

Talk from Silvertime Legal about Estate Planning

Most people have written a will, but that's not the end of all you need to do to make sure your possessions end up with the people you want after your death. This talk from Silvertime Legal covers some important issues you need to consider in estate planning.

Tips when writing your will

- Make sure that the will is valid. You must sign and date in front of two witnesses and they must sign and date it at the same time, in the same place. The witnesses really must have seen you sign the document. Check little things like the correct dates are used.
- Choose really trustworthy people to be your executors and choose more than one, in case one of the executors pre-deceases you. Solicitors can be executors but they do charge. The executors can always employ a solicitor if things get complicated.
- If you are excluding someone from your will who might have reasonably expected to be mentioned, make sure you explain who and why in your will so that the will cannot be contested. It would be a nice gesture to leave them a small amount.
- Have more than one copy of the will and store them in different secure places (and tell your relatives where they are). Solicitors can store your will for you and there are now digital places to store wills.
- If you wish to assign particular items to people, these can be mentioned in the will, or if there are a lot of items, you can write a separate letter of intention. It's best to get this letter signed and witnessed in the same way as the will. Store the letter with the will.
- If you have a funeral pre-payment plan or life assurance, mention these in the will, and store the details together with the will.

The importance of assigning Power of Attorney

- It is important to assign Power of Attorney to someone so that your best interests can be looked after if you become unable to do it.
- You must do this while you still have 'mental capacity', so if you haven't already done it, do it now!
- As with the executors of the will, it's best to choose more than one. However, make sure they can act 'jointly and severally' so that they can act on their own for the little things.
- Choose people who you really trust to look after your best interests.
- Power of Attorney has changed. Before 2007, the system was called 'Enduring Power of Attorney'. If you arranged Power of Attorney before this date, it is still valid. Since 2007, the system is called 'Lasting Power of Attorney' and has more checks, and so is generally more secure.
- There are two types of 'Power of Attorney', health and welfare and property and financial affairs. You can make one or both.
- Once you have completed the documentation, it has to be registered with the Office of the Public Guardian.
- The 'Power of Attorney' can always be cancelled and if you or your relatives are concerned about the activities of one of your nominated attorneys, then contact the Office of the Public Guardian. They will investigate.
- Again, store the documents in secure places, and tell people where they are. You may be able to leave a copy with your bank.

Liz found this useful website: <https://www.gov.uk/power-of-attorney>

Preserving your assets and forming a Trust

- A Trust is a legal arrangement in which you transfer the ownership of some of your assets to the Trust. Then the Trust is managed by trustees on behalf of the Trust's members (usually family members and/or the will beneficiaries).
- You will need legal advice to set one up. They are complicated!
- You can transfer many assets to your trust but you can't, for example, transfer ISAs and Premium Bonds as these can only be owned by one person.
- Once the asset is in the trust, you still have access to it but it will no longer be counted as your personal possession so it is not used, for example, when calculating your liability for care home fees.
- The trust also prevents sideways disinheritance. This is when one spouse dies and the other remarries. The assets in the trust cannot pass to the new partner after the death of the remaining spouse.
- People often put their home (if they own it) into a trust. If you have a partner, you will need to look at how you own the home. If you are 'joint tenants' you share ownership of all the value of the home, none of it exclusively belongs to one partner. This cannot be put into a trust and also means the entire value of the home is taken into account for care home fees. If you are 'tenants in common', then you each own 50% of the value and this 50% can be put into a trust.
- Trusts cannot be set up specifically to avoid care home costs. You will need to set up the trust before you know you are likely to need care e.g. before a diagnosis of dementia.
- Trusts do not have to pay out on the death of the originator of the trust. Smaller amounts may be paid out. It may be appropriate to delay the pay-out to avoid the money being involved in divorce settlements or bankruptcy proceedings. It may be that one of the beneficiaries is a minor or on benefits or in care themselves.

Our thanks go to Phil O'Toole who gave this excellent presentation. If you want to take any of these things further, then you will need to seek advice. This can be provided by Silvertime Legal, who can be contacted through their own website. However, we would like again to emphasise that Crediton u3a **does not endorse** this or any other company offering such services.