TOZERS

Passing On Your Assets

Tozers Guide

Welcome

According to a common saying, 'proper planning prevents poor performance'. There are many variations of the phrase, some rather less polite than others, but the crux of each and every one is that preparation is everything.

This gives a stark message to apply to life generally, but the Coronavirus crisis is showing us in its tragic consequences that it's never too soon for anyone to plan, or to review plans, for the future. It can be all too easy to put off tasks like considering how your affairs can be dealt with if you are no longer able to, or how you would like to pass on your assets after you have gone, as something that we know is important but not always urgent in the daily business of life.

Having a carefully-crafted plan in place can help to give you some reassurance and peace of mind. Should the worst happen to you, you can at least rest assured that you have left things as well-ordered as possible for your family and friends, to allow them to have the time and breathing space they may need.

In this guide

It can be overwhelming to know where to start, and what is necessary and what is just helpful when considering your finances and plans for the future. With that in mind, we will be guiding you step-by-step on topics to consider when planning for your future. This 'Tozers guide' looks into the following:

If you need any help, or have decided that you would like to put a Will or power of attorney in place, please get in touch. We will support and guide you through the process.

Writing a Will

Putting a Will in place is one of the first steps that you may want to take to plan for your future, and yet statistics often show that over half of the UK population do not have one. For those of you who have written a Will, you may feel peace of mind in completing this step, but it is always worthwhile to get your Will written at various intervals in your life, and review the arrangements you have in place.

Whether you have been through the Will-making process before, or are a beginner at writing a Will, it can be hard to know where to start. You may also feel that you are being rather morbid in planning for a future when you are no longer around. But planning in advance can pay dividends and, once completed, your Will can sit in a drawer for when needed or when you decide to dust it off to see whether it still suits!

First steps

Make a list of all of your assets

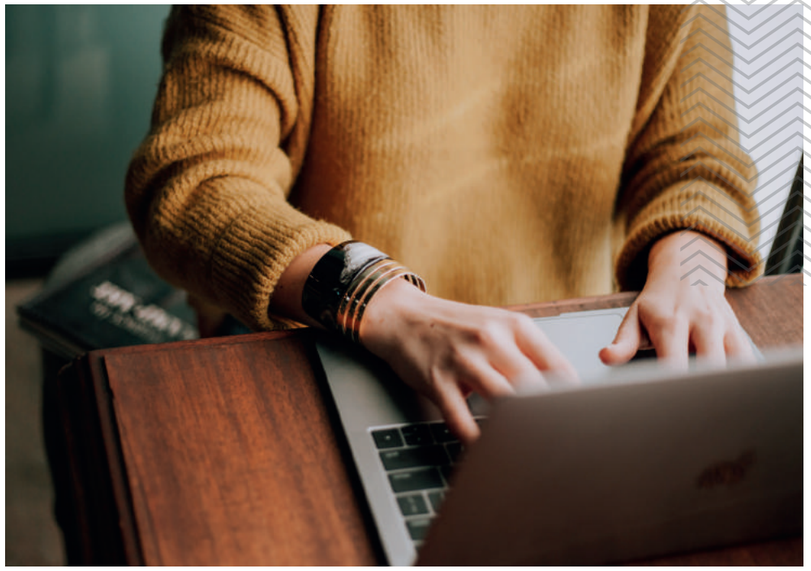
'Assets' include everything you own, both by yourself or with others. Common assets include property (bricks and mortar), cash in bank accounts and building societies, stocks and shares, cars and jewellery. Of course, you may also own a farm, a business, or an art collection!

Think about the likely value of these, as this can be handy to help you decide how to divide up your estate. Your solicitor is also likely to ask you for a summary.

As well as this, do you own any digital assets? These may include accounts with PayPal and eBay which could contain money, or photographs which you have uploaded to social media. Think about what you would like to happen to these.

Consider the debts you owe, known as your 'liabilities'. These debts could include a mortgage, loans and even down to amounts for as-yet-unpaid credit card bills or utility charges.

Again, it is useful to note down the value of these, both to give you an idea of how much you own and in case your solicitor needs them.



