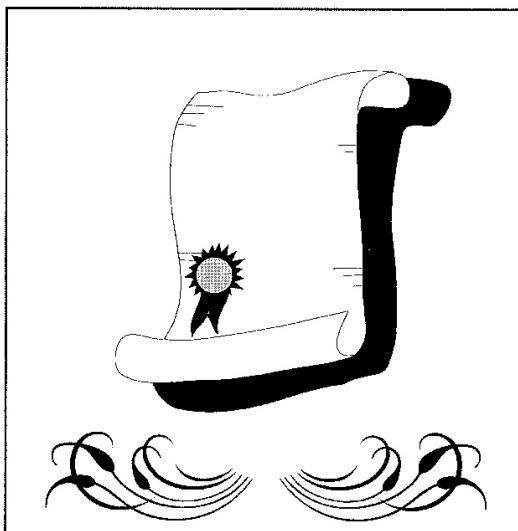


Wills



Making a Will

There are many good reasons for choosing to make a Will. People often assume that, without a Will, any property they own will simply go to the remaining members of their families. This is not always the case. By having a solicitor prepare a Will for you, you get to decide for yourself who is (and who is not) to benefit under your Will. Matters as important as this should not be left to chance!

The Maker of the Will

Persons making a Will are known in law as the *'testator'* (male) or *'testatrix'* (female). Most of the information concerning you personally can be provided during the interview, however, we draw your attention to the following:

Are you known by any other names?

Some people do not use the names that appear on their birth certificate. For example, someone whose name is Margaret may prefer the name Maggie, and so she may never use her real name. This may create problems if assets or property are held in the other name and mention is made of the fact in the Will.

Who do I want to leave my property to?

The persons who receive property under your will are called *'beneficiaries'*. You can nominate any person/s you wish to receive something under your Will. When naming beneficiaries, please follow these guidelines:

Beneficiaries need not be people — they can be charities, schools, etc. If you would like to leave some or all of your property to a particular body or institution, we will need to have its **accurate name**.

Make a list that shows the full name, address and occupation of all adult beneficiaries.

Children:

If the beneficiaries are children, we will need their full names, addresses and dates of birth.

We will also need to know the age at which the children are to receive their share of the property. If a large sum of money is involved, for example, you might want to have the child wait until he or she is 18, 20 or 25 before the money is distributed.

If there is a house or land being left to children, you will need to think carefully about whether it is best if the children are to receive the property at the same time. For example, if you simply nominate that each child is to receive his or her share at age 20, one child will become entitled to the property before the other children. You can discuss the alternatives with us at the Legal Service.

What if a Beneficiary dies before I do?

A beneficiary named in your Will may die before you do. It is important, therefore, that you make provision for someone else to take that beneficiary's share should this happen. Your alternatives are:

The share of the deceased beneficiary is to be **spread amongst the other beneficiaries**, eg:

You leave your property to Adam, Bill, Clare and David (one quarter each)

Bill passes away before you do

The property then goes to Adam, Clare and David (one third each)

The share of the deceased beneficiary is to **go only to some other beneficiaries**, eg:

You leave your property to Adam, Bill, Clare and David (one quarter each)

Bill passes away before you do

Adam is to get Bill's share, so that —

- Clare gets one quarter
- David gets one quarter
- Adam gets half

The share of the deceased beneficiary is to **go to a different person altogether**.

eg

You leave your property to Adam, Bill, Clare and David (one quarter each)

Bill passes away before you do

Bill's share of the property is to go to Edward, so that —

- Adam gets one quarter
- Clare gets one quarter
- David gets one quarter
- Edward gets one quarter

The share of the deceased beneficiary is to **go to his/her children, if any**, eg:

You leave your property to Adam, Bill, Clare and David (one quarter each)

Bill passes away before you do

Bill has two children

Bill's share goes to his children, so that —

- Adam gets one quarter
- Clare gets one quarter
- David gets one quarter
- Bill's children get Bill's quarter (ie one eighth each)

Please decide in advance which you want in your Will.

Executors of the Will

The **Executor** of the Will is the person who will be entrusted to distribute the property according to the instructions in your Will. In many cases, where property is left to children, the Executor also acts as Trustee, taking care of the property until such time as the children become entitled to their share in the estate.

