



# Viewpoint

- Should a pre-nuptial agreement be part of your wedding planning?
- Five good reasons to review your Will
- Executors beware! Rising concerns over misappropriated assets

# Welcome to the Winter 2024 Edition of Viewpoint



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Welcome to the Winter 2024 Edition of Viewpoint.

I hope you all had a peaceful Christmas. The start of a new year is always a good time to revisit your will - it may even be one of your resolutions for the year. So, no better time for us to remind you about some of the reasons why you should keep the contents of your will under regular review. Some of you may have weddings planned or have children that are about to tie the knot in 2024. Perhaps not the most romantic of planning, but in this edition, we answer

some questions regarding prenuptial agreements which you should consider - particularly if one party is bringing more wealth to the forthcoming marriage than the other.

On to a more distressing subject - sadly, every year we see more and more cases centring around the financial abuse of elderly and vulnerable people. We feature the first of two articles on this topic. In this edition, we highlight the red flags that executors should watch out for as they start the onerous role of administering an estate. A timely reminder and a topic we will cover at our ever-popular online Executor workshop which we are running again in February. We aim to ensure those of you appointed in this role are fully equipped to

deal with the task ahead, to help you make the right choice about your executors and to answer any concerns you might have. We hope to see many of you there - further details and how to sign up can be found in this newsletter.

You will also find enclosed with this edition a feedback questionnaire - we really do value your thoughts on how Viewpoint might be improved and the topics you are interested in hearing more about. There is a luxury hamper up for grabs if we can tempt you to spend a few minutes letting us know your thoughts.

Thank you for taking the time to read our newsletter - on behalf of all the teams here, I send you our very best wishes for the year ahead.



# Five good reasons to review your Will

**Your Will is the document that guides the distribution of your assets and secures the well-being of your loved ones. However, the importance of your Will doesn't end with its creation.**

Time marches on, circumstances shift, and laws evolve. This article addresses why revisiting and refreshing your Will is a vital step in ensuring your wishes endure the test of time.

## 1. Your Will may no longer reflect your personal circumstances

Changes are inevitable throughout life and your situation may have altered since you made your Will. For instance, you may have married, divorced, had children (or grandchildren), or bought property in the UK or abroad. Executors, Trustees or Guardians appointed in your existing Will may no longer be appropriate. It is important to consider whether your existing Will represents your present wishes.

## 2. Your assets or intended beneficiaries may have changed

Details of the assets and beneficiaries in your Will may be out of date. For instance, beneficiaries may no longer be minors and any trust provisions you have in your Will may no longer be appropriate. Intended beneficiaries may have died and, if this is the case, the gift may fall back into your estate and be distributed with the residue. You can avoid this happening by naming an alternative beneficiary in your Will. The composition of your estate may also change, and you may no longer have specific assets that are mentioned in your Will.

## 3. Your Will may no longer be tax efficient

The provisions in your Will may no longer

reflect current tax law. You may have inherited money since making your Will, and this could have a considerable impact on your estate. In that case, it may be useful to reconsider the distribution of your assets and review any potential tax liability. Keeping up to date with tax law may result in opportunities to make savings. Since 2007, unused inheritance tax nil-rate band allowances can be transferred between estates of married couples and civil partners. As a result, a nil-rate band discretionary trust may no longer be appropriate in your Will. Additionally, the residence nil rate band (first introduced in 2017) means that some estates can now benefit from a further allowance of up to £175,000 (or £350,000 for a married couple).

In addition, where an estate has business or farming assets these can attract tax savings. Business Property or Agricultural Relief may be available, which can provide a reduction in tax of 50% to 100%.

## 4. Your Will may be at risk of being challenged, or subject to a dispute

You may have remarried (which would automatically revoke your Will) or there may have been changes in your family. These changes might give rise to challenges against your estate and the provisions of your Will. If you have left nothing (or only relatively small gifts) to certain family members or financial dependents, your estate may face a claim in the future. Disputes are both costly and distressing for your Executors and beneficiaries to deal with. To help avoid this, our specialist Contentious Probate team can offer expert advice to minimise the risk of future disputes.

## 5. Securing your assets for the future

You may wish to ensure that your future needs and those of your dependents are adequately covered. For instance, it may

be appropriate for a trust to be set up. You may also wish to undertake planning for care home costs. It may be useful to set up a trust as part of an estate planning exercise. This could be to benefit a surviving spouse or partner, a child, or a disabled relative.

In conclusion, regularly checking and, if necessary, changing your Will isn't just a chore; it's your insurance that your wishes will be followed, no matter what life throws your way. It is important to stay on top of this to safeguard your legacy.

Updating your Will may not mean redrafting the entire document. Small updates can easily be made.

Our solicitors are independently recognised as experts in their field and can offer specialist advice, in all the above areas, tailored to your individual needs.

**For help or advice, please contact:**



**Leila Goodarzi**  
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# Should a pre-nuptial agreement be part of your wedding planning?

**Couples often overlook pre-nuptial agreements, but with one in five marriages ending in divorce by their 10th anniversary and the courts becoming more inclined to uphold them, it's worth considering one.**

Whilst pre-nuptial agreements are not binding in the UK, the courts are becoming more inclined to uphold them in the absence of any invalidating factors. If you are engaged, it is, therefore, worth adding a pre-nuptial agreement to your wedding planning, particularly if you and your fiancé want to protect resources acquired prior to your marriage or want some control over how your assets will be divided in the event of a divorce.

