A GUIDE TO WILLS AND PROBATE
The aim of this book is to guide you through the importance of making a will, the rules of intestacy and how to deal with obtaining a grant of probate.

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**INTRODUCTION**

A WILL IS A LEGAL DOCUMENT THAT DECLARES HOW YOU WANT YOUR ASSETS TO BE DISTRIBUTED AFTER YOU DIE.

IT IS IMPORTANT THAT EVERYONE MAKES A WILL DESPITE THEIR AGE OR HOW BIG OR SMALL THEIR ESTATE IS. BY MAKING A WILL YOU CAN ENSURE THAT YOUR FAMILY AND LOVED ONES RECEIVE THE GIFTS YOU WANT THEM TO.

If you do not make a will then your assets will be shared out among your next of kin according to a strict order of priority called the ‘rules of intestacy’. This means that people you want to benefit from your estate - such as a partner you’re not married to or in a registered civil partnership with - might get nothing.

**THE RULES OF INTESTACY**

THE RULES OF INTESTACY WERE AMENDED IN OCTOBER 2014. THE INHERITANCE AND TRUSTEES’ POWERS ACT 2014 INCLUDES REFORMS THAT WILL:

- Ensure that where a couple are married or in a civil partnership, assets pass on intestacy to the surviving spouse in all cases where there are no children or other descendants
- Simplify the sharing of assets on intestacy where the deceased was survived by a spouse and children or other descendants
- Protect children who suffer the death of a parent from the risk of losing an inheritance from that parent in the event that they are adopted after the death
- Amend the legal rules which currently disadvantage unmarried fathers when a child dies intestate
- Remove arbitrary obstacles to family provision claims by dependants of the deceased and anyone treated by the deceased as a child of his or her family outside the context of a marriage or civil partnership
- Permit a claim for family provision in certain circumstances where the deceased died “domiciled” outside of England and Wales but left property and family members or dependants here
- Reform trustees’ statutory powers to use income and capital for the benefit of trust beneficiaries (subject to any express provisions in the trust instrument).
Who do you want to name as your beneficiaries? This can be a single individual, a number of individuals, one or more non-profit organisation, or a combination.

How do you want your assets to be distributed among these beneficiaries? You can list specific items and who will receive the items – such as heirlooms, the family home or other assets. You can also bequeath specific amounts to various beneficiaries. And you can designate a certain percentage of your assets to beneficiaries of your choice, once expenses and debts have been paid and other bequests made. Many people choose to incorporate a combination of these approaches. Remember, you can make changes later if needed; the key is to have a will in place.

Who will you name to serve as executor of your estate? This person can be a family member or trusted friend, a legal or financial professional or an institution. Keep in mind that serving as executor of an estate can be a time-consuming process involving detailed asset valuations and reporting; the most effective executor is one who has the needed skills and can dedicate the time required to fulfil these responsibilities. You may prefer to designate co-executors, including a family member or friend along with an institution.

Do you need to name a guardian for your minor children? If you have young children, this is an important step. You may also want to establish a trust and name a trustee to protect their inheritance.

Do you have complex family relationships that might require additional legal documents? For example, if you are in a second marriage involving a spouse’s children from a previous marriage, you may want to talk with your solicitor about ways to ensure that your assets are divided according to your wishes.

The Government has also announced that the recommendations set out at Part 8 of our Report, which would be given effect by the draft Inheritance (Cohabitants) Bill annexed to the Report, will not be implemented during this Parliament. This Bill contains further provisions that would give certain unmarried partners who have lived together for five years the right to inherit on each other’s death under the intestacy rules. Where the couple have a child together, this entitlement would accrue after two years’ cohabitation, provided the child was living with the couple when the deceased died.

If you do not make a will, many problems can arise when you pass away. The people you want to inherit your estate may not as the law of intestacy will apply. There will be a delay in obtaining your assets and therefore your next of kin will be responsible for funeral expenses from their own funds. If you had children and their mother/father had also passed without a Will a guardian would not have been appointed and this would need to then be dealt with in court which would be a long and costly process.

A will includes specific directions on how you wish your estate to be distributed after your death, including provisions for any tangible personal property that you may own - jewellery, furniture etc as well as naming guardians for any minor children. It also indicates what sources will be used to pay any estate taxes and debts that are due, and it names an Executor who will be responsible for the settlement of your estate. It is not only important to make a will it is also important to keep your will up to date.

