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Planning your Estate: Wills

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Most people don't like to think about their own mortality, but planning for the future is important to ensure your property, money and possessions are distributed the way you intend.

Writing a legally valid will is an essential part of this, and can provide peace of mind for you and your loved ones.

Despite this, a study from YouGov found that 62% of the UK's adult population did not possess a will in 2017. In fact, most people tend to put it off, with only 36% of 45 to 54-year-olds saying they have a will, compared to 67% of over-55s.

When asked why they hadn't made a will, the main reason was simply that they "hadn't got round to it yet".

If you're among the majority of people in the UK who haven't drafted a will, this article covers why you need one, how to go about making one, and what could happen if you don't.

Why do I need a will?

The simple reason for having a will is also the most obvious: to ensure your wishes are fully met after you die.

It's the only way to guarantee your estate – which is made up of your money, possessions, property and any investments – goes to the people or causes you care most about.

This should provide financial security to your family and their descendants, while wills can also be used to outline guardian arrangements for any children under the age of 18.

While on the topic of family, dying without a will or having an ambiguous will can cause family disputes, so making your wishes clear should mitigate any potential for conflict.

If you're married or in a civil partnership, having a will is less important as your spouse or civil partner will be your next of kin and beneficiary to at least half of your estate.

However, your partner has no right to inherit your estate without a will if you are unmarried or have not entered into a civil partnership.

How do I make a will?

A good place to start is to value your estate by drawing up a list of your assets and debts. This is something you should review every time your circumstances change.

Assets usually include any property you own, savings, insurance or endowment policies, pensions that may pay out a lump sum on death, and stocks, shares or investment trusts you may have.
It's also important to take into account any debts, such as mortgages, overdrafts, bank loans and credit cards, when calculating the total value of your estate.

From there, you need to think about how you want your estate to be distributed and to whom. Make it clear who stands to benefit from your estate and if you want to make any charity donations.

Then it's time to pick the executors of your will – the people, or person, who will distribute your estate to your beneficiaries after you die.

This role should be fulfilled by someone you trust implicitly, although you can appoint up to four executors to manage the administrative work, to check each other and balance judgements.

Tax considerations

When you're thinking about what you want your beneficiaries to receive, you'll need to take the tax on your estate into consideration.

Estates above a value of £325,000, or £650,000 for a married couple or civil partnership, could be liable for inheritance tax at 40% on the excess.

An additional threshold of £125,000 (rising to £150,000 in 2019/20) can be used on top of this for passing on a family home to direct descendants, as long as it meets qualifying conditions.

You're also able to reduce the value of your estate by giving certain gifts, as long as you do this at least seven years before you die.

If there are fewer than seven years between when the gift is made and your passing, inheritance tax is tapered at the following rates:

Years between gift and death	Tapered relief
Less than 3	40%
3 to 4	32%
4 to 5	24%
5 to 6	16%
6 to 7	8%
More than 7	Nil

There are also some types of gift that are exempt from inheritance tax altogether, whenever they are made.

Other complex rules and exemptions apply to inheritance tax, so be sure to talk to us before making gifts as part of your estate planning.

What makes a legally valid will?

If you feel compelled to draft a legally valid will on the back of an envelope, you will need to apply strict criteria for it to be binding.

For instance, you must be an adult of sound mind, and draft your will voluntarily. The will must also be made in writing.

When you sign it, you will need to be in the presence of two adult witnesses, who also need to add their signatures to confirm they witnessed the process.

Another important thing to consider is that your witnesses, or their married partners if they have any, must not be any of the named beneficiaries in your will.

You cannot make a legally valid will under duress or with no witnesses present. The same criteria apply when it comes to reviewing your will.

If you have been diagnosed with dementia or a serious illness, you can still make or update your will as long as you're present, mentally capable of making a will, and able to direct someone to sign it on your behalf.

Any will signed on your behalf should also contain a clause saying you understood the will's contents before it was signed.

Can a will be updated?

Yes – and you should always update your will when your circumstances change or, as a rule of thumb, review it every five years.

Changes of circumstance could include the birth of a new child or grandchild, getting married or entering into a civil partnership, or even moving house.

It's general practice to add to an existing will, rather than conduct a wholesale update, and this is known as a codicil. This also needs to be signed and witnessed.

Alternatively, if you need to make substantial changes, you can draft a completely new will. This new will must contain a revocation clause to prevent the legal effect of any previous wills or codicils.

Marriage, remarriage or entering into a civil partnership cancels any previously existing wills.

Divorce does not cancel an existing will but merely causes any gift to the divorced spouse to no longer be applicable.

Whether this is your intention or not, it's generally advisable to cancel and rewrite your will in such cases.

Consequences of not having a will

Failure to write a legally valid will before you die will result in your estate becoming subject to intestacy rules, so it may not go to the people or causes you want.
Your estate will then be distributed according to fixed rules and will not take your personal wishes into account. The following scenarios apply if you die without making a legally valid will.

The first £250,000 of your estate, plus half of the remainder and your personal possessions, will go to your spouse or civil partner, while any children will receive the other half of the balance.

Where no children are involved, your spouse or civil partner will inherit your whole estate, which includes all of your personal possessions.

If you are unmarried or not in a civil partnership and did not make a will, your partner will not automatically be entitled to penny of your estate – even if you have children together or have cohabited.

In such a situation, your partner would need to make a claim under the Inheritance Act 1975, which could award them some of the estate. This is also true for any dependant omitted from a will.

Your children stand to inherit your entire estate if your spouse or civil partner dies before you do, and your estate will be equally divided between your children.

Parents, siblings, nieces and nephews are in line to be your next of kin if you don't have a partner or any children when you die.

If you requie assistance with Wealth Management, Estate Planning or would like us to recommend someone that can help you write your Will please contact us on 020 7330 0000.

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