

Explanatory Leaflet about making a Will

A leaflet referring to the law of England & Wales only which from time to time changes. In particular tax information changes annually. It is not a substitute for professional advice which is up to date and specific to your needs.

What is a Will ?

A Will is a document which comes into effect when you die in which you identify what you want done with your property after your death. In it you appoint individuals or a firm or a bank to be responsible for the administration of your estate in accordance with the terms of your Will. The Will document therefore needs to give them all the power they need to do this. It can minimise the effect of taxation, it can include express provisions about the disposal of your body and who you would want to be responsible for the guardianship of your minor children. In short, it enables the Will maker to clearly state the preferred destination of his or her assets.

Without a Will a set of statutory rules are imposed which effectively leave everything to your next of kin in a fixed order. For example, a spouse and children would share an estate exclusively if they survived you. The spouse would be entitled to a fixed statutory legacy and the remainder would be left in two trust funds partly for the benefit of the spouse and partly for the benefit of the children.

These fixed statutory rules do not provide for an unmarried partner, friends or charities you may have supported. In fact if you have no next of kin and do not leave a Will then the whole of your estate will go to the Crown.

These same statutory rules also require specific people to act as the administrators of your estate whether or not they have the necessary skills. This could prove to be traumatic if for example you have been married before and have adult children from your first marriage and are survived only by them and by children from your second marriage. All of them would be equally entitled to act as administrators in your estate. They may not even have met or communicated with one another.

What is involved ?

In order to prepare a draft Will for you to consider it will assist discussions if you can complete the client questionnaire provided with this leaflet as your personal status (for example whether you are currently married or whether you have been previously married), the nature of your family (for example whether you have any children and if so whether they are under 18); the needs of your family and any other dependents (for example a handicapped child or elderly relative) and the things you own and their approximate value (for example your home and whether it is owned by you alone or jointly with somebody else and if so how, your savings, other investments, jewellery and pension arrangements) affect the advice which will be given. It may also be that you have some significant debts, the most obvious being a mortgage. Again the nature of the debt and its value will affect my advice.

I have tried to keep the questionnaire as short as possible but please complete it fully before we meet so that I can give you the best advice to suit your needs.

Style & Content of your Will

Any Will has to identify clearly and correctly the person who; is making it and this would therefore include reference to any names by which you are known other than your birth name if you hold assets in the chosen name. In each Will **executors** are appointed. These are the people you choose to administer your estate. They are responsible for identifying the assets and debts, realising any assets to meet any debts and distributing any balance to your I chosen beneficiaries.

One person can act on their own as an executor but it is usually best to appoint two people or more to a maximum of four. This ensures that there will be a substitute in the event of one of the executors dying or being unable to act or if in your Will you are providing gifts to be managed for the benefit of other people (known as **trusts**) then the same people can continue to act as executors and **trustees**.

It is best to choose a business-like person to act as an executor. If you are going to appoint more than one it can be helpful if they are local to one another. It is possible to appoint a spouse or friends or relatives. You can appoint professional people such as a solicitor or an accountant or even a bank. Professional people will charge for the work but this would be little more than any professional would charge if appointed to act in the administration of the estate by your chosen executors. A lay person appointed as executor can claim their expenses but are not paid for the work they do although you can leave them a gift in your Will. Whoever you choose to appoint as executor should be asked if they agree and are willing to act before you appoint them.

After the executors have been appointed the gifts you want to make are usually included. Broadly speaking there are two main sorts of gift: specific gifts of money or items and the residue, i.e. what is left after specific gifts, any costs, tax and other expenses have been met. The residuary gift normally requires a careful description and can run to a number of clauses in which it is identified and then allocated to your chosen beneficiaries. The idea behind a residuary gift is to ensure that there is no gap in your giving. If there was a gap, i.e. you had assets left over after the provisions of your Will had been carried out, which have not been allocated to anybody else or no-one living, then the part of the estate that is left over would have to be administered in accordance with the fixed statutory rules that apply where you have no Will.

For these reasons it is important to have not only provision for a beneficiary to receive the residue but also a substitution in the event that they may have predeceased you.

Substitutionary gifts do not only have to apply to the residuary estate and you can provide for substitutionary gifts in relation to specific items. You can also make gifts to two people jointly so that if one of them has died the survivor would have your gift outright.

A favourite sort of gift is to make a **trust gift** which is where the trustees are managing the assets for the benefit of a group of beneficiaries. There are different sorts of trust but either you are specifying that a particular person or persons can have the right to the income on that fund while they are alive (for example) and then the capital will be disbursed to other beneficiaries when they have died or you can name a class of beneficiaries for example all your children and grandchildren and ask the trustees to exercise a discretion as to whether they accumulate the income or use it for the maintenance or other benefit of any of the beneficiaries at any time. However you might want to specify that when they reach a particular age such as 21 then they would have the right to their share of the capital.