**You should review your will after the following events:**

- You get married or divorced (a change in marital status may void your will);
- You are unmarried, but have a new partner;
- The amount of money and/or property you own changes significantly;
- Your executor or a significant beneficiary in your will dies;
- There is a birth or adoption of a child in your family;
- You change your mind about the provisions in your will.

**5 KEY QUESTIONS TO ASK YOURSELF WHEN MAKING A WILL:**

1. **Who do you want to name as your beneficiaries?** This can be a single individual, a number of individuals, one or more non-profit organisation, or a combination.

2. **How do you want your assets to be distributed among these beneficiaries?** You can list specific items and who will receive the items – such as heirlooms, the family home or other assets. You can also bequeath specific amounts to various beneficiaries. And you can designate a certain percentage of your assets to beneficiaries of your choice, once expenses and debts have been paid and other bequests made. Many people choose to incorporate a combination of these approaches. Remember, you can make changes later if needed; the key is to have a will in place.

3. **Who will you name to serve as executor of your estate?** This person can be a family member or trusted friend, a legal or financial professional or an institution. Keep in mind that serving as executor of an estate can be a time-consuming process involving detailed asset valuations and reporting; the most effective executor is one who has the needed skills and can dedicate the time required to fulfil these responsibilities. You may prefer to designate co-executors, including a family member or friend along with an institution.

4. **Do you need to name a guardian for your minor children?** If you have young children, this is an important step. You may also want to establish a trust and name a trustee to protect their inheritance.

5. **Do you have complex family relationships that might require additional legal documents?** For example, if you are in a second marriage involving a spouse’s children from a previous marriage, you may want to talk with your solicitor about ways to ensure that your assets are divided according to your wishes.
INHERITANCE TAX

THE CURRENT INHERITANCE TAX THRESHOLD IS £325,000.00 PER PERSON. THIS MEANS THAT IF YOUR ENTIRE ESTATE IS LESS THAN £325,000.00 NO INHERITANCE TAX IS PAYABLE.

Married couples and registered civil partners are also allowed to pass assets to each other during their lifetime or when they die without having to pay Inheritance Tax. It doesn’t matter how much they pass on - as long as the person receiving the assets has their permanent home in the UK. This is known as spouse or civil partner exemption.

If someone leaves everything they own to their surviving spouse or civil partner in this way it’s exempt from Inheritance Tax. It also means they haven’t used any of their own Inheritance Tax threshold or nil rate band. This can be used to increase the Inheritance Tax threshold of the second spouse or civil partner when they die - even if the second spouse has remarried. Their estate can be worth up to £650,000.00 in 2014 to 15 before they owe Inheritance Tax.

The threshold can only be transferred on the second death, which must have occurred on or after 9 October 2007 when the rules changed. It doesn’t matter when the first spouse or civil partner died. However, if it was before 1975 the full nil rate band may not be transferrable as the amount of spouse exemption was limited then.

You can reduce your inheritance tax by making provisions in your will for gifts to a “qualifying charity”. (A qualifying charity is an organisation that’s recognised as a charity for tax purposes by HM Revenue & Customs (HMRC)

You can give away gifts worth up to £3,000 in total in each tax year and these gifts will be exempt from Inheritance Tax when you die.

Some gifts made during your lifetime are exempt from Inheritance Tax because of the type of gift or the reason for making it.

WEDDING GIFTS/CIVIL PARTNERSHIP CEREMONY GIFTS

WEDDING OR CIVIL PARTNERSHIP CEREMONY GIFTS ARE EXEMPT FROM INHERITANCE TAX, SUBJECT TO CERTAIN LIMITS:

• parents can each give cash or gifts worth £5,000
• grandparents and great grandparents can each give cash or gifts worth £2,500
• anyone else can give cash or gifts worth £1,000

You have to make the gift on or shortly before the date of the wedding or civil partnership ceremony. If the ceremony is called off and you still make the gift this exemption won’t apply.

SMALL GIFTS

You can make small gifts up to the value of £250 to as many individuals as you like in any one tax year. However, you can’t give more than £250. If you give an amount greater than £250 the exemption is lost altogether.

You also can’t use your small gifts allowance together with any other exemption when giving to the same person.

