WHY MAKE A WILL?

England & Wales

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STEP
ADVISING FAMILIES ACROSS GENERATIONS

A will is a tool that allows you to pass on your possessions to benefit others, giving you control over what happens to your money, possessions and property after you die. This leaflet provides a brief guide to explain some of the key considerations, uses and benefits of making a will.

PROVIDING FOR YOUR LOVED ONES

Many people don't thoroughly plan for the future after they are gone and often assume their possessions will simply pass automatically to their spouse or children. Often people believe their assets are too insignificant to need a formal arrangement or legal guidance. But if you die without having made a will, the intestacy rules apply in an arbitrary manner. The only certain way to ensure that your spouse, partner or relative inherits what you intend is by making a will.

At present, the intestacy rules do not recognise co-habitees who are unmarried and not in a Civil Partnership. Therefore, if you live with your partner and die without having made a will, your partner will not automatically inherit any of your estate. The estate will automatically pass to your surviving family (i.e. children, parents, brothers and sisters) and your partner will have to make a claim on the estate claiming financial dependence if appropriate. If you have children with your partner or from previous relationships, then those children will automatically inherit the estate, and both your partner and your children will have to get separate legal representation in order to fight for a share in the estate. This can be distressing and expensive and is a situation that should be avoided. A simple will is all that is needed to ensure that your partner is provided for.

PRACTICALITIES

The appointment of executors

In your will you must appoint executors to deal with your estate in the event of your death and hold property in trust, for example while a beneficiary is a minor. Executors are responsible for collecting in your assets, paying any debts and taxes due, and distributing your estate among the beneficiaries. The role of executor is very important and you should appoint people who have the right set of skills and in whom you have confidence – be they business-minded family or friends and/or professional advisors.

Three is an ideal number (fewer if the estate is simple), made up of, say, two family members and potentially a professional, which is advisable if the estate is complex or there is any friction within the family. To some extent executors can act before grant of probate, which is when the probate registry sends out a legal document that allows one or more people to deal with the estate.

Burial arrangements

You can provide for specific funeral arrangements in your will. This is particularly important for some clients. Some people ask for their body to be donated to medical research. Often people who have suffered from prolonged illness want to help reduce other people's suffering by helping to find new treatments.

The appointment of guardians

If you have children under the age of 18, you can safeguard your children's interests by appointing legal guardians to care for them if both parents die. Before you appoint someone to be a guardian you should check that he or she would be happy to act.

Passing on your assets

Personal items such as jewellery, paintings and heirlooms can be passed on in your will in several ways, one of which is by reference to an informal letter of wishes. You can benefit good causes by leaving a legacy or share of your estate to charity, free of inheritance tax. Charities receive billions of pounds per year through money left to them in wills. It is an important source of funding for them and it means that you can give opportunities to others that you did not necessarily enjoy yourself. Larger estates may be able to benefit from a reduced rate of inheritance tax of 36 per cent if, subject to certain rules, more than 10 per cent of the estate is left to charity.

FLEXIBLE SOLUTIONS

The inclusion of a trust within the will, whether it is discretionary or gives the surviving spouse a right to income or occupation of the family home, may be attractive for a variety of reasons.

Family arrangements

Wills can be used to provide for complex family arrangements, for example to include children from previous relationships. A will can give a second spouse the right to occupy the family home, while protecting the capital for children of an earlier relationship. This will ensure that the assets will not pass outside the immediate family and may pre-empt potential challenges to the distribution of the estate.

Asset protection

An ageing population means that tens of thousands of homes are sold each year to fund the cost of residential care. A carefully drafted will can provide that a share of the family home passes into a trust on first death, which may give the survivor a right to occupy. With care, such a trust will ensure that the capital will be preserved and instead pass to the intended beneficiaries. A trust of this type can be drafted flexibly to allow the survivor to 'down-size' or move property.

Trusts can protect assets should future generations suffer financial or matrimonial difficulties, or if the beneficiaries are not mature and responsible enough to own large sums of money. The trustees will be able to take each beneficiary's personal circumstances into account. There may be ongoing inheritance tax charges and this will have to be weighed-up against the benefit of asset protection.

Reducing the inheritance tax burden

Trusts may have long-term inheritance tax advantages in cases where capital appreciation is anticipated to outstrip future increases of the nil-rate band. Trusts can also be used to benefit future generations by potentially by-passing children to benefit grandchildren.