What to do with your assets?

When your list of assets and debts is complete, it's time to decide what to do with it. You will need to have a think about your family or friends and how you might like to divide up the things that you own.

This can be as simple or as complicated as your circumstances dictate! Depending on your thoughts, it may also be a good idea to consider legal advice at this stage, so you know what may be possible. Examples of decisions for you to consider include:

- If you are married, would you like everything to pass to your spouse? Or do you want any children or nieces/nephews to receive something?
- If you are in a long-term relationship but not married, would you like your partner to inherit everything from you?

Many people are surprised to learn that there is no automatic right to this under the law and that, depending as well on how things are owned between you, your partner may receive nothing from you without a Will.

- Do you want to give any money to charities?
- Are there any particular items which you want certain family members to receive? This could be anything from an item of jewellery to a family business that you wish to pass on to your son or daughter who runs it with you.
- How do you want to divide up the rest of the pot?
- In the event that one of your chosen beneficiaries dies before you, what would you like to happen to the things they would have received?
- If you have a business, are there other documents which might come into play and need to dovetail with your Will, such as shareholders' agreements or partnership agreements?

A well-drafted Will can cover all of these and more. You might decide to give gifts of particular items ('specific gifts') or cash sums ('legacies') but, either way, you will then need to divide up the pot of what is left, known as the 'residue' of your estate.

Decide who to appoint

Wills of course cover money and assets and pass them to your chosen recipients ('beneficiaries') but there are other parts for people to play. You should make decisions about who to appoint in the following roles:

- Executors, who will deal with the sorting out of your finances.
- Guardians, for any children under 18.
- Trustees, if you establish a trust; for example, if your children are under 18 when they inherit, or if you want to provide for any relatives with special needs without giving them money outright.

You may choose the same people to act in all these roles. Executors, trustees and guardians can also be beneficiaries of your Will, but do give some thought to whether you are happy with this.

Writing your will

Choose a solicitor or other legal representative

It is possible for you to do it yourself, or through home kits, but is definitely not something which we would recommend, however simple you may think your plans and estate are.

All too often we see the complications which people have unwittingly added through what can appear to be a simple instruction. A gift of a property to one person with the instruction that it must pass on to another on their death, for example, sets up a trust and you would need to include all the relevant provisions. A sum of money given to 'my friend John', perhaps, may not work if your Executors are not sure who you mean.

It may seem expensive to put a Will in place, normally costing in the hundreds of pounds, but do bear in mind that this document is perhaps one of the most important that you will put in place in your lifetime. It deals with all your assets and sets out who should receive what and who be involved with things both short- and long-term. On balance, the cost of putting a watertight Will in place will certainly be worth it compared to leaving complications behind you.

Your chosen solicitor will guide you through the process, usually by preparing a draft of the Will for you to consider before it is put in place.

Once you are happy with it, you will need to sign your Will in front of two, independent witnesses, who should be over the age of 18. Neighbours or close friends not mentioned in the Will, for example, would be ideal.

Reviewing your will

At the end of the process, you should have a well-written, carefully-crafted Will which puts your mind at rest in covering all your aims.

Of course, life doesn't stop and, as the years go by and your circumstances change, it might be that this will also change what you would like to do in your Will. It would be a good idea for you to review it at least every five years and particularly if any life changes happen, such as if you have children or grandchildren, a chosen Executor or beneficiary passes away, or the nature of your assets changes, perhaps by your buying a house or a business.

How can Tozers help?

As a firm we have over 200 years' experience with Wills and Later Life Planning, and have a dedicated team to help you through the process of writing, or reviewing your Will.

If you would like to put a Will in place through us, please contact our specialist team who will happily help guide you through the process.

Planning Powers of Attorney

Over 40% of the adult population in the UK has a Will, compared to only 1% who have Lasting Powers of Attorney (LPA), according to a recent article by the Government's Office of the Public Guardian.

