User Guide

PEARSON
SOLICITORS AND FINANCIAL ADVISERS

Making a Will

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This guide aims to explain, briefly, the main reasons why it is desirable to have a will, some of the matters you will need to consider in making your will, and the information your solicitor will need to advise you on the best will to suit your wishes and circumstances. Most wills are neither complex nor expensive to make.

Why make a WIll?

Everyone who has property and who cares about what will happen to it on his or her death should make a will. If you die without one, your money and possessions may be distributed to people you do not believe should inherit them.

By making a will, the testator (the person who makes a will) will be able to determine the way in which his or her assets will be dealt with after death. It will also be possible to ensure that the people he or she wishes to benefit will do so, and in the manner intended.

If a person dies without a will (known as dying "intestate") certain statutory rules govern the division of the estate and how it is to be dealt with after the death.

These rules will often operate to frustrate a person's wishes and lead to unsatisfactory and even disastrous results, especially for those with business or farming interests.

It is not the case, as commonly thought, that if a person dies without a will the entire estate will necessarily pass automatically to the spouse. If he or she is survived by a spouse and children and the value of the estate exceeds (at present) £250,000, the children (legitimate or illegitimate) will be entitled to share in part of the estate. This is one common instance where the estate can pass to people the deceased did not intend to benefit.

Timely action may save your heirs from having to pay large amounts of tax. We may advise you to use a trust, either to save Inheritance Tax or provide an element of control in special cases, such as where a beneficiary is unable to look after his or her own affairs.

Provision for Dependents

In most cases, the testator will be survived by a spouse and/or children. It is only fair to them that thought should have been given to their position after the testator's death and how best they should be provided for. This is also an opportunity to review the financial position of dependants and what further financial arrangements are required for their benefit.

The terms of the will can have a major impact on how the testator's assets can be used to meet the domestic and financial circumstances arising.

The contents of a will

The format of a will tends to follow a fairly regular pattern and the basic contents of a will will be:

(i) Executors

These are the people appointed by the testator under the will to administer the estate. They will also usually be appointed to act as trustees of any trust arising under the will.

It is important that the testator chooses people who are competent to fulfil this role and to deal sensibly with the administration of the estate and the beneficiaries. They are usually members of the family, close personal friends or professional advisers. It is sensible in most cases to have at least two executors.

(ii) Guardians

These are the people who will act as guardians of any young children on the death of the survivor of the testator and spouse. Clearly the testator and spouse will need to give careful thought as to whom they would like to take on this responsibility.

(iii) Legacies

This is merely the lawyer's term to describe certain gifts made by the testator under the will. It is often the case that a testator wishes to make certain special gifts to members of the family, relatives or friends. The legacies are usually:

(a) gifts of money - for example, to relatives, friends, godchildren or charity
(b) gifts of specific items - such as a picture, piece of furniture or item of jewellery
(c) gifts of real property such as land or a house.

Legacies may be given to the recipient in various ways but are usually either outright gifts or gifts on attaining a given age, such as 21, or gifts on specific trusts, for example, for a person to have the use of it for life and thereafter on the death of that person the property will pass to others in the manner wished by the testator.

(iv) Residue

This is the part of the estate which is left after all debts, expenses, taxes and legacies have been paid out by the executors. It will normally represent the bulk of the estate. There are a number of ways in which this might be dealt with under the will depending on what the testator wishes to achieve. Some of the more usual forms are:

(a) an outright gift of the residue to the surviving spouse and/or the testator's children
(b) a simple trust whereby the surviving spouse will be entitled to the income of the residue for his or her life and thereafter the capital of the residue will pass to the children in stated proportions at a given age (The testator may wish to give a spouse a life interest rather than an outright interest if he or she will require the help of the trustees of the will in managing his or her affairs or if he or she wishes to ensure that on the spouse's death the residue must then go to the children or other beneficiaries who have been chosen.)
(c) a trust in favour of the testator's children or other named beneficiaries, who will take the residue on reaching a given age in stated shares
(d) a two year discretionary trust which gives the executors complete discretion as to how to deal with the assets in the testator's estate as between a specified class of people whom he or she may wish to benefit. Provided that the executors exercise their discretion within two years of the testator's death, the dispositions resulting from the exercise of the trustees' discretion should have no adverse Capital Gains Tax or Inheritance Tax consequences. This can be a particularly useful device where for family, business or tax reasons, maximum flexibility via a discretionary trust is required in order to enable the executors to deal with the estate in the most appropriate and beneficial manner after the testator's death. This is mentioned below.

