ALLETSONS
Solicitors

# Making a Will

## Why you should make a Will.....

The decision to make a Will is probably one of the most important you will make. Only by making a Will is it possible to plan with certainty what will happen to your property and affairs after death. A Will can deal with a number of matters which would otherwise be left to chance such as the provision for one's spouse or civil partner/children, Inheritance Tax planning, gifts of particular items or legacies, gifts to charity, the appointment of guardians of minor children and the expression of funeral wishes. If no Will is made, your Estate is dealt with using the rules that apply to Intestacy (dying without a Will) and the effects of these rules on your Estate may mean that your wishes are not carried out, or that very real problems are caused.

## What are the benefits of making a Will?

- **Your family know exactly how your property and possessions should be handled**
- **You can appoint an executor to deal with all necessary paperwork and procedures**
- **You can create a trust for your children to secure their future**
- **You can decide who you would like to receive what**
- **You can restrict tax liabilities**
- **You and your partner can both make Wills so that nothing is left to chance should either or both of you die.**

## Beneficiaries

One of the key functions of a Will is to set out what is to happen to ones assets and effects (collectively known as "The Estate") on death. Each individual case is different but the following may help in deciding what arrangements to make:

A. Where married (or in a civil partnership) it is essential that husband and wife (or both civil partners) make a Will each. Normally of course, each Will provides for the Estate of the deceased spouse (or civil partner) to pass to the other but there may be circumstances whereby this is inappropriate. Of course, a Will also needs to make provision for what is to happen when the death of the second spouse (or civil partner) occurs, in particular for children.

B. In cases where there is no surviving spouse (or civil partner) or an individual is unmarried (or is not a civil partner) then alternative arrangements need to be made for the distribution of the Estate. Clearly if there are children it would be usual for provision to be made for them, often in equal shares. However, if the children are young then it may be prudent to stipulate that they do not receive their benefit until they reach a specified age, normally a minimum of 18 or a maximum of 25. If a child's entitlement is held in "trust" (i.e. until they reach a specified age) then the Will needs to incorporate the necessary powers for the trustees to deal with the money held and, as appropriate, to advance income or a capital sum to a beneficiary perhaps to assist with their education or some other aspect of their developing life. In terms of education there may also be circumstances where the retention of any entitlement until age 25 will assist an individual in obtaining the maximum state benefits or other grants towards their education and a later age may be desirable having regard to issues of maturity.

C. In the event of there being no children, or to cover the situation where, e.g. due to a common accident, there is no immediate family other beneficiaries will need to be stipulated. These can include grandchildren, brothers and sisters or other relatives or indeed the gift of the residue to charity. The right solution will vary from case-to-case.

D. In addition to dealing with the main part of the Estate other beneficiaries can be included to receive legacies such as specific cash gifts or gifts of personal effects.

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## What else can a Will be used for?

In addition to simply dealing with the distribution of an Estate a Will can deal with a number of other matters that may be relevant. The following list gives an indication as to the kind of things that might require attention.

A. A Will can be used to stipulate any particular funeral wishes that an individual might have.

B. In the event that an individual has children who are under 18 a Will can stipulate who is to be appointed as guardian of those children in the circumstances, for example, where there is no surviving spouse (or civil partner) or other individual with parental rights.

C. In the event that an individual has a business a Will can incorporate the necessary powers to assist the Executors in resolving the issues relating to the running of the business following the deceased's death.

D. If there are any particular family circumstances, for example a previous marriage (or civil partnership), estranged relatives or children with disabilities which could potentially cause difficulties in the event of someone's death, these matters can be addressed in the Will so that there is guidance for those left behind as to what is to happen.

## Inheritance Tax – What effect will that have on my Estate?

The payment of Inheritance Tax on death has become increasingly likely due to the historical rise in property prices, which accelerated at a rate far in excess of the increments in which the nil rate band (i.e. the figure above which Inheritance Tax is payable) increased. The Government has sought to mitigate this for married couples and civil partners by allowing the transfer of any unused percentage of the nil rate band of a spouse or civil partner (CP) who has died to the estate of the second spouse / CP to die, applying that percentage at the rate of the nil rate band available on the death of the second spouse or CP. For many couples / civil partners the effect of this is to provide double the current individual nil rate band which may significantly reduce or eliminate a charge to Inheritance Tax. However, if this is not the case and an Estate is likely to be subject to Inheritance Tax there are measures that can be taken to try and mitigate the eventual impact of this tax. The use of gifts and sometimes Discretionary Trusts are examples and in addition we can also advise what steps might be appropriate to take during an individual's lifetime in order to mitigate the eventual Inheritance Tax difficulties. Similarly even though the use of say, a Discretionary Trust may now be of less significance for Inheritance Tax planning between spouses or civil partners there are many circumstances where such arrangements might be of benefit for other reasons. These and any other issues can be considered as part of the Will instructions.

## Lasting Powers of Attorney (LPAs)

At the same time as preparing Wills we would normally recommend clients to consider putting in place a Lasting Power of Attorney (LPA). This is a device, which in essence authorises another individual or individuals to act on a person's behalf, but only on their instruction or their authority unless that person's faculties fail for any reason whereby it is not possible for them to provide those instructions. If an individual requires assistance, particularly in the circumstances of mental incapacity, the benefit of an LPA is that, provided the document is registered with the Office of the Public Guardian, it is possible for the appointed individuals to continue to look after someone's affairs. The only alternative to an LPA in these circumstances is for an application to be made to the Court of Protection for the appointment of a Deputy. This is more expensive and time consuming with costs and fees amounting to possibly thousands of pounds. As it can also operate as a normal Power of Attorney an LPA may also be extremely convenient in other circumstances, for example where someone has a physical disability or is simply out of the country. In addition, unlike its predecessor the EPA, an LPA allows attorneys, if so appointed, to assist with health and welfare issues. We will be happy to advise further on the costs and formalities of putting in place an LPA. However, if you already have an Enduring Power of Attorney (EPA) then this remains entirely valid and it is not necessary to replace it with an LPA unless you wish to do so.

