

Why you should make a Will

It is a remarkable fact that only about three in every ten people in this country have bothered to make a Will. The remaining seven will have no control over what happens to their hard earned possessions as these will be divided up amongst surviving family relatives, or may even go the Crown.

If you do not have a Will you may be familiar with many of the usual reasons people give for not having one; death seems so far away; you are always too busy to think things through; accidents only happen to other people; it is too complicated; solicitors are expensive and so on. You may not think you are wealthy enough to need a Will. Yet you are probably far wealthier than you realise and once you add up the value of your house, car, savings, possessions and insurance policies, as well as any investments you have made, you will appreciate the true value of your "estate".

Intestacy

If you die "intestate" (without a Will), the law provides that certain members of your family who survive you will be entitled to your estate. How much each member receives is determined by strict rules laid down by Parliament reflecting what it believes is a fair distribution of your possessions. If there are no living relatives, your estate passes to the Crown.

If you die intestate:-

- No account will be taken of your wishes or intentions as to what should happen to your estate.
- If you are married, you could be mistaken if you believe that everything you own will automatically pass to your wife or husband. Some people whom you actually dislike, or have never even met, may benefit from your death.
- Unmarried partners receive nothing from your estate.
- In the absence of an executor, an administrator has to be found to deal with your affairs who may not be the person you would have chosen.
- No guardians are appointed for your children.
- Your children inherit at the age of eighteen which you may consider too young.
- You cannot achieve any tax planning.

Making your Will

Making even a relatively simple Will requires a fair amount of thought, so choose a time when you are free from pressure or anxiety and are in a relaxed and clear-sighted frame of mind so that you can decide who will benefit from your estate. You will probably want to talk things through and at Barlow Robbins LLP you will find that we are happy to listen, as well as provide you with impartial legal advice.

You can leave your property and possessions to anyone or any organisation such as a charity, subject to any legal obligations to your spouse and other dependants. You can leave selected items (jewellery, pieces of furniture, antiques, paintings, collections of books etc) to particular relatives, friends or charities. You may have certain family heirlooms which may not be worth much financially, but are of great sentimental value, and which you wish to ensure are passed to family members of your own choosing. You can also provide for your pets.

There are a number of aspects you will need to consider and decide upon in the course of making your Will.

These are some of the important ones

- Executors are the people you appoint to be in charge of your affairs and who will see that your wishes are carried out. An executor should be someone you can trust, such as a close relative, a friend or a solicitor. You may appoint up to four executors and there is no problem if the executors stand to benefit from your estate.
- Guardians are the people who will look after your children until they are 18 years of age if your spouse does not survive you. In the event of your death they will become legal guardians of your children and will be responsible for their upbringing.
- Trusts may be set up to ensure that beneficiaries are looked after until they are able to use their inheritance responsibly. You will need to decide how much to put into the trust, whom it should benefit and when, who the trustees are to be and what powers they will have.
- Burial or cremation. There is no need to say anything but you may have definite wishes for one or the other as well as specific instructions with regard to your remains. You may carry a donor card and wish your body to go to medical research or transplant surgery.
- Residuary estate is the remainder of your estate after all debts, funeral expenses, legacies, individual gifts and taxes have been deducted and all your other wishes have been carried out. You have to decide whom you want to benefit from this residue and by how much.

Inheritance Tax and Estate Planning

You should review your Will regularly. Every time your situation changes, if you get married, have children, get divorced, buy a house or inherit a sum of money, you need to re-consider your Will from a practical as well as a tax planning point of view. An up to date and valid Will is the only way of making sure that what happens to your property and possessions is what you intended and to make sure the Treasury do not take too big a slice of your estate.

Inheritance Tax is a tax charged on certain lifetime gifts and on the assets of your estate at the time of your death. Every year the Chancellor in his annual budget speech sets the threshold at which Inheritance Tax becomes payable.

It is perfectly proper to arrange your affairs so that on your death or your spouse's death your estate, which represents what you and your family have worked hard to build up over the years, benefits your family or others of your choice rather than going to the state in taxation. A well drafted Will can drastically reduce your potential Inheritance Tax liability.

In addition, we can advise you on ways of reducing potential Inheritance Tax Liabilities through the use of lifetime trusts. This is a specialist area and requires particular expertise and knowledge of the range of trusts available and the taxation rules that apply to each. These techniques might be of interest especially to those who own shares in family businesses and those who have substantial estates.

Several of our Solicitors are members of the Society of Trust and Estate Practitioners who specialise in this type of work.

Financial investment and taxation planning are important areas of work in their own right and where necessary we can help you to draw on the expertise of independent financial advisors.

Using a Solicitor

Anyone can buy a Will at a local shop or from the Internet and draft it on their own. There are a number of reasons why this is not a good idea, but the main problem with home-made Wills is that one mistake or omission, no matter how small, may invalidate the entire Will. The intention of your Will may be very simple but careful wording of the Will is essential and the legal formalities must be strictly followed. Many words and terms have specific meanings in law which are different from their everyday use.

Trying to write your own Will also means that you miss the benefits of discussing your intentions in confidence with an experienced professional who will have taken his or her clients through the same procedure hundreds of times before. Solicitors are trained to spot problems or inconsistencies which you might miss and to point out possibilities which you might not think of yourself.

As solicitors we have a duty to place your interests above all else and are bound to offer you objective and impartial advice. We are also bound by strict rules of confidentiality.

We will listen carefully to what you wish to include in your Will and then explain to you the legal and financial implications of your intentions. When we are satisfied that you are clear and certain on all the relevant points we will draw up a draft Will and send it to you for approval with a letter of explanation and advice. Once you are happy with it we will advise on the correct procedure for signing.

Your Will is one of the most important documents you are ever likely to put your name to and it is therefore important to keep it in a safe place; we should be happy to look after your Will free of charge as part of our service. Inevitably circumstances change from time to time necessitating changes to your Will. Sometimes this can be achieved by adding a Codicil to your existing Will, but if your life changes in any major way, for example through marriage or divorce, you should contact us in any event. Marriage automatically revokes an existing Will.

It is not expensive to employ our services to help with your Will and we can give you an estimate of our charges in advance. Remember – solicitors make far more money sorting out mistakes in the home-made Wills than from preparing properly drawn up ones!