

The Importance of Making a Will



Why You Should Make A Will

There are many reasons for making a Will, some of which are more important than others depending on individual circumstances.

The most important reason why you should make a Will is so that your individual wishes as to how your property (meaning all your assets and not just the 'house' you own) is to be distributed on death.

Jointly owned property, such as Bank Accounts and your home, will automatically pass to the survivor on the first death. However, on the death of the survivor a Will is required to distribute the entire Estate.

A Grant of Probate will be required in relation to any assets that are in the deceased's sole name.

Probate is an Order obtained from the Court by the **Executors** of the Will to authorise them to collect in the Estate and distribute it in accordance with the terms of the Will. In other words, to carry out your wishes.

If a person leaves a Will they are described as being **Testate**. If a person does not leave a Will then they are described as being **Intestate** and an **Intestacy** arises. Similarly, if a person dies leaving a Will but, for example, has not dealt fully with the distribution of the Estate then this gives rise to a **Partial Intestacy**.

On an Intestacy the Estate of the deceased is distributed in accordance with fixed rules laid down by the Government and depends on whether the deceased was married or in a civil partnership and whether there are any children of the marriage/civil partnership.

For example, if a married person dies (without leaving a Will) and is survived by his wife and children, then the wife would receive a Government authorised legacy of £250,000 and the personal possessions. What is left over is known as the **Residue**. The spouse would also receive a life interest in half the **Residue** – this means that the spouse would be entitled to the income for life from one half of the balance of the estate. The children are entitled to the other half of the **Residue** and to the remainder in that half in which the spouse enjoys a life interest (i.e. they are entitled to the income from that half if the wife died). Problems can arise in relation to the house if it has to be sold to satisfy the amount due to the children.

If a married person dies (without leaving a Will) and is not survived by any children but is survived by other relatives such as parents, brothers and sisters etc then the wife would receive a legacy of £450,000, the personal possessions and a life interest in half of the Residue. The remaining half of the Residue, together with the remainder of the Residue in which the spouse enjoys a life interest once that wife has died, passes to the surviving relatives.

If a couple are living together unmarried (and not in a civil partnership), then under the **Intestacy** rules the survivor gets nothing. He or she can, however, apply to the Court for an award under the Inheritance (Provision for Family and Dependants) Act 1975. The procedure is nevertheless difficult and expensive and the outcome uncertain.

Sadly these days many people survive their last known relatives. If there is no Will and no close relatives then the Estate passes to the Crown. What a missed opportunity this would have been to leave a gift to your favourite Charity. (N.B all charitable gifts are free of Inheritance Tax!)

Further, if there are known to be relatives but their whereabouts are unknown, thousands of pounds could be spent searching for missing relatives. This has become a minor industry for agencies undertaking this task.

One in three marriages ends in Divorce but the marriage rate is not going down. This is because of the number of second or third marriages. Marriage/Divorce is important in relation to Wills for a number of reasons. Firstly Divorce, but not Separation, revokes (cancels) gifts in favour of former spouses in a Will and appointment of the spouse as **Executor** (the rest of the Will remains valid). Secondly, on subsequent marriages there are often two families to think about. In this instances, if property is jointly owned the children of the deceased would have to rely on trust in relation to receiving anything from their deceased parent's Estate.

Property can be owned as Joint Tenants or as Tenants in Common. Usually a husband and wife own the property in their joint names as Joint Tenants. As explained above, this has the effect of automatically passing the jointly owned property to the survivor.

With a Tenancy in Common the property is still in joint names but each spouse has a distinct interest, which can be left by a Will so does not automatically pass to the survivor. In this way, everyone will be happy and hopefully there will be no aggravation for the surviving spouse from the family of the deceased.

A Will for each spouse can easily accommodate this problem by using a Tenancy in Common in relation to the home (see our Leaflet 'Joint Ownership of Property').

A Few Other Points on the Benefits of Making a Will

1. Most Charities receive the bulk of their income.

If you have an Estate valued in excess of £325,000.00 it would be liable to Inheritance Tax at 40%. Charitable gifts are exempt and therefore tax can be reduced or avoided altogether.

