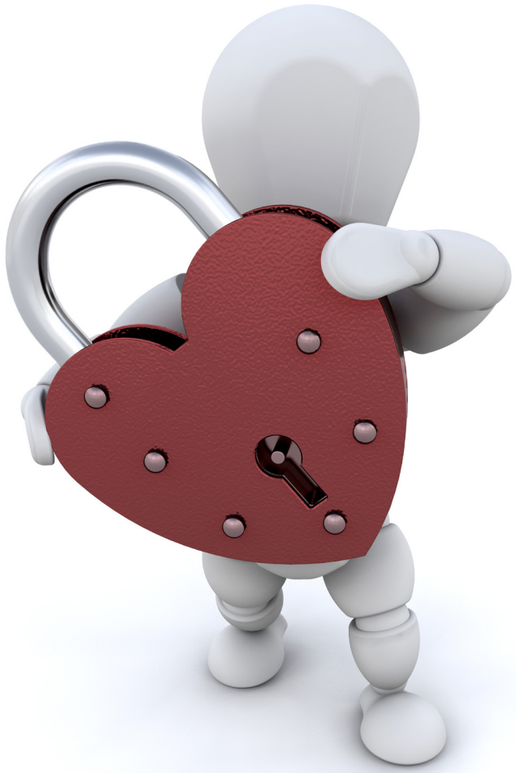
Vulnerable Beneficiaries

Using Trusts to preserve your family wealth, and to protect your loved ones in the future

ESTATE PLANNING SEMINARS



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Why is it so important?

The purpose of this guide, is to provide parents and carer's with advice and guidance, in relation to their options about looking after the long-term interests of vulnerable beneficiaries, especially after the parents and carer's are no longer around to protect them. Planning for the future can make a huge difference, particularly once you are not here to look after your child.

A vulnerable beneficiary is defined as a person with a mental health or physical disability, or a learning difficulty that means they experience difficulty with everyday activities such as household tasks, socialising or managing money.

Enclosed within this booklet are useful links, for more advice and information relating to vulnerable beneficiaries.

Main questions to consider

- Is a direct and absolute inheritance appropriate, or does the vulnerable person need protecting?
- What have you done to protect your wealth and ensure you maximise what passes down to your family?
- Is being an appointee for benefits sufficient or will attorneys or a deputy be needed to make financial decisions in the future?
- Are best interest assessments appropriate and sufficient for your circumstances, or do you need to consider a deputyship application for personal decisions?
- How do I get the best advice and who can I trust given how important it is to get it right?

The problems

Even a small lump-sum inheritance can affect your child's entitlement to benefits. Leaving an inheritance directly to a vulnerable beneficiary is not an option because:

Your child may not spend or manage their inheritance wisely: Failing to plan ahead may result in their inheritance being wasted or the need for an application to the Court of Protection for a Deputy to manage their inheritance. This means long delays, substantial legal fees and losing control to someone you don't know making decisions that may not reflect the vulnerable person's (or your) wishes.

Financial abuse: Difficulty with managing finances is common for vulnerable beneficiaries, making it particularly hard to deal with their new found wealth. It leaves them open to financial abuse from others who wish to take advantage.

Loss of benefits: Means tested benefits and support packages funded by local authorities may be lost, which in turn leads to inherited funds being used to pay for care.

Planning ahead avoids all these problems.

Wills and Trusts: Protecting your loved ones inheritance long-term

Everyone has fears for the future, and as a parent or carer of a vulnerable beneficiary, yours might be how they cope when you are no longer around. How will they cope financially? Will they still receive benefits? How can I minimise change in their life?

Wills and Trusts are vital if you wish to protect your child in the long-term. Trusts can protect your wealth from tax, care fees, future spouses or partners where family wealth can spread outside of your family, to the tax-man, local authorities or third parties. It is also very important that your inheritance from your parents is maximised, so it can be passed on to your chosen beneficiaries.

Planning now, can protect your child's future and provide you with peace of mind, that you have done everything possible for your child to secure a happy and fulfilling life. Making a Will and setting up a Trust are two of the most important things you will ever do for your child's future. Taking these steps now will safeguard their finances, minimise change in their life and enable them to continue doing the things that they enjoy.

What's the difference?

A Will sets out your wishes for dealing with everything you own after you death.

