

Making a Will

Client Guide

This document provides general guidance regarding the reasons for and process involved in making a Will. Your Private Client lawyer will be able to provide specific advice based on your circumstances.

End-of-life planning is a topic which is hard to address and easy to put off. Many people find it challenging to make a Will or think about making a Will as it can raise some difficult issues and questions. This guide sets out the very real benefits of making a Will and outlines what the process will involve. It is hoped that this information will demystify Wills so as to encourage you to make a professionally drafted Will without further delay, which will mean that you can get on with living your life in the knowledge your affairs are in order.



Do I need a Will?

In short, yes. Please see below the section setting out the many benefits of making a Will.

You may also be asking yourself if your Will needs to be prepared by a solicitor or professional Will writer (with the cost that that entails) or whether you can use a more 'DIY' option. Almost without exception, a professionally drafted Will is the better option. Not only can you be confident that your estate will pass according to your wishes and instructions, but you will be guided in thinking about your assets and family circumstances to ensure that all matters are appropriately dealt with.

The form of a DIY Will is likely to be limited, and your particular estate and circumstances may benefit significantly from a particular form of Will. For example, some people may be well advised to set up a trust in their Will for reasons of asset protection or flexibility and this would certainly require professional and careful drafting. Without the assistance of a solicitor or professional Will writer, you may be missing the opportunity of leaving your estate in the most secure and efficient way possible.



Terminology

Before we consider the benefits of making a Will, you may find the following table useful to help you understand some words that are frequently used in Will drafting. These include:

Word or phrase	Meaning
Testator	You, the person making the Will.
Estate	All of your assets (the property you own or have a right to) and possessions whether on your own or with someone else, as well as any debts or liabilities you have (for example, credit card debt or a mortgage) (the liabilities will reduce the value of the assets to leave a 'net' estate).
Executors	These are the people who will collect in and look after your estate (ie establish what assets you have and ensure liabilities are settled), pay any inheritance tax and distribute your estate according to the terms of your Will.
Beneficiary	This is a person who stands to benefit from your Will.
Residuary estate or residue	This is the amount or assets left of your estate (often it is the bulk of your estate) after gifts have been made, debts settled and tax paid.
Intestate or intestacy	Dying without a valid Will in place, with the result that intestacy law (ie a set of prescriptive rules) will determine who gets what from your estate.



Benefits of making a Will

There are many benefits to making a Will. These include:

- giving you control by ensuring you do not die intestate—this means that your assets pass to those you intended (and are not dictated by general intestacy rules) and that your estate is administered by people you choose (again, not dictated by intestacy rules)
- ensuring you have appointed executors which makes it much easier and quicker to administer your estate

- ensuring that the people who matter most to you are looked after if you die—this is particularly important if you have young children or if someone vulnerable is dependant on you
- helping you focus on and think about what your assets and liabilities may be if you die—this helps you put your affairs in order today and allows you to think about what assets and liabilities may arise on your death and who these pass to (eg life insurance or pension benefits may be payable on your death)
- ensuring your estate and what you leave behind is maximised by using tax planning and tax reliefs appropriately, particularly in relation to inheritance tax (which is the main tax to consider when doing your estate planning)

Inheritance tax is essentially a tax charge on the value of your assets when you die. There are a number of well-known reliefs and exemptions (such as the spouse exemption, where leaving your estate to your spouse means there is no inheritance tax payable). The inheritance tax charge is usually paid out of your estate by your executors when they are administering it.

However, the application of inheritance tax rules is not straightforward. As set out above, a significant benefit of getting a professionally drafted Will is ensuring that you leave your estate in such a way so as to minimise any inheritance tax charges (or other tax charges).

- ensuring (either through the Will itself or in a supplementary document) that some other very important matters are dealt with, specifically funeral wishes and appointing guardians if you have young children
- securing benefits which arise in relation to particular assets you may have, for example:
 - a foreign property (eg if you have a home abroad, it will be important to establish how and to whom this will pass on your death and to ensure to the extent possible this is in accordance with your wishes and not local law)
 - business property (eg if you are a company or business owner, preparing a Will would allow you to consider and plan the succession to the business (so that it does not have to be sold following your death), as well maximise any possible tax reliefs for passing the business to the next generation)
 - farming or agricultural land (as above, if you own or manage farmland a Will would allow you to do succession planning and also maximise tax reliefs)
- allowing you to make gifts to particular people or charities/organisations that are important to you
- allowing you to the opportunity to discuss your estate planning with your family which will significantly reduce the prospect of disputes arising after your death



Process of making a Will

If you are instructing a lawyer at Welland Valley Legal to prepare your Will then, broadly speaking, the process will be divided into taking your instructions, drafting the Will and then signing it.



Taking Instructions

At Welland Valley Legal we start the process with a meeting. This can take place at our office or sometimes in a client's home. We also offer virtual meetings. This meeting is helpful to explain your estate and circumstances fully to enable the draftsman to advise you on the appropriate form of your Will. You should prepare yourself for this by considering the information contained in the schedule, see more on this below.

The other reason that a meeting is useful has to do with validity of the Will. There is little point making a Will unless it is a valid Will. There are a number of legal requirements to ensure a Will is valid. For example, a Will is not valid if the person making it has or is starting to develop mental capacity issues. This is because a Will is only valid if (amongst other requirements) the person making understands fully what they are doing and what effect it has. Another example where a Will can be invalid is where the person making it is under pressure from someone else to make their Will and leave their assets to a particular person (this is known as undue influence). A meeting with the lawyer will allow them to assess and confirm that there are no circumstances which would prevent the Will from being completely valid.