Your will can also direct your business interests (such as shares in a family company) or a farm to specific beneficiaries, e.g. a son or daughter who has come into the business. An important inheritance tax relief can apply to these interests giving discounts of either 100 per cent (i.e. complete exemption) or 50 per cent.

Business and agricultural interests can often be dealt with through a discretionary will trust, which may offer additional tax savings.

It is of vital importance that trusts are drafted and implemented by a properly qualified professional, as trusts that are not properly set up and administered can be challenged.

OTHER CONSIDERATIONS

Maximising the available inheritance tax nil-rate band

The nil-rate band is the value of an individual's estate (after taking into account certain lifetime gifts made in the seven years before death) that can pass without a charge to inheritance tax.

Prior to 9 October 2007, married couples were advised to make best use of both their nil-rate bands on death by including nil-rate band discretionary trusts in their respective wills. While this ensured that both nil-rate bands were preserved on second death, it often resulted in complex arrangements, especially if a share in the family home was used to fund the nil-rate band discretionary trust.

In October 2007, the government introduced the transferable nil-rate band for couples who are married or in a Civil Partnership, which provides that the unused proportion of the nil-rate band of the first spouse to die can be passed to the survivor.

This can best be illustrated in an example: The husband died in 1992. Having made no lifetime gifts he passed his whole estate to his wife so he did not use any of his nil-rate band. When the wife died in 2013, the nil-rate band had increased to GBP325,000. She could therefore leave GBP650,000 free of inheritance tax.

The simplicity of this arrangement has been welcomed by many married couples. Couples with existing nil-rate band discretionary trusts should take advice before deciding whether to redraft their wills, as the flexible nature of the nil-rate band discretionary trust may have other benefits and can offer solutions to complex family arrangements, and also may offer some level of asset protection.

Home ownership

Many people own their house as 'joint tenants'. This is one of two ways in which you can own your house. You could own it as a 'tenant in common', where each person owns a fixed share of the property which then passes under their own will or on intestacy. To own your home or other asset as 'joint tenants' can be an inflexible method because the surviving co-owner automatically takes the whole. Therefore, a co-owner cannot, during lifetime or by will, give these assets to any other beneficiaries, for example to their children. The solution is to hold as 'tenants in common' and, if the holding is already as joint tenants, it can easily be severed by a relatively simple procedure.

MAKING YOUR WILL AND KEEPING IT UP TO DATE

Many wills are straightforward and simple to prepare, however others are more complex and subject to unique personal circumstances that will need to be taken into account. These circumstances include second marriages; children from previous relationships; health care needs of surviving family members; or overseas connections such as spouses from different jurisdictions and the ownership of holiday homes abroad.

Even if you have already made a will, it is important to keep this under review at regular intervals (at least every five years). The world does not stand still and in particular your family circumstances and relevant taxation laws will change.

It is also important to note that most wills are revoked by entering into a marriage/Civil Partnership and that divorce/dissolution also affects the interpretation of your will, so in either instance you should review your will.

A badly drafted will can have unintended consequences that may lead to difficulties for your loved ones after you pass away, so it is important to use a reputable and qualified practitioner to prepare a will that meets your needs.

Making a will need not be expensive. Most practitioners charge a reasonable fee for a straightforward will. Where the will achieves valuable tax savings this will normally be reflected in the fee.

Will writing is not a regulated activity in England and Wales, so in 2014 STEP developed the Code for Will Preparation – a set of ethical principles that demonstrate openly the standard of transparency, service and competency you can expect from a STEP member preparing your will. By using a will preparer who is subject to the Code, you will know they are taking all the necessary actions to plan for the future of your assets.

For more information on the STEP Code for Will Preparation and to find a STEP member visit **www.step.org/for-the-public**

WHAT IS STEP?

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have more than 20,000 members across 95 countries from a range of professions, including lawyers, accountants and other specialists. What connects our members is that they all help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

This leaflet and the companion leaflets 'Why make a trust?', 'What to do when someone dies' and 'Why make a Lasting Power of Attorney?', as well as other informational leaflets produced by STEP, are available to view and order at **www.step.org/leaflets**

This brochure takes into account the law in England and Wales as at 1 October 2014. Different laws apply in other countries, including Scotland and Northern Ireland.

For further details of our members practising in your area, contact the STEP office or visit **www.step.org/online-directory**

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