets are held jointly. This is not the case as if one of the signatories on a joint bank account loses capacity to manage your affairs then this accounts is closed except from emergencies. We, therefore, recommend all of our clients should establish Powers of Attorney whilst they have the capacity to do so. Most people leave it until it's too late.

The rules governing Powers of Attorney are different between England & Wales, Scotland and Northern Ireland as explained briefly below.

18a. England & Wales

In England and Wales the Powers of Attorney are called Lasting Powers of Attorney. Lasting Powers of Attorney replaced Enduring Powers of Attorney on the 1st October 2007.

If clients had Enduring powers of Attorney drafted before this date then the documents are still legal but it is worth remembering that with the Enduring Powers of Attorney:

- Attorneys cannot be altered if the situation has changed now or in the future
- The Enduring POA does not give the Attorney power to make welfare decisions on behalf of the client.

There are 2 types of Lasting Powers of Attorney and each individual would be recommended to establish both. They are 'property & Financial Affairs' Lasting Power and 'Health & Welfare' Lasting Power.

It is important to remember that mental incapacity can occur at any time, to anyone. This is not simply something that happens to the elderly.

As a powerful document, it is as important as your will and you should consider this a the same time, along with safe storage of all of your legal documents

Please find below listed some of the people that are used within the document and a brief description of their role:

Donor.

This is the person that is authorising the Attorneys to act on their behalf.

Attorneys.

Establishing both powers enables you to choose a person or persons, called Attorneys, to deal with your 'property and affairs' and your 'Health and Welfare'. Whereas a General Power of Attorney (see subsection 18.d) ceases in the event of you becoming mentally incapable of managing your affairs, Lasting Powers of Attorney will continue after you die.

You can nominate 'Replacement Attorneys' to act in place of a main Attorney should they predecease you or be unable to act for any other reason.

Powers.

You can limit the powers given to Attorneys, for example, you may wish them to handle your money but not the power to sell your house.

Within the Health & Welfare power your attorneys may be given certain powers to decide, for example:

- Which care home you should enter
- If life sustaining treatment should be given, or continue; or if a Life support machine should be kept on or not

Both powers also require a Certificate Providers'.

Notified Persons.

If you choose to name notified persons, they are written to and informed of what you are establishing and who you are appointing as Attorneys. If they have any concerns, they have the option to object to the Office of the Public Guardian (OPG).

Certificate Provider.

One certificate provider is also required per power and they will sign the Lasting Power documents along with you, the donor, and the Attorneys and the Replacement Attorneys.

They sign to confirm you understand the documents and the powers you are passing to the Attorneys, as well as confirming you are not establishing such powers under any duress.

Registration.

Countrywide Tax and Trust Corporation Ltd insist the powers are registered with the OPG. The powers can only be used once they are registered, and the registration process can take 3-4 months. The problem if the documents are not registered and the client loses capacity is that if there are any minor errors in the documentation the courts will not accept the documents for registration leaving the client and their attorneys with real problems and no power to act.

Once registered then the powers should be safely stored until the time arises when they are required. As the documents are very powerful it is suggested that the documents are stored away from the home, so you can ensure that only the nominated Attorneys or you the client can withdraw the documents out of Countrywide Tax & Trust Corporation Ltd.'s Safe Storage Facility when they are needed.

18b. Scotland.

In Scotland the two Powers of Attorney are referred to as continuing power of Attorney (for finance and property, which continues when mental capacity is lost. These two powers of Attorney can be combined into one document which is marginally cheaper than purchasing the two Powers separately.

It is important to remember that mental incapacity can occur at any time, to anyone. This is simply something that happens to the elderly.

As a powerful document, it is as important as your will and you should consider this at the same time, along with safe storage of all your legal documents.

Please find below listed some of people that used within the document and a description of their role:

Granter.

This is the person who is authorising the Attorneys to act on their behalf.

Attorneys.

Establishing both Powers enables you to choose a person or Persons, called Attorneys, to deal with your 'property and financial affairs' and your 'Health and Welfare'.

You can nominate 'Substitute Attorneys' to act in place of a main attorney(s) should they predecease you or be unable to act for any other reason.

