Wills

Overview

Some basic points for making sure you have a Will and that it is up to date: -

- you decide not the State who will inherit your money, property and possessions after your death as well as making bequests

- if there are young children you can appoint 'Guardians' to care for your children

- your wishes for burial or cremation are known and certain

- in conjunction with the use of Trusts, as appropriate, and the nature of legal ownership of your home you can minimise any potential Inheritance Tax liability

- avoids delay and unnecessary costs associated dealing with your Estate where there is no valid Will

- you can produce your own Will, use Will packs, services of a Will writing service or Solicitor
    - the simpler the provisions in the Will the cheaper it can be
    - during the Autumn, many Solicitors take part in Free Will Writing month for simple Wills so cost need not be a barrier to making a Will

- a valid Will requires
    - witnesses to testify your signature and if a Beneficiary (person who will inherit through your Will) also witnesses your Will they lose their potential inheritance
    - appointment of a person, people, professional such as an Accountant or Solicitor or a combination to implement your Will after your death – they are called Executor(s)
    - if the Executors have lost mental capacity when it comes to implement your Will then there is a problem

- a Will can only be made or amended while you have 'mental capacity' so leaving it too late runs the risk of being caught out and so the Laws of Intestacy in England would apply

- if you own property abroad or have other assets overseas then you need a similar legal document for that country too

- a Will can be varied by the Beneficiaries named in your Will

- Wills can be challenged in Court and certain or all provisions set aside
    - Will made under duress
    - Vexatious – intended to annoy or cause problems for someone such as cutting out a child from the Will

Ensuring validity of your Will

- must be aged 18 or over when the Will was made
- made voluntarily and not under duress even from your spouse, partner, or civil partner
- mental capacity when it was made
- made in writing
- you signed it in the presence of 2 witnesses who are both over 18
- signed by your 2 witnesses, in your presence
    - signing can be witnessed both in person and remotely (for example by video conferencing). In both cases: -
        - you must have a clear view of the person and the act of signing
        - the Will maker (or person authorised to sign on their behalf) and witnesses must sign the same document
    - can only sign remotely in England or Wales

When professional advice might be advisable

- share a property with someone who is not your husband, wife, or civil partner
- want to leave money or property to a dependant who cannot care for themselves
- several family members who may make a claim on your Will, such as a second spouse or children from another marriage
- permanent home is outside the UK
- have property overseas
- have a business

Keep your will safe, where it cannot be destroyed and let appropriate people know where it is kept

- Can keep your Will at your home in a safe place or better still fireproof safe. You can store it with: -
    - your Solicitor – in a strong room
    - your Bank – in strong room
    - a company that offers the storage of Wills
    - HM Courts and Tribunal Service
        - read full guidance on storing your Will with the HM Courts and Tribunal Service https://www.gov.uk/government/publications/store-a-will-with-the-probate-service -
        - there is a one-off charge of £20 (2021) to deposit a Will or its codicil, payable by cheque to HM Courts & Tribunals Service
        - if you need to store both the Will and its codicil, make sure you include them together in one envelope, to avoid being charged separately for each item
        - you can send your Will by post to the Registry in Newcastle-upon-Tyne following the instructions on the website
        - you can deposit your Will by taking it to a probate registry or have someone do it on your behalf, for example, a relative or Solicitor
            - Brighton District Probate Registry, William Street, Brighton, BN2 0RF
            - Cardiff Probate Registry of Wales, 3rd Floor, Cardiff Magistrates Court, Fitzalan Place, Cardiff, CF24 0RZ
            - Liverpool Probate Registry, Queen Elizabeth II Law Courts, Derby Square, Liverpool, L2 1XA
            - Leeds District Probate Registry, York House, 31 York Place, Leeds, LS1 2BA
            - Oxford Probate Registry, Combined Court Building, St Aldates, Oxford, OX1 1LY
            - Newcastle District Probate Registry, 1 Waterloo Square, Newcastle-upon-Tyne, NE1 4DR
            - Winchester District Probate Registry, 1st Floor, Southside Offices, The Law Courts, Winchester, SO23 9EL

- Let your family and Executors know where your Will is kept / stored

Review and update your Will

- Consider reviewing your Will periodically, say every 5 years, or immediately if there has been a major change in your life such as: -
    - separation or divorce
    - remarriage cancels any Will unless it was made in contemplation of marriage
    - death of your spouse, partner, civil partner, Beneficiaries in your Will unless a' Per Stirpes' clause is written in
        - In essence following the family line should a Beneficiary not be alive so that their share of the Estate then passes down their family line to their descendants in equal shares and if any of them are not alive in turn that share is passed down equally to their descendants
    - birth of a child, adoption, fostering a child, guardianship
    - moving home
    - an Executor named in the Will has died

Making changes to your Will

- cannot amend your Will after it has been signed and witnessed
- can only change a Will by making an official alteration called a 'codicil'
- any 'codicil' must be signed by you and witnessed as when making a Will
- no limit on how many 'codicils' you can add to a Will but be careful to ensure clarity and avoid possible confusion

Making a new will

- advisable to make a new Will if there are major changes
- new Will should explain that it revokes (officially cancels) all previous Wills and 'codicils'
- destroy your old Will by burning it or tearing it up