Where a Will makes provision for your finances after you are gone, a power of attorney allows you to appoint someone to step into your shoes to make decisions for you, if you are unable to in future. It seems a little lop-sided for so many of us to plan for our deaths but not our lives, but entirely understandable as powers of attorney seem not to be so well-publicised.

However they should form a key part of your future planning, whatever your age.

What forms of power of attorney are there?

An 'ordinary' or 'general' power of attorney

This is a relatively simple document, put in place in a deed, which can be used as soon as it is executed. A general power of attorney covers financial decisions only and is intended to be used in the short-term, as it does not last if the person giving it loses the ability to make decisions ('mental capacity').

It can be an ideal solution where you may be away or unable to leave your home for a period but want to make sure that there is someone to step into your shoes in your absence.

General powers of attorney have been used in the past to allow your chosen attorney to sign house sale or purchase papers on your behalf and run your business, for example. With the new normal of Coronavirus, they can also be used to great effect if you are in self-isolation.

A 'Lasting Power of Attorney'

This is a much longer and more complex document, but the key advantage is that you put the power of attorney in place now and it can be used, after registration, for as long as needed and lasts if you were to lose mental capacity. There are two types of Lasting Power of Attorney available: one to cover your financial and property decisions and the other for health and welfare matters.

You are able to appoint your attorneys to act either jointly, meaning that all decisions must be made together, jointly and severally, so that each attorney can operate independently of the others, or a combination of the two. An LPA also allows you to appoint replacements if you want.

As well as this, you can add in limits to your attorneys' powers. Perhaps you might want to prevent them from selling your home, or investing in non-ethical stocks and shares. Of course, all restrictions need to be carefully considered as there could be problems in the future.

Like you, your chosen attorneys will need to sign up to the document in front of a witness, and there must be someone who can certify that they are happy that you understand the power of attorney you're putting in place. Once everyone involved has signed, the forms are sent off to the Office of the Public Guardian, the supervising body for powers of this nature, for registration. The LPAs cannot be used until registered and sometimes only if you have also lost mental capacity, depending on what you have chosen.

An ‘Enduring Power of Attorney’

This is the predecessor to the Lasting Power of Attorney, but covered financial decisions only.

Existing EPAs may still be valid, but it is still useful to consider whether they do what you need and, either way, whether to put a health and welfare LPA in place.

Which is best for me?

A general power of attorney is a useful solution where you need something quickly and with an eye to the short-term.

For longer-term planning and to cover decisions about your health, the LPA is what you need. Registration with the Office of the Public Guardian takes upwards of a few months and so this is one reason to get the powers in place as soon as possible, to avoid delays down the line.

A Tozers client spotlight

Recently, we acted for a client who was disabled physically and unable to leave home. He wanted some help with his finances, particularly as he was running out of money and needed to deal with some bank transfers and withdrawals in order to allow him to pay his bills.

Unfortunately, the bank in question said that he could only withdraw funds in person – which was rather unhelpful, and insensitive, given the situation, and obviously impossible for him. He had not put powers of attorney in place before as he understandably wanted to deal with things himself.

The LPA which he wanted to put in place would take at least a few months to register and even the general power would take a working week or two for the bank in question to process. In the end, with much pleading and arguing with the bank, they agreed with us to accept a temporary third-party nomination before the general power is processed by them, which then in turn will be replaced by the LPA.

The moral of the story is that, as strange as it may seem today, not all banks accept telephone and online banking, so there may be unforeseen circumstances in the future where you will need a power of attorney even if you do not anticipate it. A power of attorney, particularly a Lasting one, is always a good idea to have in your back pocket for the future.

What happens if there isn’t a power of attorney?

What is the alternative if you haven’t put a power of attorney in place during your lifetime but need some help in the future?

If you are still able to understand the process at the time, the option of all the powers remains open to you, but with the probability of delay.

If you don’t have the ability at that time to understand the process, the alternative is for someone to apply to a particular Court to be appointed as your ‘Deputy’ (instead of your attorney). Due to the safeguards in place and timescales, applications of this nature can take at least six months to conclude, as well as being considerably more expensive than Lasting Powers of Attorney, with the inevitable problems that such delays can cause.

