

Making your will

Introduction

Your will is one of the most important documents you will ever sign.

If you do not make a will, your estate could end up in the hands of people you have no wish to benefit. Moreover, you might have failed to take advantage of the tax planning opportunities which often become apparent when making a will.

A popular misconception among married couples is that without a will everything passes automatically to the surviving spouse*. This is not necessarily so.

You should resist any temptation to write out your own will without the right professional help. A 'homemade' will is unlikely to save any time or money in the long run.

Indeed, your family would suffer anxiety and possible disappointment and financial loss if, after your death, it transpired that your will was ambiguous or uncertain, or if your executors found that they could not administer your estate properly because your will did not include appropriate administrative powers and provisions. Failure to make a will at all (i.e. if you die intestate) may have the same result.

Points to consider

It is therefore important that your will is drafted so that it sets out your wishes accurately. These are some of the points which you need to consider:

1 Beneficiaries

List the full names and addresses of all intended beneficiaries (including any substitutes), with a note of the approximate ages of any who are under the age of 18. Your beneficiaries are likely to fall into one of the following categories:

- a those (if any) to whom you wish to leave gifts of cash or specific assets (including personal belongings);
- b those to whom you wish to leave the rest or 'residue' of your estate.

2 Unusual assets or requirements

If you have less commonly held assets, such as shares in private companies, foreign land or an interest under a trust, or have particular requirements in relation to a proposed gift, let us know so that we can advise you appropriately.

3 Likely value of your estate

Consider the approximate value of your estate including your house and any land, your personal effects, any savings and investments and any trust assets in which you may have a life interest. We can give appropriate advice on Inheritance Tax (IHT) planning and on arrangements to fund any IHT liability.

4 Executors

Although they may be assisted in the administration of your estate by solicitors, your executors remain ultimately responsible for administering what you leave and for carrying into effect the provisions of your will. It is usually desirable to appoint at least two executors so that if

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one dies before you, there is still someone available to act.

If you wish, you can appoint Thomson Snell & Passmore Trust Corporation Limited as your executor (see our separate information sheet on the advantages of this). Alternatively, you may prefer to appoint suitable members of the family to act, whether alone, jointly with the Trust Corporation or with the Trust Corporation as a reserve if those persons die before you, or are unable or unwilling to act as executors.

There is no reason why you should not appoint one or more beneficiaries as executors provided that they are over the age of 18. Particular care should, however, be taken when selecting executors who may have to administer a continuing trust.

5 Guardians for minor children

Guardians and executors need not be the same persons. Your guardians will be responsible for the care of your children while they are under the age of 18. Your executors will be primarily concerned with the financial aspects of your estate.

6 Funeral wishes

You may not have any particular views on this, but if you do, your will is a useful place to record them.

If there are any points which you would like to discuss, it will be preferable to deal with these before the will is drafted.

Other factors

The precise terms of your will are likely to be governed by such factors as the size and

nature of your estate and the circumstances of your family and the other persons whom you wish to benefit. Unless your estate is fairly large, we normally recommend that you should try to achieve simplicity in your will. If you give a large number of small legacies, or if you ask for complicated arrangements, the will itself will be more costly to prepare, and after your death your executors are likely to incur more expense in administering your estate.

Even if you do achieve simplicity in your wishes, you may find that the will which we prepare for you is a fairly lengthy document. This is because the law relating to wills is complex and technical. In this context you should note that a continuing trust must be created if you wish your executors to hold all or part of your estate for any specified period of time - for example, until a child reaches the age of 21. Consequently, a professionally drawn will includes clauses which give suitable administrative powers to executors and trustees and enable them to carry out your wishes properly.

Need for review

While wills are usually drafted so as to be effective for many years - indeed indefinitely - it is nevertheless wise to review your will every few years to take into account changes in circumstances and legislation.

It is not widely appreciated, for instance, that marriage and divorce can have a major impact on a person's will. Marriage normally revokes any earlier will unless it was drafted with the specific marriage in mind, while the law provides that certain changes to a will are made automatically on divorce. The moral is to make a new will if you are about to marry, divorce or remarry.

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Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

NOTE: The law is stated as at 1 June 2021.

If you require further information, please contact Stuart Goodbody or Mark Politz or Sarah Nettleship on 01892 510000 or by email at:

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* All references to the term 'spouse' include a civil partner as defined by Section 1 of the Civil Partnership Act 2004.

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