## When should you start the process?

The agreement should be signed at least 28 days before the wedding, so we recommend consulting solicitors at least

4-5 months beforehand to avoid it being argued that there was pressure to sign the document.

If you are already married or are concerned that there is insufficient time, then you could have a post-nuptial agreement after the wedding.

## Can you instruct the same solicitor?

No, you should both receive independent legal advice from separate solicitors on the terms and implications of the agreement and what rights you will be relinquishing if you sign it.

## What information do you need to disclose?

You need to disclose all your resources to your partner. If there is any suggestion that they did not know the extent of your wealth, this could prevent the agreement from being upheld.

## Will the nuptial agreement be upheld?

If the agreement leaves one person with

less than they need then it is likely to be unfair and the court will make whatever provision it sees as reasonable. It is therefore important when drafting the agreement, that it meets both parties' needs.

## Is it worth the cost?

It may seem like an additional and unnecessary cost at a time when you are funding your wedding, but it is worth considering the potential future savings of protecting your pre-acquired wealth and avoiding costly litigation.

For any family law related query, our family team offer a free 30 minute no-obligation call.

**For help or advice, please contact:**



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# Free Executor Workshop

15 February 2024, 3.00 - 5.00 pm (via Zoom)

The role of an executor is a demanding one and carries with it onerous duties and responsibilities. Have you been appointed as executor under a Will and are unsure of what your role is and whether you can enlist help? Or perhaps you are yet to make a Will and need some guidance about who you should appoint. Come along to our free Executor workshop on 15th February where we will provide the answers to the questions you have as well as guide you through the administration process which can often seem daunting.

Contact our Events team on 0117 992 9730 or at [events@vwvplus.co.uk](mailto:events@vwvplus.co.uk) to register your place.



# Executors beware! Rising concerns over misappropriated assets

Cases concerning the financial abuse of susceptible individuals are rising in an ageing population and it can be difficult to prevent this from happening to a family member or friend.

In this article, we examine what can be done to unravel the issues when a deceased friend or relative may have fallen prey.

## The duty of personal representatives to investigate

Executors named in a Will or Administrators, in the absence of a valid Will, serve as the personal representatives (PRs) responsible for managing the deceased person's estate. They must provide a comprehensive account of all the assets held by the deceased at the time of their death to the beneficiaries. In instances where there are questionable transactions during the deceased's lifetime - such as discrepancies in bank account balances or the transfer of property to third parties - the PRs must diligently investigate these transactions to ensure their legitimacy.

It is common for an attorney to have been appointed, under either a Lasting or Enduring Power of Attorney (LPA/EPA), by the deceased whilst they were alive. First, the PRs should call for the LAP/EPA and check if the document imposed any restrictions that limited the attorney's powers, for example, a bar on the sale of property. Investigating will then typically start with a review of the deceased's bank accounts to identify the total number and

sums of any suspicious transactions made. PRs should ask the attorney to provide an explanation if anything looks unusual.

## Identifying gifts and their purpose

Next, PRs should request and review receipts and accounts for any transactions that call for further questioning. It is a common misconception amongst attorneys (including those who may not intend to misappropriate) that large gifts are permitted. For example, paying family members large sums to reduce inheritance tax. The attorney incorrectly assumes that such gifts are legally permissible, under the belief that making them is considered to be in the person's best interests. However, if those gifts are out of step with the deceased's typical gifting pattern, such gifts should usually have been authorised first, through the Court of Protection, to safeguard the person's interests.

## Who authorised the gifts or transactions?

An equally important consideration is whether the susceptible person had the mental capacity to authorise any extraordinary transactions made during their lifetime and whether they did so. Finance & Property LPAs can be used before a person has lost capacity as long as they are registered, but capacity is rarely a cut-and-dried case. The Mental Capacity Act 2005 imposes duties on attorneys to assist the susceptible person in making as many decisions for themselves as possible. Where the position is unclear to a PR, they are entitled to obtain medical records and a report from the person's GP or treating clinicians to investigate.

## What can be done to recover the assets?

If misappropriation is found to have taken place by a Court, and the person in question is a beneficiary of the estate, the financial remedy will often be to deduct the sums misappropriated from their share of the estate.

It can be more difficult and costly to recover assets where the recipient is not a beneficiary, when it may be necessary to claim the monies from them personally. PRs should weigh up the cost/benefits of doing so carefully, always keeping in mind what is in the best interests of all the beneficiaries.

## How to avoid criticism or a claim

Sadly, we have seen cases of financial abuse of vulnerable people rise sharply over the years. If PRs are concerned about lifetime transactions, they should not hesitate to seek specialist advice without delay. This will ensure that the PRs are seen to be properly discharging the duties they owe to the beneficiaries of the estate. And importantly, will protect them from a potential legal challenge for not taking appropriate action if financial abuse has been at play.

**For further help and advice, please contact:**



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## Upcoming 2024 Workshops

**Executors workshop**  
15 February 2024 - 3.00 - 5.00 pm

**Inheritance Tax Planning**  
19 September 2024 - 3.00 - 5.00 pm

**Wills workshop**  
22 May 2024 - 3.00 - 5.00pm

**Lasting Powers of Attorney**  
20 November 2024 - 3.00 - 5.00 pm

## Receive Viewpoint by Email

Would you like to receive Viewpoint by email rather than hard copy?

If so, please contact Laura Loveridge on **0117 314 5371** or at **lloveridge@vwv.co.uk**