

# Protecting yourself, your family and your business: A legal guide

Your ultimate legal protection  
checklist for full peace of mind



**Attwaters**  
Solicitors





**Some legal protections are automatic. For example, we are automatically protected against discrimination under the 2010 Equality Act – we do not need to meet with a solicitor and arrange documentation to protect ourselves. Others, however, are neither automatic nor mandatory – but they are equally important in protecting ourselves and those we love from adverse situations as we move through life.**

In this guide, the experienced solicitors at Attwaters Solicitors take you through the documentation you need and some of the things you need to think about

to give yourself and your loved ones every advantage in life. You may think that these things only apply to older people, or maybe that you will never need them. Sadly, it is not until somebody we love dies without a Will or loses mental capacity that we truly understand the importance of planning for every legal eventuality.

It is unlikely that you will need every legal document described in this guide. It is intended to prompt you to think about your own situation and the kinds of protection that may apply to your individual situation.

This guide should not be construed as legal advice and you should always consult a solicitor for advice tailored to your personal circumstances.

**In this guide:**

- Wills & Living Wills
- Lasting Powers of Attorney
- Trusts
- Estate and Inheritance Planning
- Cohabitation Agreements
- Declarations of trust
- Business succession planning
- And more.

**To ensure you are fully protected, we would highly recommend that you draft any legal documentation in the presence of an experienced solicitor. The popularity of DIY solutions is growing and, while these may initially be cheaper, any mistakes made could have far costlier consequences for you and your family.**

**We would therefore strongly encourage you to see your solicitor or, if you'd like all your legal protection needs catered for under one roof, then to get in touch with us at Attwaters Solicitors for an assessment of your requirements.**

# Part one

## – drafting your will

### Have a Will professionally drafted in the presence of a solicitor

If you die without a Will, there are specific laws in place to determine who should receive your money, assets and property. The trouble is, these laws are highly inflexible and there is absolutely no guarantee that the people the law designates as your beneficiaries are the people you would have chosen to inherit.

Imagine, for example, that you separated from your ex-spouse but not yet divorced. You have a new partner and a baby on the way. If you were to die, your money and property would go to your ex-spouse and certain other close relatives, and your pregnant partner would not be entitled to anything. As another example, if you have step-children and die without a Will, they would not be considered as beneficiaries under intestacy law.

#### What to consider when drafting your Will

- What money and assets do you have? Include:
  - Bank and building society accounts
  - Savings and investments
  - Property
  - Workplace and private pensions
  - Insurance policies
  - Digital assets
  - Your business, if you have one.
- Who do you want to leave your assets to?
- Who do you wish to take care of your children or financial dependants?
- Who do you want to appoint as your executor?

#### Have you thought about your digital assets?

What would happen to your Facebook account, your Spotify playlist or even your crypto wallet if you died? Does anybody have instructions on how to access your online accounts if you were no longer around?

Increasingly, solicitors are encouraging people to make provisions for their digital assets in their Wills.

#### When to change your Will

If your Will is outdated, it can have just as negative an impact as having no Will at all.

### Have your Will redrafted by a solicitor as and when your circumstances change

You may wish to redraft your Will if you:

- Buy a home
- Get married or divorced
- Have a child
- Want to change your executor
- What to change the distribution of assets amongst your beneficiaries
- Undergo any significant life change.



## Part two

### – ensuring your wishes are respected

#### Set up an LPA

Nobody ever imagines that they might lose the ability to look after themselves one day, but the sad truth is that anybody could suffer from a health condition or accident that renders them incapable of making decisions for themselves. According to government statistics, 800,000 people in the UK live with dementia, while somebody is admitted to hospital with a brain injury every 90 seconds.

A Lasting Power of Attorney is a document that enables you to nominate somebody – your ‘deputy’ – to take care of your affairs should you ever lose the mental capacity to do so yourself. However, an LPA must be made whilst you still retain capacity – so the sooner you set one up, the better.