It is worthwhile to try to avoid such hassle and expense for your loved ones, by including a power of attorney, particularly a Lasting one, in your package of planning.

How can Tozers help?

As a firm we have over 200 years’ experience with Later Life Planning and putting in place powers of attorney. We have a specialist team to help you through the process of putting a power of attorney in place.

To discuss any other questions or support you may need please contact our dedicated team who will happily help guide you through the process.

Investigating Inheritance Tax

As certainties in life, death and taxes unfortunately go hand in hand. As the tax related to your estate when you pass away, Inheritance Tax is something which may particularly be on your mind when planning for the future.

It may be that your estate would escape from Inheritance Tax at the moment, but circumstances may change in future and tax laws can change with alarming frequency. It is always worthwhile considering Inheritance Tax generally as the years go by, but also when planning your Will, so that you can be clear about how much your chosen beneficiaries may actually expect from your estate.

What is Inheritance Tax?

Inheritance Tax is charged on the value of your 'estate' when you pass away. Broadly speaking, your estate includes not only the assets that you own when you pass away, but also certain lifetime gifts made by you, together with any interests in particular forms of trust. Depending on where you are considered to be domiciled for Inheritance Tax purposes, the tax may apply to all your worldwide assets, or only your UK ones.

The exact charge on your estate would be calculated by taking into account all these factors and the specific detail of your situation. Where Inheritance Tax is due on your estate, it is charged at a substantial 40% above your allowances, reliefs and exemptions, although it can be reduced to 36% in certain circumstances.

What allowances are available?

Everyone is entitled to a 'general' Inheritance Tax-free allowance, currently of £325,000. This is known as the 'nil rate band' as no Inheritance Tax is charged on the first portion of your estate up to this amount.

It is not as simple as that, though, as the nil rate band is firstly set against lifetime gifts in date order which are included in your estate for Inheritance Tax purposes, but only such lifetime gifts as are above your available reliefs and exemptions.

Sometimes, it is possible for your estate to claim an extra allowance. You (or, rather, your Executors) would be able to claim an additional amount if you had a spouse who died before you and who did not use all of the £325,000 available to them. Complications can arise, though, if your spouse passed away under the predecessors of Inheritance Tax, as the rules were slightly different then.

Passing on property?

There is another allowance potentially available to those who pass on their home to a direct descendant. This was introduced back in 2017 by the government and much of the reports at the time seemed to suggest that the rules would be straightforward, perhaps with the standard nil rate band being increased proportionately.

Unfortunately, that turned out not to be the case and, depending on your particular circumstances, the 'residence nil rate band', as it is known, can be a headache to apply. With terms like 'residential enhancement', 'taper threshold', 'qualifying residential interest' and 'closely inherited' can add to it!

As well as this, some apparently simple decisions which you make in your lifetime or your Will can be detrimental to claiming the full allowance potentially available.

Broadly speaking, the residence nil rate band may be available where:

You own a home

Strictly speaking, this is a 'dwelling house' which 'has been the person's residence at a time when their estate included that, or any other, interest in that dwelling-house'. Simple!

A home can include a range of properties, from bricks-and-mortar houses, to houseboats and caravans. If you have more than one home, it would be tied to one only except in certain circumstances.

You owned your home at your death, or had a home on or after 8th July 2015 and downsized from it

To avoid prejudice to those who had had to sell their homes to go into care, or to prevent people from hanging on to bigger properties to receive the maximum allowance, the 'downsizing provisions' are included.

Essentially, if you owned a bigger or a home before your death but not at it, you may be able to access more of the allowance than otherwise.

You pass the home to direct descendants

This includes blood relations such as children, grandchildren etc, but also can include foster children, step-children and the spouses of those who have passed away before you. Nephews and nieces, friends or siblings do not count.

The home is closely inherited

This looks at how you have left your home in your Will. It does not necessarily matter that you have left your home as part of the residue of your estate rather than a specific gift, but aspects such as the trusts you have included in there may affect it.

