

# Writing a Will Guide



A practical guide to writing a Will

# Why should you make a Will?

A valid and professionally drafted Will is the only certain way to ensure that your wishes are carried out when you die.

There are many reasons for making a Will including:

1. Ensuring your assets pass to your chosen beneficiaries;
2. Ensuring legal guardians are appointed for your children;
3. Ensuring your children or grandchildren inherit at a suitable time rather than immediately upon your death or on their 18th birthday (an age where they may not be ready to inherit and statistically speaking an age at which they are more likely than not to squander the funds).
4. To ensure your business and employees are looked after and a plan is in place for its continuance
5. To help ensure your funeral wishes are specified and carried out
6. To reduce inheritance tax in many cases
7. To help prevent disputes arising following your death
8. To ensure your pets are looked after and maintained
9. To ensure your children receive your estate in the event your spouse or civil partner were to remarry.

If you die without a Will, your estate will pass under the law of intestacy. For those that are married but without children these may mean your estate passes entirely to your spouse. This is all well and good and may be what you want, but consider whether your wish would be the same if your spouse remarried shortly after your death and then died leaving his or her estate to their new spouse. Would this stranger be your chosen beneficiary of your assets or would there be other family members or charities you would rather inherit?

By creating a Will and using a carefully drafted trust you can ensure your spouse benefits after your death but upon their death your assets pass to your chosen beneficiaries.

If you have children your spouse may not inherit all of your estate and instead your children will inherit a share. This will be paid to them at the age of 18 which, as per the earlier comment is a dangerous age to inherit.

If you are unmarried, your unmarried partner has no right in law to your estate. This often leads to costly and lengthy Wills and probate disputes leading to a lot of stress and cost for your loved ones. This can easily be avoided by making a well thought out Will.

Without a Will there are no guardians for your children. This may, in extreme cases lead to them being taken into foster care until permanent arrangements can be made.

You can, with trusts in your Will, ring-fence your hard earned assets for your children protecting them from inheriting at too early an age and to protect them from potential predators i.e. those who may take advantage of their wealth or indeed in the event of divorce or bankruptcy as they get older.

Also, Inheritance Tax can be saved with expert advice and a carefully drafted Will ensures the maximum amount of your estate that can pass tax free does so.

A Will can also ensure your pets are maintained and looked after should the unexpected happen.

# The contents of the Will ]

## **DOMICILE AND SCOPE**

For most people this will be straightforward and will simply be where you live but if there is any doubt your Will should contain a declaration as to your domicile and will state what assets the Will attaches to.

Domicile is very important as it is usually what dictates which countries Inheritance Tax rules and laws of succession apply and if you are unsure, we would recommend that a domicile report is conducted.

In addition to this, your Will should include a statement confirming which assets your Will attaches to.

Generally, it is advised that it only attaches to your assets in England and Wales. Any other assets you have should be dealt with by a Will governed by the laws of the jurisdiction relevant to those assets.

It is always strongly recommended that you make a Will in any country that you have assets, noting that you will need to ensure any additional Will made does not revoke your UK Will.

## **MARITAL STATUS**

Marital status and future plans to be married or divorced is important information as a marriage or civil partnership will revoke an existing Will.

If you have plans to marry or divorce, please let your advisor know so that they can ensure that this does not impact your Will. Further, in the event of separation or divorce you should discuss amending your Will.

## **FUNERAL WISHES**

When drafting your Will it is important to include any wishes you have about your funeral to ensure that your executors and trustees are aware of them. Wishes can be anything you like and often include directions for the funeral itself, a choice of burial or cremation and where you would like your body to be buried, or your ashes scattered. You can also include organ donation although this is less necessary now given the automatic system now in place in the UK unless you have opted out.

It is important to note that the inclusion of funeral wishes in a Will is not binding on your trustees, or anyone else, however it does serve as a guide to what you would like to happen and can help avoid upset, trauma and burial disputes.

## **EXECUTORS AND TRUSTEES**

These are the people who will be responsible for the administration of your estate, managing any trusts set out in your Will and carrying out any wishes that you specify in your Will. They can be the same group of people or separate, but as one role tends to lead to the next it is common to appoint the same people for both functions.

You should consider carefully about whom you would like to act as trustees; ideally the trustees will be people who are able to act objectively when distributing your estate, however this does not mean that a beneficiary/guardian cannot be a trustee.

This is a position of responsibility and is not easily undertaken. The trustee can also be personally liable in the event things go wrong so they should consider legal advice before accepting an appointment.

Your professional advisors may be willing to act as trustees of your estate either alone or in conjunction with your family members.

There will be a charge for using professional trustees and executors and your advisors should be able to give you an indication of such charges as at the time of preparing the Will.

It is also a good idea to appoint at least one substitute trustee who will act if your first choices are unable or unwilling to act for any reason.

### **GUARDIANS FOR CHILDREN**

If you have children under the age of 18, you should provide the name of someone to presume legal responsibility for them. This is likely to be in the event of both parents' death or the death of those with parental responsibility.

