

Tax planning, wills, probate and trusts



Our work in this field is all about protecting your family by helping to see that your wishes are carried out and that your assets are preserved by careful planning.

And if someone has died, we provide a sympathetic and supportive service in winding up the estate.

YOUR WILL is the formal legal document in which you set out what is to happen to your property and who is to be responsible for carrying out these wishes.

There are many advantages in making a Will, not least your own peace of mind knowing that you have put your affairs in order. We strongly recommend that everyone should make a Will and review it regularly to ensure that the provisions remain relevant to family circumstances.

A Will helps to safeguard the financial future of your family or friends because it sets out how you wish your estate to be distributed. If there is no Will, your estate will be divided in accordance with the laws of intestacy and quite possibly someone may benefit whom you did not intend to benefit.

Married couples each need to make a separate Will. Many husbands and wives wrongly assume that when there is no Will, the estate automatically goes to the surviving spouse. Whilst this may be true in some cases, it may have to be shared between the spouse and the children or other relatives, and also trusts may be imposed.

Your Will can be as straightforward or complex as you wish and as your circumstances permit. These notes inside are intended to provide guidance about those matters you need to consider and decide upon so that we can prepare your Will quickly, efficiently and at the lowest possible cost. The notes are not intended as a substitute for detailed advice and they should not be relied on as such, but we will be pleased to advise in more detail if you have any queries.

Probate and administration of estates

When someone dies their assets have to be gathered in, debts, tax and expenses must be paid, then the remainder divided between the people entitled.

We can deal with all of this, thus removing a considerable and time-consuming burden at a sad time. Please ask for our free *Estate administration guide*.

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The contents of your Will

1 Executors

You need to appoint an executor or executors who will be responsible for carrying out your wishes, so you should ask someone you trust and ensure they are happy to act. An executor can also be a beneficiary, and in the usual family circumstances, husband/wife and/or grown-up children are the most obvious choice. However, if there might be a conflict of interest or too much work or worry is involved, you could appoint a friend or a professional executor, for example solicitor, accountant or bank (although you should check the cost of this). If you would like us to act we will usually be happy to do so.

You need only appoint one executor but it is often advisable to appoint two in case one cannot act (perhaps through death or illness) or to provide balance within the family or an objective view. Alternatively you can appoint a substitute to act only if the first choice dies or is unable to take on the responsibility.

2 Guardians for minor children

An appointment of guardians is not essential, but may be a good idea if your children are young. Guardians are responsible for the day to day care of the children rather than for the finances of the estate and they therefore do not have to be (but can be) the same people as the executors, though where a Will makes financial provision for children the guardians and executors will have to work closely together. Assuming funds left for children are sufficient,

guardians will usually be reimbursed the cost of looking after the children. However, again you should ensure that the people chosen are happy to take on this responsibility. Usually a guardian is appointed to act only if both parents have died.

3 Legacies

You do not, of course, need to leave any legacies, but if you do then the Will must clearly name the people who are to receive gifts and identify the particular property given to them.

If gifts are to be made to children then you need to consider whether the item or cash sum is to be paid over to their parent or guardian, or whether the child must reach 18, 21 or 25 in order to become entitled to it.

Legacies are usually expressed to be 'tax free' so that in an estate where Inheritance Tax is payable the beneficiary receives the item or amount without any deduction for the tax due in respect of it – any tax being borne out of the residue of the estate. However if the value of the gift is substantial, for example a gift of a house or land, and the estate is taxable, then it may be necessary to consider whether the recipient should bear the tax.

4 Residue

Once all the debts, expenses and any legacies have been paid, the balance is called 'residue'. A properly drawn Will always makes a gift of residue as this includes everything you leave (including for example anything you subsequently inherit) which is not itemised in the Will. You need to specify who is to receive

the residue and, again, in the usual family circumstances, this will be spouse/children/grandchildren. If young children are beneficiaries then again you need to decide whether their benefits are to be paid to their parents or held by the executors until they are, say, 18, 21 or 25. You also need to consider what is to happen if any children or other named beneficiaries predecease you, i.e. are their benefits to pass on to their children equally or perhaps to surviving brothers and sisters?

It may also be advisable to consider whom you would wish to benefit if all the named beneficiaries die before or at the same time as you (for example in a road or air crash) or before inheriting (for example a child whose benefits depend on him reaching a certain age). In that event spouses may wish to divide their property between their two families and, if so, they have to name the particular members of the families and state the shares they are to receive, or perhaps you would wish to name a charity or charities. We will be happy to discuss all these issues with you.

5 Your assets

Before making your Will you need to consider your assets and any other sums or property which may be available for your family and dependants on your death. Thus in addition to the usual items, for example savings, car, furniture, household contents, jewellery etc. and house, there may be life policies payable on your death and pension benefits which usually pass direct to dependants, though this should

be checked as in some schemes you are asked to nominate the beneficiaries.

