WILL FACTSHEET

What to include in your will

There are certain things to think about before you make your will; it will help to have thought these things through before any appointment.

Your estate

You should think about what is likely to make up your estate when you die, and how you would like to distribute this. Your estate is everything you own at the time of your death, including your money, possessions, property and investments. Before your estate is distributed to your beneficiaries (the people you are leaving things to), all your debts must be paid, including funeral expenses.

You should also take into account any property you own jointly. Property can either be held as joint tenants or tenants in common. If property is held under a joint tenancy, your share will pass automatically to the other owner on your death; you cannot leave your share to someone else in your will.

If it is held under a tenancy in common you can leave your share to someone else and they will become tenants in common with the other person on your death. The type of joint ownership you have will depend on what was agreed when you bought the property. If you have a joint bank account, money in the account automatically passes to the other account holder on your death, so you can't leave it to someone else in your will.

Legacies

You should think about whom you want to benefit from your will; whether these are individual people or an organisation such as a charity, and what would be the most effective way of leaving them a legacy (a gift made in a will is known as a legacy). You should take into account that your circumstances may have changed significantly by the time of your death. You need to make sure your will is drafted in a way that does not present problems if, for example, a beneficiary dies before you, or your estate is worth significantly more, or less, than at the time you made your will.

One important way of doing this is to name a residuary beneficiary. This is the person or charity that receives the remainder of your estate once any specified gifts have been made. This would prevent what is known as a partial intestacy. If you are leaving specific possessions to specific people, you must make sure that you give sufficient details to ensure that there is no doubt as to the identity of the possessions or whom they should go to. For example, beneficiaries should be identified by their full names and their relationship to you.

Executors

The will should name one or more executors: these are people you choose to deal with your estate after your death. The executors can be relatives or friends, or a professional such as a solicitor. You should choose an executor you can trust to carry out your wishes in accordance with the will.

Executors can be beneficiaries under the will, and often people appoint their spouse, civil partner or children as executors.

Check with your proposed executors that they are willing to take on this role before naming them in your will, as it can involve significant responsibility. Consider naming more than one executor in case

one dies before you. It may also be easier for the executors if there is more than one person to share the work and the responsibility. The executors may have to deal with any day-to-day administration of your estate in the period before it can be distributed. Executors can claim from the estate for expenses incurred carrying out their duties. If the estate is large or complicated, there may be advantages in appointing a professional executor.

A professional executor will charge for the work they do and these costs will have to be met from your estate. Ask for details of the likely costs before appointing the executor to check that you are comfortable with them.

As a last resort, the Public Trustee (an independent public body appointed by the Lord Chancellor) can act as an executor. It may be appropriate to appoint the Public Trustee as executor if there is no one else able and/or willing to act as executor, or where a beneficiary is an incapacitated adult, or dependent child likely to outlive both parents and other close relatives.

You should contact the Office of the Public Trustee for more information before appointing them as executor.

Making a valid will

Certain requirements must be met for a will to be valid:

* It must be in writing.
* It must be signed and witnessed (see section 4.1 below).
* You must be over 18 when you make it.
* You must have the mental capacity to make the will and understand the effect it will have.
* You must not have made it as a result of pressure from someone else.

The beginning of the will should state that “this will revokes all others”. If you have an earlier will, it should be destroyed.

Witnessing the will

* Your signature to the will must be witnessed by two people over the age of 18; they must be present when you sign it.
* The witnesses must also sign the will in your presence; in other words, all three people (you and the two witnesses) must be in the room at the same time when signing.
* There should be an ‘attestation clause’ in which the witnesses confirm that you have signed the will in their presence.
* The witnesses or their husbands, wives or civil partners must not benefit from the will, so it is important to select the witnesses from people you do not intend to leave any of your estate to.
* If anything has been left to the witnesses, the rest of the will is still valid, but the witness will lose their entitlement to whatever you had intended to leave them.
* Also, the witnesses must not be the same people as the executors of the will.

Changing your will

Codicils (supplements to a will) can be added to an existing will for minor changes. These must be signed and witnessed in the same way as the will, but the witnesses need not be the same as for the original will.

If anything substantial needs to be changed, you should make a new will revoking the former one.

Never make alterations on the original document: either add a Codicil or make a new will.
If you marry, remarry or enter into a civil partnership, your will becomes invalid unless it was made in contemplation of marriage or partnership (that is, you were intending to marry or register a civil partnership when the will was made and the will specifically refers to this). You should make a new will in these circumstances.

Divorce does not automatically invalidate a will, but any reference to your former spouse or civil partner (such as appointing them as executor or naming them as a beneficiary) will not be effective. It is therefore usually necessary to change your will after divorce.

Where to keep your will

It is important to keep the original will safe. The will should be stored in a safe place, or if you wish can be stored by us. Please ask for details

Funeral Plans

If you have particular views about your funeral, you can write a letter to your executor explaining how you would like it conducted, and keep this letter with your will. Alternatively, you can include this information in the will itself, but make sure the people who will arrange your funeral are aware that this is what you have done.

Do not attach any separate documents to the will itself with paperclips or staples. If these become detached, leaving marks on the will, it may raise questions about whether a Codicil has been lost. This could call into doubt the validity of the will.

Taxes on your death

Inheritance Tax (IHT) is payable if your taxable estate is worth more than the IHT threshold. For the 2015/16 financial year, the IHT threshold has been retained at £325,000. Most estates are not worth enough for IHT to be payable and so most of us don't need to worry about it.

Not all of your estate will count for the purposes of calculating IHT, for example anything left to a wife, husband or civil partner is taken off the value of your estate providing you are both permanently resident in the United Kingdom.

There are also exemptions for certain gifts, such as any gifts to charities. The value of non-exempt gifts made during the previous seven years may be taken into account in whole or in part depending on how recently the gift was made. This is so that people cannot avoid paying IHT by giving away their estate before they die.

Further information about Inheritance Tax can be found in the Customer guide to Inheritance Tax on the HM Revenue and Customs website or by calling the Probate and Inheritance Tax helpline on 0845 30 20 900.

What happens if you don't make a will?

If you die without having made a will, there will be intestacy. Your property will be divided according to the Administration of Estates Act; this means your property may not go to the people you expected or wanted it to.

- *Please see our INTESTACY FACTSHEET to see how your estate would be distributed*