

Making your Will

Your Will is one of the most important documents you will ever sign.

If you do not make a Will, your property could end up in the hands of people you have no wish to benefit. Moreover, you might have failed to take advantage of the tax planning opportunities which often become apparent when making a Will.

A popular misconception is that without a Will everything passes automatically to the surviving spouse. This is not necessarily so.

You should resist any temptation to buy a Will form from a shop or to write out your own Will without the right professional help. A "homemade" Will is unlikely to save any time or money in the long run.

Indeed, your family would suffer anxiety and possible disappointment and financial loss if, after your death, it transpired that your Will was ambiguous or uncertain, or if your executors found that they could not administer your estate properly because your Will did not include appropriate administrative powers and provisions. Failure to make a Will at all (*i.e.* if you die intestate) may have the same result.

It is therefore important that your Will should be drafted so that it sets out your wishes accurately. It would be helpful to us, and probably to you as well, if we set out some of the points which you should consider:

1. Whom do you wish to benefit by your Will?

We should like a list of the *full* names and *addresses* of all intended beneficiaries, together with a note of the approximate ages of any beneficiaries under the age of 18. Your beneficiaries are likely to fall into one of the following categories:

- (1) Those beneficiaries (if any) to whom you wish to leave specific gifts of cash or specific items of property.
- (2) Those to whom you wish to leave the rest of your estate.

2. Do you have any unusual items of property, such as shares in private companies or foreign land or an interest under a trust?

It would be helpful for you to tell us so that we can advise you appropriately.

3. What is the approximate value of your estate (your house and any land, your personal effects and any savings and any trust assets in which you have a life interest)?

We can give appropriate advice on tax planning and on arrangements to provide funds to pay the eventual tax bill.

4. Whom do you wish to appoint as your executors?

Although they may be assisted in all aspects of the administration by solicitors acting in connection with your estate, your executors remain ultimately responsible for administering your property and for carrying into effect the provisions of your Will. It will be sensible for you to consider appointing two executors so that if one dies before you, there is still a surviving executor. If you wish, you can appoint the partners in Thomson Snell & Passmore to be your executors, either by naming individuals or by appointing the firm. Alternatively, you might like to appoint a suitable member of the family to act as executor, either jointly with the firm or with the firm as a reserve if that person dies before you, or is unable or unwilling to act as an executor.

There is no reason why you should not appoint one or more beneficiaries as executors provided that they are over the age of 18. Particular care should, however, be taken when selecting executors who may have to administer a continuing trust.

5. If you have any children under the age of 18, who are to be their guardians?

Your guardians and your executors need not be the same persons. Your guardians would be responsible for the care of your children. Your executors would be primarily concerned with the financial aspects of your estate.

6. Would you like to include in your Will any wishes regarding burial or cremation?

You may not have any particular views on this, but if you do, your Will is a useful place to record them.

When you have considered all these points, please let us have your instructions to prepare your Will. If there are any points which you would like to discuss, it will be preferable to discuss them at a meeting before the Will is drafted.

The precise terms of your Will are likely to be governed by such factors as the size of your estate and the members of your family and other persons whom you wish to benefit. Unless your estate is fairly large, we normally recommend that you should try to achieve simplicity in your Will. If you give a large number of small legacies or if you ask for any complicated arrangements, the Will itself will be more expensive to prepare, and after your death your executors will have more trouble and expense in administering your estate.

Even if you do achieve simplicity in your wishes, you may find that the Will which we prepare for you is a fairly lengthy document. This is because the law relating to Wills is complex and technical. In this context you should note that a continuing trust must be created if you wish your executors to hold all or part of your estate for any specified period of time - for example, until a child reaches the age of 21.

Consequently, a modern Will should include a clause that gives suitable administrative powers to executors and trustees. Most of these clauses are of a standard form; they do not add to the expense of making a Will, so do not worry about them on that account.

Nor should you worry about conferring wide powers on your executors. You will have chosen people whom you know you can trust as your executors, and it is only right that you should equip them with the powers they need to carry out your wishes properly.

While Wills are usually drafted so as to be effective for many years - indeed indefinitely - it is nevertheless wise to review your Will every few years to take into account changes in circumstances and taxation. It is not widely appreciated, for instance, that marriage and divorce can have major consequences as regards your Will. Marriage normally revokes any earlier Will unless that Will was specifically drafted with a specific marriage in mind. The effect of divorce is more complex, but the law provides that certain changes to a Will are made automatically on divorce. The moral is to make a new Will if you are about to get married, divorced or remarried.

This information sheet has been prepared to highlight some key issues relating to making your Will. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at July 2004 and may be affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Jeremy Passmore on 01892 510000 or by email at jeremy.passmore@ts-p.co.uk and he or another member of the Private Client Department will be pleased to assist.

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* All references to the term 'spouse' include a civil partner as defined by Section 1 of the Civil Partnership Act 2004