Making A Will

In the Common Law, a Will or Testament is a document by which a person (the T*estator*) regulates the rights of others over his or her property or family after death.

In the strictest sense, "Will" is a general term, while "Testament" applies only to dispositions of personal property (this distinction is seldom observed). A Will is also used as the instrument in a trust.

The following information applies to England, Wales and Northern Ireland

1. Why It Is Important To Make A Will
2. Financial Reasons To Make A Will
3. Is It Necessary To Use A Solicitor or Professional Will Writer
4. What Should Be Included In A Will
5. Requirements For A Valid Will
6. Who Are Executors?
7. Who Inherits If You Don't Have a Will?
8. If You Feel You've Not Received Reasonable Financial Provision
9. Inheritance Tax and Your Will
10. Wills, Trusts and Financial Planning
11. Change of Circumstances
12. How to Change a Will
13. Destroying a Will
14. If a Person Who Makes a Will Commits Suicide
15. Challenging a Will
16. Where to Keep a Will

1. Why it is important to make a Will

There are lots of good financial reasons for making a will:

- you can decide how your assets are shared out - if you don't make a will, the law says who gets what,
- if you aren't married or in a civil partnership (whether or not it's a same sex relationship) your partner will not inherit automatically - you can make sure your partner is provided for and prevent the death of one partner creating serious financial problems for the remaining partner
- if you're divorced or if your civil partnership has been dissolved you can decide whether to leave anything to an ex-partner who's living with someone else
- you can make sure you don't pay more Inheritance Tax than necessary
- if you die without a will, there are certain rules which dictate how the money, property or possessions should be allocated. This may not be the way that you would have wished your money and possessions to be distributed
- if you have children, you will need to make a will so that arrangements for the children can be made if either one or both parents die
- if your circumstances have changed, it is important that you make a will to ensure that your money and possessions are distributed according to your wishes. For example, if you have separated and your ex-partner now lives with someone else, if you have purchased a property, etc., you may want to change your will. You should be aware that if you are married or enter into a registered civil partnership, this will make **any previous will** you have made **invalid.**

2. Financial Reasons To Make A Will

It's easy to put off making a will. But if you die without one your assets may be distributed according to the law rather than your wishes. This could mean that your partner receives less, or that the money goes to family members who may not need it.

3. Is It Necessary To Use A Solicitor or Professional Will Writer?

There is no need for a will to be drawn up or witnessed by a solicitor. If you wish to make a will yourself, you can do so. However, you should only consider doing this if the will is going to be straightforward.

It is generally advisable to use a an experienced, professional will writer or solicitor to have a them check that a Will you have drawn will have the effect you want it to have. It is all too easy to make mistakes or to prepare a will which will not comply with formal requirements.

You must be aware that if there are errors in the will, this can cause problems after your death. Sorting out misunderstandings and disputes may result in considerable legal costs, which will reduce the amount of money in the estate and most importantly, negate the wishes you set down in the will in the first instance.

Some common mistakes in making a will are:-

- not being aware of the formal requirements needed to make a will legally valid
- failing to take account of all the money and property available
- failing to take account of the possibility that a beneficiary may die before the person making the will changing the will. If these alterations are not signed and witnessed, they are invalid
- being unaware of the effect of marriage, a registered civil partnership, divorce or dissolution of a civil partnership on a will
- being unaware of the rules which exist to enable dependants to claim from the estate if they believe they are not adequately provided for. These rules mean that the provisions in the will could be overturned.
- damaging the original will or not storing it correctly

When it is particularly advisable to use / take advice from a Professional

There are some circumstances when it is particularly important that you take advice from a professional will writer or solicitor, for example:-

- you share a property with someone who is not your husband, wife or civil partner
- you wish to make provision for a dependant who is unable to care for themselves
- there are several family members who may make a claim on the will, for example, a second wife or children from a first marriage
- your permanent home is not in the United Kingdom
- you are not a British citizen
- you are resident here but there is overseas property involved
- there is a business involved

4. What Should Be Included In A Will

Prior to providing your instruction to prepare your will, you must give some thought to the major points you want included . You should consider such things as:-

- how much money and what property and possessions you have, for example, property, savings, occupational and personal pensions, insurance policies, bank and building society accounts, shares
- who you want to benefit from your will. You should make a list of all the people to whom you wish to leave money or possessions. These people are known as 'beneficiaries'.
- whether you wish to leave any money to charity
- who should look after any children under 18
- who is going to sort out the estate and carry out your wishes as set out in the will. These people are known as the Executors

5. Requirements For A Valid Will

In order for a will to be valid, it must be:-

- made by a person who is 18 years old or over; and
- made voluntarily and without pressure from any other person; and
- made by a person who is of sound mind. This means the person must be fully aware of the nature of the document being written or signed and aware of the property and the identity of the people who may inherit; and
- in writing; and
- signed by the person making the will in the presence of two witnesses; and
- signed by the two witnesses, in the presence of the person making the will, after it has been signed. A witness or the married partner of a witness cannot benefit from a will. If a witness is a beneficiary (or the married partner or civil partner of a beneficiary), the will is still valid but the beneficiary will not be able to inherit under the will.

