

Guidance note



Making a Will

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01

Introduction

Why write a Will?

Writing your Will allows you to decide how you want your assets to be dealt with after your death .

If you die without a Will there is a strict set of rules that sets out who can deal with your affairs and how it should be distributed.

In this guide we will explain what the roles of executors and trustees are, the different types of gift that you can make, how you can deal with your home and the different ways of dividing the remainder of your estate.

We'll also try to bust some common myths so that you can make an informed decision about preparing a Will.



02

Executors and Trustees

Executors are the people that deal with your estate. They are the ones that will need to make sure all of your assets (cash, personal possessions, property or investments) are distributed correctly between your beneficiaries.

Before they can follow your instructions about gifts in your Will, they will need to make sure all outstanding debts are paid.

Acting as an executor is a responsible role and they have to give a full report about how they have dealt with your estate when they make the final distribution to your beneficiaries.

If any part of your estate has to be looked after for another person for any amount of time, your executors will also act as trustees.

You should think carefully when choosing your executors to ensure that the people you choose will be able to cope with the work they will need to carry out.

Executors can be beneficiaries of your Will and you can have just one executor who is also the sole beneficiary.

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Guardians

If you have children, you might want to set out in your Will who should take care of them if they are under 18 when you die.

If someone with parental responsibility survives you they would normally care for the children.

If you have chosen a couple to care for your children, and they are no longer together at the time of your death, this may cause difficulties and you should, therefore, keep this under review.

If you are leaving your estate to your children you might want to consider whether their guardians should have any access to the funds. You could authorise your executors to release funds to help with the cost of raising your children.



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Specific Gifts

Specific gifts are gifts of items such as jewellery furniture, or paintings.

You may have your great-grandmother's engagement ring that has been passed down in your family to the eldest daughter in each generation.

Alternatively you may have an ornament that a friend has always admired when they come to visit.

If you want to give a particular item to someone it is referred to as a specific gift.

If you part with the item during your lifetime, perhaps by giving it to the person it would have gone to under your Will, then this gift clearly cannot take place after your death.

The item that you want to give should be very carefully described in your Will to ensure that the correct item is passed to the right person.



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Cash Gifts

These would appear to be the simplest form of gifts. A straightforward lump sum payment to a named person or group of people.

However the way that the gift is worded in your Will, or the age of the person to whom you are giving the money can make it more complicated.

It is also worth thinking about what would happen if your estate was worth far less at the date of your death than at the time your Will was made.

This could mean that someone who was due to receive a very small part of your estate actually ends up receiving most of it and the people that you wanted to give more to would end up with little or nothing from you.

This is one of the reasons that we urge you regularly review your Will.



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Your Home

For many people, their home is their biggest asset.

If Inheritance Tax might be an issue for you, then making a gift of your home to your children, step-children, grandchildren, or their spouses may reduce the amount of tax payable.

If you would like to ensure that part of your estate passes to your children even if your spouse has to go in to care after your death, this can be dealt with in your Will.

If you are living with a partner in your home and you want to give them the right to continue to live there for some time after your death, but not for the rest of their life, this can also be incorporated in your Will.



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Residue

The residue of your estate is made up of what is left after all debts and expenses have been paid and the specific and cash gifts have been made.

As it can be difficult to calculate the value of the residue when you are making your Will, working out the division of the residue can prove challenging if you are not leaving it to just one person .

It may be easier to work in fractions or percentages, as then the amounts received by each person will be in the same proportion if the value of the residue increases or decreases.



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Foreign Assets

Many more people now own property abroad or hold investments or pensions in foreign countries.

A Will made in England will not always be sufficient to deal with these assets.

Some countries set out who must inherit assets when the owner dies, while others work in the same way as the rules covering England and Wales.

It may be that you made a Will when you purchased the asset abroad, or that you will need to do so to ensure that it passes to the right people after your death.

It is important when you make Wills in different countries that they do not revoke any existing Will that you have in place.



Trusts

A trust is an arrangement where someone (a trustee) holds property as a nominal owner for the good of other people (the beneficiaries).

Sound complicated? Whilst trusts can be complex, this isn't always the case.

If you make a gift of £500 to a grandchild who is under 18 when you die, the money will be held on trust for them as they cannot inherit it before 18. The money can be invested and looked after for them until they reach 18 or perhaps even later if you prefer.

You can also use a trust to give someone the use of an item for a specified period, but with it passing to someone else afterwards.

For instance, you could give your child the right to live in your home for their lifetime but specify that after their death it is to pass to your grandchildren.

You should carefully consider who you want to act as Trustees. If you are leaving money for a child you may want to appoint their parent or you might prefer someone independent.

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Process

At Vine Law we can advise you on all aspects of creating your Will. The process generally involves the following steps:

1. We will have a meeting with you to discuss your circumstances and advise you on how you could structure your Will, including any trusts that might be appropriate. This could be in person or via video call.
2. We prepare drafts of your Will for you to check.
3. We will arrange for you to sign the Will and for it to be correctly witnessed.
4. After it has been signed we will store your original Will for safe keeping.

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Further Help

If you'd like more information about making a Will, please contact Cath Collins.

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