And even commonly-used gifts, which you might not immediately identify of trusts, can affect availability of the relief. A common gift in a Will is to leave sums to your children at a specified age or, if they die before you, to their children at a certain age.

If the worst happens and a child did pass away before you, leaving grandchildren, your estate may not receive the full allowance available if they are underage at that time.

As ever, much is dependent on the terms of your Will, so it is always vital to seek proper legal advice both when planning your Will and in future.

Your estate is not above the taper threshold of currently £2 million

This does not prevent the relief in itself but may mean that you receive less of the allowance and potentially even none of it, depending on the value of your estate.

The available allowance for 2020-2021 is £175,000 and the amount is capped at the lower of your property's value (taking into account any downsizing etc) and this sum. It is possible, as with the standard nil rate band, for a surviving spouse to claim their deceased spouse's allowance if not used.

What are ‘exemptions’?

These are gifts which may not be counted for Inheritance Tax purposes and might not reduce any of your available allowances, either. Examples of such exemptions are:

- Spouse exemption. Gifts between UK-domiciled spouses do not use up any allowances and are not charged to Inheritance Tax.
- Charitable exemption. Gifts to charities based in certain countries are also not counted for Inheritance Tax purposes.

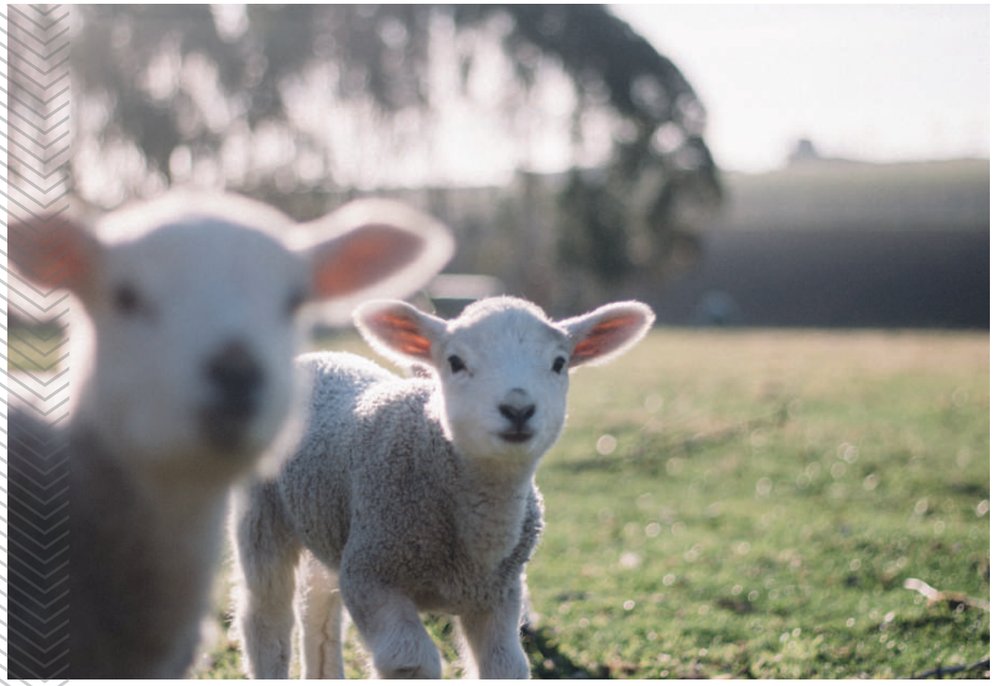
There are other exemptions available as well, including for gifts to particular political parties. Oddly it’s not one that we tend to see all that often.

What are ‘reliefs’?

Exemptions may apply depending on the recipient of the gift in your lifetime or on death. Reliefs, on the other hand, can be granted depending on the asset that you’re transferring. Examples of reliefs include:

- Business Relief, which may be available to those who own shares or an interest in certain trading businesses if they have held these for long enough.
- Agricultural Relief, which may be given to farmers or those letting out land for farming.

The rules, restrictions, exceptions and exclusions for these could fill (and do) a library of books. If you think that these reliefs might apply to you, it is certainly worthwhile obtaining proper, full advice to ensure that you maximise your chances for using them. Simple steps taken now can pay dividends for the future.