How the residue is dealt with depends very much on what the testator wishes to achieve and the terms of the will dealing with residue which may take a number of different forms depending on the circumstances of each individual or family.

(v) Discretionary trusts

For deaths on or after 9th October 2007 on the death of a surviving spouse or civil partner any proportion of the unused nil rate band (NRB) will be applied to the NRB available at the death of the surviving spouse or civil partner.

e.g. Mr A dies in August 2007 (when the NRB was £300,000) leaving £150,000 to his son and the rest of his estate to Mrs A. 50% of the NRB is added to the NRB of Mrs A on her death in August 2008 when the NRB was £312,000 i.e. £312,000 plus £156,000 = £468,000.

Before this change it was customary to leave the value of the NRB into a discretionary trust for the potential benefit of the surviving spouse and any children in order to preserve the NRB on the death of the survivor which otherwise would have been lost.

Discretionary trusts can still however be effective when for example:

- A parent wishes to ensure children from a first marriage benefit from the estate.
- Capital appreciation in the trust is anticipated to outstrip increases in the NRB.
- There are vulnerable beneficiaries.
- Protection may be required from possible claims against beneficiaries in divorce or bankruptcy proceedings.
- Agricultural property or business property relief from IHT may be available.
- Protection from Care fees may be an issue.

Also remember that funds in the trust are still available to the surviving spouse who is also a beneficiary of the trust. The money will also be immediately available to pay any IHT due upon the death of the surviving spouse.

(vi) Administration clauses

These will often form the longest part of the will. They are specifically included in order to help the executors and trustees of the will to administer the estate and any continuing trusts which may arise under the will.

Executors and trustees are given certain administrative powers by statute and under the general law. However, in practice these do not cater for many special circumstances that may arise in the estate, either by virtue of the assets comprised in it, or the way in which the testator wishes the will to be structured. The administration clauses will usually contain investment powers or restrictions on the trustees; extended power to apply income and capital for the benefit of (usually minor) beneficiaries under the trusts of the will; special powers to enable the trustees to deal with any land (especially farmland) or business interests in the estate; and a charging clause to enable any professional adviser who is appointed to be executor and trustee to be paid his usual fee. The object of these powers is to help the executors and trustees in administering the estate or the trusts to the advantage of the beneficiaries under the will and to ensure that they have enough flexibility to enable them to do so in what is now a fast changing, fickle economic climate.

The intestacy rules do not contain these extended powers, which is one of the reasons why serious difficulties can and do arise in administering an intestate estate, especially where there are business or farming interests.

(vii) Attestation clause

This is the name given to the clause at the end of the will where the testator has to sign the will. If the will is to be valid, it has to be signed in strict accordance with statutory rules.

Instructions for a will

There are obviously many things that a solicitor will need to know before he can advise his client properly in making a will. It will help the solicitor greatly if, at the outset, you make available the following information:

(i) Full details of your family, including full names, ages and occupations

(ii) Full details of your assets and those of your spouse with their approximate values.

A rough guide to the likely items is as follows: house, stock exchange investments, shares in private companies (majority/minority holding), building society account, bank account, business interests and assets, life insurance policies, pensions, land, personal possessions.

Details of the children's assets, if any, might also be relevant.

(iii) Details of any trusts or settlements which you may have set up in your lifetime or in which you or your family may have interests

(iv) Executors, together with their full names and addresses

(v) Guardians, if appropriate, together with full names and addresses

(vi) Full details of any legacies which you might wish to give together with the full names and addresses of the legatees

(vii) Your wishes as to how you would like your estate to be dealt with on your death.