A Trust is used to protect the following:

- Your wealth, to maximise inheritance for your loved ones
- Your beneficiaries, to minimise threats that could reduce their enjoyment of their inheritance
- Your inheritance, from your parents

What **can** I do?

1. Make your Will
Your Will is the legal document which sets out your wishes for the distribution of everything you own, after you've passed away. Your Will can be used to maximise inheritance passing down the bloodline, by minimising risks such as sideways disinheritance and long-term care fees, which can partially or totally disinherit your loved ones.

2. Set up a Trust
Your Trust is an arrangement where Trustees (chosen by you, and including you) hold Assets (chosen by you), subject to some rules (decided by you). A Trust offers more protection than a Will because the Trustees have control over the Trust Fund, and not the vulnerable beneficiary. Trusts should only be set up by a legal professional with experience in this area (STEP qualified).

3. Letter of wishes
Your letter of wishes sits alongside your Trust and provides guidance for the Trustees. It states exactly how you wish the assets in the Trust to be used and may also set out their personal likes, dislikes and preferences.

Always ensure those acting on your behalf, are Will and Trust specialists, who have experience in this area and are STEP qualified. This is the Gold Standard and highest level of qualification available for Wills and Trusts.

What should I **not** do?

- Write a Will making no provision for the vulnerable beneficiary, thinking that the other children will take care of them
- Have no Will, or make a Will that leaves the estate to the vulnerable beneficiary absolutely, who as a result will:

- Lose their benefits
- Need an application to the Court of Protection for a deputy to look after their affairs
- Expose them to unnecessary risks and being taken advantage of

Guardianship

One of the most important steps you can take in making plans for your child is to appoint a Guardian. A Guardian is a person who will effectively 'step into the shoes' of a deceased parent and assume responsibility for the child.

Whilst a Guardian can be appointed in a written, signed and dated statement, the best methods of appointing a Guardian is to include it in your Will.

Making the appointment of a Guardian within your Will has the added benefit that related financial agreements (such as a Trust for your child) can be included in the same document.

If there is no surviving parent with the 'paternal responsibility' and no appointment of a Guardian has been made, then the child becomes the responsibility of the Court, and until such time as the court appoints a Guardian who may not be who you would have chosen, or the child may be taken into care.

Factors to consider when appointing a Guardian

When deciding who to appoint as a Guardian, it may be helpful to bear in mind the following:

Practical

- Do you trust you Guardian to raise your child as you would have wished?
- Does your Guardian have children the same age and experience of parenting?
- Is your choice of Guardian known to your child? Do they get on well together?
- Does your choice of Guardian have a genuine concern for your child's welfare?
- Does your Guardian live locally? Would your child have to move school?
- Does your Guardian share the same values and beliefs that are important to you?
- Have you discussed the proposed Guardianship with your choice of Guardian, and established if they are willing to accept?
- Is your choice of Guardian aware of your child's likes, dislikes, favourite activities, foods, people and places?

Financial

- How will your child's upbringing be paid for?
- Is money to be held in the Trust for the child beyond the age of 18?
- Will your chosen Guardians also be the Trustees of your child's fund? If not, can they work well with the Trustees?
- Do you wish to make a direct gift to the Guardian for their benefit?
- If you own a property, is it to be sold after your death? If not, how is maintenance to be paid?
- What can the Trustees spend your child's money on before he / she reaches 18?
- Have you written a letter of wishes to your Trustees and is this up to date?

Making decisions

A vulnerable person may lack the capacity to make important decisions about their finances or personal decisions like medical treatment and where to live.

When an individual lacks capacity, then the first and most basic principle is that any decision must be made in their best interests. The Mental Capacity Act (MCA) is the statutory framework for people who may not be able to make their own decisions, due to illness, disability or mental health problems. Strong emphasis is placed on supporting and enabling the individual to make everyday decisions.

For more information on 'best interest assessments', please visit:

https://www.39essex.com/wp-content/uploads/2017/11/Mental-Capacity-Guidance-Note-Best-Interests.pdf

What if a person is deemed to lack the capacity to make a personal decision?

If a person lacks capacity, then actions can be taken, or decisions made in that person's best interests on their behalf, by a decision-maker. This is usually the carer responsible for the day-to-day care, or a professional such as a doctor, nurse or social worker.