This can be one person, a couple or a number of people however; we would advise that you consider carefully where your children are to live. If they are to live with one particular person it may be preferable to simply make that one person their guardian with any others as replacements.

This appointment will only come into effect if, at your death, there is no-one else with parental responsibility.

As with trustees, it is a good idea to appoint a substitute guardian who will act if your first choices are unable or unwilling to act for any reason.

When considering guardians you should also consider what funds should be made available to the guardians to enable them to look after your children. This may fall from a lifetime provision of maintenance or a trust held for the children.

You can also provide us with a separate letter for your guardians outlining any other wishes you want them to consider. This may include religion, schooling, hobbies, contact with various family members and anything else of importance to you. Your advisor may be able to provide a template letter to assist with this.

This all amounts to a well thought out plan for your children in the event of your death. This can help satisfy social services and the Court if necessary, that thought and planning has gone into these arrangements and there is no need for any intervention here.

### **DISTRIBUTION OF YOUR ESTATE**

There are 4 broad options when distributing your estate; gifts of your personal possessions, specific gifts of other assets (shares, properties for example), specific gifts of set amounts of money and then finally the division of the remainder of your estate.

There is no need to list everything you own as any items not referred to will fall into the remainder of the estate. This also prevents you having to update your Will every time you buy or sell something. If you wish to leave anything to a minor you will need to state which age you want them to inherit the gift. Generally, if you do not specify this is 18 but you may consider this too young an age to inherit so other options are typically age 21 or 25.

This will then be held on trust until the beneficiary reaches the specified age.

Your trustees will have power to advance funds to this beneficiary early should they need to do so. For example, if you would like someone to have a share of the estate upon reaching 25 but they are wanting to buy a house or pay for education before this date, your trustees will be able to give part of the trust early for this purpose. The same applies to school fees and upbringing costs.

This is a good time to make charitable donations either by way of a gift of money or a share of the residue as they are all tax free and leaving more than 10% of your estate to charity will be advantageous for tax purposes as the 40% rate can be reduced to 36% on all chargeable items in your estate.

### **GIFTS OF PERSONAL POSSESSIONS**

This includes all of your chattels for personal use (the list is long and non-exhaustive, but may for example include vehicles, boats, furniture, clothes, jewellery, wine, household goods, electronic items, animals etc). Items you use for business purposes (if any) are not included here; neither is money or currency, which may for example include gold coins. Valuable collections of items may or may not fall under the statutory definition, depending on specific circumstances.

When drafting your Will it may be wise to state that all personal possessions will be distributed by

your trustees with reference to any wishes you make known to them prior to your death (or which come to their attention within 3 months of your death). Whilst you do not have to set out those wishes in writing, it is a good idea to do so, to avoid potential conflict after your death. You can write a letter of wishes setting out how you would like your possessions to be distributed; this letter should be stored with your Will, and can be changed without making a new Will.

However, any request or letter of wishes will only be a request and your trustees will not be legally bound to do this and so, if you have any particularly valuable items or family heirlooms which you would like to gift to someone it may be worth individually describing these items.

You will be able to state whether these items are free or subject to tax and you can also choose to charge the remainder of the estate with any delivery costs.

### **SPECIFIC GIFTS OF OTHER ASSETS**

This can include (but is not limited to) properties or a share of a property, items used for business purposes or valuable collections.

If you would like any particular asset to be gifted to someone you must list them here, any asset not listed here will fall into the residue of your estate.

It is important to note that any assets that you own jointly with someone are likely to pass to that person by survivorship and therefore do not need to be listed.

As with personal possessions, you will be able to state whether these items are free of tax and free of any charge, for example free of a mortgage, and any amount owed will be paid out of the residue. For tax purposes any business interests should be included as a legacy not left to the remainder of your estate.

### **GIFTS OF MONEY**

Within your Will you can gift an amount of money to specific people, as above, you will be able to state whether this gift is free of or subject to tax. If you state free of tax, the exact sum mentioned passes to the named beneficiary and any tax due is simply paid out of the residue of your estate (as long as there is enough there to pay the tax due). If you state subject to tax then the recipient may pay tax on their legacy and receive a lesser sum.

### **DIVISION OF THE RESIDUE**

You will then need to consider how the rest of your estate is to be divided – percentages normally work best as the value of the remainder of your estate may vary at the time of your death.

You may decide to leave everything to one person (perhaps a spouse), to a number of people in equal or differing shares or to a trust for additional flexibility and protection.

Whatever, you decide here it is worth including substitute beneficiaries.

### **REPLACEMENTS**

As mentioned throughout this guide, replacements for your executors, trustees, guardians and beneficiaries should be selected.

The idea behind this is to prevent you needing to change your Will in the event that something happens to the original people named.

Whilst ideally you should review your Will whenever something significant happens in life (birth of a child, marriage, divorce, death of a loved one, major property purchase etc), drafting the Will with replacements included can prevent the need to rush to change it saving you time, stress and money.

