

Getting your affairs in order

What you have and what you want to happen to it

Everyone should have a Will, but it is even more important if you have children, you own property, you have savings, investments or insurance policies, or you own a business.

The very act of having a Will drawn up can be beneficial in that it makes you think about what you have and what you want to happen to it. While most of us find it difficult to think about our mortality, the fact is that one day we will be gone, and we owe it to our beneficiaries to make the task of settling our affairs as easy as we can.

RULES OF INTESTACY WILL APPLY

If you do not leave a valid Will, the rules of intestacy will apply in respect of your estate (your 'estate' is defined as assets less outstanding liabilities). If your estate is very small, this may not matter, and there are circumstances in which the result might be perfectly acceptable (for example, if the value of your estate is such that it will pass wholly to a surviving spouse or children). In most cases, however, it still makes sense to have a Will drawn up. The rules of intestacy do not provide for 'common law' spouses. If you do not provide for them via a valid Will, they may be obliged to make a legal claim against your estate and could find themselves seriously short of funds in the meantime.

PROTECT CERTAIN FAMILY MEMBERS

The very act of having a Will drawn up can be beneficial in that it makes you think about what you have and what you want to happen to it. For example, whether you want to protect certain family members (such as minor children or those who will struggle to manage their affairs), whether you want certain interests to take priority (for example, giving a second spouse or registered civil partner a right to remain in occupation of the family home for the rest of their life), whether you want children or grandchildren to benefit equally (or for any inheritance to be adjusted to reflect lifetime gifts), whether you want to benefit charities, and whether it would be appropriate to consider some tax planning.

ASPECTS OF YOUR ESTATE

In addition to a Will, you can write a letter of wishes. This is not legally binding, but you can use it to deal with smaller items and more significant matters such as the factors you would want trustees for your children to consider in exercising their discretion. You might also want to guide your executors towards professional advisers who you think would be best placed to deal with particular aspects of your estate or the estate as a whole.

REFUSAL TO ACT ON YOUR WISHES

Talk about your Will to those who will be affected by it. You can name people as executors without their prior consent, but they can refuse to act when the time comes. Check that they are willing, tell them why you have chosen them and make clear why your Will says what it says and what your wishes are in respect of any matters not covered in the Will. Also, tell them where your Will is kept.

IMPACT AND THE LEGAL COSTS

If the terms of your Will are likely to lead to arguments within your family, think very carefully about the impact and the legal costs associated with any challenge and whether it makes sense to explain things in a covering letter or face to face while you have time. Think carefully about your choice of executors. While family or friends are usually a good option, there are circumstances – for example, if you have business interests, if family conflicts are expected or if there is simply no one else appropriate – where the appointment of one or more professional executors may make sense.

KEEP IT UNDER REVIEW

If you already have a Will, make sure you keep it under review. Are your chosen executors still the right people? Are they still alive? Have your wishes

changed in any way? Have your family circumstances changed? (Bear in mind that marriage usually makes a Will invalid and that divorce makes any bequests to your ex-spouse/civil partner null and void.)

Minor amendments to a Will can be achieved via a codicil. More wholesale changes call for a new Will which, assuming it is valid, takes priority over your old Will.

MAKE YOUR WISHES CLEAR

You can not bind family or friends in terms of funeral arrangements or, at present, organ donation. You could sign up to the organ donor register and carry a donor card, and – most importantly of all – talk to your family about your wishes and the reasoning that lies behind them.

KEEP RELEVANT PAPERS SAFE

It is essential that Wills are kept secure, whether in a professional adviser's safe or at home in a fireproof box. Your executors, however, are going to need access to far more. They will need to determine your assets and liabilities on death and, if Inheritance Tax (IHT) is an issue, investigate any gifts in the seven preceding years. Leave them lists, together with relevant papers and life policies and contact details. Also leave a note of relevant contact details – your accountant, your solicitor, your bank and professional financial adviser – with details of pension and life policies.

IMMEDIATE FAMILY NEEDS

Assets that are owned jointly (including properties held as joint tenants) pass to the survivor automatically on death. Most other assets, however, will be frozen until a Grant of Probate has been obtained (a process that invariably takes several months). Ensure that your spouse or registered civil partner, or any adult child who is dependent on your support, has sufficient funds in a bank account of their own or in a joint account to meet their immediate needs.

Consider life insurance as an appropriate way of supporting your family after you are gone, and make sure that life insurance policies are 'written in an appropriate trust', which means that the proceeds can be released before Probate has been obtained.

SIMPLE AND TRANSPARENT FINANCES

The more complicated your financial affairs, the greater the difficulty could be for those you leave behind. Try and make things as simple and transparent as you can. Go through your documents and either dispose of or identify those that are no longer valid. If there are matters that should have been disclosed to HM Revenue & Customs (HMRC), think seriously about disclosing now and getting everything cleared up.

INHERITANCE TAX PROVISION

In the event that your estate is likely to be subject to Inheritance Tax (IHT), it requires advance planning. If your estate passes to a surviving spouse or partner (or to charity), IHT is not likely to be an issue. On the second death, the first £325,000 (the 'nil-rate band') of your estate is likely to be free of tax. You may benefit from an additional £325,000 if a spouse has pre-

deceased you, and those dying after 5 April 2017 may benefit from an additional exemption in respect of the family home. However, if you have remained single, have divorced and not remarried, or are in a common-law relationship, the exempt amount may be just £325,000. And, if you have made substantial lifetime gifts, this may not be available to set against your estate at death. Any value not covered by reliefs or exemptions is charged to IHT at 40% (or 36% if 10% of the net estate is left to a registered charity).

LASTING POWER OF ATTORNEY

All of the above relate to what happens when you die. There is a distinct possibility, however, that you will lose capacity to deal with your affairs well before that point.

Lasting powers of attorney (LPAs) are intended to fill the gap – they are a legal document under which you appoint one or more persons to deal with either or both of your financial affairs and your health and welfare in the event that you are no longer able to deal with things yourself. An LPA is important, and it should be drawn up while you still have full capacity (they are often dealt with at the same time as a Will). Bear in mind that incapacity could be triggered by an accident or a sudden illness, rather than gradual decline. ■

NEED SOMEONE TO TALK THINGS THROUGH WITH?

If you want to be sure your wishes will be met after you die, then a Will is vital. Whatever your circumstances, we are there as someone to talk things through with and guide you in an appropriate direction. If you require more information or would like to discuss your situation, please contact us.

