

# A guide to making a will

## Why it is important to make a Will

Making a Will and keeping it up to date is one of the most important actions you will ever take. A Will ensures that all those you want to help - family, friends and charities - benefit from your generosity.

Without a valid Will, you are placing the security of those you love at risk. It is very unwise to rely on information about Wills and inheritance that you *think* is accurate. You need to find out the facts as they relate to your circumstances.

Think of making a Will as a form of insurance. It enables you to make decisions as to how you want to dispose of your possessions, including property, for the benefit of your family, friends, carers, neighbours, and also include any organisations and charities you admire and respect. Without a Will, you leave everything to the rules of intestacy, chance and possibly the Inland Revenue.

It is only by making a Will that you can ensure that your wishes will be carried out. For example, you will be able to ensure that your wife/husband receives everything you intend them to. A Will can also ensure that an unmarried partner inherits. It can be used to appoint a guardian for your child(ren) under 18. Children and grandchildren can be included to ensure that they receive the particular gifts you intend them to receive. Without a Will, none of this may happen.

When a family member is affected by disability, and is unable to handle their own financial and legal affairs, consideration needs to be given to establishing a Trust in your Will. Without such provision, an application may have to be made to the Court of Protection to appoint a receiver to manage the affairs of this family member. This can cause delays, and will involve expense in fees payable to the Court.

Including a Trust in your Will can ensure that you protect the benefit entitlement of your family member, and thereby guarantee continuity and security of care. It can also ensure that you make provision for "extras" that you want your family member to have. These can include things like holidays, and particular, equipment to enhance their quality of life. See our factsheet 'Setting up a trust for a disabled family member'. To get a copy pls call KIDS on 020 7359 3635.

## When is the right time to make a will?

Generally, it is best to make your Will sooner rather than later. Ideally, the perfect time is when you are well, happy and free from any pressure or influence. Remember, making a Will is not the sole province of the ill or the elderly.

As a rule, it is advisable to consider drawing up your Will as soon as you fall into one of these categories:

- You buy a property. Indeed, as soon as you have any assets which may include property and when you know that you would like particular people, organisations and charities to benefit in the future.
- As soon as you have children (you can appoint Guardians under your Will) or grandchildren.
- Upon marriage or remarriage (marriage invalidates previous Wills).
- Upon divorce – who should now receive the gifts you had intended for your former spouse? It is important to note that divorce does not automatically revoke a Will.
- If you are living with someone as husband/wife but are not married. They cannot inherit from your estate unless you include them in your Will.
- If you receive an inheritance/windfall/lottery win which could now affect your estate's liability to Inheritance Tax.

## **How do I write a Will?**

The law lays down strict rules as to how a Will must be drawn up. If a Will fails to meet any of the legal requirements it may be declared invalid and therefore fail to meet the intentions of the deceased.

To make a valid Will you must be over 18 (though there are exceptions) and be of "sound disposing mind". Being of "sound disposing mind" means that you are legally capable of understanding the effects of drawing up a Will. Without this requirement you will not have testamentary capacity but you can still have a valid Will. However, it must be drawn up by the Court of Protection and this is called a statutory Will.

It is extremely important that your Will is drawn up to accurately reflect your intentions, duly signed and witnessed.

DIY or Solicitors? For some people, using a DIY Will form or consulting Will making Companies who are not legally qualified works fine. Be aware though that one mistake in the wording may invalidate the whole will. There is currently no regulatory body overseeing levels of service so "caveat emptor" (buyer beware) applies.

Consulting with a qualified solicitor who specialises in drawing up Wills however gives you the peace of mind knowing that you have had expert legal, taxation and inheritance planning advice. Contrary to opinion, fees of making general family Wills are not exorbitant and often fixed by the solicitor.

Whichever decision you make, ensure that the executor (these are the people you appoint to carry out the terms of your Will) of the will is either a trusted family member or friend, or a qualified solicitor.

The administration required to deal with your estate after your death also needs consideration as there will probably be some costs involved. Some solicitors will negotiate a fixed percentage fee from the estate in order to pay for the execution of the Will and deal with all matters of probate after your death, this will be written into the Will. Remember you have a choice and do not have to agree to any 'fixed' costs. It is a good idea to ask about these costs before going ahead with any Will.

We suggest that when you contact a few firms and ask them the following questions that are appropriate to your circumstances:

- What is your usual fee for a straightforward Will (try and fix a fee beforehand if possible)?
- What is the name of the solicitor I will be seeing if I consult you?
- Do you do Legal Aid work (you may be entitled to some help)?
- Do you do home visits (if you find it difficult to travel some solicitors are able to visit you)?

