
Fact Sheet

Making or changing a Will

What is a Will?

A will is a legally binding document that is drawn up before a person dies which describes how property should be disposed of or distributed upon that person's death.

Who makes a Will

In order to make a will, you must be over eighteen and be mentally capable. You must also be aware of the extent of your property that can pass under your will and also the people that could benefit from it.

Why make a Will?

It is important to make a Will so that should anything happen to you, your financial affairs can be dealt with in accordance with your wishes, and your family and friends can benefit in the manner that you want.

A valid Will ensures that after your death, your affairs can be managed in a clear and unambiguous way, which reduces the stress for family members at a difficult time.

Make sure your estate goes where YOU want

Many assume that their estate will automatically go to their spouse or long term partner, this is not always the case.

Joint Assets – PROBABLY

Sole Assets – NOT NECESSARILY

If you are not married, your partner will not be entitled to benefit from your estate.

This could result in financial hardship, being made homeless and will also be extremely upsetting at what will already be a most difficult time.

No Will = No Choice

The Intestacy Laws will dictate how your assets are divided amongst your family members;



1. Surviving spouse and children

Where the net estate does not exceed the amount of the £250,000.00, the surviving spouse is entitled to the whole estate (no one else gets anything).

Where the net estate exceeds the £250,000.00 then: -

- the surviving spouse is entitled to what is known as the personal chattels (cars, jewellery, household goods, etc.. free of inheritance tax and costs;
- £250,000.00 plus interest payable on that sum from date of death;
- half of all that is left is held **upon trust** for the spouse for life and after the spouse's death this half share then goes to the children (or grandchildren). A trust means that the share, no matter how large, belongs to the trust fund and not to the spouse. The spouse only has the right to the income produced. This may cause acute problems if the main asset of the deceased's estate is the family house and could result in the surviving spouse having to share ownership of that property with the trust;
- the other half passes to the children (or children's children etc) or is held on trust for them until they attain the age of majority.

2. Surviving spouse and no children but leaving surviving parent(s) or siblings of the whole blood or their children

Where the estate does not exceed the £450,000.00, the surviving spouse is entitled to the whole estate.

Where the net estate exceeds the £450,000.00 then:-

- the surviving spouse is entitled to personal chattels free of inheritance tax and costs;
- the surviving spouse is entitled to the £450,000.00 free of inheritance tax and costs with interest;
- the surviving spouse is entitled to one half of the remainder absolutely (no trust this time);
- the surviving parent(s) of the deceased (equally if both alive) take the remaining half share. If neither survives, brothers and sisters of the **whole blood** are entitled equally between them. If there were any brothers or sisters of the whole blood who died before you then their children (or children's children, etc) take that share instead.

3. Surviving spouse and no children or parent(s), siblings or siblings children

The surviving spouse is entitled to everything (after taxes and costs are paid). No trusts are created.

Note if there are half brothers or sisters they receive nothing.



4. No surviving spouse but surviving children

The whole of the net estate passes to the children (or children's children, etc) or is held on trust until they attain majority.

5. No surviving spouse or children but surviving parents

The net estate passes to the surviving parent or parents (equally between them if both surviving)

6. No surviving spouse, children or parents but siblings of the whole blood and their children

Brothers and sisters of the whole blood (those sharing both parents) are entitled in equal shares, with the children of any brothers and sisters who have died before you getting the share to which their parent would have been entitled to.

7. No surviving spouse, children, parents or brothers and sisters of the whole blood and their children, but Siblings of the half blood

Brothers and sisters of the half blood (i.e. sharing only one parent) will be entitled in equal shares, with the children of any such brothers and sisters who died before you receiving the share to which their parent was entitled.

8. No surviving spouse or other relative specified above

The grandparents will be entitled and equally between them if more than one surviving.

9. No surviving spouse or other relatives as specified above, but uncles and aunts of the whole blood and their children

Uncles and aunts of the whole blood take equally between them, with the children of any uncles or aunts dying before you taking the share to which their parent would have been entitled.

10. No surviving spouse or other relatives as specified above, but uncles and aunts of the half blood and their children

Uncles and aunts of the half blood take equally between them, with the children of any uncles or aunts dying before you taking the share to which their parent would have been entitled.



11. No blood relatives specified above

If a person dies leaving no will and leaving no surviving spouse, issue or other relatives specified in the above categories, the whole of their estate will pass to the Crown or, if they died resident within the Duchy of Lancaster or the Duchy of Cornwall (belonging to Prince Charles!), the relevant Duchy will get all of the estate.