2. Legacies could be left to favourite nieces, nephews and godchildren etc.
3. Bequests of family heirlooms can be made to individuals. Otherwise these things would be sold and converted into cash.
4. Funeral arrangements can be made specifying burial or cremation detailing the form of service, the music and the priest to take the service.
5. **Testators** (the person making the Will) can express a wish as to who should be the guardian of their children should he or she and their spouse die together or if their spouse has already died.
6. Making a Will gives you the opportunity of appointing **Executors** to administer the Estate. The choice of **Executor** is very important if a minor interest arises under the Estate, i.e. a beneficiary is under the age of 18 and then the Estate will need to be administered by the Executors, in their capacity as Trustees, until the beneficiary comes of age. On an **Intestacy** you will have no say as to who may become the **Administrator** of your Estate. Further, if no Executors have been appointed in a Will there will be a delay and complication until **Administrators** can be appointed and the Estate safeguarded.



When you should make or change a Will

1. You should make a Will if you own property and if you are concerned as to the issues mentioned above.

Sometimes people say “why should I bother, I will be dead and gone, they can sort it out themselves”. This attitude is unfortunate and, indeed, selfish as it means those left behind may have to sort out what could potentially be a mess. As the Law Society say, “over two thirds of adults die without a Will causing a great deal of uncertainty at a time of heartache and distress”. Therefore there is no time like the present to Make a Will.

Some people have a morbid fear that if they even start thinking about making a Will, let alone signing one, they have written their own death warrant. There used to be a slogan “making a Will won’t kill you”.

2. As for changes, Wills do not have to be re-written each time you want to, for example, increase a legacy. A **Codicil** can be made instead which is a document which supplements the terms of an existing Will by adding to it, amending it or by revoking it in part and which is usually simpler and cheaper than a new Will. If you need to amend an address of one of your beneficiaries for example then again you do not have to make a new Will – simply make a note of the new address and we can place it with your Will.

Other reasons for regular review include changes in your own circumstances, i.e. birth of a new grandchild; death of a legatee and, most importantly, tax changes in the Budget.

It is important to remember that Wills are “not written in stone” and they should be reviewed regularly.

How to make a Will

1. The cheapest way to make a Will is to go to a Newsagent or Supermarket and buy a Will pack and do it yourself – fine, go ahead, but think of the consequences!

You may well be keen and competent on other aspects of DIY, plumbing for example. If you do your own plumbing and you do not do it properly you will have a leak and then you can employ a proper plumber to fix it.

With a homemade Will you will never know if you have got it right as you will not have a second chance to fix it.

As an example, someone made a homemade Will leaving a gift of “Uncle Joe’s shares”. There were many shares in the portfolio and only after a great deal of time and money was it discovered that Uncle Joe used to work for the Gas Board and the reference was to Gas Board shares.

2. There are professional Will Makers but they are not legally qualified and will not have the depth of knowledge and experience to be able to consider all the issues

mentioned.

3. We charge £100.00 + VAT for a straightforward Will (generally we consider this to mean a simple Will with two executors, a small number of legacies and residuary beneficiaries – probably not more than a couple of pages). For a more complex Will involving Trusts and Tax Planning and a considerable number of legacies, we are likely to charge more. For a 'Mirror Will' - Wills for husband and wife containing similar terms – we charge £150.00 + VAT for the two.

Our charges cannot be compared with those of Will Makers as we provide a personal interview with a professional with all round experience backed by Professional Indemnity Insurance if, unfortunately, anything should go wrong.

What to consider before making a Will

Please see our leaflet 'Making a Will'.

What to do next – Take the plunge!

Having completed this appraisal, strike whilst the iron is hot and make an appointment with your solicitor to make a Will.

At the appointment the extent of your Estate and your wishes in relation to it will be discussed. Matters such as the appointment of **Executors** and funeral arrangements will be considered.

The solicitor, having obtained a full picture of your affairs and considered the issues, will then prepare a draft Will. This will be sent to you for approval. Once this has been obtained a final version or as we say an 'engrossment' will be prepared. You will then be asked to come to the office where, having read through the engrossment, you will sign the Will before two witnesses. The signing can be arranged at home or in hospital as needs arise.

In relation to witnesses, they must not be a beneficiary under the Will (or a spouse/civil partner of a beneficiary under a Will) as their gift will fail (i.e. they will receive nothing) if they witness the Will.

We will send you a copy and retain the original Will in our strong room free of charge or send the original to you if that is your preference.



Where there is a Will there is a Way

To leave this world and head for the next knowing that your affairs are in order, those nearest to you are safeguarded and there is no doubt or uncertainty in relation to any issue – in other words peace of mind – from you having made your Will.

Call, write or email us on the contact details below to make an appointment today!

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