REGULAR GIFTS OR PAYMENTS THAT ARE PART OF YOUR NORMAL EXPENDITURE

Any regular gifts you make out of your after-tax income, not including your capital, are exempt from Inheritance Tax. These gifts will only qualify if you have enough income left after making them to maintain your normal lifestyle.

These include:

• monthly or other regular payments to someone
• regular gifts for Christmas and birthdays, or wedding/civil partnership anniversaries
• regular premiums on a life insurance policy - for you or someone else

You can also make exempt maintenance payments to:

• your husband, wife or civil partner
• your ex-spouse or former civil partner
• relatives who are dependent on you because of old age or infirmity
• your children, including adopted children and step-children, who are under 18 or in full-time education
**PROBATE**

IN ORDER TO DEAL WITH SOMEONE’S ESTATE YOU NEED TO ESTABLISH IF THEY MADE A WILL. IF THEY DID YOU MAY NEED TO OBTAIN A GRANT OF PROBATE. THIS IS THE LEGAL DOCUMENT WHICH ALLOWS ONE OR MORE PEOPLE TO LEGALLY DEAL WITH A DECEASED ESTATE.

If the deceased died intestate you will need to obtain a letter of administration.

If you believe the deceased made a will but are unable to locate it, you can use a will database such as certainly. This may help establish if the deceased did in fact make a will.

A grant may not be needed if the deceased’s estate is a low-value estate, generally worth less than £5,000 (some organisations may use a higher or lower figure in deciding whether or not a grant is needed) and doesn’t include land, property or shares. A grant will also not be needed if the assets are held in joint names as the asset will automatically pass to the survivor.

Jointly held assets, such as bank and savings accounts, will typically automatically transfer to the other named holder without the organisation requiring a grant of representation.

In order to apply for a Grant of Probate you must firstly assess the size of the estate to ascertain whether any inheritance tax is payable.

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**STEP BY STEP GUIDE**

**WHAT TO DO IN THE EVENT OF DEATH**

1. Obtain death certificate of the deceased
2. Obtain the original will to ascertain who the executors are. Joint executors are named all will need to sign probate documents, even if they agree one will take the lead role.
3. Make a preliminary valuation of the estate. For property you may need a professional valuation to satisfy HMRC.
4. Complete IHT form, swear oath and apply for the grant of probate by submitting the forms along with the original will, death certificate and probate registry fee of £155.00. If the estate is worth more than £325,000.00 inheritance tax will be payable.
5. Pay any inheritance tax (IHT) that is due. If the bulk of assets are tied up in property you can pay IHT in instalments.
6. Probate Registry will then send you the Grant of Probate.
7. Deal with the liabilities of the estate and then distribute the assets.

The executors are responsibly for distributing the estate in accordance with the will or the rules of intestacy.

Before distributing an estate the executor or administrator should wait put a notice of the death in the local newspaper, they should also wait for a period of 6 months before distributing the estate.
GLOSSARY OF TERMS

Administration
Managing the affairs of the deceased. This involves establishing, collecting and distributing the assets of the estate as laid out in the Will or, where there is no Will, according to the intestacy rules that apply.

Administration period
The time taken from the date of death to the completion of the estates administration.

Administrator
The person who deals with distributing the estate in cases when there is no Will.

Affidavit
A written statement, confirmed by oath, for use as evidence in court.

Apportionment
The proportionate division of income between certain beneficiaries.

Attorney
Someone appointed by another to act on their behalf.

Attestation
Witnessing a signature.

Asset
Property, money or belongings owned by the deceased.

Beneficiary
Anyone or thing that is entitled to a share of the estate of the deceased.

Bequest
Any gift left in a Will that is not land or buildings.

Capital Taxes Office - The Inland Revenue Department that deals with all aspects of inheritance tax.

Chargeable Gift
An item given in a Will on which tax may have to be paid.

Chattels
Any movable personal property or belongings not used for business.

Codicil
An addition or changes made to a Will. It has to be signed and witnessed in the same way as a Will. A codicil may be needed, for example, to increase a cash legacy, change an executor or one named in a Will, or to add another beneficiary. Codicils should only be used to perform minor changes to the existing Will. If more complicated changes are needed it is advisable to make an entirely new Will.

Contingent Legacy
A gift with a condition attached for example a gift conditional on the beneficiary reaching a certain age.

Deceased
The person who has died.

Devises
A gift of leasehold or freehold property stated in the Will.