I can be more specific about the type of trust(s) which might be appropriate for your estate once I have seen your questionnaire.

Other provisions which a Will may include are relating to the appointment of any guardians for your minor children and directions as to disposal of your body.

There will be a certain amount of jargon which is unavoidable. This is because to give your executors (and any trustees) the right powers to manage your estate effectively needs a set of administrative provisions. In a simple Will I might rely on the Society of Trust and Estate Practitioners administrative provisions which are designed to be reasonably comprehensive. In more complex estates I would need to identify the relevant powers required and set those out in the document. The sort of powers I am talking about are wide powers to invest properly, insure property and manage property all of which are restricted under the law unless they are expressly stated in your Will.

The law is complex and lawyers are aware of decisions by judges in cases where the wording of Wills has been interpreted, Human life and lifestyles are varied and the lawyer is trying to juggle previous interpretations of words with the wishes of the client. Simplicity is what I strive for but inevitably it may be necessary to include provisions which need some explanation because to simplify them would be in fact to prepare an inappropriate Will.

Estate Planning

A Will can help in minimising the impact of taxation on your estate. If you own substantial assets (and in some parts of the country owning a home can be significant) your estate may be caught by **Inheritance Tax**. This tax is predominantly a death tax payable on the value of your estate when it exceeds a specified sum which is often referred to as the *nil rate band*. The Government regularly reviews how much the nil rate band should be. Everybody is entitled to use their nil rate band and often the way a will is structured can make the most beneficial use of the nil rate band where the **testator** is married.

Although not payable on death **Capital Gains Tax** is another tax which is payable when assets are disposed of by either the executors or subsequently by trustees managing a trust fund created under your Will. The impact of capital gains tax might be reduced by different types of wording in your Will.

Finally, **Income Tax** is applied at different rates depending upon the type of gift you make in your Will. Professional advice to understand the differences is usually required.

The act of making a Will and considering the tax efficiency of it usually provides scope for a discussion as to whether any suitable lifetime tax planning can be undertaken now. It may be that actual gifts, perhaps into trust, could be undertaken now to improve the tax position on death. Even if this is impossible or impracticable in your circumstances then there may be other options such as taking out insurance policies to meet the liability, which could be considered.

The Process

Once you have completed the questionnaire with all the information and we have met to discuss it then I will produce a draft Will with explanatory notes on the terms of that Will. If you have any questions or second thoughts then this gives you the opportunity to raise them. Once you are happy with the terms then a fair copy of the Will is produced for your signature. There are some special rules concerning the signature of Wills and if they are not followed it will not be a valid document. Usually, therefore, it is best to arrange to call at the office so that I can explain the procedure and arrange for the correct execution of the Will.

If this is not possible then I would need to explain the procedure to you and be satisfied that you understand it. In any event I would recommend that you return the completed Will to me after it has been signed so that I can check it.

Once the Will has been completed then I will prepare a copy for you to keep at home and suggest you place the original in a safe location such as with your Solicitor or Bank until you want to alter it.

Once your Will has been completed you cannot make changes by simply altering it. If you wish to only make a few simple changes, like the alteration of one of the names of the beneficiaries or the amount of the sum of money you are leaving to a charity, then a document known as a **Codicil** could be used to explain and substitute the changes. It is treated in exactly the same way as the making of a Will.

If the changes you wish to make are fundamental then it is best to make a brand new Will. This avoids any misunderstanding between the wording of your original Will and any words you are substituting by Codicil. It also avoids embarrassment in that once you die and your executors obtain a **Grant of Probate** (the document which confirms their authority to administer your estate) your Will and any Codicil to it becomes a public document. It can be embarrassing for people whose original gift in your Will has been removed by Codicil to find this out. A new Will would mean they would never know that they have previously been provided for (unless of course you told them!).

It is vital that you take responsibility for reviewing your Will regularly. Since the law and taxation changes it is best to contact me to review it. It is particularly important to consider whether your Will needs altering when your personal circumstances change. For example, if

you get married or divorced or cohabit or separate. As a rule, it is sensible to check your Will every three years just to make sure it is still relevant and current.

Challenges to a Will

Certain people may not be provided for under your Will but may be dependant upon you at your death. If you ignore them or fail to make adequate provision for them they may apply to Court for a judge to order your estate to make specified provision for them. If you are aware of anyone who is reliant upon your financial support then it is best to tell me so that I can explain more fully about the rights that person may have acquired.