# What to take with you when you meet with your legal advisor to discuss your Will

## **TWO FORMS OF IDENTIFICATION**

This is required so that you can be correctly identified and to avoid disputes of mistaken identity or one person trying to make a Will for someone else without their knowledge.

## **A COPY OF ANY EXISTING WILL OR PREVIOUS WILL(S) YOU MAY HAVE MADE**

It is important for your adviser to know when drafting your Will if you have a previous Will. At the very start of your Will, it will state that it revokes any previous Wills. This can exclude certain Wills, for example if you have a foreign Will that you would like to ensure is not revoked, but is included to ensure that there is no argument that any part of an old Will still has any effect.

The main reason we need to know details about your old or existing Will is so that we can record why your wishes have changed. This is useful in the event a dispute occurs.

## **YOUR ADDRESS BOOK**

Full names and addresses of those to be named in your Will including your chosen beneficiaries, executors, trustees, guardians and replacements for the same is useful to take with you as it will save time in sending these across later.

If you have a charity you wish to benefit, it can be helpful to take their registered charity number with you to ensure that the correct charity is identified within your Will.

## **DETAILS OF YOUR ASSETS, DEBTS AND DIGITAL ASSETS**

This is useful to help identify legacies or to help with tax planning advice and opportunities that may arise from your wishes.

It may also highlight needs such as the need to obtain life insurance to ensure your partner, spouse, children, parents or anyone else you may financial support is provided for in the event of your death.

Further, when it comes to administering your estate your trustees will need to establish your financial situation and find out details of your finances and by providing this information to your advisor it will help your trustees to identify any assets and liabilities. Whilst this information is likely to change, it will at least be a useful place to start.

Some clients also like to store a list of passwords or security numbers with their legal advisor. Again this can change but if you use an application on your phone or computer to store such information by providing details of this to your legal advisor you can ensure assets are located and traced. This is particular important in a large digital world as more and more companies and financial institutions move away from sending paper statements and information in the post.

Without passwords or access to your devices it can prove very difficult to trace assets.

# Where to store your Will

Once you have made a Will it is very important to keep it safe and make sure that your executors and beneficiaries are able to find it easily after you have passed away.

If the Will is lost or destroyed, it can be difficult to prove a copy of the Will at the Probate Registry after your death.

If a copy is not accepted, then your estate would pass under the intestacy laws rather than in accordance with your Will.

There are a number of ways to store your Will and these are set out below.

## **KEEP THE WILL AT HOME**

You can choose to keep your Will at home amongst your private papers, however we would not recommend this; it may be vulnerable to accidental loss or destruction. It has also been known for Wills to be deliberately destroyed by family members who would stand to gain under an earlier Will or the intestacy laws.

## **STORE THE WILL WITH YOUR LEGAL ADVISORS SAFE DOCUMENT STORE**

Firms often have a secure, fire resistant strongroom where Wills and other important documents can be stored.

They may also keep scanned copies on their IT systems.

There may be a small charge for storing your Will although many firms now include this within the cost of the Will.

If you do this it may be worth letting your family members know where your will is kept.

## **REGISTER IT WITH THE NATIONAL WILL REGISTER**

In addition to storing the Will with your legal advisor, it is worth registering your Will with The National Will Register who keep a record of the existence of your Will and where it is stored. They do not have a copy of the Will, simply details of its location. When a Will is registered, a Certificate of Registration is issued to keep in your private documents to confirm that your Will is registered on The National Will Register. If your family or executors cannot find your original Will then, for a small fee, they can search the database after your death and will be told if a Will was registered and where it is held.

Will Registration is not compulsory but is higher recommended to ensure, should your legal advisors shut down, change their name or move premises the Will is not lost.

## **LODGE AND STORE THE WILL WITH THE PROBATE SERVICE**

Your original Will can be lodged with the Probate Service. The document would be stored at the Records Keepers Department at the Principal Registry in Holborn, London, and a record placed on the register of Wills maintained by the Court. In return, you get a certificate of deposit.

After you have died, your family or executors need to apply to the Probate Registry of the High Court for a Grant of Representation; this document lets them administer your estate.

Whenever an application for a grant is submitted to the Probate Registry, a search of the Court's register of Wills is made; this would reveal your Will and means that the estate cannot be administered except in accordance with the terms of your Will.

However, the procedure for storing your Will with the High Court can be cumbersome, and retrieving it from storage is likewise not necessarily straightforward. You can lodge the Will in person or through the post, but in both cases a strict procedure must be followed, or the application will be rejected. The Court currently charges a fee of £20 for depositing a Will and this fee is also payable if you wish to lodge any new Wills at a later date. There is no fee to collect the Will from the High Court

but it can only be picked up by you or, after your death, by your executor with the original certificate of deposit.

Please note that the Court will not store a letter of wishes with your Will, so this would need to be kept safe somewhere else.

Once the Will has been lodged you will receive a certificate of deposit. This must be kept safely as the original certificate is required when you or your executors wish to collect the Will.

The information contained in this guide is meant for information purposes only and you should seek your own legal or professional advice where applicable.

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