



A Complete Guide to Creating a Will

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Why Make a Will?

It's only natural that one of the last things people want to think about is death. However, whether it's a case of necessity or just being organised, it's important to consider the impact death causes and how you would like your assets distributed amongst your loved ones.

By making a Will you can ensure you have control over who benefits after your passing.

It is not obligatory to make a Will - often it is one of those things that can pass you by in life, or that you just keep putting off. But here are a few reasons why you should give it a bit more thought.

The Law of Intestacy

The Law of Intestacy (1925) was passed to determine a certain range of rules that govern how property and assets are divided after a death. If you do not have a Will this dictates who inherits what – and if you have no close relatives and you're unmarried your estate automatically passes to the government.

Inheritance Tax

Inheritance Tax (covered in more depth later on in this guide) is for many of us a matter of fact. It is a tax you pay on your estate – everything you own over and above the threshold at the time of your death. Making a Will can greatly reduce the amount of tax you pay. For more information, you can read the [ways of limiting inheritance tax](#) guide on our blog.

Funeral Arrangements

It is not always possible to factor this conversation in to everyday life, but if you have a Will it's written, stored and kept for when it's needed. You can specify whether you would like to be buried or cremated. Where, and whether there are any last requests such as songs or hymns to be played can also be included in the Will.

What Do I Need to Put In a Will?

Most Wills are made up of financial legacies and other bequests to relatives, friends and loved ones and are usually specific fixed sums or treasured objects. After Inheritance Tax or debt, what is left is called the 'residue' and can be shared out amongst one person or as many people as you like.

Property

It is common to leave property in your Will. If you share ownership with a spouse or partner, you share half of its worth each less the mortgage. Bear in mind that any land, housing developments, car parking spaces or garages you own are counted as property.

Children

Children can be specifically referenced in a Will, but if they are under 18 money is held in a trust (or until they marry). You can also state in your Will who you wish to be their guardians if both parents die, and what money will be available to look after them.

Donations

Within their beneficiaries, many people choose to make donations that are close to their heart or they have had an arrangement with in the past. Leaving gifts to charity is also a good way of reducing inheritance tax.

Arrangements

As mentioned before, many people choose to mention specific funeral arrangements in their Will. It saves time and confusion when it's being arranged, and provides comfort for loved ones.

Appointing Executors

Executors are in charge of carrying out your wishes in accordance with your Will. More than one executor is normally named and can be a relative, friend or solicitor.

How to Make a Will

In the age of the internet, with the ability to receive guidance on almost anything online, there is the ability to choose from a number of different ways to make a Will.

However, it is still the case that in most cases, solicitors can be used to help create Wills, and can store the document at their premises for reference when required.

You will need to make sure your Will is watertight and legally valid – many solicitors will offer a range of services which include fixed price as well as tailored solutions.

If you do choose a DIY option for making a Will, ensure you have two independent witnesses who can sign it at the same time. A witness cannot be the beneficiary of the Will, or married to anyone mentioned in the Will.



However you decide to make your Will, consider all elements wisely and make sure you have consulted people such as your executors before signing them up for the role. They form an important part of your Will; and are responsible for handling large sums of money and important assets.

When going through the process of drafting a Will, make sure you make specific legacies. For many people, preserving items of specific sentimental value is important – make sure you talk to loved ones and discuss this process.

Once you have made a Will, you have to decide where to store it. Bear in mind that the original signed and witnessed Will must be produced when you die.

What if I Die Without Making a Will?

This is when the Law of Intestacy comes in to play – someone who dies without a Will is said to have died ‘intestate’

‘Intestacy is the condition of the estate of a person who dies owning property greater than the sum of their enforceable debts and funeral expenses without having made a valid Will or other binding declaration.’

The Government’s website has a step-by-step guide to work out what you should do if someone dies without a Will

<https://www.gov.uk/inherits-someone-dies-without-will>

If there is a living husband, wife or civil partner and the whole estate (including their share of the house) is likely to be worth more than £250,000, they inherit all the assets up to £250,000 and all the personal possessions, whatever their value.