There are two types of LPA:

- **Property and financial affairs** – this will allow your deputy to manage your bank accounts, pay your bills, make purchases on your behalf, etc.
- **Health and welfare** – this will allow your deputy to make medical and welfare decisions on your behalf.

**What happens if I don't have an LPA?**

If you lose mental capacity without an LPA in place, it can be very difficult for your family and friends to get control of your affairs. They will have to apply to the Court of Protection to become your deputy, which can be a lengthy and stressful process. Even in the simplest of cases, it can take at least six months, during which time your loved ones will have no right to access your accounts or look after your affairs.

#### Make a living Will

A living Will, otherwise known as an advance decision, is a legally binding document that allows you to make a decision in advance to refuse certain medical treatment should you lose mental capacity.

For example, you may wish to refuse a blood transfusion due to your religious beliefs, or opt out of life-prolonging treatments like cardiopulmonary resuscitation (CPR) or feeding tubes.

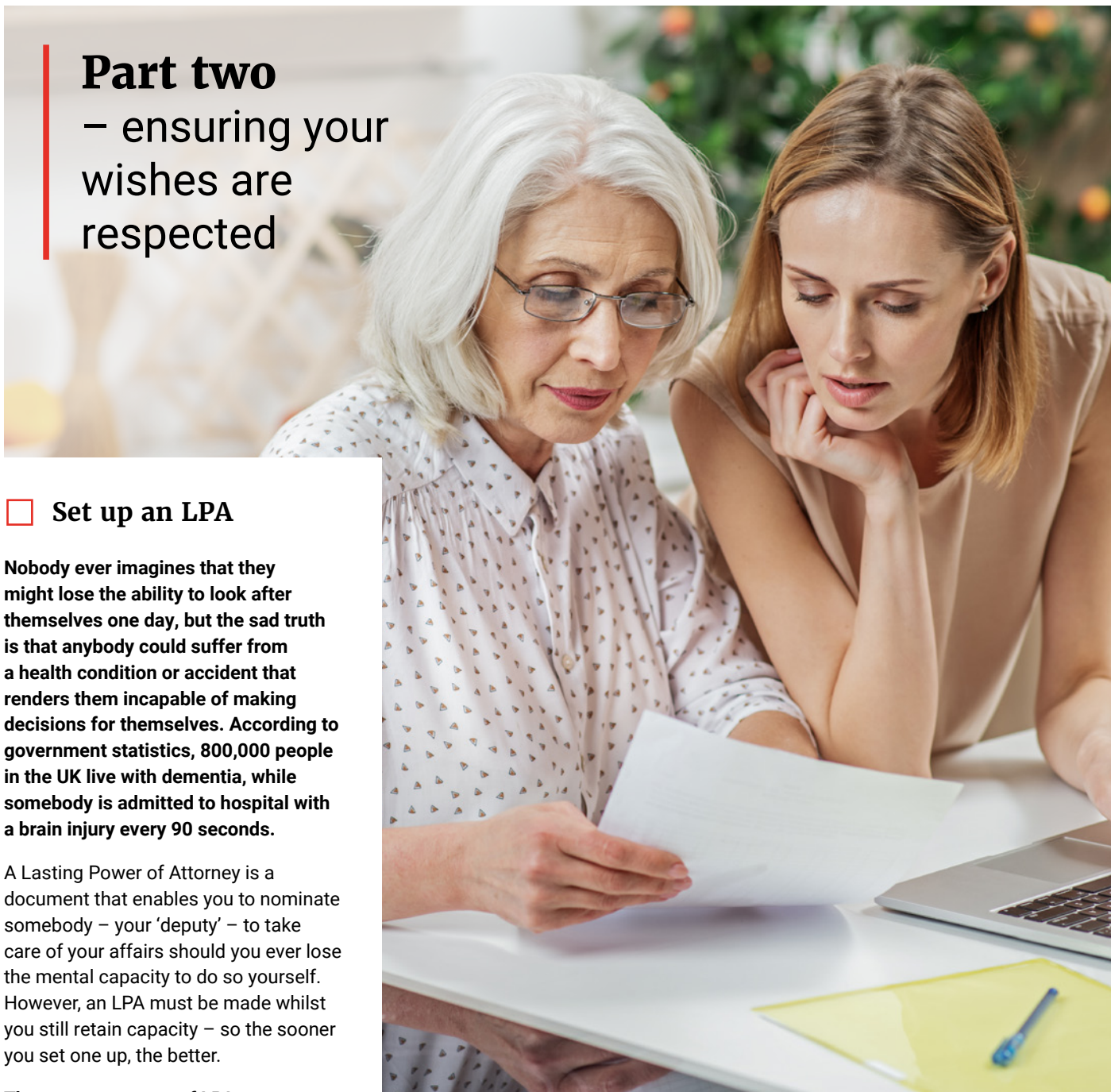
There are certain requirements that must be met for your living Will to be legally binding, so it is always best to have this drafted by a solicitor.