Note in Scotland age of the majority is 16, so Attorneys can technically be appointed at that age.

Powers.

You can limit the powers given to your Attorneys, for example, you may wish them to handle your money but not have the power to sell your house.

Within the Welfare Power your Attorneys may be given specific powers to make decisions regarding certain issues.

For example for health and welfare; decisions such as:

- Where the Donor's residence should be
- Decisions regarding diet and clothing should be specified

- The ability to sell property
- Manage bank accounts

There is a list of powers to choose from; most donors choose all powers for maximum flexibility.

Certifier.

One certifier is also required per power and they will sign the documents along with you, the Donor, and the Attorneys and any Substitute Attorneys.

They sign to confirm that you understand the documents and the powers you are passing to the Attorneys, as well as confirming you are not establishing such powers under any duress.

The certifier needs to be a Doctor (Or Solicitor)

Specified Persons.

Once the powers are registered, up to two Specified Persons can be given a copy of the Powers of Attorney. This copy is purely for their information only. The role does not give any authority over the donor's affairs, and as it is not a legal requirement to name Specified Persons, they are rarely included in the process.

Registration.

Countrywide Tax & Trust Corporation Ltd insist the Powers are registered with the Scottish OPG. The powers can only be used once they are registered, and the registration process can take up to several months. The problem if the documents are not registered and the client loses capacity is that if any minor errors in the documentation the courts will not accept the documents for registration, leaving the clients and their Attorneys with real problems.

Once registered then the powers should be safely stored until the time arises when they are required. As the documents are very powerful it is then suggested that the documents are stored away from the property where you are sure that only the nominated Attorneys or you the client can draw the documents out of storage when they are required to be used.

18c. Northern Ireland

Enduring Powers of Attorney are still in use in Northern Ireland. Enduring Powers of Attorney are valid to be used once signed, but the Enduring Powers of Attorney must be registered to remain valid if the Donor loses mental capacity.

The Enduring Power of Attorney only covers you're Financial and Property Affairs. There is no corresponding document covering Health and Welfare matters, unlike in England & Wales and Scotland.

It is important to remember that mental incapacity can occur at any time, to anyone. This is not simply something that happens to the elderly.

As a powerful document, it is as your will and you should consider this at the same time, along with safe storage of all your legal documents.

Please find below listed some of the people that used within the document and a brief description of their role:

Donor.

This is the person who is authorising the Attorneys to act on their behalf.

Attorneys.

Establishing Enduring Powers of Attorney enables you to choose a person or persons, called Attorneys, to deal with your 'Property and Affairs'.

18d. General POA.

If you want someone to look after your Financial Affairs for a specific period of time, you can create a General (also known as ordinary) Power of Attorney. You might want to establish a General Power of Attorney, if for example, you have a physical illness or you are abroad for a period of time.

Please find below listed some of the people that people used within the document and a brief description of their role.

Donor.

This is the person that is authorising the Attorneys to act on their behalf.

Attorneys.

Establishing Enduring Powers of Attorney enables you to choose a person or persons, called Attorneys, to deal with your 'Property and Affairs'.

N.B. A General Power of Attorney cannot be used if mental capacity Is lost, so should only be considered as a short term solution, it does not continue post incapacity. Lasting or Enduring Powers of Attorney should always be considered as the best advice.

19. Safe Storage Facility and Document Checking.

Clearly the planning established is very important. It will be planning that could be protecting and saving many thousands of pounds for you and your family.

When a death occurs, your original documents will be required and without these considerable delay and cost could be incurred. The 'Grant of Probate can only be granted by the courts and they will only accept the original will. So if the documents are lost or destroyed, then any previous Will or the intestacy laws (if there is no longer an original will) will apply with undesirable consequences.

It is therefore absolutely critical that these documents are securely stored. Copies of your documents would be provided for your reference along with a Certificate of Storage with all the appropriate reference numbers and contact details you and your family would need when the need arises.

We highly recommend that the documents are checked to ensure that they are correctly signed and therefore validly executed. If the documents are not appropriately signed, dated and witnessed then this can lead to extra delay and cost, not to mention unintended consequences if it is the will that has not been executed correctly, for example.