Please complete the enclosed form if you would like us to prepare a draft will for your consideration.

Jointly owned property upon separation

If you separate from your partner and jointly own a property, you should carefully consider your position because, in the event of your untimely death, the property will pass automatically to your former partner (unless this was addressed when you purchased the property and the property is already held as "tenants in common") by way of survivorship. This can be avoided by serving a "Notice of Severance of the Joint Tenancy" upon your former partner and by preparing a will leaving your interest in the property to a nominated beneficiary.

The notice of severance is a relatively simple document that we can draw up at short notice.

Lasting Powers of Attorney

This is a document in which the maker of the power ('the Donor') appoints someone to deal with his financial affairs. It continues in force even if the Donor becomes mentally incapable of handling his affairs.

It is also possible to make a separate Lasting Power of Attorney appointing someone to make health and welfare decisions on the Donor's behalf, which can only be used when the Donor is incapable of making the decision.

It is not possible to enter into a Lasting Power of Attorney once somebody becomes mentally incapable of understanding the effect of the document.

If a person were to become mentally incapable of handling his affairs, but did not have a Lasting Power of Attorney, the only way in which that person's financial affairs could be dealt with would be through an application to the Court of Protection for a deputy to be appointed to act on his behalf. This is a lengthy and expensive process.

If you would like more information, please contact us and we will be pleased to answer any queries you may wish to raise.

Financial Services

Pearson Solicitors and Financial Advisers is one of a few firms of solicitors in the North West of England to have its own in-house financial services department. We are able to offer completely independent and impartial financial and investment advice. You have the additional comfort of knowing that you can rely on the trustworthiness and integrity you would expect from a firm of solicitors. We offer a free initial consultation.

Clients who stand to benefit most from a solicitor's financial advice are:

- Recipients of lump sums seeking advice on tax-efficient investments
- Elderly people needing a helping hand to look after their finances
- Divorcing spouses needing to divide their assets and to provide for family protection and school fees
- Clients wishing to provide family protection, savings and retirement planning
- Business owners wishing to protect their own and their family's interest
- Trustees and charities with investment requirements

- House-buyers seeking mortgage advice.

Our independent financial team can select the best form of contracts to suit your requirements, using the most up to date research software.

Our advice can often reduce the tax on your savings, so you and your family can enjoy more of your income.

Our detailed knowledge of trusts and Inheritance Tax planning can help you to minimise the tax effect on the money and possessions you leave after death.

Successive governments have made clear that the value of the state pension and other benefits will diminish in years to come and you will need to make your own arrangements for a financially secure retirement. Our team of advisers has enormous expertise in pension and retirement planning.

Your house is usually the most expensive purchase you will make in your lifetime. We can help you to find the best and most economical way of financing this purchase. Also, in conjunction with our conveyancing department, we can ensure that the process of buying your house runs more smoothly.

To arrange your free consultation, contact Financial Services Team-Partner, Richard Eastwood, on 0161 785 4549, or e-mail richard.eastwood@pearsonlegal.co.uk

Our firm is regulated by the Financial Conduct Authority in the conduct of investment business.

Conclusion

Making a will requires careful thought and judgement. Despite this, many people do not give this aspect of their affairs the attention it deserves.

Many simply do not make a will at all. This is less than fair on the testator's dependants as there are many cases where failure to make a proper will produces unhappy results and involves substantial cost in trying to rectify the position after the death, all of which could have been avoided if proper attention had been given to the matter in the first place.

These notes are intended to help clients in considering the main implications of making a will. The notes are not an exhaustive summary of all the provisions that can be made and advice should be sought in specific cases. The notes have been prepared for clients of this firm only, and should they come into the hands of anyone else they should consult their own solicitors.

To speak to a solicitor about any of the issues raised in this User Guide, please call **0161 785 3500** or email: **enquiries@pearsonlegal.co.uk**