Discretionary Trust
A trust where the trustee has the full power to decide when and which certain beneficiaries are to receive their capital.

Donee
The person who receives the gift.

Donor
The person leaving the gift.

Estate
The property, money and possessions of the deceased person.

Executor
The person appointed in a Will or codicil to administer an estate.

Gift
Any legacy left in a Will.

Grant of Letters of Administration
The legal document issued by the Probate Registry, appointing an administrator to deal with an estate. This is issued when there is a Will but no named executor, where the executors are unable to apply, where they do not wish to be involved in dealing with the estate, or where the deceased has not made a Will or any Will that the deceased has made is not valid.

Grant of Probate
The document obtained by the executors of a valid Will from the Probate Register.

Grant of Representation
An order from a court authorising a person to deal with the estate of the deceased when no Will is in place.

Guardians
The people chosen by the testator to look after their children in the event of their death.

Inheritance Tax
Often referred to as IHT, it is the tax which is payable on the deceased’s estate.

Interest
The amount allowed before tax is payable.

Inheritance Tax Threshold
The amount that can be passed to beneficiaries without paying Inheritance Tax.

Interest
The right to property.

Intestacy
The name for the situation which arises when someone dies without having made a legally valid Will. Their estate is then distributed according to the laws governing intestacy.

Issue
All the direct descendants of a person.

Intestate
When a person dies with no legally valid Will.

Lapses
When a beneficiary dies before the testator.

Last Will and Testament
A legal document that lays out the way a person wishes to have their estate distributed upon death. It can also contain their wishes for their burial/cremation.

Laws of Intestacy
The Intestacy Laws (1925) dictate how your estate will be distributed if you die without a legally valid Will. The Intestacy Laws (1925) dictate how your estate will be distributed upon death. It can also contain their wishes for their burial/cremation.

Liabilities
The debts that need to be settled by the estate following the death of the deceased.

Life Interest
The right to enjoy for life or for a specified period of time either money or property which will eventually revert to the original estate in some way on death.

Minor
A person under the age of 18.

Next of Kin
The nearest blood relative of the deceased.

Nil Rate Band Allowance
The amount that can be passed to beneficiaries without paying Inheritance Tax.

Nominated Property
Assets that can be given to a beneficiary outside of a Will or estate.

Oath
A pledge to tell the truth often calling upon God as a witness.

Pecuniary Legacy
A gift of money.

Personal Chattels
Any personal and domestic items owned by a testator/testatrix excluding business assets.

Personal Representative
A person entitled to deal with the deceased’s estate.

Power of Attorney
Authorisation to act on someone else’s behalf.

Probate
Probate is an official form that gives the executors of a Will the right to deal with the deceased’s assets and property. It acts as proof that the executors have the authority they need to handle the estate of the deceased person. This legal procedure must be undertaken to establish that a Will and codicil are genuine and valid.
GLOSSARY OF TERMS

Probate Registry
A court within the family division of the High Court. Responsible for making sure that the Will is valid and the applicant is entitled to handle the estate of the deceased.

Renouncing Probate
Where a named Executor in a Will signs a legal document cancelling his appointment from the start of the administration period.

Residuary Beneficiary
Any person entitled to receive the whole or a share of any residue of the estate, under the terms of the Will or on intestacy.

Residuary Estate
What is left of the estate after all liabilities and expenses have been paid.

Residue
What’s left after the money legacies, specific gifts, funeral expenses, Inheritance Tax, and all other expenses.

Revocation
When the testator decides to change their Will completely and invalidates the previous one.

Specific Legacy
Specific gifts left to specific people.

Testament
Another name for a Will.

Testate
Dying leaving a Will.

Testator
The person who sets out his wishes and requests as to how their estate should be divided in the form of a Will.

Testatrix
A female testator.

Trust
An arrangement set up by Will or deed with Trustees being appointed and given money or assets to hold and manage for the defined beneficiaries.

Trustee
Someone who is given the legal responsibility to holds any assets until nominated beneficiaries meet certain criteria set out in the deceased’s Will e.g. until a beneficiary reaches the age of 18. Trustees normally have powers to distribute monies and have full power to sell and invest.

Will
A form of instructions indicating how someone wishes to dispose of their assets on death.

Witnesses
The persons who must be present to see the testator sign the Will. They must also sign the Will themselves and should not be beneficiaries of the Will.