MAKING A NEW WILL: PROCEDURE AND COST

Congratulations on your decision to make a new Will!

A very large number of adults in the UK die without leaving a valid Will. This is very bad news for their nearest and dearest, because the rules of intestacy will decide how that person's assets are dealt with – and this is unlikely to be as they would have wanted. For instance –

- If you are legally married or in a civil partnership, and your estate (total assets less total liabilities) is worth less than £250,000 *or* you have no other surviving relative (children, grandchildren, parents, siblings, etc), then your husband or wife (spouse) or civil partner gets everything

- If you leave a spouse/civil partner and children and your estate is worth more than £250,000, your spouse/civil partner would get £250,000 and your personal belongings and a life interest (ie: the right to receive income, but not the capital itself) in *half* of anything else. Your children would get half the sum over £250,000 immediately and be entitled to the other half on the death of your spouse/civil partner. Should any of your children die before you, then their children would be entitled to take their parent's share.

- If you leave a spouse/civil partner, no children, but other relatives, and your estate is worth more than £200,000, then your spouse/civil partner would get £450,000, plus half the balance. The remaining half goes to the other relatives in this order of priority – first, parents; then, siblings; then half siblings; then grandparents; then aunts and uncles; finally, spouses of aunts and uncles.

- If you are not married or in a civil partnership, but have had children, your estate will be shared between the children. If any children died before you, then their children would take their share.

- If you are not married or in a civil partnership, have no children, but have other surviving relatives, those relatives would receive your estate in the same order of priority as above, except that if any prospective beneficiary died before you, leaving children of theirs living at your death, those children will take their parent's share.

- If you are not married or in a civil partnership, and have no other relatives, your estate will go the government

These rules currently (February 2009) do not recognise "common law" partners, though this may change. "Children" means natural, adopted and illegitimate children, but not step-children.

If you do not want these rules to apply to your estate, you must make a Will. Making a Will also gives you the ability to –

- minimise the inheritance tax payable on your estate – to maximise the value your beneficiaries receive
- appoint guardians for young children
- leave specific "keepsake" gifts
- pass on family heirlooms
- provide for the care of pets
- specify funeral wishes
- etc

Your decision to make a Will is therefore an entirely good one, which we will do our best to help you implement

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OUR SERVICE

We can prepare a Will for you to suit your individual circumstances, advising you on particular problems or suggesting simple ways of minimising the effect of Inheritance Tax on your estate. We do not profess to be tax experts, however, and more complicated circumstances may require a suitable tax expert's additional advice. We are happy to work with tax and financial advisers to create a Will that is exactly right for your circumstances

POINTS TO CONSIDER

EXECUTORS AND TRUSTEES

The most appropriate executors and trustees in a particular case will depend upon the circumstances of that case: with a simple Will, it is best to appoint a friend or relation of the testator (the person making the Will) since this avoids paying extra professional fees. In a complicated Will, it may be appropriate to appoint a professional advisor as a trustee. If the trust is to continue for a long time, it may be worthwhile appointing a bank's executorship department, but this is rarely good value for money. The ideal solution may in some cases be to appoint a friend or relation and a professional advisor.

In all cases, the questions to consider are:-

- Is the proposed executor trustworthy? This is not simply a case of ensuring that the executor is honest. The testator should also consider whether the executor can be relied upon to administer the terms of the Will in the way that the testator would want.
- Is the proposed executor competent? The level of competence required will depend upon the level of complications in the Will. A simple Will does not need an expert as an executor, whereas a complicated Will may. Even in the case of a complicated Will, executors can always obtain appropriate professional advice, of course, so this does not mean that it is essential to appoint a professional advisor as an executor.
- Is it worth paying an executor? Put another way, if the executor will charge for his services, will the benefits of employing him as executor justify the charges likely to be made?

FUNERAL WISHES

These can be expressed in a Will but need not. The testator may prefer burial to cremation or vice versa, or may wish to allow use of his organs for transplant, etc., If the latter is the case, then a donor card should be carried anyway.

TESTAMENTARY GUARDIANS

Section 3 of the Guardianship of Minors Act 1971 provides that, on the death of the parent of a minor, the surviving parent will be guardian of the minor either alone or jointly with any guardian appointed by the deceased parent. Appointments can be by Deed or by Will. When a Will is prepared, the point should always be considered. A testamentary guardian can be appointed to act jointly with the surviving parent or can be appointed to act only on the death of the second parent.

BUSINESSES

In some cases, it may be best to leave a gift of a business as a going concern to a beneficiary or to give trustees powers to run the business after the testator's death. If this is not done, the business would have to be sold promptly, probably at an under value.

SPECIFIC GIFTS

Particular items can be given to beneficiaries as keepsake gifts or because they have intrinsic value.

SURVIVORSHIP

A clause can be included in the Will stating that anyone who does not survive the testator by a specific period (usually a month) will be deemed to have predeceased.

SUGGESTED PROCEDURE

1 We strongly recommend that the first step should be a "financial health check" by an independent financial adviser on your behalf. This would normally be carried out without charge or obligation. If you do not already have a suitable adviser, we are happy to recommend one – it is not the sort of work that we do ourselves, however

2 Then, once you have considered the points mentioned above, please tell us what you would like your Will to say, or contact us to discuss possible provisions. You can -

• telephone • write or email • arrange a meeting

whichever suits you best

3 We will then prepare a draft Will, and send it to you with a letter or email (as you prefer) of explanation, so that you can raise any questions or make any changes

4 We then prepare a fair copy of the Will for you to sign; for this -

- we can send the Will to you (you will need two independent witnesses) or
- you can call at our office, when we can provide the witnesses – we prefer this, so that we can make sure all the required formalities are complied with

5 The signed Will needs to be kept safe. There are several options -

- We can keep it in the deeds cabinet here; we do not charge extra for this, and would let you have a copy for your reference anyway
- You can keep it at home, in a safe place where it is likely to be found when needed
- You can lodge it elsewhere (eg: at your bank), though you might be charged for this

6 Once the Will is signed and put away, do not forget about it: you should review it every five years or so, or earlier if your circumstances change, to make sure it remains appropriate

Following this procedure, and dealing with each step promptly, is the most efficient way to make the Will and minimises the costs involved

GENERAL

Justin Nelson is qualified as a solicitor, but not practising as such but as an unregulated lawyer. He will normally carry out all of the legal work involved personally. If at any time you have any questions or problems, please contact him. If he is not available, Anne Nelson or Richard Watkins will be happy to take a message and help you as far as they can or arrange for Justin to telephone you. We aim to offer all clients an efficient and effective service, and are confident that we will do so in this case. If however, you are unhappy with any aspect of our service, please speak to us.

FEES AND EXPENSES

It is difficult to predict how much an individual case will cost. We charge at an hourly rate of £150. As a result, the normal charge is about £300 for an individual straightforward Will or for straightforward Wills for a married couple/civil partnership. More complicated Wills (for instance, those involving the creation of trusts or tax-saving schemes) tend to cost more, but we will warn you if, in your case, these indications are likely to be exceeded. In addition, there may be out-of-pocket expenses, but these are rare, and we will warn you in advance of them. The main possibilities are Land Registry fees (if ownership of a property has to be checked or adjusted), Companies Registry fees (if shares in a private company are to be left by Will), etc.

If you have any questions, please speak to us.

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