

## WILLS

### Why make a will?

We all like to be in control of our own lives and protect our assets yet many of us do not like to think about our death. Making a will is often something you will consider later. NOT having a will can be costly and lead to stress and confusion for your loved ones in the event of your death.

Making a will is the only way to ensure that in the event of your death, your estate assets are divided among your loved ones as YOU wish.

A will records who YOU (the "willmaker") wish to benefit from your estate (that is, your assets and belongings) when you die. As well as family, you can provide for people, such as friends, who would not be entitled to anything from your estate if you died without a will.

If you die without a will (called dying "intestate"), the law dictates who will receive your assets after you die and this may not be what you want.

There are good reasons to make a will and to keep it updated:

- Having a will removes any uncertainty about what will happen with your belongings and assets when you die. It gives YOU the power to decide where your possessions go.
- Marriage or a dissolution revokes your will.
- If you die when you are separated without a Court Ordered Agreement or your marriage is not yet dissolved, your previous partner can still inherit your belongings. This can be particularly painful if they are living with a new partner and/or you have started a new family. By making a will, YOU decide who inherits your belongings.
- If you are not in a legally-recognised marriage or partnership, your partner is not automatically provided for by the law.
- If you die without a will your partner or children will have to claim under the law. This can be a costly, stressful and slow process and your partner could be left with a reduced income.
- You can provide protection for a family member with an addiction or gambling problem.
- If you die without making a will and no living relatives can be traced, your estate will end up with the Crown. Friends have no legal rights.

Making a will and keeping it up to date is relatively quick and easy (in the context of a lifetime) and gives you peace of mind. YOUR WISHES MATTER.

### What should you put in your will?

The most important things to provide for in your will are:

- Who will be your trustees and executors? The trustees and executor will administer and distribute your estate. As they will be in charge of carrying out your wishes, they should be people you know are responsible and trustworthy. It is preferable that you appoint two people to be executors, in case one of them dies before you, although you can make provision for substituted executors in that event.
- Who will be the beneficiaries (i.e. the persons/entities who will receive your assets?) These may be family, friends or charities.

- You may have specific gifts of jewellery or heirlooms you wish to leave for particular people.
- You should consider making provision for your spouse or partner as they too can challenge your will through the Courts.
- You should consider making some provision for your children otherwise they can make a claim over your estate through the Courts for recognition. You do not have to treat children equally.
- You should consider any future children you may have, and make provision for them.
- You should consider how you would like your property to be distributed should your spouse or partner die at the same time as you and the appointment of guardians for younger children under 18 in that event.
- You may wish to make provision to protect a family member with an addiction or gambling problem.

Other considerations are:

- If you are in a relationship where your children are not the children of your current partner or where you own the family home you may wish to make provision for your partner to have the right of occupation of the family home and the income from your assets for a period after your death. This may be a life interest or a set period of years. The home and assets can then be left to your children who may miss out eventually if your partner finds someone else.
- You can also forgive any debts owed to you, this may be from a family trust set up by you.
- Provision for particular funeral arrangements, whether you wish to be buried or cremated or donation of body parts for medical use. These wishes are not strictly binding on the executor, but they will generally be followed.

**The information we require from you to make your will is:**

- Who you wish to appoint as the executors of your Will, the people who will administer your estate when you are gone. These can be family members or friends or a professional eg lawyer or accountant particularly if there is disharmony in your family or your affairs are complex.
- Any funeral instruction eg buried or cremated.
- Any special gifts eg jewellery family heirlooms etc?
- Who will the final beneficiaries be –the people you want to leave your assets to.
- If you leave your estate to your partner / spouse who would you like to leave it to if your partner/spouse dies before you or at the same time as you.
- Any provision for your partner to occupy the family home or receive income from your assets, after your death(especially if your children are from a prior relationship and you want them to be the ultimate beneficiaries of your assets).
- Any friends or charities you wish to benefit from your estate.

**Challenges to Your Will**

In certain situations your will can be challenged. These situations are briefly summarised as follows:

## **Dependants**

Under the Family Protection Act 1955 you have a moral duty to provide for close family members in your will. These can be children or partners. If you don't recognize them they have a right to contest the will because you haven't made adequate provision for them.

## **Promises**

Under the Law Reform (Testamentary) Promises Act if you have promised someone a reward in your will for their services and don't keep that promise, they can contest the will.

## **Partners and Spouses**

If you've been in a relationship for three years or more, under the Property (Relationships) Act your partner is entitled to half your relationship property if you separate or die. This applies to married, civil union and de facto couples, including same-sex couples. Your partner may choose to either divide property acquired jointly during the course of your relationship or accept what has been left to them as a beneficiary under your will.

## **Validity**

There are also ways in which a will can be challenged for challenges to its validity:

- If the will maker was not of sound mind and did not fully understand the consequences of their actions.
- If the will was not properly executed by way of signature or witness requirements.
- If the person making the will was mistaken about the type of document that was signed and would not have approved of the content.
- If there was an element of duress or undue influence when the will was executed.

You wouldn't want the Crown making decisions for your assets in your lifetime. Your Will distributes your assets according to your wishes.

## **LIVING WILLS**

A living will, also called an "advance directive", applies while you are living and states your wishes regarding the medical care you want if you become physically or mentally unable to decide. You might want to make a living will saying you should or shouldn't be resuscitated or that you want life support turned off in certain circumstances.

Medical professionals can't ignore an advance directive unless there are reasonable grounds to doubt its validity. The Health and Disability Commissioner says validity revolves around whether you:

- were competent to make the particular decision;
- made the decision free from undue influence;
- were sufficiently informed to make the decision;
- intended the directive to apply to the specific circumstances.