If it is decided that a person lacks capacity, what actions can be taken on their behalf?

If a person has been assessed to lack capacity and it has been deemed that certain actions would be in their best interests, the Act allows people to legally carry out these actions in relation to a persons care or treatment.

Decisions are normally individual, but the Court of Protection can appoint a Deputy to make **financial** decisions on a person's behalf long-term. A Deputy will be accountable to the Court for any decisions they make.

There are three problems with applying to the Court of Protection for a Deputy to be appointed:

Costs: Likely to be around £2,500 - £3,000

Delays: It can take up to 12 months

Control: Deputy appointed. This can be the solicitor making the application, so you **lose control** and pay heavily for every action they take.

Means tested benefits

The benefits system is complicated, and it can be very difficult to understand properly and make sure you are receiving the correct benefits. Often people will not claim because:

- They are coping financially
- Because it's too difficult
- Fear of making a claim incorrectly and having to repay money in the future

It is important to realise, that if you don't claim the benefits you are entitled to now, then in the future when you are no longer around, the local authority are far less likely to approve the benefit application. Their argument being that: **'you didn't need it / qualify back then so why give it to you when nothing has changed?'**

For more information go to:

www.gov.uk/become-appointee-for-someone-claiming-benefits

Can I manage the benefits?

Yes, you can apply to become an 'Appointee for benefits' so that you are able to deal with the benefits for someone who is unable to manage their own affairs, due to mental incapacity or severe physical disability. Only one person can be appointed.

It is usually a parent or carer who applies to become responsible for making and maintaining benefit claims, this includes:

- Signing benefit claim forms
- Keeping the benefits office advised about changes
- Spending the benefit in the person's best interests (it is paid directly to the Appointee)

The application to become an 'Appointee for benefits' is made to the DWP (Department for Work and Pensions) and there are different contact details to call for Attendance Allowance, Disability Living Allowance, Personal Independence Payment and State Pension.

What's next?

Things to consider:

Q Will: Is your Will up-to-date and fit for purpose?

Q Trust: Would a Trust arrangement benefit your family?

Q Is the best interest assessment process sufficient for the person's circumstances?

Q Is an application for an LPA Property & Finanace decisions necessary?

Q Do I need to become an Appointee for benefits?

Q What is likely to happen if my child inherits absolutely?

A It always makes sense to plan ahead to avoid future problems

A By having the right planning in place, the vulnerable person can have all the benefits of their inheritance with none of the downsides.

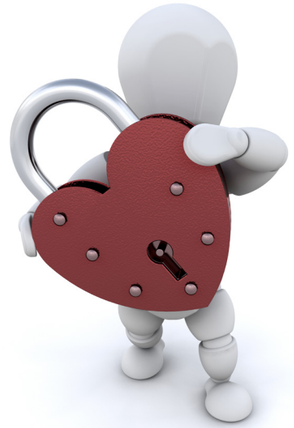
A By planning ahead, you can get peace of mind and make life easier for those left behind.

Why choose Estate Planning Seminars?

What makes Estate Planning Seminars different?

Our dedicated legal team have vast experience within the Wills and Probate sector. As every individual has varying circumstances, we pride ourselves on the personalised approach we have towards every client that comes to us.

We ensure our services are delivered in the most professional and reliable way possible, resulting in a trusted and loyal relationship being built between us and our clients.



Ten facts you need to know

1. 70% of people die without a Will.

2. Approximatively 80% of people have an out-of-date Will, or only a basic Will; losing control and taking unnecessary risks.

3. Your Will can be used as a financial planning tool, to protect and preserve your wealth.

4. Inheritance Tax is a voluntary tax; you can plan to avoid it but need to do so early.

5. About 135,000 people go into care every year. 65,000 homes a year are sold to pay for long-term care.

6. Sideways disinheritance is a major cause of family disinheritance; google 'Lynda Bellingham Will'. It can be avoided.

7. The average weekely cost of care is £1,400. It can be avoided.

8. On average, people put off writing their Wills over 20 times.

9. Around 1 in 3 people will end up in long-term care.

10. Probate is time consuming and expensive - around £9,000. It can be avoided.

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For more information, please contact our dedicated team of legal professionals:

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or visit our website

epseminars.co.uk