Drafting the Will

Once the lawyer has advised you on the options and taken your instructions fully, they can prepare a draft Will which you can review. In order to give full instructions and prepare yourself for the sort of information that the solicitor or professional Will writer will need, you should consider the items listed in the schedule.

It is possible that some further calls, meetings or discussions may need to be had during the Will drafting process. This will depend on the complexity of your estate and your personal circumstances. For example, it may be advisable for you to have discussions with potential beneficiaries or those who may not benefit in order to reduce the possibilities of disputes later. Another example is where you have foreign property and some local law advice may need to be obtained to ensure all your assets are dealt with appropriately, or where you

need to speak with potential executors of your Will to ensure they would be happy to act as such.



Signature and Storage

Once you are happy with the draft Will, a final signing version is prepared. Ideally, you would sign this at our office to ensure that all the formalities for signing the Will are met. Again, if the signing formalities are not followed precisely, this can lead to the Will being invalid. For example, one of the formalities requires there to be two independent witnesses present who both witness your signature and they then sign the Will (as witnesses) themselves in your presence. Signing the Will at the office of the person who prepared it is helpful in ensuring all the formalities are met. Alternatively, a Will may be sent to you with specific instructions to make sure you sign it properly at home.

Once the Will has been signed, the original would ideally be kept in a fire-proof safe at our office. Alternatively, you may decide to store your Will at home and you will be given safe storage recommendations. In either case, you should keep a copy in an accessible place, and those who need to locate your Will (your next of kin or your executors) should know where to find a copy and the original. This will be particularly important if your Will contains funeral wishes, as these will need to be quickly ascertained on your death to ensure they are followed in time.



Reviewing and Updating a Will

Once your Will has been signed, this will give you peace of mind that your estate will be dealt with according to your wishes.

It is a good idea to review your Will at least once every five years in order to ensure it still accurately reflects your wishes. For example, many things may change between the date of your Will and the date of your death from your personal and family circumstances to your asset base.

In particular, if you get married after you have made your Will (and the marriage was not contemplated at the time), this will automatically revoke your Will and you must ensure that you prepare a new Will. If you get divorced, it is also advisable to prepare a new Will to reflect your changed family circumstances.

It is also important to remember that inheritance tax rules can and do change. It may be advisable for you to involve the solicitor or professional Will writer who originally drafted your Will so that they can advise you on whether there have been any changes to the law which would result in a different inheritance tax outcome than the one anticipated when the Will

was drafted. Once a Will has been drafted, it is not usually the obligation of the draftsman to keep you up-to-date with any changes, which reiterates the need to seek professional advice when the time comes to review the Will.

Please do not hesitate to
contact us.

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Schedule

Information needed to make a Will

The following table sets out the information needed and the questions that will need to be considered when making a Will. The items and their details should be discussed with your lawyer:

Category	Detail
Personal circumstances	<p>marital status</p> <p>previous marriage(s)/civil partnership(s) and cause of relationship ending (eg divorce or death)</p> <p>children or those you treat as your children</p> <p>anyone you look after or who is dependent on you</p> <p>any family conflicts</p>
Assets	<p>anything you own such as your home, personal possessions, cars, investments, bank accounts (including approximate values)</p> <p>any other assets you have such as a business interest, a farming interest or property abroad</p> <p>pension (whether written in trust)</p> <p>life insurance (whether written in trust)</p> <p>any asset which you hold jointly with another person equally or otherwise</p> <p>any debts or liabilities (the obvious one being a mortgage on your home if you own it) owed to any person or organisation</p> <p>expected increase in assets before your death (eg if expecting an imminent inheritance or if you are a beneficiary of a trust)</p> <p>any digital assets you own, such as cryptocurrency and any assets such as a cloud account that may hold family photographs, facebook and other social media pages.</p>
Gifts	<p>gifts made in the last seven years</p> <p>anticipated lifetime gifts or pattern of giving to be established</p> <p>gifts to be made through your Will</p>
Will contents	<p>The main areas you will need to consider and discuss include:</p> <p>who your executors should be</p> <p>Executors can be anyone (including a beneficiary) over 18 years of age. It is usual to have at least two executors to ensure they can deal with real property. As the executors will</p>

administer your estate, you will need to consider carefully who they should be. Sometimes professional executors may be advisable.

who you want to appoint as guardians of your children under the age of 18

This appointment would take effect if no other person with parental responsibility survives you. It is advisable to discuss any appointment with your spouse/partner and to consider what happens if something were to happen to the appointed guardians (eg they get divorced).

gifts to be made through your Will (of money or particular possessions) including if you are making large gifts to charity

Gifts in your Will are known as legacies. For example, you may wish to leave cash amounts to certain individuals or organisations that are important to you, while leaving the bulk of your estate to your immediate family.

If you are making a large gift to charity (or intend to leave your estate to charity), your estate may benefit from a reduced rate of inheritance tax.

if you have any pets that need to be provided for after your death

any funeral or burial wishes

who you want the rest of your estate to be left to

The discussion around this will allow your lawyer to advise you on the most suitable form for your Will.

whether you want to use a trust to protect or preserve your estate after your death for the benefit of particular people

As above, this discussion will affect the form of Will which is most suitable for your circumstances.

whether there are any unusual or surprising features as to how you want to leave your estate

These may be best addressed during the Will preparation stage so as to avoid any future disputes to the extent possible.