



Making a Will



Common misconceptions about Wills

Some people take a great deal of convincing of the need to make a Will. With approximately 60% of the adult population in the UK without one, it is clear that there is resistance, reluctance or plain apathy about the reasons for making a Will. Often people believe their assets are too insignificant to need a formal arrangement or legal guidance. However people do not realise that their wealth may only come to fruition when they die.

For instance, they may have life insurance, mortgage protection insurance or pension benefits that mature on death and increase the value of their estate.

A small estate can increase in value significantly. Many people's perception of their wealth has changed in recent years with the rapid acceleration in property prices.

Essential reasons for making a Will

- To avoid your assets being distributed in accordance with the Intestacy Rules. Under current law, the Intestacy Rules do not recognise co-habitees who are unmarried and not in a civil partnership. Therefore if you live with your partner and die without having made a Will, your partner will not inherit any of your estate. They would have to make a claim on the estate claiming financial dependence if appropriate;
- To ensure that those you wish to inherit your assets on your death actually receive them;
- To nominate Executors of your choice to deal with the distribution of your estate in the knowledge that they will comply with your wishes;
- To nominate preferred guardians of your children to avoid disagreements or family upsets;
- To make personal gifts; and
- To take advantage of tax saving strategies.

Possible reasons for making a Will (depending on individual circumstances)

- To explain why a possible beneficiary is being excluded;
- To ensure the continuation of a family business;
- To ensure that 'first' and 'second' families are treated fairly;
- To reflect lifetime rearrangement of assets; and
- To give specific guidance to Executors.



Points to Consider

You may like to think about the following for your own Will:

Funeral Arrangements

You can specify whether you would like your body to be buried or cremated. You can also state whether you are willing for your body to be used for medical research.

Executors

This is the person you appoint to safeguard your possessions, pay debts and ensure your instructions in the Will are carried out. An Executor can be anyone, even a beneficiary, over 18 years of age. If you are leaving everything to one person, it is usually convenient to make them the only Executor. With more complicated estates and particularly where children are involved, it is advisable to have at least two Executors. In some cases (e.g. where the estate is likely to be taxable or where there may be family difficulties) it is preferable to appoint experienced professional Executors such as the directors of The Owen Kenny Partnership Ltd.

Guardians

A clause appointing guardians in a Will would generally only come into effect if the other parent dies before you; if you are divorced or separated from the other parent then we can provide you with specific advice regarding this. It will be necessary to appoint someone for the day-to-day care of your children under 18 years of age and it would also be prudent to consider some form of fund being made available to the guardian to pay for increased expenditure. We can help by letting you know the different options by which you can do this.

Legacies

You have the ability to leave sums of money or specific gifts. You can leave them, if they belong solely to you, without difficulty however, you may need to consider if they will be needed by a surviving spouse/civil partner. In such a situation you will need to make some provision, such as a life interest to the survivor, to cover this situation. This is complex and will require input from your solicitor so that the best method can be adopted. Remember that if you leave something to your surviving spouse in the belief that they will honour your wishes they are not obliged to do so.

If you are making gifts of specific items such as furniture, jewellery etc, it may be worth considering a 'letter of wishes' to accompany your Will. In your Will you give all the items to one person but express the hope that he or she will distribute the items in accordance with any list of beneficiaries and items you may leave at your death. This is a very flexible arrangement. You can change the list at any time without the legal formalities and expense of amending your pre-existing Will.

Residue

This is what remains of your estate (except any jointly owned assets), after payment of debts, legacies, any Inheritance Tax, and legal fees. Jointly owned assets usually pass automatically to the other joint owner(s). You must, however, specify who is to inherit the residue, and in what proportions. You should also cover what should happen to the residue if any of these people die before you.

Family Arrangements

You may have children from previous relationships. A Will can give a second spouse the right to occupy the family home, while protecting the capital for children of an earlier relationship. This will ensure assets will not pass out to the immediate family and may pre-empt potential challenges to the distribution of the estate. You can also plan for a child's future if they have special needs or disabilities or cannot manage money. You can stipulate an age for them to inherit the money or put funds in a trust so that their spending can be controlled and managed.



Sometimes people assume that if they leave everything to their spouse, the spouse will ensure that the other family members are taken care of. Of course, there is no obligation for this to happen and even if the spouse would have been minded to heed the deceased's wishes, they may not be in a physical or mental state to comply with them. If you die without making a Will, the Intestacy Rules apply. These rules, which are set by law, dictate the order in which family members will receive your estate. The only way to ensure that your estate is inherited by the people you want to benefit is to make a Will, which will ensure your wishes are clear in the event of your death.

Things to Remember

- If you die without making a new Will your estate will pass under the Intestacy Rules unless otherwise specified;
- On marriage (or remarriage), your old Will is automatically revoked and has no effect; and
- On divorce, any gift in your old Will to your ex-spouse is cancelled as is his/her appointment as Executor but the rest of the Will stands. This can create problems and we would advise you make a new Will.

If you are not making any provision for a spouse or partner, or a former spouse, or a child (including a step child), or a partner you have been cohabiting with for more than two years, or someone you have been maintaining financially, it is possible that he/she could claim against your estate. If this applies to you, you should ask for advice about this.

“We visit clients in hospitals, residential homes and nursing care homes as well as their own homes.”

Our service

We deal with all aspects of Private Client work including Wills, Lasting Powers of Attorney and Probate. The nature of the work we do requires an empathetic and understanding approach to the needs of our clients, many of whom are elderly or bereaved.

Our dedicated team will provide you with the support and the legal advice that you need.

Our other services

Family Law • Conveyancing
Civil Litigation • Commercial Property

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