## **Inheritance tax**

Inheritance tax (IHT) is the tax payable on the estate you leave. IHT is only payable if the total value of your estate is higher than £312,000 (2008-09 figure) or £624,000 for married couples. This is generally referred to as the threshold. This total includes gifts made over the previous 7 years although there are exceptions to these gifts such as those to your spouse and charities.

If your estate is less than £312,000 you pay no inheritance tax. The tax is payable only on the amount over £312,000. The current rate is 40 per cent.

For those who have an estate over the IHT threshold it certainly pays to think carefully about planning your estate to maximise your beneficiaries legacy.

Strategies to minimise IHT may include making eligible gifts over time to your spouse or family, or where you have a partner, ensuring that the assets are not all in one person's name. Speaking with an accountant or solicitor who specialises in estate planning now could save your estate thousands later.

NB: Leaving a gift to charity in your Will is tax free, regardless of whether your estate is over the IHT threshold. This means the charity receives 100% of your gift rather than letting the chancellor have 40%. The gift is also not included in the total of your assets for tax purposes.

## Checklist

Before you begin the process of actually making your will or seeing a solicitor it is a useful exercise to write down answers to a few simple questions e.g:

- Who do I want as my executors (these are the people you appoint to carry out the terms of your Will)?
- Who do I want to leave my estate to and in what proportions?
- Will I leave a gift to any charities?
- If I become incapacitated as a result of illness or accident who do I want to look after my affairs (appointing a person who has power of attorney)?
- What are my assets (write a list of all that you own i.e.: shares, property, jewellery, household items, insurance policies) and liabilities?

## Leaving a legacy to KIDS

If you wish, it is possible to leave a legacy to KIDS and any bequest would be tax-effective i.e. it is not liable to inheritance tax.

A legacy to KIDS would help to ensure that we can continue to support Disabled children, young people and their families for years to come and expand our services to reach even more families who currently do not have access to KIDS services, creating a lasting legacy.

## Jargon guide

Like all areas of the law, estate planning carries with it words which are not in common everyday usage, and to confuse matters more those that are often have a specialist meaning when it comes to wills. Here is an explanation of some of words and phrases you may come across:

**Testator:** this is the person making the Will i.e. you.

**Beneficiaries:** i.e. all those people, organisations and charities you wish to benefit under the terms of your Will. Beneficiaries can also be referred to as Legatees.

**Executor(s):** these are the people you appoint to carry out the terms of your Will. It is usual to appoint two people, but you can appoint up to a maximum of four. Executors can benefit under the terms of the Will.

**Witnesses:** are two people who must be present when you sign your Will. They may not benefit under the terms of the Will, and neither can their spouses.

**Solicitor:** a professional person who meets the standards set by the Law Society and is qualified to undertake legal work including Wills and Probate. Solicitors are regulated by the Law Society.

**Trustee(s):** are those people who you appoint to carry out the intentions of any Trust included in your Will. If your Will includes a discretionary Trust to provide for any family member who is not capable of managing their own affairs, Trustees will need to be appointed to carry out the terms of the trust. Usually the same people as the Executors, Trustees can benefit under the terms of the Will.

**Guardian:** the person(s) appointed under the terms of a Will to have physical custody of any minor child(ren).

**Codicil:** a legal document adding to, or altering, an existing Will. A codicil is used where only a minor change is needed and there is no need to make a new will.

**Court of Protection** - a division of the Supreme Court which exists to manage the affairs of those who are incapable of managing or administering their own financial affairs.

**Estate** - the total value of all the assets you leave when you die, after all debts, taxes and costs have been paid.

**Inheritance Tax:** this is payable if your estate exceeds the current tax threshold (£312,000 from April 2008). It can be avoided or reduced by leaving a legacy to a charity.

**Intestate:** if you die without a Will, the law declares intestacy and decides how your assets will be distributed, regardless of your wishes

**Legacy** - a gift of personal property made in a will

### **Specific legacy terms**

When you leave a gift to anyone in your will specific terms are used to describe the types of legacy:

**Conditional:** a gift conditional upon a certain event taking place.

**Discretionary:** where you allow your Executors or Trustees to choose who will benefit under your Will.

**Pecuniary:** a gift of money; if it is index-linked it will help retain its value.

**Residuary:** what is left of the estate after all other legacies, tax debts and costs have been paid.

**Reversionary:** a gift to someone for their lifetime and after their death to someone else or a charity.

**Specific:** a gift which is identified – i.e.: house, car, jewellery etc.

### **Useful links**

[www.lawsociety.org.uk](http://www.lawsociety.org.uk) – The Law Society's home page

[www.hmrc.gov.uk/cto/iht.htm](http://www.hmrc.gov.uk/cto/iht.htm) - HM Revenue & Customs guide to inheritance tax

**For further information please contact:**

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