

## Wills: frequently asked questions

Below are some frequently asked questions (FAQs) about making a will. Although these FAQs highlight some key issues relating to wills, they are not comprehensive and the answers should not be treated as a substitute for seeking professional advice on a specific issue. Civil partners and registered civil partnerships are included in all references to husbands, wives and marriage.

**Q: I am unmarried but live with my partner. What would happen if I don't make a will?**

A: The intestacy rules would apply to your estate and your partner would receive nothing under these. If you have lived with your partner for more than two years they may be able to bring a claim against your estate, but if you would like your partner to inherit your home (or any other assets), you should provide for this explicitly in a will to avoid the stress, costs and uncertainty of litigation.

**Q: I am married and don't have a will, but my husband does. Do I still need to make a will?**

A: Both you and your husband should make wills. As well as ensuring that you have provided for each other, you can also cover what should happen if you both died together.

**Q: My wife and I own everything jointly. Do we still need to make wills?**

A: You should both have wills to ensure a fair division of assets if one of you dies shortly after the other. Otherwise the intestacy rules could pass your combined assets to relatives of the survivor, to the exclusion of relatives of the first to die. If

you both die together and the order of deaths is unclear, the law will treat the younger as having survived the elder.

**Q: I am marrying for the second time. How can I make sure that the children from my first marriage receive something from my estate?**

A: Consider giving your spouse/civil partner a lifetime right to benefit from your estate. This will enable him/her to carry on living in the house and receive income, while ensuring that the property and other assets ultimately pass on to your children.

**Q: What is an executor? Who can be one and how many do I need?**

A: An executor is responsible for looking after your money, property and other assets after your death and carrying out the wishes in your will. You can appoint relatives, friends or professionals (including a Trust Corporation), or a mixture, up to a maximum of four. A beneficiary of your will, such as your spouse, can act in this role and may be the only executor, if appropriate. At least one substitute should be included. If your estate is to be held in trust for young or vulnerable beneficiaries, it is good practice for there to be at least two executors who can act together.

**Q: I am concerned not to give too much to my children at a young age. Can I ensure that they receive money at an age of greater maturity?**

A: Unlike an intestacy, where children must take their inheritance at 18, if you make a will you can specify at what age you would like them to benefit.

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**Q: My husband and I plan to have a family. Can we cover this now in our wills?**

A: It is possible for you to provide for future born children. However, it is advisable to cover what should happen if you do not have children at the time of your death, and include appropriate default beneficiaries.

**Q: One of my daughters has a disability and receives State benefits. Should I simply leave her out of my will?**

A: You can set aside money for her using a Discretionary Trust, which will not affect her entitlement to State benefits.

**Q: I would like to leave some gifts of personal effects. Can this be dealt with in my will?**

A: You can include gifts of personal belongings in your will. However, if you would like a more flexible way of dealing with such items, which would allow you to change your mind without requiring alterations to your will each time, consider giving personal belongings to your executors. They can then distribute these in accordance with a separate letter of wishes, which you can update periodically.

**Q: Can I name people to look after my children if I were to die before they reach 18?**

A: You can appoint one or more relatives or close friends to act as guardians and assume parental responsibility. Always discuss this with them beforehand, and with your children if appropriate. Guardians can be the same individuals you choose to act as executors, but do not have to be.

**Q: I own property outside the UK. Can my English will cover this too?**

A: What happens to property abroad when you die depends on the law of the country where it is located. In most cases it is recommended that you make a will in that country to cover the foreign property. It is essential that your foreign and English wills do not conflict. Where property is owned in Europe, it is now possible to make an election so that English law applies to your property in other European countries (if certain criteria are fulfilled).

**Q: My partner and I are unmarried and are buying a property together, but I am contributing all of the deposit. Do we need to record that anywhere?**

A: Unless you would like your partner to inherit your share of the property outright on your death, you should buy your property as tenants in common. You should record your contribution and the way in which you would like the future proceeds of sale to be divided in a co-ownership agreement known as a Declaration of Trust. You will need to take account of these arrangements in your wills as well, as your share of the property will pass via your will (or the intestacy rules if you do not have one) and not directly to your partner if you own as tenants in common.

**Q: Where should I keep my will?**

A: Given the importance of your will, it should be kept in a fire-proof location. We are pleased to offer a free storage facility, which enables you to access your will at reasonably short notice.

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### **Q: What happens if I make a will and then get married, or make a will and then get divorced?**

A: Marriage will cancel your will unless it was prepared in expectation of the event, specifically naming the person to whom you are getting married. Getting divorced will not cancel your will, but any gift to your former spouse will lapse unless a contrary intention appears in the will.

### **Q: How often should I review my will?**

A: As a general rule, you should review your will every five to ten years. You should also review your will if there is some significant change in your life, such as an intention to marry or divorce, the birth of children, the death of one of the main beneficiaries, the acquisition of foreign property or a material increase or decrease in the value of your estate.

### **Q: How do I alter my will if my wishes change in the future?**

A: If the change is fairly minor, it is possible to sign a supplementary document called a Codicil but, if the changes are substantial, a new will is recommended.

### **Disclaimer**

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

NOTE: The law is stated as at 1 June 2021.

If you require further information, please contact Sarah Nettleship or Mark Politz on:

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