

PRIVATE CLIENT DEPARTMENT

GUIDE TO MAKING A WILL



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Introduction

Making a Will is one of the most important decisions a person can make. This guide aims to highlight the importance of having a Will drafted by a Solicitor and the points you need to consider to give instructions to your Solicitor.

What you can expect if you make an appointment with Hill & Abbott

We normally need at least two meetings. If you are unable to attend the office through illness or disability we are happy to visit you at home or in hospital. In the first meeting we will endeavor to collect as much information as we can about your personal and family circumstances. We will discuss your aims and advise you of the best way of achieving them. We will then prepare a draft of your Will and send it to you for your approval.

If your Wills are of the more complex type a further meeting may be necessary to go through the Wills with you and to take further instructions.

Once you are happy that your Wills accurately reflect your wishes a final appointment will be made. We will go through the Will with you and then you can sign it in front of your Solicitor and another member of our team.

Your Will can then be stored in our strong room for safekeeping free of charge. We recommend you review your Will on a regular basis and will always be happy to see you.

The dangers of having a home made Will.

You may not want to pay the costs of a Solicitor preparing your Will for you but the benefits far outweigh the costs.

1. There is a danger that the beneficiaries or the property are not described with sufficient certainty which may mean the gift is void or a court may have to determine the testator's intention. This will cause delay and greatly increase the costs of administration. It could also mean your estate or part of it will be dealt with under the intestacy rules.
2. The Will may not be executed correctly. This may render the whole Will or just a gift invalid.
3. If there is a claim against the testator's estate for example undue influence or lack of capacity, there will be little evidence to dispute these claims. If a Solicitor had drafted the Will there will be attendance notes to rely on.
4. If a Will is lost or destroyed you will be deemed to have revoked it. We offer free storage for Wills prepared by us so you can be sure that your Will is safe.
5. You may forget to review your Will if your circumstances change for example if you marry or have children. We endeavor to write to our clients to remind them its time to review your Will.

What assets pass under the terms of your Will?

Only assets held in your sole name pass under the terms of your Will.

If you have foreign property it is important to decide whether your UK will should deal with your world wide assets or whether they should be specifically excluded and dealt with under a foreign Will.

Joint property

Property held in joint names pass to the surviving joint owner by survivorship. The only exception to this is joint property held in joint names as tenants in common. If Property is held in this way it passes under the terms of your Will.

Other assets passing outside of your Will

Foreign Assets may do so if you have a Will executed where your assets are situated.

Life Policies and pension funds held in trust or specifically nominated.

Points you need to consider when making a Will

Executors/Trustees

Only four executors can prove a Will so it is advisable that the appointment is limited to four.

When deciding who to appoint you will need to consider the following:

- whether to appoint individuals or professional Executors
- their availability, suitability and willingness to act.
- Is there a possibility of conflict with each other or the beneficiaries.
- is there a likelihood that your appointed executor may predecease you. If this is the case a substitute appointment is recommended.
- The size of your estate and its complexity e.g. is there business assets or foreign property?

Funeral wishes

You can include your funeral wishes in your Will. This will avoid the possibility of dispute between family members. It is important that if you do include such wishes in your Will that you also inform family members of them.

Guardians

If you have young children it is important to appoint guardians in your Will to look after your children.

Any person with parental responsibility can appoint Guardians. The appointment will only come into effect if there is no surviving person with parental responsibility.

Example

Mother dies and appoints A as guardian of her infant children. Father survives so the appointment does not take effect. Father then dies and appoints B as Guardian. Both A&B's appointment will take effect. The Court can resolve any dispute.

Specific and Pecuniary Legacies

You may wish to make specific gifts of money or property in your Will. You will need to consider when the gifts should take effect. For example if your spouse survives you or predeceases you.

Residuary Estate

This is what is left after debts, taxes, administrative costs and funeral arrangements and specific/pecuniary gifts have been paid.

You can leave your estate to anyone you chose but when making decisions you will need to consider the following;

- Possibility of claims against your estate
- Are any of your beneficiaries vulnerable, disabled or on benefits? If so your will should provide for the assets to be held on a discretionary trust instead of given to them outright
- The extent and nature of your estate and the possibility of inheritance tax payable.
- Who do you want to benefit if your first named beneficiary predeceases you.
- Consider what property will not pass under the terms of your Will and who will receive it.
- If your beneficiaries are your children, are you concerned that they may not be mature enough to receive a large inheritance? Do you wish to ensure that it is held on trust until they are more mature? If so at what age do you want them to benefit?

What happens if you do not make a Will

Your estate will be dealt with under the intestacy rules

If the deceased leaves a surviving spouse and children:

Surviving spouse is entitled to personal chattels, a statutory legacy of £125,000 plus interest. The residuary estate is divided into two equal shares. The Surviving Spouse is given a life interest over one share with the capital held for the children. The other half is held on a statutory trust for the children.

If the deceased leaves a surviving spouse and no children:

Surviving spouse is entitled to personal chattels and a statutory legacy of £200,000 plus interest. The residue is divided into two equal shares. One share passes to surviving spouse absolutely. The other share will pass to the deceased's parents or to the survivor. If no parents are alive then to the brothers and sisters of the whole blood.

If the deceased leaves a Surviving Spouse or Civil Partner only:

Surviving Spouse/Civil Partner receives whole of estate.

Where there is no surviving spouse or civil partner the order of priority is:

Issue or

Parents or

Brothers and sisters of the whole blood or their issue or

Brothers and sisters of the half blood or their issue or

Grandparents or

Uncles/Aunts of the whole blood or their issue or

Uncles/Aunts of the half blood or their issue or

The Crown, The Duchy of Lancaster or the Duke or Cornwall

To arrange an appointment please contact :

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This fact sheet deals briefly with what is a highly complex subject. It should not be taken as complete, accurate or precise.

Full legal advice should be sought wherever a legal situation arises.

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