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Making a Will

A Guide

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INTRODUCTION

Putting in place arrangements for what happens to your estate after your death is a sensible step for the future security of your family. It also ensures that your wishes will be carried out in the way you want them to be.

Taking steps that will enable trusted friends or advisers to manage your financial affairs and to arrange your estate in a tax-efficient way is a wise move.

This guide to making a will is designed to highlight some key points.

Everyone is different, so it is essential to seek legal advice tailored to your personal circumstances. If you would like to discuss these issues in more detail, please contact us.

WHY MAKE A WILL?

Writing a will is one of the most important personal and financial decisions we make in our lifetimes.

While it is never too early to make a will, far too many people leave it too late. According to 2012 research by unbiased.co.uk, more than 28 million of the UK adult population (58 per cent) are currently without a will.

Failing to make a will means that you have no control over what happens to your estate and that on your death it will be distributed according to the laws of intestacy, which may produce an outcome very different to what you would have wished. There is a common misconception that the intestacy rules leave everything to a husband or wife, which is not necessarily the case.

Regardless of your financial status, a will allows you to decide who will benefit from your money, property or possessions when you are no longer around.

Some other key reasons why it is important to make a will are listed here.

- Partners who are unmarried or not in a civil partnership cannot inherit from each other unless this is specified in a will. If one partner dies, this could cause serious financial problems for the other.
- If you have minor children, a will allows you to put in place arrangements for their future care if either one or both parents die.
- Your will can help you pass on your assets in the most tax-efficient way and mitigate inheritance tax.
- Your will needs to reflect changes in your circumstances. For example, if you have separated and your former spouse or civil partner lives with someone else, you may not wish them to benefit from the automatic inheritance they are entitled to under the laws of intestacy.

WHY USE A SOLICITOR?

The best way to make a will is by working with a solicitor. By doing so, you will have peace of mind that you are dealing with a legal professional who will draft a will that sets out your wishes in a legally compliant and tax-efficient way. You also have the reassurance of knowing they are trained and regulated.

Of course, you can make a will yourself, but it is all too easy to make mistakes. Any errors can cause problems after your death, which can be time-consuming and costly to sort out, reducing the value of your estate for your beneficiaries.

Common errors include not being aware of the requirements to make a will legally valid, or to validate any changes, or of the effect of a divorce or dissolution of a civil partnership on a will.

There are also rules that enable dependants to claim from an estate if they believe they have not been adequately provided for, which could lead to your will being overturned.

Will writing services are available but the sector is, as yet, unregulated. This means that anyone can offer to give advice about drawing up a will, without necessarily having any particular training, expertise or insurance cover.

WHAT DO I NEED TO DO?

You will almost certainly already have an idea of what you want to say in your will and it is a good idea to give this some serious thought before you see your solicitor. Doing so makes it easier for your solicitor to draw up the will, and reduces the time and costs involved.

Some issues to consider are set out here:

- How much money and other assets you have? This will include property, savings, occupational and personal pensions, insurance policies, bank and building society accounts, shares and valuable items such as antiques or jewellery. It will also include your business assets.
- Who do 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. You also need to consider whether you wish to leave any money to charity.
- Who should look after any children under the age of 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.

Working with you, your solicitor will draft a will that sets out your wishes regarding the distribution of your estate to your beneficiaries. Your solicitor's experience and knowledge will allow them to identify potential problems and advise you on ways to resolve them.

Because of their specialist expertise, they will also be able to advise you on drafting your will in such a way to minimise your liability to tax now and after your death.

HOW CAN I USE MY WILL TO PAY LESS TAX?

On your death, inheritance tax is levied at 40 per cent on your estate above an allowance known as the nil rate band – currently frozen at £325,000 until 2018 – so forward planning is essential.

A tax-efficient will is a key tool in this process. Your solicitor will review your estate, including all your personal and business assets, and explore tax-minimisation opportunities.

This may include advice on:

- first death discretionary trusts and IPDI (immediate post-death interest) trusts
- maximising business property relief and agricultural property relief
- maximising the tax benefits from any pension lump sums
- minimising or eliminating the tax consequences of holding life policies
- the spouse exemption and the charity exemption
- lifetime gifts and
- tax-efficient investment.

WHO SHOULD I APPOINT AS AN EXECUTOR?

Executors are the people responsible for carrying out your wishes and for sorting out the estate through probate, the legal process of distributing someone's assets after their death.

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

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 the responsibility for administering the will after a death. The people most commonly appointed as executors include relatives, friends and solicitors.

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.

Because the role of executor places a considerable responsibility on the person involved, it is worth considering whether your solicitor should carry out this role, rather than a relative or friend. Your solicitor will have extensive experience in acting as an executor, which can make the process easier and quicker, as well as relieving your loved ones of a difficult task at a stressful time.

If an executor dies, any other surviving executor or executors can deal with the estate.

WHAT HAPPENS IF THERE IS A DISPUTE OVER THE WILL?

A death can sometimes lead to disputes. For example, a relative may feel that they have been inadequately provided for in the deceased's will and the resulting disagreement may lead to a will being challenged.

Your solicitor will be able to use their experience in this field to resolve probate disputes, taking an objective view of the issues and using their professional skills and knowledge to find practical solutions and satisfactory outcomes.

Making your will with a solicitor can help to avoid many issues that could potentially give rise to a dispute and ensure that it is legally compliant.

WHAT DO I DO ABOUT MY WILL IF MY CIRCUMSTANCES CHANGE?

When a will has been made, it is essential to keep it up to date to take account of changes in circumstances. It is also advisable for you to review the contents of your will regularly to make sure that it still reflects your wishes.

The most common changes of circumstances that affect a will are:

- getting married, remarried or registering a civil partnership
- separating, getting divorced or dissolving a civil partnership
- the birth or adoption of children.

And if you have inheritance tax issues you should review your will every couple of years anyway, as the law is constantly changing.

The only way you can change a will is by making a codicil or by creating a new will. You cannot, for example, make handwritten amendments to an existing will.

Your will should begin with a clause stating that it revokes all previous wills and codicils. Revoking a will means that the will is no longer valid. The old will should be destroyed.

LOOKING AFTER YOUR WILL

Once your will has been made, it should be kept in a safe place. There are a number of places where you can keep a will, including your home or bank. Most commonly, your solicitor holds it in safe custody.

To find out more about how we can help you, please contact us:



Jeffrey Cohen

Jeffrey is Head of the Private Client department of Mackrell Turner Garrett's London office.

Jeffrey is a highly experienced private client lawyer and focuses on all aspects of private client law, wealth management, tax and trust law including estate and inheritance tax planning. He is also experienced in drafting wills, probate administration, establishment and running of trusts including charity trust foundations, court of protection work, powers of attorney and offshore tax planning.

In 2013, Jeffrey was recommended in the Legal 500 directory of legal services providers. In it he "is recommended for his experience in Inheritance Tax and Capital Gains Tax."

Graduating from Kings College London in 1983 with an Honours degree in Law, Jeffrey completed a Masters Degree from Jew's College, London University in 1989. He trained at Gershon Young Finer & Green (now Finers Stephen Innocent), qualifying in 1986.

Jeffrey was made a partner at Gershon Young Finer & Green, before moving to Davenport Lyons as a partner in 2001.

Jeffrey is a member of the Society of Trust and Estate Practitioners (STEP) and is often asked to speak on trusts and tax planning. He is also a qualified Rabbi and takes a leading role in The Federation of Synagogues.

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