

Palmerslaw

Your guide to estate
administration, Wills,
trusts and mental
capacity issues

Moving forward
together >



We understand that having to deal with the estate of a loved one who has died; looking after the affairs of a person who through lack of mental capacity cannot make decisions for themselves or drawing up a Will to deal with your wishes on death is not an easy task. It can be a traumatic and stressful time.

We are here to help and to listen and advise with compassion, consideration and professionalism.

Our experienced specialist team of Private Client lawyers include members of the Society of Trust and Estate Practitioners, and the Association of Lifetime Lawyers.

We offer free and voluntary advice and assistance to local Citizens Advice Bureaux and give talks to a variety of local groups and organisations. Where necessary personal visits to hospitals, hospices, care homes or your home can be arranged.

Administration of Estates

A Grant of Representation is an order of the High Court authorising the appropriate person(s) to collect in the assets of a deceased person and settle their debts before distributing the balance to those who are legally entitled. If a Will has been made, the Grant is one of Probate; if there is no Will, Letters of Administration are granted.

The Grant is required to protect the estate and the beneficiaries against fraud, ensuring money/property pass to the correct person(s).

The value of the estate must be calculated to determine whether Inheritance Tax is payable to HMRC. The Personal Representative(s) will have a duty to make sure all tax, debts and liabilities are settled before the balance is distributed.

A deceased person's property and assets will include a house, car, furniture, savings, life insurance, jewellery and anything capable of being valued and of being transferred from one person to another. The liabilities may include a mortgage, outstanding loans, bills and the funeral expenses.

No two estates are the same and what may seem straightforward can be complex.

We can advise on the procedures involved, deal with the application for the Grant of Representation or assist in the entire administration. Our services can be tailor-made to suit your requirements.

Claiming against an estate

In some circumstances the Courts will consider a claim by certain categories of person to bring a claim against an estate, where it is felt an otherwise valid Will, or the intestacy rules, fail to make sufficient provision for them. The categories of claimant are clearly defined and there are strict time limits.

Claims can also be brought where lifetime promises of financial provision have been made but not honoured. We can advise and represent you in such claims.

Challenging Wills

The validity of a Will can be challenged on the grounds of:

- Lack of capacity
- Failure to comply with statutory signing formalities
- Lack of knowledge and approval
- Undue influence and fraud
- Revocation

Such challenges can be difficult and expensive – professional advice should be sought.

Making and revising a Will

It is a fact that one in three adults do not make a Will and run the risk of their assets being distributed in accordance with statutory intestacy provisions.

A Will enables you to ensure your assets pass to chosen beneficiaries, appoint guardians for minor children, appoint an executor(s) to carry out your wishes, create trusts to protect vulnerable beneficiaries and mitigate both Inheritance Tax and care fees.

An existing Will often needs to be updated because of changing personal and financial circumstances.

We can offer you independent advice and guidance at a reasonable cost to achieve your wishes.

Minimising Inheritance Tax

Inheritance Tax is currently charged at 40% on the amount of your estate above a certain threshold.

There are certain exemptions and reliefs and the ability on a second death to transfer the proportion of any unused threshold to a surviving spouse or civil partner's estate, which may double up the available threshold figure. This does not apply to unmarried couples and the impact of Inheritance Tax in those situations may be significant.

A properly drawn Will, a financial review of your net worth and the available reliefs, and the use of trusts can help to minimise Inheritance Tax.

Creation and administration of trusts

The creation of a trust, during one's lifetime or by Will, can protect assets in the long-term including against the threat of long-term care fees, provide for vulnerable beneficiaries, treat income and capital in different ways or, in some cases, save tax.

Your choice of trustees, their powers and responsibilities, the administration of the trust and its objects require careful consideration.

We can advise you on all these issues and help you to make informed decisions to suit your particular needs.

Lasting Powers of Attorney

To enable someone to look after your property and financial affairs or make personal welfare decisions for you should you lose mental capacity, one needs a Lasting Power of Attorney, appointing an attorney(s) to act for you.

The attorney(s) should be someone you trust as they must follow certain principles and act always in your best interests.

A Lasting Power of Attorney can be signed at anytime while you have mental capacity, but it can only be used, by the attorney, once it is registered with the Office of the Public Guardian.

We can advise on the creation and registration of both types of Lasting Power of Attorney.

Court of Protection

When mental incapacity strikes and there is no Lasting Power of Attorney in place and there are assets which need to be used or dealt with for an individual's benefit, an application to the Court of Protection for the appointment of a deputy may be the only option available.

An application to become a deputy may be made by a close relative, a friend, a professional person or, in some cases, by a local authority or the Public Trustee.

Medical evidence is required.

A deputy is subject to the directions of the Court and must account annually.

We can assist you in taking the appropriate steps.

Residential and nursing care

The cost of an individual's care in a residential or nursing home may run to tens of thousands of pounds per year resulting in a huge financial cost to a family. Levels of care will differ and legal advice on one's rights is essential as they may involve the following:

- NHS fully-funded care
- Registered Nursing Care contribution
- Care funded by the Local Authority
- Self-funding care

Complicated and confusing rules exist as to whether an individual must pay anything towards the cost of their care and, if so, what income and capital may be taken into account in assessing what an individual must pay. There is always a risk an individual may end up paying more than necessary.

We can provide specialist advice on all these issues.

Property

If you die or have to enter care your home may have to be sold or transferred to another.

You may own commercial or residential investment property in which others have an interest.

Our Property Department is available to assist in dealing with such matters.

Family

Death and incapacity issues can place a considerable strain on family relationships.

We offer a professional, practical and non-judgemental approach to the resolution of family disputes. Our family solicitors are members of Resolution, an organisation which encourages parties in dispute to reach a fair solution through constructive dialogue.

Other legal services

We offer a whole range of services to private and commercial clients working in partnership with you.

What our clients say...

“ We should not hesitate to recommend you to any of our friends who may find themselves in a similarly unfortunate position. ”

Mr and Mrs R, Wickford

“ Any decisions were talked through with me to help me understand what was entailed. Anything I did not understand was explained to me in language I could understand and I was not made to feel silly because of this. ”

Ms Lockwood, Chafford Hundred

“ Thank you for a speedy and efficient service. ”

Mr Patston, Rayleigh

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The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000 but responsibility for regulation and complaints handling has been separated from the Law Society's representative functions. The Solicitors Regulation Authority is the independent regulatory body of the Law Society and the Legal Complaints Service is the independent complaints handling body of the Law Society.

The information given in this booklet was, at the time of publication, believed to be a correct statement of the law. However, readers should seek specific legal advice on matters arising, and no responsibility can be accepted for action taken solely in reliance upon such information.

Basildon

 01268 240000

19 Town Square, Basildon, Essex, SS14 1BD

Rayleigh

 01268 988488

105 High Street, Rayleigh, Essex, SS6 7QA

South Woodham Ferrers

 01245 322111

Prospect House, 1/3 Brickfields Road,
South Woodham Ferrers, Chelmsford, Essex, CM3 5XB

Thurrock

 01375 484444

Ascension Chambers, Fleming Road,
Chafford Hundred, Grays, Essex, RM16 6HH

Commercial Hub

 01268 240000

Suite 1A, Phoenix House, Christopher Martin Road,
Basildon, Essex, SS14 3EZ

www.palmerslaw.co.uk

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*Helen Jago, Siobain Moore and Marissa McKenzie are members.