KJ Smith Solicitors

WILLS - WHY MAKE A WILL?

Making a Will is the only way of ensuring that after you pass away your estate is distributed as you wish it to be. If you die without creating a Will, your estate falls under the Rules of Intestacy.

In addition, if you have young children it is essential that you make a Will to set out who should look after your children if the unthinkable happens before they are 18 and you are no longer around to look after them.

A Will is also the only way to ensure family members such as stepchildren or unmarried partners can benefit from your estate. When preparing your Will, we will discuss all of the options available to you. By the end of the process, we will provide you with a Will that is specifically tailored to your particular needs and requirements.

ESSENTIAL REASONS FOR MAKING A WILL

1. to avoid your assets being distributed in accordance with the intestacy rules which could mean, for instance, your spouse not inheriting all of your estate or your partner receiving nothing
2. to ensure that those you wish to inherit your assets on your death actually get them
3. to nominate executors of your choice to deal with the distribution of your estate in the certain knowledge that they will comply with your wishes
4. to nominate your preferred guardians of your children to avoid disagreements or family upsets
5. make small personal gifts
6. to take advantage of tax saving strategies

OTHER POSSIBLE REASONS (DEPENDING ON INDIVIDUAL CIRCUMSTANCES)

1. to explain why a possible beneficiary is being excluded
2. to ensure the continuation of a family business
3. to ensure that 'first' and 'second' families are treated fairly
4. to reflect lifetime rearrangement of assets
5. to give specific guidance to executors

POINTS TO CONSIDER

Some thought needs to be given and a number of issues are likely to arise during discussions about why you should make your Will and why you should put particular provisions in it.

FUNERAL ARRANGEMENTS

You can specify whether you want your body buried or cremated or specify whether you have opted out of the Organ Donation Register. You may have other particular wishes to be recorded here.

EXECUTORS

This is the person(s) you appoint to safeguard your possessions, pay debts and ensure your instructions in the Will are carried out.

An Executor can be anyone, even a beneficiary, and must be 18 years of age or over. If you are leaving everything to one person, it is usually convenient to make them the only Executor.

With more complicated estates, and particularly where children are involved, it is advisable to have at least two Executors but more can be unwieldy when decisions have to be made.

In some cases (e.g. where matters are likely to be complicated or where there may be family difficulties) it is preferable to appoint professional executors such as the partners of KJSmith Solicitors who are independent and fully insured to deal with your estate and carry out the terms of your Will.

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GUARDIAN

This would generally only come into effect if the other parent dies before you.

It will be necessary to appoint someone for the day-to-day care of your children under 18 years of age. It is possible to appoint more than one person, e.g. a sibling and their spouse but this could be difficult if, say, they were to divorce.

It would also be prudent to consider some form of fund being made available to the guardian(s) to cover increased expenditure.

LEGACIES

You have the ability to leave sums of money or specific gifts. You can leave them, if they belong solely to you, without difficulty. However, you may need to consider if they will be needed by a surviving spouse/civil partner. In such a situation you will need to make some provision, such as a life interest to the survivor, to cover this situation. This is complex and will require input from your solicitor so that the best method can be adopted.

Remember that if you leave something to your surviving spouse or significant other in the belief that they will honour your wishes in respect of it they are not obliged to do so.

If the gift (particularly of money) is to children you will have to decide at which age they will be able to fully enjoy it. You might want them to inherit it outright at 18 or you might like to choose a slightly older age such as 21 or 25 years.

If you are making gifts of specific items such as furniture, jewellery etc, it may be worth considering putting these in a side letter, known as a letter of wishes. In this case you give all the items to the trustees of your Will with the hope that they shall distribute the items in accordance with any letter of wishes you have left. This is a very flexible arrangement. You can change the list at any time without the legal formalities and expense of updating your Will.

RESIDUE

This is what is left of your estate (except any jointly owned assets), after payment of debts, legacies, any Inheritance Tax, and legal fees is known as the residuary estate.

Your Will sets out who you want to inherit your residuary estate and in what proportions. You should also cover who inherits in the event any of these people die before you. If children are to benefit, you can specify the age at which they become entitled (usually in the age range of 18- 25 yeas).

Jointly owned assets usually pass automatically to the other joint owner(s) outside the terms of your Will.

THINGS TO REMEMBER

On marriage (or remarriage), your Will made prior to the marriage is automatically revoked and has no legal effect. If you die without making a new Will your estate will pass to a list of your relatives specified by law (under the intestacy rules). However, if you are engaged to be married please ensure you tell your lawyer when discussing your Will requirements as your Will can be drafted in such a way as to withstand the marriage at not become invalid.

On divorce, any gift(s) made in your Will to your ex-spouse will not take effect and neither will his/her appointment as your Executor but the rest of the Will still stands. This can create problems and it is better to make a new Will. If you are not making any provision for a spouse or partner, or a former spouse, or a child, it is possible that he/she could claim against your estate. If this applies to you, you should ask for extra advice about this.

COMMON WILL WRITING QUESTIONS

If you're thinking of having a will prepared but still have unanswered questions, our legal team have put together frequently asked questions to help put your mind at ease.

Can I use my Will to take care of my pet?

Absolutely. For legal purposes your pets are viewed as your possessions and therefore you can leave your pets to named individuals or a charity. If you want to leave money to go towards your pet's care and maintenance then this is best dealt with through a simple Trust arrangement and is something you can speak to us about at KJ Smith Solicitors.

What happens to a Will when a civil partnership is converted to a marriage?

Nothing. The marriage is deemed to have existed at the point when the civil partnership was formed. Any Wills made after the civil partnership will still be valid despite the subsequent marriage.

I am due to become a parent/grandparent, can I leave assets to my unborn child/ grandchild?

Yes. Your Solicitor can draft your Will to deal with any future-born children or grandchildren that might be born after the date of your Will but before the date of your death.

Inheritance for any minor child or grandchild would be held in a Trust arrangement for their benefit until their 18th birthday (or an older age that you specify). The monies in the Trust can be used for that child's benefit prior to that age for their education, maintenance and benefit.

There are some tax consequences on choosing an age older than 25 for your own children, or 18 for Grandchildren. At K J Smith we can discuss this with you to ensure you are also leaving your Estate in the most tax efficient manner.

Can my partner and I make Wills to sign right after our marriage/civil partnership?

Yes, however, it is much safer to have a Will prepared prior to your wedding day, which is made in contemplation of your marriage. This is because marriage automatically revokes any Will you have in place, unless your Will is specifically drafted to withstand the marriage.

At K J Smith we can draft your Will so that it is 'made in contemplation of your marriage' and therefore still take effect after it. This ensures that if something awful were to happen to either of you immediately after your wedding that your Will still stands.

We would also recommend that you think about making Lasting Powers of Attorney

For more information please see our website www.kjsmith.co.uk/our-services/wills, email your enquiry to wtp@kjsmith.co.uk or call one of our lawyers on 0118-418-1000.