The remainder of the estate is divided in half and shared between children.

If the value of the estate is less than £250,000 and there is no Will, the spouse inherits everything.

You may have to apply through your solicitor for a Grant of Representation to collect the money and pay any debts.



Making Sure Your Will is Legal

There are number of things that you have to adhere to for a Will to be legally valid:

- It has to be made without influence and voluntarily.
- It has to be in writing.
- Made by a person over the age of 18.
- Signed by someone of sound mind in the presence of two witnesses.
- Signed by the two witnesses, in the presence of the person creating the Will.

To ensure your Will is correct and legally binding, it's recommended to employ solicitors to draw up the Will for you.

Without the correct terminology, phrasing or witnessing, you risk leaving your family with additional difficulties when they are least expecting it.



There are many Will making services out there, and countless 'easy solutions'. However, there is a certain lack of regulation within many services and people currently have no way of knowing whether the person writing their Will is a reputable solicitor or someone with limited qualifications.

As well as countless Will writing services, DIY kits are available from the internet or even a number of high-street stores. Many are listed as being 'solicitor approved,' but it must be remembered the laws around this are quite complex, and are not necessarily suited to people leaving larger sums of money or assets to loved ones.

Dealing with Contested Probate

Contested Probate is defined as a dispute as to the validity of a Will, and sadly in many cases it is on the rise in the UK.

With an additional rise in large second and third families, it has also become more confusing as to who is entitled to what. Dealing with contested probate requires a soft and sensitive approach.

A Will can be challenged or contested on a number of grounds, including:

Lack of Due Execution

One of the benefits of hiring a solicitor to make your Will is that they are experienced in its required construction and execution. A Will must comply with section 9 of the Wills Act 1837, and is not valid unless it has been approved, has the correct signatures and has not been created under undue influence.

Lack of Testamentary Capacity

A person must be of sound mind and understand the consequences of their actions for a Will to be valid. Additionally, it needs to be intended by its maker to operate as a Will.

Undue Influence

Undue influence can be difficult to prove, and the evidence has to be good, however it is one valid reason people can claim when it comes to contested probate.

If you feel you have been left out of a Will you should feel able to speak to someone about a claim. Likewise, if a claim is being made against a loved one and you'd like to defend it, seek assistance from a solicitor.

Choosing Someone to Manage Your Affairs

In legal terms, choosing someone to manage your affairs is called a Lasting Power of Attorney (LPA).

The person chosen is known as the attorney – and in many cases this is often a friend or close relative. The donor (the person who delegates responsibility) can decide how much power the attorney has over their affairs.

Upon issuing an LPA, the donor must be able to understand what they are signing and have full control over their decision. An LPA must also be registered with the Office of the Public Guardian – the relevant forms and documents can be downloaded from their website:

<http://www.justice.gov.uk/forms/opg>

There are two types of LPA – one which deals with personal property, affairs and finance, and one which deals with authority in direct relation to personal welfare.

With the former, it is usually specified that that the attorney should start managing their affairs after the donor lacks capacity. Investments, finance decisions and limited gifts are all within the attorney's control.

In the case of the latter, decisions are made regarding the personal welfare, healthcare, diet and living arrangements of a donor. Although this does not have a direct link to creating a Will, there can be implications further down the line which need to be borne in mind when putting together end of life arrangements.

A Lasting Power of Attorney can be organised and processed by a solicitor, who can also organise the necessary forms and associated formalities. It is worth not delaying when applying for Lasting Power of Attorney – registration normally takes up to 6 weeks and an attorney cannot act until after registration is complete.



Trusts

Trusts are commonly defined as a legally binding document which holds assets on behalf (or for the benefit of) another person.

Trusts are a good way of assigning important resources to loved ones or people who will benefit from them more than you.

By setting up a trust you have essentially given up direct ownership of the asset.

Why Set Up a Trust?

'Trust funds' may occasionally get bad press, but money, investments, land or buildings you would like to stay in family control can be entered into a trust for protection. When someone is too young to handle their affairs, a trust is an excellent way of safeguarding for the future.

