Gaby Hardwicke SOLICITORS

Briefing Note: 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 have any queries concerning your personal situation you should contact us for advice on your specific circumstances.

Briefing Note
Reviewed October 2025

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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Marriage and divorce

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 couples who are unmarried or whose partnership is not registered.

Children and grandchildren

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 law does treat some step-children as children for certain inheritance tax purposes.

Joint assets

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.

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Specific gifts

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.

Assets and residence abroad

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. In every case we will provide our advice and prepare the will based on the assumption that you are domiciled in England at the time the will is made, unless you expressly instruct us in writing to the contrary.

Mutual wills

Mutual wills are created when two individuals agree at the time the wills are made to impose restrictions on their ability to make future changes to their wills without the other party's consent. When instructing us we will rely upon you to inform us in writing if you have previously made a mutual will and if you do not do so we will assume that no such restriction does exist.

Inheritance tax

Currently 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 or on agricultural assets. 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 a couple who are unmarried or whose partnership is not 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.

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- 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.

- If 10% or more of the aggregate value of your estate is left to charity, the rate of inheritance tax on any taxable portion of your estate is reduced from 40% to 36%.

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.

The basic threshold of £325,000 is projected to remain in place until at least 2030. Since 2017 an additional family home allowance known as the 'residence nil rate band' is available on homes left to direct descendants in addition to the existing tax-free allowance. The residence nil rate band allowance is currently £175,000 per person, and as with the basic threshold is projected to remain at that level until 2030. As with the standard allowance 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 additional inheritance tax free amount of £350,000.

The additional tax allowance is also available when a person downsized or ceased to own a home on or after 8 July 2015 and assets of an equivalent value (up to the value of the new allowance) are passed on death to direct descendants.

The rules include provisions which have the effect of tapering away the additional residence nil rate band for estates worth more than £2 million, but for many families the effect of the combination of allowances is that there is a maximum IHT free threshold of £500,000 per person or £1 million per married couple.

Beyond drawing your attention to the above points about inheritance tax and subject to any express instructions you have in fact already given us, we record that our obligations to you do not extend to advising you on inheritance or any other tax and we have calculated our fee on that basis. The same applies to other matters such as the possibility that sometimes occurs of reducing the full impact of care home fees. We shall nevertheless be pleased to advise you on inheritance and capital gains tax planning and other such matters if you wish, in which case we will tell you of the basis of our fees for that advice.

Signing your will

If you call at our offices to sign your will or we have made an arrangement that we will call on you for this purpose, we are responsible to you for ensuring the will is appropriately signed and witnessed. If we post the will to you to sign, we do not have that responsibility though we will provide you with full written instructions on how your will should be signed and witnessed.

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Reviewing your will

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 illfortune, 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.

Claims and challenges

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.

Other private client services

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;

- living wills, also known as advance decisions;

- the creation of lifetime trusts or settlements, 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.

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If you would like to know more about this topic or our other legal services please get in touch with us. For expert advice on wills and estate planning contact one of our Private Client Services partners:

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