

**GUIDELINES
FOR MAKING
A WILL**

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WHY YOU SHOULD MAKE A WILL

Roughly 70% of everyone who dies in the United Kingdom today will not leave a Will. The reasons why you should make a valid Will are many and just a few of those reasons are as follows:-

- (a) In making a will you ensure that you benefit those you wish to benefit. If for example you are separated from your spouse but not divorced, if you do not make a will they will benefit under the Intestacy Rules.
- (b) If you make a will you can be certain as to the destiny of your assets otherwise your estate will be distributed in accordance with the Intestacy Rules which are outlined below.
- (c) Making a will may well give you peace of mind to know that you have ensured that those you wish to benefit receive their entitlement and they too, after your death, will appreciate the fact that you have made the will rather than leaving matters to the arbitrary Intestacy Rules.
- (d) If you have a young family you may wish to ensure that Trustees are appointed to look after your assets until your children are entitled to those assets absolutely on reaching the age of 18 or a later date and that those Trustees are able to use the assets during the minority of your children to look after them financially.
- (e) In your will you can appoint guardians for your children who have custody of your children after your death until they reach the age of majority.

WHAT HAPPENS IF I DO NOT MAKE A WILL (THE INTESTACY RULES)

This depends upon what dependants and relatives you may have. Under current Intestacy Rules if you die without making a will your estate will be disposed of according to the following rules.

- (a) If you have a spouse (and this expression includes civil partner in this Guide) and children and the estate is worth £250,000 or less the spouse receives everything.
If the estate is worth more than £250,000 your spouse gets the first £250,000 and a life interest in half the rest of your estate together with all household contents and personal effects. Your children receive equal shares in half the estate above £250,000 and equal shares of the remaining half when your spouse dies.

- (b) If you have a spouse but no children the estate is worth £450,000 or less your spouse receives everything.

If your estate is worth over £450,000 your spouse receives the first £450,000 and half the rest of your estate and all household contents and personal effects. If your parents are living they get half of your estate above £450,000, but if they are not living your brothers and sisters, if you have any, get half of your estate above £450,000. If you have neither parents nor brothers or sisters (or their children) living your spouse receives all of your estate.

- (c) If you have children but no spouse your children share your estate equally between them.

- (d) If you have neither spouse nor children the whole of your estate will pass to your closest relative in the following order of precedence:-

- (i) Parents
- (ii) Brothers and sisters of the whole blood
- (iii) Brothers and sisters of the half blood
- (iv) Grandparents
- (v) Uncles and aunts of the whole blood
- (vi) Uncles and aunts of the half blood
- (vii) If you have no relatives everything goes to the Crown.

HOW TO MAKE A WILL

Making even the simplest of wills requires expertise and therefore you should consult us on the preparation and completion of your will.

The best way to give this firm instructions to prepare wills for you is to arrange for a meeting with one of our solicitors to discuss your requirements.

Prior to that meeting we can supply you with a questionnaire and if you complete the questionnaire fully this will assist us in taking instructions.

Generally you should consider:-

- (a) What you own and how much it is worth.

You should list and total all the assets and the property which makes up your estate e.g., your home, car, valuables, investments, insurance death benefits, any business interest etc.

- (b) You should consider who you wish to benefit from your will.
- (c) You should consider who you should benefit (if, for example, you have dependent relatives, if you fail to benefit them in your will the law gives them a right to apply to your estate for reasonable provision).
- (d) You should consider your present circumstances and not what may happen in the future. Remember that until your death you can change your will at any time. You should review your will every five years or earlier if your personal circumstances change before then.

THE WILL

EXECUTORS AND TRUSTEES

Executors are the persons appointed to look after the estate of the deceased. An executor appointed by the will does not have to accept the office and can either renounce the executorship or decide not to act initially but to reserve their right to do so during the period of the administration of the estate.

Once an executor has obtained a Grant of probate either by themselves or with another then they are appointed for the remainder of their life. The role of executors is to establish what is comprised in the estate, pay any debts or taxes due and then ensure that the provisions of the will are carried out. Once all the debts in respect of the estate has been paid and the assets distributed in accordance with the will the period of administration is completed.

It may be that the will sets up a trust or a trust is imposed by law for instance where children are under the age of eighteen. If the will provides for ongoing trusts then the executors will automatically become trustees of the ongoing trusts unless you specify otherwise. Trustees do not have to be the same people as the executors but in general your trustees should be chosen for the same reason as your executors i.e., because they are trustworthy and have some experience in financial matters.

