A GUIDE TO MAKING A WILL

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A Will is one of the most important documents you will ever write and allows you to decide what happens to your money, property and possessions after your death. However, in Britain approximately 52% of people do not have a Will in place. In addition to this, a further 46% of those who have made a will have not reviewed it within the last 5 years. Failing to make a Will can cause chaos and disruption to your family or dependents and in the absence of a Will there is no guarantee that your money and property will pass in accordance with your wishes. An up to date Will provides you with the security that your wishes are complied with and provides your family and friends ease of dealing with your estate following death.

WHAT IS A WILL?

A Will is a legal document that sets out your wishes and expressions regarding the distribution of your property and estate should you pass away. Furthermore it can deal with things such as protection over assets, beneficiaries and who should take care of any minor children. There are a number of things which need to be considered when creating a Will, including but not limited to:

- Who you want to appoint as your Executor(s) and Trustee(s).
- Are there any minor children and if so, who would you want to act as a guardian on your death.
- Are there any specific gifts you wish to make, either of personal items or cash legacies.
- Who do you want to benefit from your estate ultimately.
- Is there a need for asset protection, such as care home fee planning or where there are children from a previous relationship.
- Is there a potential inheritance tax liability and a need for advice and planning.
- Are there any business assets which may need further advice.

Each of the above is a crucial part of planning your Will and future circumstances. It is important that each element is discussed in full to ensure your precise wishes are met. There are a number of misconceptions surrounding Will writing that often lead to problems on death, they can cause considerable upset and problems for those family members and friends that are left behind. One common misconception is that cohabitees have the same rights as spouses and civil partners, this is simply not true, and failure to put a Will in place may mean that they are forced to leave the shared property or lose control of assets.

Further to the above considerations, there are strict formalities which must be met for the Will to be valid. In order to create a Valid Will, you must be of sound mind and understand your wishes. Furthermore, your Will must be executed in the proper way and the correct formalities followed. If your will does not meet these standards, your instructions may not be carried out and your estate may fall in accordance with intestacy. To avoid uncertainty it is strongly recommended that you seek professional guidance to ensure your wishes are complied with.

WHAT HAPPENS IF YOU DIE WITHOUT A WILL IN PLACE?

The distribution of your estate and assets can become exceptionally complicated and long-winded when there is no Will in place. In the absence of a Will, you are classed as dying intestate. If this occurs, your estate will be divided in accordance with the intestacy rules as contained in the Administration of Estates Act 1925.

In Britain approximately 1 in 3 individuals die intestate and the government benefits every year from unclaimed estates. The rules are complex and can change depending on your individual family circumstances when you die. This may mean that your estate may not pass in accordance with your instructions and can cause great problems following death.

As well as complicating issues and making the process of administration lengthy, dying without a Will in place can cause great problems as previously mentioned for cohabitees. Under the intestacy rules unmarried couples have no automatic entitlement to any of the deceased partner's estate. If the property they shared was in the deceased's name solely, then the partner has no immediate interest in the property and would be forced to leave. Even in circumstances where the property is held as tenants in common where they have an equal interest, the deceased's share would not pass to the surviving partner and would in fact pass to whomever was entitled under the intestacy rules. This means that the survivor of them would be forced to own the house with a relative of the deceased.

In addition to the above problem, issues which commonly arise where there is no Will in place involves minor children. If there is no Will, then the matter surrounding guardianship of the child is unlikely to have been dealt with. If there is no guardian appointed for the child/children then it is up to the courts to decide who is responsible for the child, this might not necessarily mean the child/children are left with who the parent would want.

Dealing with the loss of a loved one can be hard enough without the above and the concern that they did not have their estate in order. Preparing a Will provides peace of mind and security that your wishes are complied with and that you have simplified the process for your loved ones.

WHAT ARE THE EXECUTORS DUTIES?

The purpose of appointing an Executor/Executors in your Will is to give you the opportunity to specify who should deal with your estate following death. There is no prescribed rule dictating who should be appointed to deal with the estate, it is at your discretion. The only requirements for an executor is that they must have mental capacity and be 18 years or older.

You may appoint any combination of the following:

1. Individuals who are not professionals (e.g. family or friends);
2. Solicitors or other professionals (as individuals)
3. Banks or other trust corporations.

There are advantages and disadvantages to either option and it is something which should be strongly considered when drafting your Will taking into account your particular circumstances, wishes and the complexity of your estate.

The executors have a number of responsibilities including:

- Contacting the beneficiaries (the people due to inherit named in the Will)
- Locate and identify the assets and debts of your estate
- Applying to the Court for the Grant of Probate. That is the legal document which gives your executors the legal right to deal with your estate after you die
- Collecting the assets of your estate
- Distribute the estate following the instructions in your will
- Prepare estate accounts and deal with any tax returns, if necessary

WHY SHOULD YOUR WILL BE UPDATED?

It is sensible to review your Will every few years and consider amending it or even writing a new one if there's a change in circumstances, such as marriage, having children or getting divorced.

Changes to a Will can be made by codicil or by revoking the old Will by creating a new one. If the change is relatively simple, you can write a codicil which needs to be correctly signed and witnessed, and keep it with your existing Will. But you should not alter the original Will. It is usually advisable to avoid ambiguity upon death, that a new Will is drawn up with your up to date wishes and instructions. If you do make a new will, it needs to be clear that it revokes all previous wills and codicils, this is done by adding clause in the Will to this effect.

WHAT NEXT?

As a Will is such an important part in planning for your future it is important that you seek professional guidance and legal advice from a solicitor when doing so. Our team of experts are able to take you through the process to guarantee you the service is tailored specifically to your needs and advise on all suitable areas. Please contact us on the details below to discuss further.

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