

Private Client

Making a Will



It is estimated that around 60% of the adult population don't have a Will despite the well-publicised dangers of not having one. Without a Will, in the event of your death, your loved ones will have to arrange all of your affairs with the added possibility of facing legal complications. This guide aims to help you understand the importance of making a Will and what it needs to say.

What will happen if I do not make a Will?

Dying without having made a Will will bring into effect the rules of intestacy which, aside from involving a more complex and expensive administration procedure, provide that:

- ▶ Your spouse or civil partner may only be entitled to part of your estate
- ▶ Your children or grandchildren will inherit your assets at age 18, which you may feel is too young
- ▶ Only blood relatives and your spouse or civil partner can benefit. Your in-laws, friends and unmarried partner (whether having lived with you for many years or not) will NOT inherit your estate

Why make a Will?

If you make a Will your property and affairs will be dealt with in accordance with your wishes when you die, instead of in accordance with the rules of intestacy, which may not be what you would have wanted.

Having a Will can also help:

- ▶ Reduce administration costs
- ▶ Speed up the process of transferring your assets to beneficiaries, helping to reduce stress and hardship
- ▶ Take care of the needs of young children
- ▶ Provide for a friend or unmarried partner
- ▶ Minimise any liability to Inheritance Tax (IHT)
- ▶ Help protect assets from a potential liability to care home fees (CHFs)

What should I put in my Will?

- ▶ **Executors:** it will be necessary to appoint trustworthy people to deal with your assets after your death. They will be known as your Executors and can be family members, a friend or a professional. If you wish, Buckles Solicitors LLP can act as your Executor either alone or in conjunction

with a member of your family or other person of your choice

- ▶ **Guardians:** if you have young children then it is advisable to appoint guardians who will see to their upbringing. The Will can include a provision to allow the Guardians to receive payments from the funds being held for your children to ensure that the Guardians do not suffer any financial hardship by taking on that role. The decision on whether or not payments are made lies with your Executors. Whilst the Guardian can also be an Executor, it is important that there is a check and balance on any payments being made – our advice is therefore to appoint separate people in these roles
- ▶ **Gifts:** one of your most important decisions in your Will is who will inherit your assets. It is possible to make gifts of specific items such as jewellery or furniture and specific sums of money, although ultimately it will be necessary to specify who is to benefit from the remainder of your assets and in what shares. In drafting your Will we will ensure that your intentions are clearly expressed to avoid them failing due to uncertainty and that all your assets are properly dealt with in the event that a Beneficiary dies before you
- ▶ **Providing for children:** gifts to children involve the added issue that minors are not permitted to hold property until they attain the age of 18. Therefore we will be able to advise you on the best way of making such gifts and controlling their inheritance to include the possibility of specifying an older age such as 21 or 25. Advice can also be given on more complex issues such as providing for a disabled child or ensuring step-children are included in the terms of the Will
- ▶ **Inheritance Tax:** you may be able to significantly reduce your liability to IHT on death by incorporating the correct provisions into your Will. Further details on this subject are available on request

- ▶ **Care home fees:** incorporating the correct provisions in your Will can help protect your assets from the potential liability to CHF. Please see our guide on care home fees for full details
- ▶ **Trusts:** where a Trust is incorporated into your Will, either to provide for infant children or to protect assets from IHT or CHF, then it is important that the powers given to Trustees under the general law are extended so that full use can be made of your assets after your death

But I already have a Will

Even if you already have a Will it is important to review it regularly to ensure that it still reflects your circumstances. Some changes in your circumstances automatically affect your Will. For example if you have:

- ▶ **Married:** marriage or re-marriage will always invalidate a Will, unless the Will expressly states that it has been made with the marriage in mind
- ▶ **Divorced:** divorce will mean that your former spouse will be automatically excluded from your Will once there is a decree absolute, but not before. It is possible that he or she might still inherit under your Will, if that Will leaves your property to your children and those children (or one of them) die before you, in a common accident with you, or very shortly after you
- ▶ **Separated:** unlike marriage or divorce, a separation will not affect your Will, so gifts to your former partner will still be valid, even after your separation
- ▶ **Children:** unlike marriage, having children does not automatically invalidate a Will, so reviewing your Will at this time is essential
- ▶ **Begun living with a partner:** as stated above, an unmarried partner has no entitlement to your estate if you die, so any new relationship should result in your Will being reviewed
- ▶ **Had significant change in the value of your personal wealth:** IHT may begin to affect you in these circumstances

Why use a solicitor to draw up your Will?

Where an individual draws up his or her own Will, even using one of the DIY kits available, errors can be made, which can invalidate an entire Will. We are expert in knowing how to express your wishes in legal terms, which may have an entirely different meaning to their everyday use and can ensure that the strict rules applicable to signing and witnessing a Will are followed. In doing so, expensive delays in interpreting your Will on your death will be avoided along with the risk of the whole Will being invalid.

We can also offer advice on related matters such as IHT, protecting assets from CHF and Lasting Powers of Attorney (LPAs).

What shall I do next?

Before starting to prepare your Will, you should gather together the full name (including middle name), full address (including postcode), telephone number and date of birth for all those people who may be mentioned in it.

New Wills: if you wish to make a Will then please contact us to arrange an appointment to discuss your requirements. We will take your instructions and give you advice on the best way of implementing your wishes before drawing up the Will for your approval and signature.

Existing Wills: if you wish to change an existing Will then please contact us to let us know the whereabouts of your Will and to arrange an appointment to discuss your requirements.

If the change is only a minor one then this may be affected by means of Codicil, which is a legally binding amendment to be kept with the existing Will. If more significant changes are to be made, then it is often better to have an entirely new Will drawn up.

It is extremely important that you should not make alterations to your Will just by writing in or deleting a provision. Alterations need to be witnessed in the same way as the Will itself and advice should be taken.

Storing your Will?

We offer a free service to store your Will in our strong room whether you come to us to prepare it or not.

Key contacts



Stephen Duffy
Partner

01733 888879

stephen.duffy@buckles-law.co.uk