Although it will be legally valid even if it is not dated, it is advisable to ensure that the will also include the date on which it is signed. As soon as the will is signed and witnessed, it is complete.

6. Who Are Executors?

Executors are the people who will be responsible for carrying out our wishes and for sorting out the estate *(please request for our additional leaflet on Personal Representatives if you require more information on this topic)*

The Executors will have to collect together all the assets of the estate, deal with all the paperwork and pay all the debts, taxes, funeral and administration costs out of money in the estate. They will need to pay out the gifts and transfer any property to beneficiaries.

Who to choose as Executors to Your Will

It is not necessary to appoint more than one executor although it is advisable to do so, for example, in case one of them dies. It is common to appoint two, but up to four executors can take on responsibility for administering the will after a death. The people most commonly appointed as executors are:-

- Relatives or Friends
- Solicitors or Accountants
- Banks
- The Public Trustee (in England and Wales) if there is no one willing and able to act.

It is important to choose Executors with considerable care since their job involves a great deal of work and responsibility.

You should always approach anyone you are thinking of appointing as an Executor to see if they will agree to take on the responsibility. If someone is appointed who is not willing to be an executor, they have a right to refuse.

If an executor dies, any other surviving Executor(s) can deal with the estate. If there are no surviving executors, legal advice should be sought.

7. Who Inherits If You Don't Have A Will?

If you don't have a will there are rules for deciding who inherits your assets, depending on your personal circumstances. The following provisions apply only in England and Wales.

The law differs if you die intestate (without a will) in Scotland or Northern Ireland:-

You are Married (or in a Civil Partnership) and your Estate is worth less than £250,000

Your surviving spouse / civil partner gets everything.

You are Married (or in a Civil Partnership, Your Estate is worth more than £250,000 but you don't have any surviving Parents or Brothers / Sisters (or their Issue)

Your surviving spouse / civil partner gets everything.

You are Married (or in a Civil Partnership), Your Estate is worth more than £250,000 and you have children

Under the Intestacy Rules, it now starts to get interesting and potentially problematic for the surviving spouse/civil partner. The first £250,000 and the personal possessions will go to the spouse/civil partner but they will only get a life interest in half of whatever is left over. The other half will go to the children immediately with the rest following when the life interest ends on the death of the spouse/civil partner.

If any child should pre-decease you, then their own children (your grandchildren), would get their parent's share and so on if a grandchild has predeceased etc.

You are Married (or in a Civil Partnership), Your Estate is worth more than £250,000, You don't have children but you do have Parents or Brothers/Sisters (or their issue).

Under the Intestacy Rules, the surviving spouse's/civil partner's automatic share goes up to £450,000 and they still receive the personal possessions. Half of anything left over also goes to the spouse/civil partner absolutely (i.e. it is not subject to a life interest). The other half goes to the surviving relatives in this order:

- Parents
- Brothers or sisters (whole blood) or their children (or their children's children etc.)

You are not Married (or in a Civil Partnership) but have children

Under the Intestacy Rules your children will inherit everything equally. Again, if a child has pre-deceased you, then their children will get their parent's share (or children's children etc.)

You are not Married (or in a Civil Partnership) and have no children

Your surviving relatives will inherit in the following order:-

- Parents
- Brothers or sisters or their children (or children's children etc.)
- Half-brother or sisters or their children (or children's children etc.)
- Grandparents
- Uncles or aunts (brothers and sisters of the whole blood of a parent) or their children (or children's children etc.)
- Uncles and aunts (brothers and sisters of the half blood of a parent) or their children (or children's children etc.)

If you have no surviving spouse/civil partner, parents, children, siblings, grandparents, uncles, aunts, cousins, first cousins etc.

Everything will go to the Crown!

It is important to remember:-

- The Intestacy Rules do not recognise unmarried "common law" partners.
- The Intestacy Rules allow a 28 day survivorship period.
- To inherit under the Intestacy Rules a person needs to be aged 18 or over or have married earlier. If they inherit as a minor the gift will be held on trust for them until they reach the age of 18. If they do not reach the age of 18 (i.e. they either pre-decease as a minor or die before coming of age) the gift will revert to the persons entitled in the same class or the next class below if no such person in a same class exists.
- The effect of the Intestacy Rules can be inequitable and unfair, especially for surviving spouses. Surviving dependents may be entitled to seek more adequate provisions by making a claim under the Inheritance (Provision for Family and Dependents) Act 1975 or by seeking a discretionary grant from the Crown if the estate passes to the Crown.

8. If You Feel You've Not Received Reasonable Financial Provision

If you feel that you have not received reasonable financial provision from the estate, you may be able to make a claim under the Inheritance (Provision for Family and Dependents) Act 1975 (applicable in England and Wales)

To make a claim you must have a particular type of relationship with the deceased:-

- Child
- Spouse
- Civil Partner
- Dependent
- Cohabitee.

