

A Will sets out what is to happen to a person's assets when they die. There are detailed rules about how a Will should be made, and what it should say to carry an individual's wishes into effect. These can create traps for the unwitting, and we have seen many fall into them by using stationer's forms, or indeed the computerised Will packages on the Internet.

In this short guide we set out some of the matters to consider when making a Will.

Making a Will

This is one of the most important documents an individual can make as it is their legal declaration naming one or more persons to manage their estate and providing for who will inherit after their death.

What if there is no Will

If there is no Will, this is called Intestacy. The law sets out rules which specify how an individual's affairs should be managed if there is no Will. However, these rules can be complicated, and will often not deal with situations satisfactorily. Additionally there is the stress for friends and family in knowing that the arrangements being made are those imposed by an Act of Parliament, rather than those which might have been chosen by the individual.

Some terms explained

Testator - the individual making the Will.

Estate - all assets owned by the Testator at the time of death. This includes all money, property and other possessions.

Executors and Trustees - in the Will the Testator will firstly identify the people who are to deal with what is being left. The Executors will carry out the directions in the Will. If longer running trusts are involved, Trustees will be responsible for dealing with these trusts. They are often the same people and the transition from one responsibility to the other may not be noticeable. The Testator will want to appoint people they trust to act as Executors and Trustees. This can be family or friends, or a professional adviser, including people who benefit under the Will. A non-professional executor would be able to instruct a solicitor to advise and/or act for him or her, and the estate would be expected to meet the costs.

Guardians - a person appointed to take care of minor children (under 18 years of age). This appointment will only take effect if there is no-one else who has responsibility for the children under other legal arrangements.

Specific Gifts - the main purpose of the Will is to say who is to inherit the assets (Estate). The Testator may wish to leave specific items - furniture, jewellery, fishing rod, car, shares or defined sums of money (which may have to be obtained by selling some or all of their assets). The Will is prepared on the assets the Testator states they have, which may change before their death. There may be conditions which would affect the ability to make a gift of property for example, trusts affecting a life policy or land, or restrictions on transferring company shares. It is important the Testator gives full details of their assets and anything which might affect them.

Liabilities - any debts owed by the Testator which includes a mortgage, tax and any professional fees including legal fees.

Residue - after any specific gifts and the payment of liabilities, the residue of the Estate remains. The residue can be left outright in one or more shares, usually expressed as fractions or percentages, or in trust. A trust can be a flexible way of leaving the estate but can also be more complicated to set up and administer than outright gifts. If there is not sufficient in the estate the residue will not be paid and the specific gifts will be reduced proportionately.

Gifts - can be made to anyone, and can be made the subject of a condition. Conditions have to be treated carefully as they can fail. The most common condition is the age at which a person can inherit, commonly 18, 21 or 25.

Alternative Gifts - it is worth considering eventualities which might occur before the Will comes into effect. If a husband and wife only leave everything to each other, only one of those Wills will be effective, because on the second death, the other will already have died. The Testator can however make an alternative gift for example, saying if A has died before me then I give it to B. The most common substitution is for a gift to pass to children if the original beneficiary has died. Without such a provision, the gift will usually be cancelled and the other beneficiaries will then receive more from the estate.



Final Directions - the Will may contain directions which are immediately important at the time of death. There may be funeral directions for example, or a request for cremation. There may also be a medical bequest; either for organ donation or to assist medical research. In addition to the formal directions in the Will, the Testator can leave a note of any other wishes they may have, such as the notification of any friends or relatives, or details of a funeral service. Whilst not legally binding like a Will, these can be particularly helpful to the appointed executors.

Revocation or Alteration - a Will is cancelled (revoked) by simple destruction or by making a new Will, and this can include a Will made in another Country. A Will is also revoked by marriage or registration of a civil partnership, unless expressly stated otherwise. On divorce or termination of a civil partnership, any provision for a former spouse or partner is cancelled, and a guardianship and executor appointment is also revoked.

Preparing your Will

It is useful if the Testator has worked out the extent of their assets. Jointly owned assets may pass under the terms of the joint ownership. For example a joint bank account will usually pass to the surviving account holder independently of the terms of the Will. Similarly, any trust property, will pass under the terms of the trust. It is important to tell the solicitor of the arrangements for any joint or trust property so they advise.

Assets outside the country (especially land and buildings) may have to be dealt with separately under a Will made in the country concerned.

In addition it is sensible to leave clear instructions about what should happen to digital assets for example social media, banking, investments, or other online accounts. It is best to make a list of all these and keep it safe.

The Benefits of Making a Will

- Being able to choose the executors.
- Deciding who will receive your assets.
- Deciding the age at which children or grandchildren will inherit.
- Incorporating provisions to reduce the risk of assets being assessed to pay for long term care fees if a spouse or partner requires care.
- Tax Planning - this is a further area in which making a Will can be important. There can be tax consequences on death if your net estate is above the minimum value for Inheritance Tax (the Nil Rate Band).
- Tax is calculated by reference to the value of the estate on death and on some lifetime gifts of capital made in the seven years before death. However, no tax is charged on gifts between husband and wife. In addition the unused portion of the Nil Rate Band of the first spouse to die can be claimed in the estate of the second to die. These rules give scope for planning. If care has been taken with arrangements before death the amount of tax charged can be reduced, both by lifetime arrangements (including gifts, trusts and insurance) and by the way the Will is planned. It is possible with careful planning to make substantial reductions of the potential tax liability.
- The Will can be part of a larger programme of estate planning. A Solicitor can be asked to advise on estate planning when preparing a Will, and would then advise as to the cost and the likely benefits of estate planning. They can of course only advise on the basis of the rules as they apply at the time and are not equipped to say what the tax rules may be when the Testator dies.

Why Use Linder Myers

We have a large team of dedicated lawyers specialising in the preparation of Wills, Trusts and Estate Planning.

A number of our lawyers are members of the Society of Trust and Estate Practitioners (STEP), which is a worldwide body representing practitioners specialising in the area of trusts and estates. For further information on STEP see their website www.step.org.

We are committed to delivering the very best possible service at a competitive price. We work closely with clients to take the strain out of the legal process. Distance is not an issue as we provide:-

- A postal service or email service using simple forms which are completed in the comfort of the home. Once received one of our lawyers will make a telephone call to verify certain details.
- Telephone service – at a time suitable to the client one of our lawyers will go through a range of questions and take instructions over the phone.
- Skype and Face Time – as with the telephone service but using this technology to enable face to face discussion.
- Many clients wish to visit a lawyer in one of our offices.
- We can arrange a home visit and if this is necessary we will discuss the costs associated with this prior to the visit.

The preparation of a Will is essential. Contact Linder Myers to help you with this – place your trust in a specialist lawyer.



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