Once the executors have completed the administration they can resign and appoint trustees as their successors. However during the period of administration they cannot resign and they cannot themselves appoint substitute executors. Thereafter the trustees will own the assets but can only use them for the benefit of the beneficiaries. They have a long term commitment to look after the trust assets. Although many of the tasks referred to in your will are those which will be undertaken by the executors, from the point of view of clarity the person administering your estate and any subsequent trust are referred to throughout as Trustees of your will.

TYPES OF GIFT

- (a) **Specific gifts of cash or specific items.** Such items will be paid in priority to your residuary estate. If you wish to make cash gifts then please specify the full names of the beneficiary and the amount you wish to pay to them. Remember that the beneficiary will receive precisely the amount specified in your will and if your estate is likely to bear Inheritance Tax you should specify whether the gift is to be subject to Inheritance Tax or free of Inheritance Tax. You should also clearly describe the gifts of any chattels you wish to make, any of your personal possessions not specifically given will fall into residue and will pass under the gift of your residuary estate.
- (b) **Your residuary estate** This is all that you own except jointly owned property and gifts referred to above less any debts payable by your estate and the costs of your funeral.

THE MIRROR WILL

The mirror will classically provides for the estate of the first spouse or partner to die to pass to the survivor. The idea is then that if the will of the survivor is not revoked or amended that the estate of the survivor would then pass to your children (or whomever you wish to benefit) if more than one in equal shares.

If one of your children dies before the survivor of you leaving in turn their own children then those children would take the share that their parent would have received equally per stirpes. This expression means the distribution “by stocks” i.e. by descent according to the branches of the family tree. To give an example if you had two children and one of them predeceased you leaving three children then each of those children (your grandchildren) will receive one sixth of residuary estate. Unless an age is specified in this section those beneficiaries would be entitled absolutely to their interest in your estate on reaching the age of 18 years.

You may wish to give us instructions as to what you would wish to happen to your estate if all the nuclear family i.e., husband and wife and children were all to perish together. If you do not make a provision for this then your estate will pass under the Intestacy Rules which have been discussed above.

You may wish to prepare a Memorandum of Wishes addressed to your trustees setting out how you would wish your trustees to exercise their extensive powers to benefit

your children. This is simply a framework of ideas you may wish to include in such a Memorandum which is not legally binding upon your trustees but gives them guidance as to how they exercise their legal powers as trustees. It can take the form of a letter addressed to your trustees and placed with your will.

Mirror wills are not “mutual wills” and we do not recommend that our clients prepare mutual wills.

SIGNING YOUR WILL CORRECTLY

Making sure that the will or codicil is properly executed, i.e. that it has been signed by the testator (the person making the will) in the presence of the witnesses, is very important. The following notes describe the correct way to ensure that the will or codicil is valid and properly executed and should be followed in cases where the will is not signed here at our office, but when the will has been sent to you for signature. Failure to follow the correct procedure will mean that your will or codicil may be wholly or partly invalid.

- You must have two adult witnesses. No beneficiary or executor (or anyone married to a beneficiary or executor) should be a witness. Witnesses do not have any right to see what is in the document unless you choose to show them.
- When you are ready to sign the will and the two witnesses are present, first date the document where indicated at the end and on the frontsheet.
- Then sign your name in the presence of the two witnesses and ask them to sign and write their names, addresses and occupations at the end of the document where indicated. All of you must be present while each of you is signing.
- If any amendments are necessary it is best to return the document to us for alteration. If there are any very minor amendments, or, if for any reason it is impractical to return it to us, the amendments should be made in black ink before it is signed. They must then be initialled by you and both witnesses. No alterations should be made after the document has been signed.
- After the document has been executed, please send it back to us. Do not attach a paperclip or anything to it. We will check it and send you a copy, retaining the original here (unless you give us express instructions to the contrary).

If you are concerned in any way about signing your will correctly please get in touch and we will be happy to give you all the help and assistance we can.

If you have not returned the executed will to us within 28 days of our having sent it to you for execution, we will assume that you have either not executed the will or that you intend to keep the executed will.

FUTURE CHANGES TO YOUR WILL

You should realise that, if, after executing your will, you marry (or remarry), your will would be automatically revoked, unless the will had expressly stated that it was made in contemplation of marriage. If you divorce, gifts made in your will to the former spouse will then be ineffective and any appointment of the former spouse as an executor or trustee will lapse. It is recommended that you seek advice if any of these matters arise to establish whether any action is needed.

Other changes in your personal circumstances or changes in the law may affect the appropriateness or the effectiveness of the provisions of your will. We do not review the terms of your will after it has been executed, unless you ask us to do so. If you ask us to do so, there will be an additional fee for this service.

THE STEP PROVISIONS

We can provide you with a copy of the standard provisions of the Society of Trust and Estate Practitioners together with a commentary on them. These will be included in your will and you are referred to the purpose of the standard provisions in the commentary which explains why we recommend that this is done.