When nominating an Executor, please follow these guidelines:

You can nominate more than one person to be Executor and/or Trustee.

The position of Executor and/or Trustee is an important one, and should be given only to someone who you feel you can trust. He or she often manages the estate

and makes important decisions about how to invest it, particularly where the property won't be distributed for some years. Think carefully about who you would choose to fill this position.

It is important that you obtain the person's consent before nominating him or her as Executor/Trustee. As the position involves some responsibility, not everyone will wish to be nominated.

We will need the Executor's full name, address and occupation.

Unless the property under the Will is to be distributed to the beneficiaries immediately after your death, the Executor may have to make important decisions about how to deal with the property over a period of time. For example, it may be necessary to hold property until children turn 18 years old. Think carefully about what you would like done with the property during this period. For example, if the property is a house, is it to be rented during that time, with the rents being held on trust for the children? If you wish, you can *leave these sorts of decisions to the Executor*.

Is there anything that you definitely do not want the Executor to do under the Will? For example, you may not want the family home sold. This wish can be expressed in your Will.

You will need to consider whether the Executor will be allowed to use funds from the estate to help pay for the education and living expenses of your children. It may even be necessary in such a case to sell the property. Decide whether this is acceptable to you.

It is not necessary that you nominate a friend as your Executor/Trustee. You may prefer to nominate a trustee company to fill the position. If so, we will need to know the full name of the trustee company you choose.

What if the Executor dies before I do?

As in the case of beneficiaries, an Executor may pass away before you do. It is not wise to nominate someone who would be unlikely to outlive you. Make sure you nominate a 'stand by' Executor in case the person you choose to be Executor dies before you do. Remember to seek the 'stand by' Executor's consent.

Who will take care of my children?

If you have young children, their welfare will usually be the responsibility of the surviving parent. However, in case your husband or wife dies before you do, you should appoint a **Guardian** in your Will. A Guardian is someone who will take care of your children and make all of the decisions that you normally would as a parent in your place.

When selecting a Guardian, please follow these guidelines:

You can name more than one person to be a Guardian. You might like to choose a married couple, for example.

As with Executors, this position is an important one and you should only choose someone you can trust. You will also need to discuss with that person whether he or she minds being a Guardian.

We will need the full name, address and occupation of any Guardian you select. As with Executors, you will need to choose a 'back up' Guardian in case the person/s you choose do not outlive you.

If you decide that money from your estate can go towards the living expenses and education of your child, it is the Guardian who will receive this money.

Am I a co-owner of property?

Often the family home is jointly owned by the husband and wife. What many people do not realise is that there are two different types of co-ownership. You can be either a **joint tenant** or a **tenant in common**. Before coming to see us, you will need to know which of these you are. Checking the title deeds will often provide this information.

The main difference between the two types of co-owner is that a **joint tenant cannot** leave his or her share of the property to anyone else. This is because joint tenants fall under a rule of law called '**survivorship**'. Under this rule, each co-owner of the property is seen as owning **all of the property** rather than owning only a **share** in it. This means that one co-owner does not have a separate share that he or she can leave behind to someone in a Will. Instead, when a co-owner dies, his or her ownership of the property comes to an end, so that the property is then owned by the surviving co-owners. In the end, when there is only one survivor, that survivor owns the entire property. If you are a joint tenant, we will explain this situation to you.

Do I need to describe my property?

If you want to leave particular items to certain people, it may be necessary for you to **describe** that property.

For example, if you want a certain piece of jewellery to go to someone, we will need to know which piece of jewellery it is. The description must be detailed enough to identify that piece from other jewellery owned, for eg 'my gold ring with the three rubies in it'.

Remember, your lawyer will treat all of this information as confidential.

Please Note

As we are a free legal service, it is our policy to handle only **simple** wills. Wills that involve complicated instructions will not be handled by this office and are best referred to a private solicitor. Further, as a general rule, we provide this service only for **pensioners**. It is only in a few instances that we will allow exceptions to this rule.

When you have decided 'who gets what' under your Will, call our office to make an appointment. Our telephone number is 9905-4336.

The information provided in this pamphlet is a general guide only. To be sure of your rights and responsibilities, you should get advice from a solicitor or a community legal service.