Lifetime gifts

Inheritance Tax of course looks not only at the assets you pass away with, but particular gifts you have made during your lifetime. Generally speaking, it is gifts made in the previous seven years before your death that are added in, but this rule can change, depending on:

- Whether exemptions or reliefs apply. A helpful, but closely-guarded exemption is one for gifts made out of your net income, but there are many hoops to jump through to access this one.
- If you have set up or transferred assets into trusts, as this can mean that longer periods back may be relevant.
- How you have given them away. If with strings attached, the gifts may not have escaped you at all.

What can I do?

Plan ahead! So much of the final bill which your Executors receive can depend on the specific detail of your situation and the steps you have taken during your lifetime to prepare.

Do take full and proper advice on your circumstances and act as soon as you can. The costs of obtaining advice may seem expensive, but remember to balance that against a charge of potentially 40% on the assets you own and it is likely to be worthwhile!

All too often, we see estates which would have benefitted from planning coming to us when it is too late, where simple changes could have made all the difference to the valuable reliefs, exemptions and allowances which would otherwise be available. The legislation is complex, so there is no substitute for expertise in this area.

How can Tozers help?

As a firm we have over 200 years’ experience with Later Life Planning and Inheritence Tax, and we have a specialist team to help guide you through the different processes.

If you have any questions or concerns around Inheritance Tax then we have the experience and knowledge to support and guide you.

Thinking About Trusts

If you may not be comfortable leaving your money to your beneficiaries for them to use as they wish, then a trust might be for you.

For those with young children or grandchildren, or loved ones who have special needs, trusts can be the ideal vehicle, but they may also be of use to you if you want to protect assets for your family.

When can I set up a trust?

Trusts can be set up during your lifetime or on death, in your Will.

For lifetime trusts, you would need to part with ownership of assets at the time of setting up the trust and place the assets in the hands of 'trustees' who would manage them.

Trusts established in your Will would only come into effect on your death and, after the estate administration had been completed, your trustees would take over from there.

What forms are there?

One common type is a 'discretionary trust'. This sets out a group of potential beneficiaries, but leaves it up to trustees to decide who can receive anything from the trust and when. None of the beneficiaries can point to the trust as being theirs, which can make this form of trust commonly used to protect assets.

Another is a 'life interest' trust, which gives one or more people the right to an asset for their lifetime. A classic example is the right to live in a property during their life, with the home then passing on to others on that person's death.

Trusts can also be set up by the law itself, even if you did not intend to. For example, if you give money outright to your children in your Will, if you passed away while they were under 18 (the age of inheritance here) the law would set up a trust for them until they came of age.

There are also specific forms of trust with particular tax advantages. Trusts set up as 'disabled person's trusts', for example, can have unique and favourable Inheritance Tax and Capital Gains Tax treatment. As well as this, they can be ideal to ensure that funds are managed for your loved one when you are not there to protect them.

Who can be my trustees?

The decision is yours, but it is best to appoint those you trust and who you feel would be able to manage the work needed.

Trustees must be unanimous in their decision-making, generally speaking, so it would be best to avoid any appointments which may leave to obvious conflict!

Are trusts useful to escape Inheritance Tax?

Trusts have their own unique treatment for Inheritance Tax purposes, which is another huge subject area in itself!

Broadly, they are not a silver bullet to Inheritance Tax planning for anyone, as they have their own Inheritance Tax regime which is intended to mirror the general one.

Depending on your circumstances, though, if your aim is to give away wealth during your lifetime and to give flexibility as to which of your family needs it, it might be worthwhile considering putting in place a trust at various intervals.

How do I know if a trust is right for me?

Your aims may be to protect family members and/ or to consider lifetime Inheritance Tax planning. Trusts may be useful to anyone and everyone so, if you think you might be interested, mention them to your solicitor as part of your Will-drafting or Inheritance Tax-planning process.

