

will fact sheet

Why make a Will?

Everybody over 18 should make a Will. A Will is a **legal** document in which you state what you would like to happen to your estate. Your Will is an invaluable opportunity for you to clearly let your intentions be known relating to such things as: -

- Who you wish to receive what from your personal items, money, investments and property
- Who you wish to act as guardian of your children
- Funeral arrangements.

Without a Will, you lose **entirely** your right to determine the above.

If you die **without** making a Will, the consequences are as follows: -

- a. Your next of kin sometimes won't know if you have made a Will or not, and will spend time searching for one.
- b. When they don't find your Will, they'll then have to apply to the courts for the power to deal with your estate (assuming it's worth more than £5,000). This takes a lot longer than the simple process of 'Applying for Probate' - which is what happens when you **have** written a Will.
- c. In the meanwhile, they'll have to pay your funeral expenses and (in almost all cases, due to the significant extra delay) pay any Inheritance tax due **before** they've gained access to your Estate/money (due date is six months after the end of the month in which the death occurred and interest is charged on late payments). This may leave them in significant hardship - even debt.
- d. If you have any children and haven't appointed Guardians for them (and their mother isn't alive), your next of kin will have to sort that out as well - again by going through the courts (which can be a costly and time-consuming process).
- e. When they finally have access to all of your Estate, it is distributed according to the Laws of Intestacy (which in most cases will not be what you want) and any special gifts you wanted to make will be ignored.

There are absolutely no benefits at all to **not** having a Will, and there are numerous disadvantages.

How to make a Will

Making a Will is straightforward. There are really only 4 things you have to do: -

- a. Specify Legacies
- b. Specify who is to receive your Residuary Estate
- c. Appoint Executors and Guardians
- d. Sign your Will in the presence of 2 witnesses

Excluding people from your Will

If you intend to exclude somebody from your Will (i.e. not leave them anything, or leave them virtually nothing), then you need to be aware that, however well-worded your Will is, the following people will be legally entitled to challenge it in the courts (under the Inheritance (Provisions for Family and Dependents) Act 1975) if they have been excluded or under-provided for: -

- Your current spouse
- Your children (unless they are provided for via your spouse)
- An ex-spouse who has not re-married
- A partner who has lived with you for more than 2 years
- Any stepchildren who live with you
- Any other people who are financially dependent on you

When should I make or re-make my Will

If you are over 18 and don't have a Will, or have recently married, you should make a Will **now**.

You may need to revise or re-make your Will should one of the following occur: -

- Changes in the family** - if there is a death in or addition to your family, you will probably want to add or remove beneficiaries in your Will.
- Marriage** - this automatically revokes a previous Will (unless the previous Will specifically states otherwise).
- Divorce** - this does not revoke a previous Will, but a former spouse will cease to be a beneficiary and also may no longer be allowed to act as executor.
- Separation** - this does not have the effect on your Will that divorce does, so you may wish to revise it as soon as separation occurs.
- Your finances change for the better** - you may wish to give your newly-acquired assets to particular beneficiaries
- Your finances change for the worse** - such that they become insufficient for the legacies you have made.
- A name change in a Beneficiary** - if you leave a legacy to a charity or organisation and that charity or organisation changes its name or ceases to exist – and no similar organisation can be found - then your Executors may have to cross that legacy off your Will unless you amend your Will accordingly.
- Going to live abroad** - you should make a Will in the country where you reside to cover any immovable assets (e.g. property) which you have there in addition to a Will for your immovable assets in England and Wales.

The contents of this document should not be regarded as constituting legal advice and should not be relied upon as such. You should seek specific legal advice in respect of all legal issues or problems.

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