

## Wills

### An Introduction to the Guide

This guide has been prepared by us to assist you in understanding some of the main issues that you should be aware of when making your will. The guide is not intended to cover in full all aspects of the process and should not be relied upon as legal advice. If you wish to make a will or review your existing arrangements you should contact us for advice on your specific circumstances.

Marriage or the registration of a civil partnership automatically revokes a previously made will unless this is stated to have been made in contemplation of it. A decree absolute of divorce or dissolution does not revoke a previously made will but any gift to a former spouse or a former registered civil partner, and any appointment of that spouse or partner as executor or trustee, no longer takes effect unless the will states otherwise. The same principles do not apply to unmarried heterosexual couples or to same sex couples whose partnership is not registered.

When making a gift by will to those described as children, grandchildren, issue, etc such words include all those whether legitimate, illegitimate or adopted (but not step- unless adopted), although you may expressly limit or expand that statutory definition. However the Finance Act 2006 treats some step-children as children for certain inheritance tax purposes.

In the case of jointly held accounts, investments and other assets, the will of the first joint holder or co-owner to die is usually ineffectual to deal with their interest. Instead, it automatically passes to the surviving joint holder/s or co-owner/s irrespective of the will.

A particular exception is a freehold or long leasehold property jointly owned as beneficial tenants in common. That basis of joint ownership means the share in the property of the first to die can be dealt with by their will. A more frequent form of co-ownership is where the owners are beneficial joint tenants. In this case, on the death of the first co-owner, their share in the property automatically passes to the other co-owner/s irrespective of their will. If this is not something we have already discussed and you wish to be advised on the point, please let us know.

Your will is also ineffective to deal with some other types of asset, e.g. a life policy, pension funds or death in service benefit if written in favour of, or otherwise payable to, someone you have stipulated or to trustees you or the insurance company have appointed for the purpose

If during your lifetime you cease to own any asset you specifically state in your will is given to your nominated beneficiary, e.g. a particular investment, a specific item of jewellery, a property, that beneficiary will not usually inherit anything in its place unless you make a further will stipulating your revised wishes. However, when your will specifically gives your interest in the property you own as your home to someone, our wording - which you should please check - normally extends to any other home owned in its place. As a general rule there can be no equivalent provision in respect of other assets you specifically mention.

If you own a property abroad or a share in one you must please tell us so we can ensure that your English will does not inadvertently revoke a will you have made in the other country regarding that property. If you have not already made a foreign will in this respect, you should take advice from a lawyer in the country concerned because an English will is not usually able to deal with such an asset. Conversely, you should ask your lawyer abroad to ensure any will you make there in the future does not revoke your English will in respect of your UK assets. We recommend a copy of the foreign will, preferably with an English translation, is kept with the original of your English will. If you have an investment or other asset in the Channel Islands or Isle of Man bear in mind they are not in the U.K.

#### Briefing Note July 2011

##### Summary:

An introduction to some of the legal issues to consider when making your will.

##### For detailed advice on all Private Client Matters please contact:

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From 6 April 2009 inheritance tax is payable on death at 40% of the excess in the net value of the estate over £325,000, though the tax may not be fully payable on the value of many assets of one's own business. Everything left to a spouse or registered civil partner domiciled, or a charity registered, in the UK is exempt. Such an exemption is not available to the surviving partner of either an unmarried heterosexual couple or a same sex partnership which has not been registered. These are broad statements which are subject to many qualifications; e.g.

- in computing the inheritance tax liability, the need to add the value of lifetime gifts to the assets owned at death if the gift is made within seven years (sometimes 14 years) before death: there is no time limit for escaping inheritance tax on lifetime gifts if you directly or indirectly retain a benefit from the subject matter of the gift;
- in some circumstances where you have a life interest in any property or income under a trust, the value of the property or trust assets is added to the value of your own estate and any excess of that total over £325,000 becomes chargeable to inheritance tax, divided proportionately between your estate and the trust.
- The survivor of a marriage or civil partnership can claim up to 100 per cent of their deceased partner's unused inheritance tax allowance, giving them a potential maximum inheritance tax free threshold of £650,000 in the current tax year.

All gifts of specific sums or assets (except those to UK domiciled spouse or registered civil partner or UK registered charity) are usually expressed to be free of tax which means any inheritance tax payable in respect of these gifts has to be paid out of the residuary estate if that is of sufficient value. If you wish to reverse that, so the gift of the specific sum or asset has to bear its own tax, please tell us. Where the residue of your estate is divided between beneficiaries exempt from inheritance tax (a UK domiciled spouse or registered civil partner or UK registered charities) and beneficiaries who are not exempt, we usually provide that the exemption is to benefit the beneficiary or beneficiaries with exempt status alone so that the benefit of the exemption is not shared between them and the beneficiaries who are not exempt. Again, if you wish to reverse that, please tell us.

Whenever there is a significant change in your circumstances or those of any of your beneficiaries or anyone else whom one might consider making a beneficiary (whether in terms of health or significant good or ill-fortune, financially or otherwise), you should review the will you are now making. In any event you should not let more than three to four years pass before reviewing it. To review it does not necessarily mean you should then make any change to what you now provide. The only way you can effectively make a change is to have a new will or a codicil (a document amending the will you are now making) properly signed and witnessed. Deletions and alterations simply written on an existing will or wishes set out in a letter are ineffective.

A 1975 Act of Parliament enables certain relatives and others who claim to be financially dependent on you, or to have other legitimate expectations of you, to make a claim in the Courts on the grounds that you should benefit them under your will or should do so to a greater extent than your will provides. Even if such a claim were to fail, the distribution of your estate would be delayed and substantial cost might be incurred and not be recoverable from the claimant. When instructing us to prepare your will you should please tell us about anyone you believe may make such a claim even if you consider it to be unjustified.

In addition to advising on and preparing wills, Gaby Hardwicke's private client department can assist with:

- advising on and preparing lasting powers of attorney of which there are two distinct types, one to enable whomever you appoint to deal on your behalf with financial and property matters and the other empowering whomever you appoint to assist you with questions relating to your health and welfare;
- arranging for the affairs of someone who no longer has mental capacity to manage them personally to be dealt with by someone else on their behalf;

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- living wills, also known as advance decisions;
- the creation by a client in his lifetime of a trust or settlement, for tax planning purposes or to safeguard a disabled relative, for example;
- advising on and recording the basis on which different people fund, own and have the right to occupy a property, e.g. when a granny annexe is to be built; when parents exercise their right to buy with the financial assistance of their adult children; when couples neither married nor in a registered civil partnership make unequal financial contributions to a property they buy together.

We are happy to accept appointment to act as executors, trustees, attorneys and deputies. This means we can undertake everything that is required to administer and distribute the estate of a client who has died or a trust or settlement he has created or to manage his financial affairs during his lifetime. Alternatively, we very often act in conjunction with relatives or others who are also appointed.

If you would like to discuss any of these matters with us or if you would like us to put you in touch with colleagues who are independent financial advisers and investment managers with whom our practice is linked, please get in touch with us.

If you would like to know more about this topic or our other legal services, please contact:

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