#### Record your wishes in an advance statement

Whilst not legally binding, an advance statement allows you to write down your wishes about how you would like to be cared for if you were no longer able to express these wishes yourself.

**You might want to include:**

- Where you'd like to live
- Whether you have any religious or spiritual beliefs you would like to be reflected in your care
- What you like to eat and drink
- Your preferred daily routine
- Where you like going out, etc.

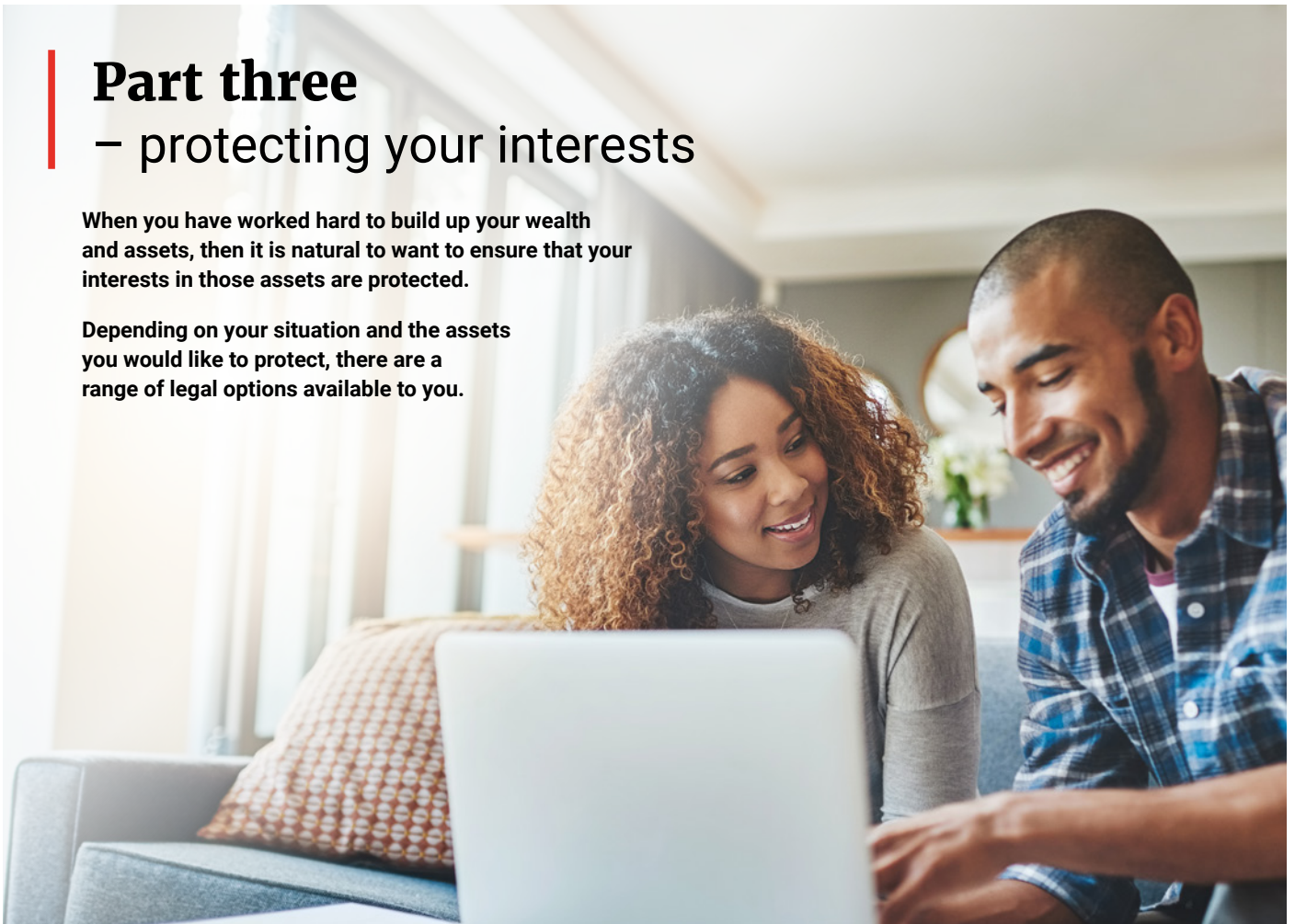


# Part three

## – protecting your interests

When you have worked hard to build up your wealth and assets, then it is natural to want to ensure that your interests in those assets are protected.

Depending on your situation and the assets you would like to protect, there are a range of legal options available to you.



### Draft a prenuptial agreement with your solicitor

Despite their poor reputation as unromantic ‘gold-digger’ repellents, prenuptial agreements are simply legal planning tools like any other. Many people think it bad taste to be planning for the end of a marriage before it has even begun; those same people, however, would think nothing of taking out building and contents insurance in case their house burned down or they were burgled.

In modern relationships, it is more likely than ever that both partners will have assets built up after marriage that they’d like to ringfence in the event – however unlikely – of divorce or separation. For example, one of the spouses might have an inheritance left to them before marriage, whilst another might want to protect their interests in the business they have worked hard to build.

