

WHY MAKE A WILL?



England & Wales

A will is a tool that allows you to pass on your possessions to benefit others, giving you control over what happens to your money, possessions and property after you die. This leaflet provides a brief guide to explain some of the key considerations, uses and benefits of making a will.

PROVIDING FOR YOUR LOVED ONES

Many people don't thoroughly plan for the future after they are gone and often assume their possessions will simply pass automatically to their spouse or children. Often people believe their assets are too insignificant to need a formal arrangement or legal guidance. But if you die without having made a will, the intestacy rules apply in a very strict way and may not benefit the people you want to leave your money to. The only certain way to ensure that your spouse, partner or relative inherits what you intend is by making a will.

At present, the intestacy rules do not recognise co-habitees who are unmarried and not in a Civil Partnership. Therefore, if you live with your partner and die without having made a will, your partner will not automatically inherit any of your estate. The estate will automatically pass to your surviving family (i.e. children, parents, brothers and sisters) and your partner will have to make a claim on the estate claiming financial dependence if appropriate. If you have children with your partner or from previous relationships, then those children will automatically inherit the estate, and both your partner and your children will have to get separate legal representation in order to fight for a share in the estate. This can be distressing and expensive and is a situation that should be avoided. A simple will is all that is needed to ensure that your partner is provided for.

PRACTICALITIES

The appointment of executors

In your will you must appoint one or more executors to deal with your estate in the event of your death and hold property in trust, for example while a beneficiary is a minor. Executors are responsible for collecting in your assets, paying any debts and taxes due, and distributing your estate among the beneficiaries. The role of executor is very important and you should appoint people who have the right set of skills and in whom you have confidence – be they business-minded family or friends and/or professional advisors. If you decide to appoint a professional advisor as one of your executors, you should discuss with them beforehand whether they will charge your estate for their time spent.

To some extent, executors can act before the grant of probate, which is worth considering if you run a company or family business that will need to be supervised during the probate administration period, which can take anywhere from two to eight months.

Burial arrangements

You can provide for specific funeral arrangements in your will. This is particularly important for some clients. Some people ask for their body to be donated to medical research. Often people who have suffered from prolonged illness want to help reduce other people's suffering by helping to find new treatments.

The appointment of guardians

If you have children under the age of 18, you can safeguard your children's interests by appointing legal guardians to care for them if both parents die. Before you appoint someone to be a guardian, you should check that he or she would be happy to act. You can choose the same people to be your executors and guardians, but only if you feel it is appropriate in your circumstances.

Passing on your assets

Personal items such as jewellery, paintings and heirlooms can be passed on in your will in several ways, one of which is by reference to an informal letter of wishes. You can benefit good causes by leaving a legacy or share of your estate to charity, free of inheritance tax. Charities receive billions of pounds per year through money left to them in wills. It is an important source of funding for them and it means that you can give opportunities to others that you did not necessarily enjoy yourself. Larger estates may be able to benefit from a reduced rate of inheritance tax of 36 per cent if, subject to certain rules, more than 10 per cent of the estate is left to charity.

The inclusion of a trust within the will, whether it is discretionary or gives the surviving spouse a right to income or occupation of the family home, may be attractive for a variety of reasons.

Family arrangements

Wills can be used to provide for complex family arrangements, for example to include children from previous relationships. A will can give a second spouse the right to occupy the family home, while protecting the capital for children of an earlier relationship. This will ensure that the assets will not pass outside the immediate family and may pre-empt potential challenges to the distribution of the estate. There are benefits and drawbacks to this arrangement, however, which should be discussed with a professional.

Asset protection

An ageing population means that tens of thousands of homes are sold each year to fund the cost of residential care. A carefully drafted will can provide that a share of the family home passes into a trust on first death, which may give the survivor a right to occupy. With care, such a trust will ensure that the capital will be preserved and instead pass to the intended beneficiaries. A trust of this type can be drafted flexibly to allow the survivor to 'down-size' or move property.

Trusts can protect assets should future generations suffer financial or matrimonial difficulties, or if the beneficiaries are not mature and responsible enough to own large sums of money. The trustees will be able to take each beneficiary's personal circumstances into account. There may be ongoing inheritance tax charges and this will have to be weighed-up with the benefit of asset protection.

Reducing the inheritance tax burden

Trusts may have long-term inheritance tax advantages in cases where capital appreciation is anticipated to outstrip future increases of the nil-rate band. Trusts can also be used to benefit future generations by potentially by-passing children to benefit grandchildren.

Your will can also direct your business interests (such as shares in a family company) or a farm to specific beneficiaries, e.g. a son or daughter who has come into the business. An important inheritance tax relief can apply to these interests giving discounts of either 100 per cent (i.e. complete exemption) or 50 per cent.

Business and agricultural interests can often be dealt with through a discretionary will trust, which may offer additional tax savings.

