

Making a Will



Often people do not realise the consequences if they fail to make a Will and one of the mistakes that people make is to assume that they know who will inherit their estate when they die. Here are some of the reasons why you ought to make a Will.

Avoid the intestacy rules

If you do not have a Will, the law of intestacy dictates who will inherit your assets. Many people believe that without a Will, their assets will pass to their spouse, civil partner or "common law spouse" which may not be true.

The following are some of the main examples of what can happen if you die intestate and are survived by a spouse or civil partner (let's call them "your spouse"):

1. If you have children, your spouse will be entitled to the first £250,000 of your estate and your personal effects (otherwise known as your "chattels"). The remainder of your estate will be split in half, with your spouse getting one half and your children getting the other half outright at the age of 18. Your children will also inherit the capital which generates the income going to your spouse after your spouse dies.
2. If you do not have any children, your spouse will get everything.
3. If you do not have any children and are not married, your estate will go to your parents or failing then to your brothers and sisters.

Your spouse will only inherit all of your estate if you do not have any children, parents, brothers, sisters, nephews or nieces.

Who will not benefit?

Under the intestacy laws, there are certain people who will do not have a right to a share of your estate, these include:

- » Your partner – the law does not recognise a "common law spouse" which means that he or she does not have an automatic right to a share of your estate. He or she would have to go to Court and bring a claim if they cannot reach agreement with the intestacy beneficiaries;
- » Stepchildren;
- » Foster children;
- » Some distant relatives;
- » Friends.

By making a Will you can choose who will inherit your wealth, instead of allowing the intestacy laws to decide who will receive your assets.

Appointing guardians for your children

If anything happens to you and your partner while your children are under the age of 18, a guardian can make important decisions about your child's life, particularly in areas such as medical treatment and education. The rules of intestacy do not provide for guardians of your children.

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If you do not appoint a guardian by your Will, one of your relatives will need to apply to Court to be appointed as guardian, but it may be that the guardians who the Court appoints are not the people that you would have chosen.

Making a Will which appoints at least one guardian for your children can give you the peace of mind in knowing your children will be with the people you have chosen to look after them.

Specific and Cash legacies

If you are married or have a civil partner, they will inherit your chattels, but if you want to leave specific items to anyone else then this can only be achieved if you make a Will. Similarly, you will need a Will if you want to leave cash gifts to people and/or your favourite charities.

Choose your executors and trustees

You can only decide who will deal with everything in your estate if you appoint executors in a Will. Similarly, if you would like some or all of your estate to be held in trust then you can also appoint trustees to manage the trust's assets. In the absence of a Will, the Court will appoint an administrator to manage your estate and the funds which will be held in trust if your children are under 18 or your spouse is entitled to the income from part of your estate. This may be someone who is wholly unsuited to the task.

Specify your own funeral wishes

It is common to express wishes in your Will for your funeral arrangements.

I am happy for my spouse's inheritance to be limited by the intestacy laws – why should I make a Will?

Although you may think that it is ok for your spouse to receive only a share of your estate, the following problems can arise:

- » Your children may inherit a large sum of money when they are young and financially inexperienced or vulnerable. By making a Will, you can delay the time that they will get their inheritance. The children's entitlement can be protected and properly managed in the meantime.
- » Even if your children are older, if you are worried about their ability to manage money or you think that their partner may be unsuitable, you can delay and or manage their inheritance by putting it into a Will Trust. The trustees appointed in your Will can then decide when and if the beneficiary will receive income and/or capital and you can help the trustees decide what to do by leaving them a letter of wishes.
- » Your spouse cannot benefit from the capital of the half that he or she gets the income from, even if there comes a time when they might need the money. It is possible to give your trustees the power to use capital for an income beneficiary if you make a Will.
- » Inheritance tax may be payable on you death even if you are survived by a spouse. You can avoid this by making a tax efficient Will even if you decide that you only want your spouse to have the right to income and not your capital assets.
- » You can preserve your Nil Rate Band (the amount which you can bequeath free of tax) with the careful use of a tax efficient Will so that it can be preserved and used on the subsequent death of a surviving spouse.

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Reduce the amount of Inheritance Tax that you pay

The rules of intestacy can result in a significant liability to Inheritance Tax.

Example:

Mr Brown has not made a Will. His estate is worth £2m. When Mr Brown dies, he is survived by his wife and son. Even though Mrs Brown survives her husband, because she will not inherit all of his estate, there will be an immediate liability to Inheritance Tax of £220,000 following Mr Brown's death. If there isn't enough cash to pay the tax, assets may have to be sold which may create another tax liability.

A tax efficient Will can avoid the above tax problem.

For more information and advice contact Gaynor Jackson TEP:



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