

# What To Consider When Making A Will

Having taken the important step of deciding to make or renew a will, you've overcome the first hurdle. There are now some important decisions to make about who will be your beneficiaries, and how to structure your will. This Guide outlines what to consider.

## Assets

What are your assets, i.e. your savings, investments, possessions and property? When making a will, it's helpful to make a list. You might co-own a property with someone else – such as owning your home jointly with your spouse or partner. If you want to leave your share in your will, you will need to know if you are a joint tenant or tenant in common.

Also consider the value of your assets. With careful planning and structuring of your will, you should be able to minimise the share of your estate that goes in tax and maximise the share that goes to your beneficiaries.

## Beneficiaries

Who do you want to benefit by your will? For many people this is an easy question: it's their spouse or partner first, and then their children. But often there are other points to think about:

- What if your spouse or partner remarries – would this disinherit your children?
- What rights do estranged children have to inherit?
- Who should benefit if your spouse/partner or a child predeceases you?
- Should children and step-children from previous relationships be included?



## Executors, Trustees And Guardians

Who do you want to carry out the terms of your will? Your spouse and/or your adult children may be the obvious choice. But if your children do not get on with each other, the task of carrying out your wishes together may lead to tension or disputes. You could therefore consider appointing a suitable third party or an impartial or professional executor. You may also want to consider naming a substitute if you're appointing only one executor, in case your first choice is unable to act.

Executors will also usually act as trustees. For example, if children are beneficiaries, the trustees will need to manage their inheritance until they reach the age at which they will inherit. This is usually 18, but you can specify an age above that. Being a trustee is a responsible and long-term commitment. If you have young children, you have the difficult task of naming guardians to look after your children's physical welfare until they are 18 (if their other parent is unable to do so, or you are separated/divorced). It is not necessary for the guardians and the trustees to be the same people, but they should be able to get on with each other. The trustees will need to ensure that the guardians are not left out of pocket as a result of caring for your children.

## Foreign Property

If you own foreign property, you will need advice on any 'forced heirship' rules in the relevant country. These rules may prevent you leaving your property to the beneficiaries of your choice, but in some cases the rules can be circumvented. You may need to make a foreign will.

It is important that your executors have full details of all your foreign assets, and of any lawyers abroad who you have used to make a foreign will.

## The Family Business

If you have built up a family business and want to ensure its continuation, there are difficult decisions to be made, particularly where some family members are involved in the business and others are not. This can be a particularly acute problem for businesses such as farms, which have a high capital value but which often don't produce sufficient income to support more than one family.





## Dividing Your Estate

The starting point for most parents is fairness, but this does not always mean an equal division of their estate between their children. For instance, you might have helped one child to buy a property but not another, and wish to take account of this in your will. Or one child may have greater need due to personal circumstances such as disability, illness or financial hardship. Alternatively, a child could have been particularly supportive towards you.

It is helpful to prepare a note for your children, explaining your reasons for any apparent unfair treatment.

If you do not have close family, you may wish to consider benefiting friends and charities.

## Claims Against Your Estate

You should consider whether there is anyone who might make a claim against your estate after your death, if they receive less than they were expecting in your will. There is a broad category of people who may be able to claim a bigger share of your estate. The list includes spouses and civil partners, former spouses and civil partners who have not remarried, cohabitees, children and those treated as children of the family.

A claim on your estate could also be made if you have made a promise to someone that they have relied on. For instance, a child who worked without pay in the family business on the expectation of inheriting it.



## Inheritance Tax And Care Fees Planning

There are a number of IHT planning opportunities available when making a will. A useful strategy for couples who are not married or in a civil partnership (and so do not benefit from the IHT transferable Nil Rate Band) is to save tax by using Nil Rate Band discretionary trusts in their wills. Other tax planning opportunities involve leaving gifts to charity, and agricultural and business property relief.

Similarly, a couple with a house and modest savings may wish to use their wills to preserve part of the value of their home, by avoiding it being used to pay their surviving spouse or partner's care fees.

## Putting Your Affairs In Order

Making or renewing a will is not something to do in isolation. It's an ideal time to put your affairs in order more generally:

- Check property ownership and the location of title deeds for unregistered property.
- Put in place arrangements for passing on undrawn private pensions, SSASs and SIPPs.
- Review investments and life insurance, etc.
- Set up Lasting Powers of Attorney to manage your affairs during your lifetime, should you become unable to make decisions for yourself.

## Making Your Will

Making a will isn't always straightforward, and everyone's will is going to be different, to reflect their circumstances and wishes. There may be some difficult decisions to make.

Once you've made your will, it should be reviewed every 3 to 5 years, or whenever there is a major change of circumstance, such as marriage, divorce, the birth of children and grandchildren, and retirement.

# How We Can Help

This Guide is for reference purposes only, and does not provide advice for any particular set of circumstances.

For further information, and to discuss your situation with no obligation, please contact us:

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