As a note of caution, do beware of those unscrupulous organisations who like to sell lifetime trusts as a one-stop cure for all ills, from Inheritance Tax, care home fees, family divorces or business insolvencies and so on.

They can have some benefits, but not all are guaranteed and so your chosen advisor should guide you through the pros and cons of trusts if you instruct them to do so. A lifetime trust does involve you parting with full ownership of your assets, so do think carefully and clearly about them.

Above all, seek independent and full professional advice, as part of your planning process.

How can Tozers help?

As a firm we have over 200 years' experience with Later Life Planning and Inheritence Tax, and we have a specialist team to help guide you through the different processes.

If you have any questions or concerns around Inheritance Tax then we have the experience and knowledge to support and guide you.

Forming a Funeral Plan

It can seem particularly morbid to start putting some thought into your funeral. But consider how your preparation can help your family to deal with things smoothly and quickly for you at an already tragic time in their lives.

They can also rest assured that they are putting your last wishes into effect.

Prepaid funeral plans

If you do not have a plan covering your funeral costs at your death, then these will be covered from your assets by your Executors. Many bank accounts are frozen if an estate needs to go through the Probate process, but banks so commonly agree to settle funeral bills from them even before sight of Probate.

For this reason, a pre-paid funeral plan is not needed, but might be something for you to consider if you are hoping to save your beneficiaries some extra hassle and potentially cap some costs now.

Of course, you will need to do your research, as with any purchase. You will need to check any exclusions or caps on the policy, together with the exact protection afforded and costs, including any interest or administration fees.

Your wishes

Planning your funeral would cover more than just how to pay for it, though.

At the simple end, you might want to think about your preference for burial or cremation. Would you be happy for your organs to be donated, or to opt out from this? If cremation is your preference, where should your ashes be scattered? Or for those to be buried, do you have a particular churchyard where you want to lay your head, or is a woodland burial for you?

Then there is the service itself. It might be that your family already knows your likes and dislikes and whether you would prefer a religious or non-religious ceremony. But you would be able to set out your thoughts about the choice of music, hymns or readings and, ideally, store these with your Will.

We often act as Executors, both for those without close family and those with and, either way, it can be of a great help for your wishes to be recorded already. As you can imagine, families can differ in their opinion of what they each feel you might have preferred and, without any guidance at all, those passing away without close friends or relatives may not receive what they would have wanted.

Funeral wishes are, of course, wishes only and the final decision is up to your Executors. If you have strong, or even any views, it is definitely worthwhile recording these and storing them with your Will. Your solicitor should be able to include simple wishes in your Will and, for anything more specific or complex, can provide you with a funeral wishes sheet for you to complete.

Tidying Up

Tidying up and de-cluttering your personal and business related paperwork is something we all must do every now and then. Although there are some papers which you should definitely keep for the future, although they can be as colour-coded and neatly labelled as you like. These include:

- Your list of assets, the value of them and contact addresses;
- Statements from banks, savings and investments, and other correspondence linked to assets, to show your Executors where you hold assets;
- Life insurance and pension documents;
- Any records of gifts made and the dates of them;
- A list of your online accounts, such as with Facebook, PayPal, eBay etc and what you would like to happen to them. These are known as 'digital assets'.

Some documents should ideally be stored somewhere extra-safe, such as with a solicitor's firm or bank. These include:

- Your original Will (with a copy stored in your records);
- Your power of attorney documents (with a copy stored in your records);
- Funeral plan policy documents (perhaps with your Will).

Do tell your trusted family members and your Executors where the originals are held and how to access your records.

Final checklist

1. Put together a note of where you hold your assets and debts and store it somewhere safe.
2. Make a thorough and well-drafted Will, or review it at intervals.
3. Put Powers of Attorney in place.
4. Think about your preferences for your funeral.
5. Put some though to Inheritance Tax and steps to take to mitigate it.
6. Store all your records safely and, above all, let your family, Executors and attorneys know where to find them.

Do ensure that you take full and proper legal advice when considering all of the steps above. If you would like any help with any of these elements, please do come to Tozers. We would be delighted to assist you.

Get in touch

Ready to talk?

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