It is of vital importance that trusts are drafted and implemented by a properly qualified professional, as trusts that are not properly set up and administered are more likely to be challenged.



OTHER CONSIDERATIONS

Maximising the available inheritance tax nil-rate band

The nil-rate band is the value of an individual's estate (after taking into account certain lifetime gifts made in the seven years before death) that can pass without a charge to inheritance tax.

Prior to 9 October 2007, married couples were advised to make best use of both their nil-rate bands on death by including nil-rate band discretionary trusts in their respective wills. While this ensured that both nil-rate bands were preserved on second death, it often resulted in complex arrangements, especially if a share in the family home was used to fund the nil-rate band discretionary trust.

In October 2007, the government introduced the transferable nil-rate band for couples who are married or in a Civil Partnership, which provides that the unused proportion of the nil-rate band of the first spouse to die can be passed to the survivor.

This can best be illustrated in an example: The husband died in 1992. Having made no lifetime gifts he passed his whole estate to his wife so he did not use any of his nil-rate band. When the wife died in 2013, the nil-rate band had increased to £325,000. She could therefore leave £650,000 free of inheritance tax.

The simplicity of this arrangement has been welcomed by many married couples. Couples with existing nil-rate band discretionary trusts should take advice before deciding whether to redraft their wills, as the flexible nature of the nil-rate band discretionary trust may have other benefits and can offer solutions to complex family arrangements, and also may offer some level of asset protection.

Home ownership

Many people own their house as 'joint tenants'. This is one of two ways in which you can own your house. You could own it as a 'tenant in common', where each person owns a fixed share of the property which then passes under their own will or on intestacy. To own your home or other asset as 'joint tenants' can be an inflexible method because the surviving co-owner automatically takes the whole. Therefore, a co-owner cannot, during lifetime or by will, give these assets to any other beneficiaries, for example to their children. The solution is to hold as 'tenants in common'. If the holding is already as joint tenants, it can easily be severed by a relatively simple procedure.

From 6 April 2017, the government introduced an additional £100,000 (increasing to £175,000 by 2020-21) inheritance tax allowance (on top of £325,000) to use against the value of their home. They can only get this allowance if they leave their home to their 'direct dependants' such as children or grandchildren. This allowance can also transfer to the second spouse if it hasn't been used up, which means that by 2020-21, a married couple could leave their family a combined estate of up to £1 million inheritance-tax free. Not everyone is eligible for this additional allowance. The residence nil-rate band rules are complex and it would be prudent to speak to a professional about them.

MAKING YOUR WILL AND KEEPING IT UP TO DATE

Many wills are straightforward and simple to prepare, however others are more complex and subject to unique personal circumstances that will need to be taken into account. These circumstances include second marriages; children from previous relationships; health care needs of surviving family members; or overseas connections such as spouses from different jurisdictions and the ownership of holiday homes abroad.

Even if you have already made a will, it is important to keep this under review at regular intervals (at least every five years). The world does not stand still and your family circumstances and relevant taxation laws will change.

It is also important to note that most wills are revoked by entering into a marriage/Civil Partnership and that divorce/dissolution also affects the interpretation of your will, so in either instance you should review your arrangements.

A badly drafted will can have unintended consequences that may lead to difficulties for your loved ones after you pass away, so it is important to use a reputable and qualified practitioner to prepare a will that meets your needs.

Making a will need not be expensive. Most practitioners charge a reasonable fee for a straightforward will. More complex requirements will normally be reflected in the fee.

Will writing is not a regulated activity in England and Wales, so in 2014 STEP developed the Code for Will Preparation – a set of principles that demonstrate openly the standard of transparency, service and competency you can expect from a STEP member preparing your will. By using a will preparer who is subject to the Code, you will know they are taking all the necessary actions to plan for the future of your assets.

For more information on the STEP Code for Will Preparation and to find a STEP member visit **www.step.org/for-the-public**

WHAT IS STEP?

STEP is the global professional association for practitioners who specialise in family inheritance and succession planning. We work to improve public understanding of the issues families face in this area and promote education and high professional standards among our members.

STEP members help families plan for their futures, from drafting a will to advising on issues concerning international families, protection of the vulnerable, family businesses and philanthropic giving. Full STEP members, known as TEPs, are internationally recognised as experts in their field, with proven qualifications and experience.

This leaflet and the companion leaflets 'Why make a trust?', 'What to do when someone dies' and 'Why make a lasting power of attorney?', as well as other informational leaflets produced by STEP, are available to view and order at www.step.org/leaflets

You can find more information on related topics at www.advisingfamilies.org/uk

This leaflet takes into account the law in England and Wales as at 1 January 2020. Different laws apply in other countries, including Scotland and Northern Ireland. As laws may change, professional advice should be sought before taking any action.

For further details of our members practising in your area, contact the STEP office or visit www.step.org/step-directory

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