

Making a will. Things to consider.

Burial and Funeral Wishes

You may wish to include a clause in your will stating whether you want to be cremated or buried. You may want your organs to be donated for use after your death, or wish your body to be used for medical research.

Executors and Trustees

Executors and trustees administer your estate after your death. They can be different people. It is most common to appoint either your spouse solely or your spouse and one other as well as two substitute executors such as your children, in case your spouse predeceases you. You may appoint a professional person. This is normally done when the administration of the estate may be complicated or the estate is likely to be large or if you feel that there may be problems with the beneficiaries such as in cases of step families, life interests or trusts e.g. if your children are still minors.

Guardianship

You may appoint guardians for your minor children in the event of both parents dying. The guardians may also be the executors and trustees of your estate. You can appoint preliminary guardians with reserve guardians in case the first appointed guardian cannot act or predeceases you. Please remember that you should make sure that you have their agreement before appointing them.

Personal Effects

Your personal effects and contents will include your jewellery, clothes, furniture, ornaments and possibly your car etc. They can either be sold by your executors or left to your beneficiaries or executors to deal with as they wish. Alternatively you can leave items to specific beneficiaries as part of your general estate or you can ask your executors to distribute them in accordance with your wishes as set out in a "wish list" which can be placed with your will at any time, but is not legally binding. If the legatee dies or the specific gift is no longer in your possession when you die (e.g. you leave a specific car to your daughter but it is sold before you died) then the gift will lapse and the legatee will not receive a cash equivalent.

Pecuniary Legacy

A pecuniary legacy is a gift of money. You can choose to leave a gift free of tax, if appropriate. You can leave cash gifts to charities which are tax free (i.e. not subject to Inheritance Tax). If you wish to leave a cash gift to a minor you can state at what age they are to receive the gift, e.g. 21, 25 etc, or that it is to be paid to their parent or guardian if under the age of 18 for them to look after. This will mean that the money will be invested for the minor until he or she reaches the specified age. If the legatee dies before you then the gift will lapse, unless you state in your will that it should pass to his or her children.

Residuary Estate

Your residuary estate is what is left after any specific or pecuniary legacies have been paid out, and the debts, funeral and testamentary expenses and Inheritance tax, if applicable, have been paid. It is most common to leave everything to your spouse with a gift over to your children if your spouse predeceases you, and then to your grandchildren if your children have predeceased. If you have children from a previous marriage then, depending on how your house is owned (owners in common or joint tenants) you can leave your share of the house to your spouse for life or remarriage and then to your children. This can be discussed further at the appointment.

The Family Business

If you have built up a family business and want to ensure its continuation, there are difficult decisions to be made, particularly where some family members are involved in the business and others are not.

This can be a particularly acute problem for businesses such as farms, which have a high capital value, but which often do not produce sufficient income to support more than one family. It is important to start discussing succession to the family business at an early stage, so that those who may not receive equal value under the will understand the reasoning behind it, and do not feel unfairly treated.

Foreign Property

If you own foreign property you may need to make a foreign will. It is important that your executors have full details of all your foreign assets, and of any lawyers abroad who you have previously used, as this will help to avoid problems after your death.

Claims Against Your Estate

You should consider whether there is anyone who might make a claim against your estate after your death. Certain people, including spouses and civil partners, former spouses and civil partners who have not remarried, co-habitees, children and those treated as children of the family, and others who have been maintained by you, may be able to make a claim under the Inheritance (Provision for Family and Dependents) Act 1975.

If you have made a promise to someone that they have relied on to their detriment, they may have a claim under the doctrine of 'proprietary estoppel'. An example would be a child who worked without pay in the family business on the expectation of inheriting it.

Inheritance Tax/Care Fees Planning

Couples with a house and modest savings may wish to incorporate provisions in their wills to preserve part of the value of their home from being used to pay their surviving spouse or partner's care fees after their death.

There may be Inheritance Tax planning opportunities using charity, agricultural and business property relief; and it is also important to note that couples who are not married or in a civil partnership do not benefit from the Inheritance Tax transferable nil rate band.