Bear in mind that if you were living with the deceased as a partner but weren't married or in a civil partnership, you'll need to show that you've been 'maintained either wholly or partly by the deceased' - this can be difficult to prove if you've both contributed to your life together.

You will need to make a claim **within six months** of the date of the Grant of Letters of Administration.

Please note: this is quite a complicated area and as a claim may not succeed, further advice should be taken in such circumstances.

9. Inheritance Tax and your Will

9.1. If you leave everything to your husband, wife or civil partner

In this case there usually won't be any Inheritance Tax to pay because a husband, wife or civil partner counts as an 'exempt beneficiary', but of course you must keep in mind that their estate will be worth more when they die, so more Inheritance Tax may have to be paid then. However, if you are domiciled (have your permanent home) in the UK when you die but your spouse or civil partner isn't, you can only leave them £55,000 tax-free.

9.2. Other beneficiaries

You can leave up to £325,000 tax-free to anyone in your will, not just your spouse or civil partner (tax year 2012/13). You could, for example, give some of your estate to someone else or a family trust. Inheritance Tax is then payable at forty per cent (40%) on any amount you leave above this.

9.3. UK Charities

Inheritance Tax isn't payable on any money or assets you leave to a registered UK charity - these transfers are exempt.

9.4. Some national institutions, including National Museums, Universities and the National Trust

9.5. UK political parties

10. Wills, Trusts and Financial Planning

As well as making a Will, you can use a **Family Trust** to pass on your assets in the way you want to. You can provide in your will for specific assets to pass into a Trust or for a Trust to start once the estate is finalised. You can also use a Trust to look after assets you want to pass on to beneficiaries who can't immediately manage their own affairs (either because of their age or a disability).

You can use different types of Family Trust depending on what you want to do and the circumstances. Setting up a trust is complicated and you'll need specialist advice on how to do so. You should also bear in mind that since 22 March 2006, for most types of Trust, there will be an immediate Inheritance Tax charge if the transfer takes you above the Inheritance Tax threshold.

11. Change of Circumstances

When a will has been made, it is important to keep it up to date to take account any changes in your circumstances. It is advisable for you to reconsider the contents of a will regularly to make sure that it still reflects your wishes. The most common changes of circumstances which affect a will are:-

- getting married, remarried or registering a civil partnership
- getting divorced, dissolving a civil partnership or separating
- the birth or adoption of children, if you wish to add these as beneficiaries in a Will.
- purchasing property

12. How to Change a Will

You may want to change your will because there has been a change of circumstances. You **must not do this** by amending the original will after it has been signed and witnessed as it will invalidate your Will. Any obvious alterations on the face of the will are assumed to have been made at a later date and so do not form part of the 'original legally valid will'. The only way you can change a will is by making:-

- a codicil to the will; or
- a new will.

Codicils

A codicil is a supplement to a will which makes some alterations but leaves the rest of it intact. This might be done, for example, to increase a cash legacy, change an executor or guardian named in a will, or to add beneficiaries.

A codicil must be signed by the person who made the will and be witnessed in the same way. However, the witnesses do not have to be the same as for the original will.

There is no limit on how many codicils can be added to a will, but they are only suitable for very straightforward changes. If a complicated change is involved, it is usually advisable to make a new will.

Making a New Will

If you wish to make major changes to a will, it is advisable to make a new one. The new will should begin with a clause stating that it revokes all previous wills and codicils.

The old Will should be destroyed. 'Revoking a Will' means that the will is no longer legally valid.

13. Destroying a Will

If you want to destroy a will, you must burn it, tear it up or otherwise destroy it with the clear intention that it is revoked. There is a risk that if a copy subsequently reappears (or bits of the will are reassembled), it might be thought that the destruction was accidental.

You must destroy the will yourself or it must be destroyed in your presence. A simple instruction alone to an executor to destroy a will has no effect. If the will is destroyed accidentally, it is not revoked and can still be declared valid.

Although a will can be revoked by destruction, it is always advisable that a new will should contain a clause revoking all previous wills and codicils. Revoking a will means that the will is no longer legally valid.

14. If a Person Who Made a Will Commits Suicide

If a person who made a will commits suicide, the will is still valid.

15. Challenging a Will

A person may want to challenge a will because:-

- they believe that the will is invalid; or

- they believe that they have not been adequately provided for in the will.

There are strict time limits for challenging a will and if you want to challenge a will, you should seek advice / discuss this with us as soon as possible.

16. Were To Keep A Will

Once a will has been made, it should be kept in a safe place and other documents should not be attached to it. However it is necessary to store any Codicil or Side Letter as may affect your estate with the Will.

There are a number of places where you can keep a will:-

- at the Principal Registry of the Family Division of the High Court, a District Registry or Probate Sub-Registry for safe keeping.
- at home
- with a Will Storage Facility (e.g. The Society of Will Writers)
- at a Bank
- with a Solicitor