There are many types of trusts – 'UK family trusts' and 'non-family' trusts operate differently and are therefore managed and taxed differently.

Trusts are a big topic and it's worth seeking professional advice from a lawyer if you are thinking about setting one up. There are numerous tax implications, but if you are looking to set up a legacy for the benefit of your children or your grandchildren it can be a great way of conserving assets.

We make no charge for talking to you about your enquiry – email us at enquire@bbc-law.co.uk



Tax Planning

One aspect of creating a Will solicitors should be able to help with is the issue of tax planning.

Inheritance tax is the tax you pay on your estate after you pass away, and it currently applies to people whose entire assets are valued at more than £325,000 (or £650,000 if in a marriage or civil partnership).

The value of property and investments can change – it's always best to check their values every so often to be sure of where you stand with regards to the tax you owe.

Solicitors offering a tax planning service often can provide detailed and in-depth advice in the case of more complicated estates. You can find more information on our blog post which looks at [10 Ways to Limit Inheritance Tax](#)

Here are a few ways you should be able to legitimately reduce how much tax you pay on your estate:

- Family Trusts – keep assets in the family
- Gifts to charity
- Gifting money to your children when they marry
- Be aware of any land you own, and get advice on how it's tax

Organising your affairs with regards to inheritance tax is a complicated issue, and very few people navigate it without prior advice from a trust solicitor.

There are a number of harsh penalties for breaking the rules around tax in the UK – the HMRC requires detailed and accurate information and if you are in any doubt as to the validity of your tax planning, you should take steps to find the appropriate advice.

[Click here](#) to visit the appropriate section of our website for more information.

Updating Your Will

Updating your Will is important to bear in mind if your situation or circumstance changes.

People who have put together a Will many years before they die often see the position of their family, friends and loved ones change too – here are some clear situations whereby updating your Will may be a good option.

Births, Divorces & Marriages

As your family develops, matures and grows older, there may be more people you'd like to put some of your assets towards after you pass away. Updating the beneficiaries of your Will ensures you can allocate your assets properly and distribute them to the right people.

Change in Gifts

If you have become involved in charities, organisations or institutions since you made your Will, you may want to consider leaving a proportion of your estate to them in the form of a gift. There may also be tax benefits – contact a solicitor for more information.

Property and Assets

As stated before, it's likely that if you made your Will many years ago your personal circumstances will have changed. You may have changed jobs or retirement plans, or maybe you have moved home and the value of your estate has altered. These are important features of your Will that will have to be updated – you need to make sure your Will is current.

Although it takes time, it is recommended you review your Will every 5 years and update it with any major life events or anything that could alter how you distribute your assets.

A change to a Will is called a codicil – because the document has already been created, a codicil Will require separate witnesses and signatures in the same way as creating it for the first time. It's recommended for major changes a new Will is put together – [Burt Brill and Cardens](#) can help you with this process and advise you on the best solution.

Administration of your Estate

After you pass away, there are a number of important tasks that need to be carried out. The responsibility of these falls to the executors named in your Will.

This is an important job; executors take overall responsibility when it comes to ensuring matters regarding your estate are carried out as per your requests.

If you did not leave a Will or the executors formally apply to cease involvement with the process, a beneficiary or relative can apply to administer the estate. Priority is given to the closest adult relative starting with the spouse or registered civil partner.

As someone managing the estate, there are a number of established stages to go through:

- Obtain a medical certificate, register the death and begin funeral arrangements
- Check the Will and other documents pertaining to end of life
- Contact banks and other financial institutions to cancel accounts
- Look into insurance, tax and income source implications. Notify relevant parties

When it comes to the financial aspects of the estate, you may want to open a new bank account to handle all the relevant money. Build a file of important documents, and of course keep copies of all correspondence between administrators and official institutions.

To give you the legal authority to deal with the estate, you will need to apply to the probate registry for a grant of probate. It is common in this instance to use solicitors to advice on the best way to do this. If there are family trusts, large gifts, any challenges to the validity of the Will or untraced beneficiaries solicitors are highly trained to help obtain the most appropriate solution.

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