

The Making & Witnessing of a Will

Overview

If you die without a valid Will, you are considered to have died intestate. This means that your assets will be under the rules of intestacy, and you and your family and friends will have no say in what is done with them (unless your survivors launch a legal challenge).

Under the rules of intestacy, only relatives, such as spouse, civil partner, or children can inherit and this is decided according to a strict “pecking order”, with your spouse or partner at the top, followed by your children, parents, siblings, grandparents, and uncles or aunts.

So, if you die intestate, you will not be able to leave anything for a common law spouse or your stepchildren. You will also be unable to leave a donation to a charity of your choosing.

Take care of your children - As well as outlining where you would like your money, property and any possessions to go, it is also possible to specify your wishes for what should happen to your children if you and their other parent or guardian passes away. You can nominate a guardian to take care of your children until they turn 18 in your Will.

Choose your executors - The executors are the people who will be responsible for carrying out your final wishes, executing the Will and taking care of other probate matters, such as dealing with inheritance tax.

You can choose the executors in your Will, giving the role to those you feel would be most capable and appropriate. They are not legally bound to act as executors, and if they decide that they don't want to take on the role, they could leave it to a solicitor or the other named executors.

Minimise inheritance tax - Inheritance tax is paid on any amount of your estate that exceeds £325,000. However, there are ways to set up your Will which can help to reduce the amount of inheritance tax that must be paid.

What type of Will?

There are a number of options, but the most common is a Single/Mirror Will and a solicitor will be able to guide you on this decision.

Single and Mirror Wills - A Single Will is created by one person, and stipulates their wishes after death and how they would like their estate to be distributed.

Mirror Wills do the same thing for couples who have very similar wishes. Because the wording of the two Wills is going to be pretty much the same it is usually a far better deal than buying a Single Will for each partner separately. Mirror Wills can be purchased by couples whether they are married, in a civil partnership or even unmarried.

Using a Single Will, or a set of Mirror Wills, you can name the executors who will manage the distribution of your estate after your death, appoint guardians for children and set out who should inherit sums of money or specific possessions. You are also able to state if you wish to leave any money to charities, and express your wishes with regard to funeral arrangements.

A Living Will - This allows a person to set down their wishes regarding the extent of the medical treatment they would want to receive should they become incapacitated and incapable of making their own decisions on the matter.

This enables you to refuse treatment you would never want to receive – for example, life-extending therapy when suffering from an extremely debilitating terminal illness, although you are not able to make legally-binding requests for a specific treatment.

We would recommend that a Living Will be done in conjunction with a Lasting Power of Attorney.

A solicitor will doubtless be more expensive than a “will writer”, BUT you will get the best service for your money, they will be fully qualified, and if something does go wrong, you will have redress through the solicitor's firm and the Legal Ombudsman.

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What is a Witness?

In England and Wales a will requires two adult Witnesses to verify the signature of the Testator (the person making the will).

Who can be a Witness?

There must be 2 adult independent persons, known as Witnesses, who have seen the act of signature and are prepared to add their details to the Will to prove this.

Therefore, when all UK Wills are signed, there must be two Witnesses present who must be over 18 years old. It is preferable that you are all present when the will is being Witnessed. Also preferable is that the Testator dates the will to make it clear that this is their most up-to-date version.

Who to choose as a Witness

Anyone who is of age, can see, read, has mental capacity and not intoxicated can witness a will. But, make note of the following –

- A very old witness may die and be unable to confirm that they signed the document in the event of a dispute.
- A beneficiary under the will should not be a witness as any gifts left to them would not be allowed if they witnessed the will.
- A spouse or partner of any beneficiary under the will should not be a witness as the above warning will apply and the gift will fail.

So, it is advisable to choose an independent person to witness your will and perhaps ask your solicitor, especially if they are named as an executor, to be a witness.

Does a witness have to read the will?

No, the witness is simply verifying a signature and does not need to see the content

Should I keep in touch with the witnesses of my will?

Ideally yes, just in case there is a problem in the future and they are asked to confirm that they did indeed sign the document. It is possible that witnesses can move away, you lose touch and be unaware that the witness has died or have lost mental capacity.

By not being aware of these situations, the validity of your will may potentially be compromised. This is why a prudent measure would be to have at least one professional witness, ideally your solicitor. If you have lost touch with a witness it would be sensible to have your will reviewed and updated by your solicitor.

In conclusion

Finally we would always recommend that you have your will drafted by a solicitor and not a “will writer” who may not be regulated and may not have the expertise that a solicitor has. Yes, you can create a “DIY” will but we would always warn against doing this.

We will be very happy to introduce you to a solicitor appropriate for your needs



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