

A Guide to Making Your Will

Wills | LPAs | Probate

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Introduction

A Will is a legally binding document that comes into force on the death of the individual. You can change your Will as many times as you wish during your lifetime and we recommend you review it at least every five years to check it is still relevant. When making your Will there are a number of areas that you will need to consider.

Appointing Executors/Trustees

Executors wrap up your affairs and ensure that your wishes are carried out following your death. Most people can be appointed an executor as long as they are over 18 and have not been bankrupt. People often choose family or close friends until their children become old enough to act. The key is to appoint people you trust.

If you choose your husband/ wife/ civil partner as an executor you should also appoint a reserve. The maximum number of executors who can apply for probate is FOUR and it is recommended that you appoint at least TWO. Your executors can also be beneficiaries of your Will.

You can choose a Professional Executor and their fees will usually be paid from your estate. However this ties your family to using that executor and paying their fees. Therefore we generally advise on this ONLY if there are contentious or complex issues arising. Your executors can always choose to appoint a professional, following your death, if they wish to.

Appointing Guardians

In most cases both parents have parental responsibility (see note for unmarried parents) so Guardianship will only apply in the unlikely event that something was to happen to both of you while your children were under the age of 18. In choosing guardians you must give thought to who is most appropriate. You might consider parents but are they too old? Do you want your father to be guardian if something was to happen to your mother? Would you appoint your sibling and her husband/wife or just your sibling? What would happen if they were to divorce? If you appoint joint guardians they MUST live at the same address.

Note for Unmarried Parents: Where parents are unmarried, the father may not automatically have parental responsibility. The mother may give parental responsibility to the father by marrying him or naming him on the birth certificate (applies for births registered since December 2003, for births pre December 2003 the births will have to be re-registered). If the father does not have parental responsibility at the time of the death of the mother he will have to apply to the court. Alternatively the Mother must appoint him as the FIRST guardian.

Excluding Somebody in Your Will

Exclusions/Reduced Entitlement apply where no provision is made in your Will for a person that may have a claim on your estate. This can include a person who was financially dependent on you at the time of your death, e.g. an elderly parent who lived with you or an ex spouse, or somebody, e.g. a child, who may expect to receive an inheritance.

However, if you have deliberately excluded someone from your Will who may have a possible claim, it is advisable to hand write a note explaining your reasons for excluding them and store this with your Will.

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Specific Gifts

Specific gifts of cash or items of value (sentimental or otherwise) can be gifted in your Will to individuals, charities etc. If you wish you can state that a cash gift is to increase in line with inflation.

For smaller items it may be more appropriate to write a list, outside of your Will, that informs your executors who you wish items to go to. The advantage of this is you can make changes to your list without making changes to your Will. Your Will simply makes reference to the list informing your executors/trustees of its existence. However, the list is NOT legally binding and therefore we advise that gifts of high value or gifts of money are written in the Will.

Residue

The Residue is everything that remains in your estate after all debts and gifts have been paid. In addition to main beneficiaries it is also advisable to consider reserve beneficiaries i.e. who would benefit if all those in your Will die before or with you. Typically people choose other family or charity organisations. The share of residue that you leave is usually expressed as a percentage.

Inheritance Tax (IHT)

IHT is a tax payable at a flat rate of 40% on any amount over the 'tax free' allowance to which each individual is entitled. In most cases there is no IHT liability between husband and wife/civil partners or for any outright gift to charities. Married couples/civil partners can transfer to each other any unused tax free allowance. For unmarried couples some degree of planning may be possible through your Will. There also maybe some IHT benefits of gifting to charity (depending on the size of the gift).*

The Use of Trusts

The use of trusts in a Will may be appropriate but this will depend upon individual circumstances. Typical examples where trust planning may be used are (1) in second marriages to guarantee the share of the home goes to children from the first marriage whilst ensuring the surviving husband/wife can remain in the property (2) care fee planning (3) business assets (4) IHT planning (5) where there is a disabled beneficiary (6) where there are concerns over divorce/bankruptcy of a beneficiary.*

** Please speak with your adviser if you would like more information on IHT and/or the use of trusts in your Will*

Including Funeral Wishes

Requests can be recorded in your Will but note they are not legally binding. We recommend that you also make your friends and relatives aware of your wishes, particularly if they are detailed or complicated.

Dealing with Foreign Property

Your Will can take account of any "moveable" worldwide assets but for any "immoveable" assets abroad, e.g. property, you are advised to make a foreign Will. It is important to ensure that the foreign Will ONLY concerns the asset(s) in that country and that it does not revoke your UK Will.

Preparing for Your Will meeting

Use this check list to help you prepare for your meeting with us:

- Make a summary of what you would like to achieve through your Will
- List approximate values of all the assets in your Estate including property, business interests, investments, insurance policies, pension rights etc
- Have a copy of any previous Will you may have
- Have an idea of who you would like to appoint as your executors
- Consider who you wish to nominate as GUARDIANS and confirm that they are prepared to act. It is also advisable to nominate a SUBSTITUTE GUARDIAN
- Think about any SPECIFIC GIFTS of money or property, e.g. family heirlooms or jewellery, that you wish to pass to nominated individuals
- Decide who should initially inherit the MAJORITY of your Estate and also the order of succession
- Consider the consequences if any of your BENEFICIARIES were to die before you, and any alternative Will Instructions that should therefore be included
- Consider your wishes for funeral arrangements
- Get the FULL names and addresses of all those mentioned in your Will, including postcodes. This will save time when drafting your Will
- Make a list of any questions you may have regarding your Will
- Have to hand a copy of your passport or driving licence as we are required to confirm your identity



If you wish to discuss anything prior to meeting us please feel free to call on 0345 634 4185