Prenuptial agreements are not legally binding in the UK, but a judge will usually take such an agreement into account in a court of law so long as it is perceived

to be fair to both parties and to any children. In the event of a divorce, it can help take away the uncertainty and stress of financial proceedings and make the achievement of a fair financial settlement much easier.

**Did you know that you can also draft a post-nuptial agreement, which can help you protect assets – such as an inheritance or business interests – acquired during your marriage?**

### Sign a declaration of trust

If you have purchased a property with somebody as ‘tenants in common’, you may wish to sign a declaration of trust – a legally binding document that records how much of the property each party owns, how much each person has paid towards the deposit, mortgage and bills, and what share of the property each is entitled to if the property is sold.

Tenancy in common is one of two property ownership structures, which allows parties to own different shares of a property and pass on their share of the property to their chosen beneficiary.

### Think about a Cohabitation Agreement

In the UK, couples who live together and share a committed relationship may think of themselves as ‘common law’ spouses. But the fact is that there are currently very few legal protections for unmarried couples in England and Wales, no matter how long they have been together. A Cohabitation Agreement allows unmarried couples to record what should happen to your finances, property and any children in the case of a relationship breakdown.

Without a cohabitation agreement, one or both of the partners could find themselves in a situation of significant financial vulnerability, with no entitlement to the other partner’s money, assets or even the home they live in.