If you own assets (for example bank or building society accounts or other investments or house or land) jointly with anyone else (usually a spouse), you need to check carefully what happens to your entitlement on your death. Whether this passes automatically to the other co-owner (by 'survivorship') or is dealt with under your Will depends upon the terms agreed when you opened the accounts or bought the property unless you or your co-owner have changed these.

In some circumstances it can save tax if spouses ensure that their shares in their home pass under their Wills rather than to the other automatically, because the gift can then be linked to a requirement that the spouse survives a set period (usually thirty days – the 'survivorship period') to ensure that if both spouses die within that period (perhaps in an accident) each has a separate estate which passes under his or her Will to make maximum use of the available Inheritance Tax allowances.

6 Tax

Inheritance Tax is the name now given to what used to be called estate duty, capital transfer tax or "death duties". The tax rates and detailed rules are usually changed annually in the budget.

At present no tax is payable when property passes between spouses or to charity, but other than this (broadly speaking) if an estate is worth more than the amount allowed to pass free of tax, Inheritance Tax has to be paid on the balance, though there are

certain reliefs including those for business and agricultural property. This means that when the second of two spouses dies the children may well have a considerable tax liability to meet. There is much that can be done to reduce this potential burden. Our team is very experienced in advising upon tax planning and we will be happy to advise further.

Please ask for our free *Inheritance Tax Planning Guide*.

7 Our charges

Details of our costs are set out in our terms of engagement.

8 Other important points

• Marriage and divorce

Marriage automatically revokes a Will made previously unless that Will was specifically made 'in contemplation' of that marriage – so engaged couples may wish to include such a provision in their Wills.

Single and/or divorced people will need to remember to make a new Will if they marry or remarry, otherwise they will be intestate with all the complications that may result.

Divorce does not completely revoke an existing Will, but it is likely to affect the provisions of it and it is therefore essential that the Will is reviewed.

• Claims against an estate

You need to consider (though not necessarily include) everyone who may have a claim upon you. Under the Inheritance (Provision for Family and Dependents) Act 1975 various specified peo-

ple can challenge a Will if they consider that it does not make reasonable financial provision for them.

•-Adoption/illegitimacy

Generally speaking the expression 'children' etc. in a Will has for some time included adopted and legitimated children, and under the Family Law Reform Act 1987 in a Will signed after the 3 April 1988 also now includes illegitimate children. All these provisions can be specifically excluded from a Will.

•-Reviewing your Will

Family circumstances, the general law, and tax law all change, and we therefore suggest you ask us to review your Will at regular intervals. However, as each case needs individual attention, we cannot accept any responsibility for automatically advising you of these changes or for suggesting that a review is needed.

These notes do not try to encompass all the legal implications, nor do they contain sufficient detail to resolve specific individual problems. They have been designed to provide you with a brief summary of some of the main implications of making a Will and, we hope, provide some ideas for you to think about when considering the planning steps to take.

We will of course be pleased to advise in more detail at any meeting we have with you.



Tax planning, wills, probate and Trusts

Trusts

A Will may provide for assets to be held in trust. This is often relevant for young beneficiaries whose inheritance is to be looked after for them until they reach a stated age, or when a beneficiary is only to be entitled to the income or interest for his lifetime and then the capital passes to the next generation. Alternatively, lifetime trusts may be created, particularly when it is advantageous for someone to make a gift but he or she does not wish to hand complete control to the beneficiaries.

Trustees are responsible for managing trust assets and accounting to beneficiaries. We can advise on the creation of trusts by Will or during lifetime, and can also assist with the administration of such trusts.

Tax planning

Inheritance Tax is a tax on gifts. The tax rates and detailed rules are changed annually in the Budget, but at present no tax is payable when property passes between spouses or to charity. Otherwise, generally if an estate is greater than the tax-free threshold, tax is charged on the

balance over that figure, although certain reliefs may be available.

There is much that can be done to mitigate tax bills with careful planning and Will drafting and this is an area in which we have considerable expertise. We will be pleased to advise you further and you are welcome to request a copy of our free *Inheritance Tax Planning Guide* which will give you further information.

Long-term care planning

The future cost of long-term care is a big concern for many people, and can have implications in relation to gifts made in your Will or during your lifetime. We will be pleased to advise on this area at your request.

More information

It is impossible to cover here in detail all the aspects mentioned, and this is only a brief summary; please get in touch with us for further information, or ask for our free guides on –

- Estate planning, including inheritance tax, long-term care and Enduring Powers of Attorney
- Estate administration.

For further details, or to discuss whether we may be able to help you now or in the future, please get in touch with any member of our team.

If you are not already receiving our regular newsletters on topics of interest to individual and business clients, we will be glad to send you copies every quarter free of charge.

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