Variation of a Will after death

- changes can be made to a Will after death if the beneficiaries agree to safeguard the position of anyone left worse off by the changes

- any changes to the Will must be completed within 2 years of the death and before the Estate is wound up

- typical reasons for such a course of action: -

    - changes within the family or friends had not been picked up by the Will and to provide for someone left out of a Will

    - original Will was made at a time when Inheritance Tax provisions were different, and the current Will does not reflect more favourable or adverse provisions

    - a Beneficiary potentially benefiting from their inheritance might find themselves caught by the scope of Inheritance Tax and prefer to leap-frog a generation by their inheritance being transferred through the Will to their own children

    - move all or part of the assets into a Trust

    - resolve uncertainty over the Will

To change a Will a 'variation' is made. You do not need a formal document or deed. A simple letter will suffice if it meets the conditions set out on this website https://www.gov.uk/government/publications/inheritance-tax-instrument-of-variation-checklist-iov2

If the variation means there will be more Inheritance Tax to pay, then a copy must be sent to HM Revenue and Customs (HMRC) within 6 months of making it. You do not need to do this if the variation does not alter the amount of any Inheritance Tax due.

Take responsibility to check your draft Will, perhaps enlist the help of others if in any doubt or just to be certain, then make sure it can be found once signed

If you draft your own Will thinking it is a straightforward matter do take care. Omissions or mistakes can frustrate or end up costing a great deal of time and money to put resolve and correct.

Even if you use the services of a Solicitor or another professional to draft or revise your Will do ensure that it is checked thoroughly because mistakes can and do happen.

You might ask your Executors, Beneficiaries, family member, close friend, or some other trusted person to read it and see if they spot any mistakes or possible confusion. A fresh pair of eyes looking at something another person has written can pick up omissions or glaring inconsistencies that the author fails to notice. How many times having sent an email that on re-reading you notice that there is a mistake or omission?

A few examples to bring out the importance of this point about checking before signing a Will. Especially the importance of the procedures and the importance of the words within the Will itself: -

- a lady appointed her dog to be Executor in her Will, the matter had to be dealt with in Court and the Judge concluded wisely that on balance the dog was not a fit and proper person to act as Executor!
- a father thought his own situation so simple that he drew up his own Will in which he wrote "I leave all my property to my wife..." thinking this meant everything he owned. When the Will came to Probate it caused problems because in legal terms 'property' means the house but not bank accounts and other financial assets. Extra expense was incurred by the widow to gain access to the money in bank accounts
- an existing Will was to be varied by a leading local firm of Solicitors and though the details for change, the proportions to be left to particular beneficiaries, had been advised by email the draft Will when received did not reflect those changes and even had other sections missing. In the end the Solicitor did not charge for the work
- a Leading Authority on Executorship and author on the subject died and when his own Will was opened they found it had been properly drawn up, dated, witnessed but not signed!
- a single lady had made a Will but after her death the Will could not be found immediately even though it was known which firm of Solicitors had been involved. Eventually having searched the house high and low the Will was eventually found in the attic within a folder of sketches that might have been thrown away along with the Will

Related matter – nominations related to a pension scheme or personal pension arrangements

You may have benefits or life assurance cover under the umbrella of an occupational pension scheme or Personal Pension where on death there may be certain benefits payable such as: -

- life assurance cover calculated as a multiple of your salary
- the value of any Additional Voluntary Contributions you have made
- deferred tax-free lump sum
- unpaid pension as it has been deferred
- a 'guarantee' period payment relating to a pension in payment where a lump sum in payable on death should you not survive the entire period that counts from when payment first started – typically a 5-year period
- a financial dependant's benefit where you can nominate or allocate a pension that is payable to nominated surviving dependants
- the untapped money within a Personal Pension Plan or in an 'Income Drawdown' account

The Trustees / Administrators do encourage completion of a Nomination or Expression of Wishes Form so that you can make your intentions known and considered when they exercise discretion in relation to whom payment will be made.

All too often this is overlooked and either there is no such Nomination or Expression of Wish Form lodged or it was made so long ago and in effect is out of date. Remember each arrangement needs its own Form.

If you have lost track of your previous pension benefits then they can be traced through the Pension Tracing Service. Visit https://www.gov.uk/find-pension-contact-details

Some other sensible measures

- maintain an up-to-date statement of your savings / investments and policies to make their life easier and less stressful for those who must deal with your Estate after your death
    - remember relevant reference numbers, contact details, passwords for associated websites / accounts

- keep a record of gifts or transfers of assets that might need to be considered in the application for Probate and the calculation of any Inheritance Tax on death– remember the '7-year rule' when as a rule any such gifts are set aside for calculation of Inheritance Tax 7 years after the date of each gift
    - transferring ownership of property and then continuing to live in it rent-free could present problems, be set aside and in effect added back into the Estate for the calculation of Inheritance Tax. So, do seek professional advice before transferring to others any property that you live in

- retain the death certificate and Will for the first of you to die if a couple (married or civil partners) as the Executors on the death of the survivor might need to claim any transferable Inheritance Tax allowances in respect of the first to die that could be claimed by the Executors on the second death

- if you own assets or have savings abroad then remember the Will for England and Wales will not deal with anything abroad and so suitable measures should be taken in relation to those overseas assets

- at all times remember the importance of a Lasting Power of Attorney while living, particularly in later life