Making it easier for those left behind

A Will is basically a list of instructions setting out what a person wants to happen to their worldly goods following their death.

Some people also like to give a reason for their decision, e.g.

“My Mantle Clock to my good friend Annie Smith as a token of our friendship and in recognition of the support she has given me during my lifetime”

A Will can also include funeral wishes, especially useful if a person has no family and is relying on their executor to make their funeral arrangements. However, I would normally advise people to discuss their wishes with their family if they feel able to do so and sometime the arrangements are already made by the family before they consult the Will.

Finally, the Will puts someone in charge. The choice of executors can be important if for instance there is a large family involved, family rifts in existence or likely to happen, complicated financial arrangements to be dealt with or trusts created by the Will.

Under an intestacy it is the people inheriting the estate that are also responsible for administering the estate. This can cause complications where family members do not get on or if there are large numbers of beneficiaries as they are all equally entitled to deal with the estate and it can be a race to the Probate Registry.

Protect your children's interests

People with young children should make Wills if for no other reason than to specify whom should care for their children in the event of both their deaths.

With ever more complicated family arrangements and relationships, if you have stepchildren, they will not be included as beneficiaries under the intestacy rules. Adopted and illegitimate children are now included however.

People with children from a previous relationship may wish to ensure that their new partner cannot “disinherit” their children from the previous relationship. This can be achieved with careful Will planning and drafting using Trusts.



Tax

Despite the introduction by the government of the transferrable Nil Rate Band Inheritance Tax Allowance, Wills still have a part to play in ensuring that Inheritance Tax is minimised.

This might be in ensuring that other allowances, such as Business Property Relief or Agricultural Relief are used to best effect.

Depending upon circumstances, if a client has been widowed and remarried provisions can be made to protect up to 3 Nil Rate Bands.

Asset Protection

Many older clients need advice on protecting assets against means testing, for Care Home fees as an example. Wills can be used to assist in this in some circumstances by creating Trusts upon the first death rather than allowing the whole joint estate to pass to the survivor.

Such Trusts can also be useful for protecting the inheritance of children from previous relationships or even from the possible future remarriage of your current spouse/partner.

Why change a Will?

Provided your Will has been properly thought out and prepared accordingly, you should not need to make a new Will for several years. However, there may be circumstances where it will be necessary to review the effect of your Will and, if necessary, to update it. For example:

1. **Marriage or Divorce**

If you have married since making a Will then this revokes your previous Will and so you will need to make a new one. On divorce, your ex-spouse, if mentioned in your Will, is treated as if they died before you and so will be excluded from benefiting from your Will. However, if they are appointed as an executor then they may still be involved in the administration of the estate.

2. **Children or Grandchildren**

You may have children or grandchildren and you may wish to include them in your Will and consider appointing guardians for your minor children.

3. **People Dying**

It may be that a family member has passed away. It is important to check that your Will provides for the gift to be made to a different beneficiary of your choosing.



4. **Family Disputes and Divorces**

Sometimes family members fall out with each other or there is a divorce. As a result you may not wish people to benefit under your Will or may wish that they benefit in a different way. Family changes may not just affect the beneficiaries under a Will but also who administers a Will and new Executors may need to be appointed.

5. **Finances**

Since making your Will, you may have come into more money and as such you may wish to change the provisions of your Will to reflect this. The finances of your beneficiaries may also change. For example, if your Will provided that your estate should be split equally between several children, but one child has recently come into money and will not require financial assistance then you may choose to alter your Will so that your Estate is divided between the less well off members of your family. Similarly, if one of your beneficiaries is facing severe financial hardship you may wish to alter your Will so that they stand to gain more than other beneficiaries.

It may be the case that your assets change. You may have a different or an additional property, or more savings and investments for example. Similarly there may be assets that used to form part of your Estate but do not anymore.

6. **Specific Gifts**

You may have provided in your Will that a specific item was to go to a named individual on your death. If that item no longer forms part of your Estate then the gift cannot be made. That person may then not receive anything under your Will, which may be contrary to your wishes.

If your personal details or those of your executors or beneficiaries change such as their name or address, you do not have to alter your Will. Instead, you need to place a letter confirming the changes with your original Will so that your executors are aware of this change when the time comes. Alternatively, you can change the details in the Will if you wish when updating your Will.

How to make or change your Will

If you would like to make a new will or change it, then please contact **Emma Harrison** and we will be happy to provide you with a quote for doing this.

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