

Wills

Making sure that your loved ones are cared for



Do I need to make a Will or update it?

The only way to ensure that the people you want to benefit from your estate in the event of your death is to write a legally enforceable Will. With the addition of a new family member this is the ideal time to make sure they will be cared for under all circumstances. Ideally this should be reviewed every five years because your own situation or the Law may change affecting how you want your estate to be shared.

If you die without a Will, your estate falls under Intestacy rules. These are the rules used when no instructions are left as to how your estate should be divided. Intestacy can often leave partners in a far worse financial situation than you might think. For instance, with children or other relatives, your partner will not receive your entire estate, and in many cases, not even the majority of it. Or you may not have immediate family and your estate is passed to distant relatives rather than those close friends or organisations you wanted to benefit.

A Will prevents this from happening and helps avoid what might otherwise be complicated and sometimes unpleasant circumstances that those you care about will have to manage.

Your executors

An Executor is the person (or persons) you appoint in your Will who is responsible for administering your estate and following its instructions. This includes paying any debts, collecting all your assets and then distributing them to the relevant beneficiaries. Executors are also responsible for the payment of any tax due to the Inland Revenue.

Often people appointed as Executors will also be the trustees of any trust created on your death (see 'Using trusts in Wills'). Sometimes the Executors of your estate will have to deal with more complex matters. For example, if a relative sues your estate because they believe they are entitled to more of it, it is the responsibility of the Executors to defend the estate.

Dealing with an estate is usually time consuming and can be stressful. If you cannot think of anyone close to you who can administer your estate then consider appointing specialists. Russell Jones & Walker already act for many people as Executors of their Wills and for information on how we might help please, call the number on the back of this leaflet.

Your Guardians

With children who are under 18 you may also want to give specific consideration to who you will appoint in your Will to be their Guardian (or Guardians). In the case of married couples, parental responsibility usually passes to the survivor. As far as unmarried couples are concerned, the mother automatically has parental responsibility but a father will not necessarily have acquired parental responsibility while the mother was alive.

If neither parent is alive, then the Guardians appointed will be responsible for all children under 18. Generally it makes sense to appoint Guardians in Wills who are also the Trustees responsible for any trusts arising from the Will for the children.

Inheritance tax

Everyone is entitled to a Nil-Rate Band. The Nil-Rate Band is the level or wealth you may distribute without incurring a charge of inheritance tax on death. Everything over and above your Nil-Rate Band will be chargeable for inheritance tax purposes at a rate of 40%. The Nil Rate Band is currently set at £325,000 however this will change over time.

Please note that there is no inheritance tax charged on assets passing between married couples or civil partners (spousal relief). It is also worth noting that the Nil-Rate Band is transferable between married couples and civil partners, therefore on second death the survivor can hold a Nil-Rate Band of up to £650,000. Couples who are not married or civil partners do not hold transferable Nil-Rate Bands and do not benefit from spousal relief.

Everyone can take steps to reduce the amount of inheritance tax payable by taking appropriate action throughout their life. If you have any questions about this or more generally about inheritance tax issues please contact us.

The people who will benefit from your estate

These are normally referred to as your 'beneficiaries'. The ways in which people or organisations can benefit generally fall into one of four categories as follows:-

- They receive an outright gift of a fixed sum of money
- They receive an outright gift of a particular object or objects that you own
- They receive all or a part of the remainder of your estate, often referred to as the 'residue'. In other words everything else which you have not otherwise bequeathed in your Will
- They are the beneficiaries of a trust established by your Will (see next section).

Using trusts in wills

It is worth carefully considering what you want your Will to do in order to ensure those you wish to benefit from it will do so. This will determine how it is created or structured in order to ensure your wishes are carried out correctly.

For instance, if you leave everything outright to your partner, you have no guarantee they will leave their estate to your children. This is especially relevant to those who have children from more than one relationship but is also applicable to anyone who wants their partner to benefit in the first instance, followed by other people. There is always the possibility that the survivor might meet a new partner and leave everything to them instead.

One solution is to make a Will, which leaves a 'life-interest' trust to benefit the partner and then state that on their death everything will go to the other named beneficiaries. Such an arrangement should not restrict your partner who, for example, would still be able to move from one property to another. It would also be usual for the partner to access funds held in the trust in an emergency as long as they received the consent of the trustees.

You may wish to ensure that your children below a certain age benefit from a trust rather than receive the assets outright on attaining the age of 18. It is possible to establish a trust in your Will which would prevent your children from receiving the assets until they reach the age of 25. It is still possible for the trustees to use the trust to assist them before that age. Note that there are tax consequences for trusts established to benefit children beyond the age of 18 but when this is balanced against the long term welfare of the children this may be considered to be of lesser importance.

Other forms of trust which you may want to consider incorporating into your Will include:

- A discretionary trust enables a flexible vehicle which can provide for several beneficiaries. Also discretionary trusts can still be useful for inheritance tax planning in certain specific circumstances
- Those protecting a beneficiary from themselves if they have proved to be inept when dealing with their personal financial affairs previously.

If you have any questions regarding any of the above or anything else relating to the use of trusts in wills please contact us.

Lifetime gifts and establishing a trust during your life

If you have accumulated considerable wealth in excess of the nil rate band and do not expect to use it all personally, you may want to give substantial gifts to people during your lifetime. You would normally do this outside of a Will as your Will is only effective after your death. Provided your gifts are made a substantial time before you die, the advantage of doing this is to reduce the amount of inheritance tax due on your estate, as it will be smaller. In addition, you may also give people small sums every tax year, which will ultimately be exempt from inheritance tax as well.

These gifts can take the form of a trust set up during your lifetime. You may retain some control over them but normally you would not be able to benefit from them yourself.

Other circumstances may prompt the need for a trust. For example an unmarried couple or friends purchasing a property together may want to ensure that when the property is sold they each receive the money they put in plus a percentage of any increase in the property's value. For further information on Lifetime gifts and Trusts please contact us directly.

Living wills

A 'living will' is a document outlining those treatments you do not wish to receive in the event of certain accidents. To be enforced it should be registered with your normal doctor and all relevant parts of the medical profession and you should always keep a copy with you.

Further information

We can also help with other similar related matters involving planning for events during or after your lifetime or managing current situations. For instance:


- Managing a close relative's financial affairs - You could be concerned about the welfare of a close relative who is no longer able to cope with day-to-day matters
- Assets abroad - If you have assets abroad, and so under another country's jurisdictions, you may need assistance in planning the best way to manage them and incorporate them within your estate.


If any of the above applies or if you have other queries regarding similar situations please contact us and we will be happy to assist.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:

 **0800 916 9055**

 **Email: enquiries@rjw.co.uk**

 **Web: www.rjw.co.uk**

 **Our offices:**
Birmingham, Bristol, Cardiff, Edinburgh (Associated Office), London, Manchester, Milton Keynes, Newcastle, Sheffield, Wakefield

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Prepared by Russell Jones & Walker Solicitors 2010.

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