## Part four

### – keeping your assets safe for future generations



**Mitigating your various tax liabilities, keeping assets in trust and making lifetime gifts are all ways of preserving your legacy for the benefit of future generations – otherwise known as estate planning. Together with your Will, estate planning can ensure that your family and business are protected for the future, even after you are no longer around.**

#### **Explore the tax planning opportunities available to you**

**They say that only two things in life are certain – death and taxes. But, with support, there are legal ways of rendering your tax liability a little less burdensome.**

Taxation is an ever changing and complex area of the law, so it's always best to consult an expert tax solicitor to understand the strategies that might best suit you.

There are a wide range of strategies that can be employed, depending on your situation:

- Full use of tax-free allowances
- Tax reliefs, such as relief on pension contributions
- Business Property Relief and Agricultural Property Relief
- Lifetime gifting
- Tax efficient investments
- Charitable donations
- Trusts.

#### **Consider a trust to hold your assets**

**A trust is a legal instrument that is used to hold assets – including cash, property, shares and land – until a specific time or until a specific event has taken place.**

The responsibility for holding the assets is given to an individual or group of people called the trustee, who must comply with all the terms and conditions laid out in the trust deed.

Trusts can be extremely tax advantageous and are used for a wide range of reasons, including:

- Reducing Inheritance Tax liability
- Holding an asset until the beneficiary reaches adulthood
- Holding assets on behalf of somebody who lacks mental capacity
- Avoiding probate
- Greater control and flexibility over your assets.

## Part five

### – safeguarding your business for the future



#### Plan for succession

**When you have worked hard to build up your business, it is difficult to imagine stepping back and letting somebody else take the reins.**

So much so, that over a third (37%) of businesses surveyed by Charles Stanley in 2023 admitted they did not have a succession plan in place.

A good succession plan can ensure that your business wealth can be passed down the generations successfully without compromising.

Factors you should incorporate into your succession plan include:

- A timeline for succession (when do you/other key members of staff plan to retire?)
- Identification of key positions in the business
- Identification of potential successors to those key positions
- Key business knowledge that must be passed on
- Training and development work potential successors will require
- Emergency/contingency planning.

Many businesses will not have a succession plan by design, their plan instead being to secure a lucrative exit by sale. Together with your solicitor, you can work to boost the value of your business and increase the chances of a profitable sale to fund your retirement and leave a legacy for your heirs.

#### Review your contracts and documentation

**Ensure your business is fully protected with professionally drafted business contracts and legal documentation.**

Poorly written contracts – or worse, verbal agreements – can cause ambiguity and lead to business disputes that can expose your business to high levels of risk.

Properly drafted contracts and documentation, prepared by a specialist solicitor, can ensure that there are no misunderstandings between the parties and that your contracts include protections against adverse situations and scenarios.

**These protections might include:**

- Break clauses
- Confidentiality agreements
- Limitation of liability clauses
- Grace periods
- Dispute resolution processes
- Force majeure.

# Your ultimate legal protection checklist



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## Drafting your Will

- Have a Will professionally drafted in the presence of a solicitor
- Have your Will redrafted by a solicitor as and when your circumstances change

## Ensuring your wishes are respected

- Set up an LPA
- Make a living Will
- Record your wishes in an advance statement



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## Protecting your interests

- Draft a prenuptial agreement with your solicitor
- Sign a declaration of trust
- Think about a Cohabitation Agreement



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## Keeping your assets safe for future generations

- Explore the tax planning opportunities available to you
- Consider a trust to hold your assets



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## Safeguarding your business for the future

- Plan for succession
- Review your contracts and documentation

### Look after everything under one roof

Life is busy, with so many different priorities to juggle. We at Attwaters Solicitors understand this.

As a full-service law firm, we can take care of all our clients' legal needs under one roof. Should you wish to discuss the legal protections that may be appropriate to you, our specialist teams are on hand to help.

Please note that the information contained in this guide is intended as guidance only, and should not be construed as legal advice. Should you be experiencing any of the issues outlined in this guide, please seek professional legal advice.

### Where we are

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