## Why do I need an Executor?

Executors are the individuals appointed under the Will who have the responsibility to administer a person's Estate. The choice of Executors is therefore very important. Broadly, there are two possible alternatives as to the type of Executor to be appointed. Firstly, it is possible to appoint family or friends. This may be considered more comforting for the family and there may be potentially a saving to the estate (for example one that is of low value), but this is not necessarily so as the executors may require legal advice themselves during the administration process. The second alternative is to appoint independent and professional Executors, such as the partners of this firm, to deal with the administration. It is true to say that this course of action may be a little more expensive.

## What are the advantages of appointing professional Executors?

A. It removes the responsibility for the administration from family or friends, particularly a surviving spouse (or civil partner), at what is inevitably a difficult time. If there are difficulties within the family or circumstances which cause great emotional distress it can often be a relief for family members not to be involved in the administration.

B. In the event of any dispute or difficulties within a family, independent Executors can ensure that the administration is carried out with objectivity and fairness to all parties.

C. By appointing partners of a firm of Solicitors such as ourselves there is continuity and longevity of Executors. If a Will is not reviewed or altered for some years Executors' circumstances might change as a result of which it may not be possible for them to deal with the administration when the time comes. Furthermore, with professional Executors there is also continuity should the Will result in a trust arising whereby, for example, monies have to be held for a minor beneficiary until that individual reaches a specified age. Likewise as we have amongst our number members of the **Society of Trust and Estate Practitioners (STEP)** you can be sure of expert advice in relation to the administration of an estate.

D. Administration of a deceased's Estate has become more complex and demanding in recent years. Consequently failure to deal with matters properly can lead to problems and where Inheritance Tax is payable, penalties if the requisite information is not disclosed. Inevitably a firm such as ourselves which has been established in this town since 1879 has developed a high level of expertise in dealing with the administration of Estates (indeed a large proportion of our work is of this nature) and this is reflected in the smoothness and efficiency with which we, as professional Executors, can deal with matters. If we as Solicitors/Executors deal with the administration of the Estate then the responsibility of correctly dealing with the administration lies with us, thus removing a considerable responsibility from family members. We can also advise, as necessary, on issues that may only occur after death such as a need for a Deed of Variation of someone's Will should circumstances have changed whereby it is appropriate to make adjustments e.g. for the further mitigation of Inheritance Tax. The possibilities of, for example, saving tax in this way are something that may not readily be appreciated by non-professional Executors. We also attend to tax matters generally relating to the administration of an Estate.

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## How much will it cost me to make a Will?

This will inevitably reflect the requirements of each individual case and the complexity of the document required. Full costs information will be given upon receipt of instructions, however as a general guide:

A. The cost of a single straightforward Will is in the region of £175 plus VAT.

B. Wills for husband and wife (or civil partners) in similar terms where there are children and further substitutional beneficiaries will cost in the region of £250 plus VAT for both wills.

C. More complex Wills that require the use of Trusts, Discretionary Trusts and other measures including Inheritance Tax planning and involve the consideration of collateral matters such as the deeds to a property and the provision of Powers of Attorney are likely to cost in the region of £500 - £950 plus VAT. ***However, this needs to be set in the context of the very considerable benefits and savings which may be achieved.***

## How much does it cost to administer an Estate?

This will depend very much upon the circumstances prevailing at a given time and it is impossible to give an exact estimate until full details of each case are known. However, our present method of charging is to apply a discounted hourly rate of £165 an hour plus VAT (normally £187 an hour plus VAT) to the work undertaken in the administration. A value percentage is also added of 1.5% (1% where Alletsons are not appointed as Executors) of the gross value of the Estate **excluding** the deceased's residence. Where the estate includes the residence of the deceased a further value percentage of 0.75% (0.5% where Alletsons are not appointed as Executors) of the value of the residence is added. Our charges are subject to a minimum amount equating to the time spent on the matter charged at our normal hourly rate of £187 per hour plus VAT with no value element added. Charge rates are reviewed periodically and the overhead rate altered. This method of charging for probate work is in line with the 2003 Court of Appeal decision in the case of *Jemma Trust Co. Ltd. - v - Liptrott and others* and the guidelines of the Law Society. If the Property is sold during the administration and we deal with the conveyancing, additional costs for this work will be chargeable. Naturally, at the time the administration is commenced full costs information will be provided.

## How can we ensure we get the best advice?

As will perhaps be appreciated in order for us to advise properly on the requirements for an individual's Will it is essential that we have details of that individual's assets, liabilities, circumstances, family situation and any other matters which are likely to affect what is to happen in the event of their death. It is also sensible for us to review the title deeds and documents to any property which an individual holds. Only then can proper advice be provided. Likewise it is not possible to make a Will that will be universally appropriate for all time. As individuals' circumstances change, their Wills require review and in any event it is sensible for a Will to be reviewed every 3-5 years. There are also events such as divorce (or termination of a civil partnership) or marriage (or creation of a civil partnership) which can have a bearing on the validity and effect of a Will.

## Conclusion

Inevitably the above gives only guidance as to the points that need to be considered when making a Will. Hopefully however it will provide the building blocks for the provision of instructions by you and highlight the various issues that need consideration so that proper and full advice can be given to ensure that the Will or Wills that are prepared fulfil an individual's requirements.



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