Factsheet 7

Making a will

July 2020 (amended December 2020)

About this factsheet

This factsheet explains what you should think about when making your will and how to make sure that the will is legal, effective, and your wishes are carried out.

It includes general information about choosing executors, finding professional help with writing a will, and what happens if you do not make a will.

This factsheet also contains information about using video conferencing to witness a will being made legally. These measures were introduced in response to the Covid pandemic. See section 7 for more details.

For information on dealing with an estate, see factsheet 14, *Dealing with an estate*.

The information in this factsheet is applicable in England and Wales. Please contact Age Scotland or Age NI for their version of this factsheet. Contact details can be found at the back of this factsheet.

If you need more detailed advice tailored to your personal circumstances or representation, it is often best to find a local service offering this.

Age UK Advice can give you contact details for a local Age UK or contact one of the independent organisations listed in the *Useful organisations* section.

In Wales, Age Cymru Advice can give you contact details for a local Age Cymru.

Contact details for any organisation mentioned in this factsheet can be found in the *Useful organisations* section.

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1 Making your will

It is important to make a will for many reasons. You may want to be sure who inherits your assets, or protect yourself from Inheritance Tax, or you may want to pass specific items onto children or other relatives.

In particular, if you do not make a will, your estate may be distributed by the state according to intestacy rules. This means your estate is divided in a pre-determined way and this may not be to the people who you wanted to benefit. It may not be carried out in the most tax-efficient way.

You can write your own will and you can buy packs from shops or online to help you do this. However, except in the simplest cases, it is generally advisable to use a solicitor who specialises in drafting wills. If there is a problem with the drafting or formalities of your will, it may prevent your wishes being carried out and can cause difficulties for those left to sort out your estate.

2 What happens if you die without a will?

If you die without making a will, you are said to have died "*intestate*". In this situation, your estate is divided up according to the rules of intestacy, which strictly governs how assets are shared out. If you have a spouse or civil partner and have children, your spouse or civil partner inherits all your personal possessions and the first £250,000 of your estate plus half the remainder. Your children inherit the remaining half of your estate.

If you have a spouse or civil partner and do not have any children, they inherit the whole of your estate and possessions. If you and your partner are not married or in a civil partnership and they are not in your will, they have no automatic right to inherit anything, even if you have children and have lived together for a long time. See factsheet 14, *Dealing with an estate* for more information about the rules of intestacy.

3 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 6 and 7
- you must be over 18 years, unless on military service
- you must have mental capacity to make a will and understand its effect
- you must not have been pressurised into making the will by someone else, and
- you must have full knowledge of, and approve, the contents of the will.

At the beginning of the will, you should make a statement that this will revokes all others. Official guidance recommends that you should destroy your old will by burning it or tearing it up.

4 How to make a will

There are a number of options open to you if you want to make a will.

4.1 Use a solicitor

Unless your will is very simple, it is advisable to consult a solicitor who specialises in writing wills. For example, you can use a solicitor if you intend to leave significant sums of money to people other than those who might expect to inherit it such as your husband or wife, or if you own foreign property or business. A poorly drafted will can cause unexpected difficulties or outcomes when your estate is settled, so using a suitably qualitied solicitor is often a good idea.

A solicitor may visit in your own home, care home, or hospital if necessary. The cost of making a will varies according to its complexity. Ask at the start exactly what the cost will be. Many firms act on a fixed fee basis.

Check if the solicitor is a member of the Law Society's Wills and Inheritance Quality Scheme (WIQS) or the Society of Trust and Estate Practitioners (STEP). These are recognised quality marks for professionals who draft wills and deal with estates after your death.

Visit www.lawsociety.org.uk/for-the-public/using-a-solicitor/quality-marks/wills-inheritance/ or call 020 7242 1222 for more information. Alternatively, Solicitors for the Elderly is a national network of solicitors specialising in this area.

4.2 Other professional will-writing services

Other will-writing services can be provided by people who are not qualified solicitors. They can be cheaper than solicitors but are not regulated in the same way and may not have comparable experience, skills, qualifications, or insurance. Always check for any extra charges that might be applied.

You should check they have insurance that covers the cost of any losses resulting from mistakes in the drafting of your will. Some charge fees for storing your will, which most solicitors do not. Ensure they have adequate secure facilities if they store your will.

If you store your will with them, ensure you inform your executor, family and friends of the full details of the company and where the will is. Keep a copy of the will in a safe place.

Problems may occur if a will-writing company goes out of business and it is not possible to locate the will.

There are two voluntary regulatory bodies that will-writers can join, called The Society of Will Writers, and the Institute of Professional Will Writers. They have Codes of Practice and require members to have professional indemnity insurance. Contact them to check if someone is a member.

4.3 Banks

Most banks and building societies offer will-writing services, but sometimes expect you to appoint them as your executor also. You should consider whether this is appropriate before you agree to this. Remember to ask about charges for this service.

4.4 Charities

Some charities offer free will writing services, hoping you will consider leaving them some money in your will. This is, however, optional and you do not have to do this if you do not want to.

Free Wills Month is a regular campaign in England and Wales offering free simple wills to people aged 55 years and above. Participating charities, including Age UK, hope you might donate to them in your will. This is optional and not obligatory. If your will is more complicated, you may be asked to pay the solicitor a fee to recognise this.

Will Aid takes place every November. You can use a local solicitor signed up to Will Aid and instead of paying their fee, you are invited to make a donation to Will Aid. Funds raised are distributed to participating charities, including Age UK.

4.5 Make your own will

You can write your own will using do-it-yourself will-writing packs or forms you can purchase from stationery shops or online. In principle, you could simply write your will on a piece of paper, provided it satisfies all of the conditions in section 3.

However, unless your will is very straightforward, this may cause problems when dealing with your estate if you make any mistakes, for example, spell someone's name incorrectly, miss out important information, or be unclear as to who you want to get what or do what.

5 What to include in your will

There are certain things to think about when you make your will. Even if you use a solicitor or professional will-writing service, it helps to think about these things beforehand.

5.1 Your estate

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 money, possessions, property, animals, 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 take into account any property you jointly own. Property can either be owned as '*joint tenants*' or '*tenants in common*'. If you are a joint tenant, your share automatically passes to the other joint tenant(s). You cannot leave your share to someone else in your will.

If you are a tenant in common, you can leave your share to someone else. The type of joint ownership you have depends on what was agreed when you bought the property. It is possible to convert one form of joint ownership to the other. If you are in any doubt, seek independent advice.

If you have a joint bank account, money in the account automatically passes to the other account holder on your death, so you cannot usually leave it to someone else in your will.

5.2 Legacies

A gift made in a will is known as a '*legacy*'. Think about whom you want to benefit from your will, whether these are individuals, for example, family and friends, or an organisation such as a charity and the most effective way of leaving them a legacy.

Take into account that your circumstances may change significantly by the time of your death. Make sure your will is drafted so it does not present problems if, for example, a beneficiary dies before you, or your estate is worth significantly more or less than when you made your will.

If you want to leave specific possessions to specific people, make sure you give sufficient details to ensure there is no doubt about the identity of the possessions, or who they should go to. For example, beneficiaries should be identified by their full names and relationship to you, and items by way of clear descriptions.

In any event, you should always name a '*residuary beneficiary*'. This is a person or charity that receives the remainder of your estate once any specified gifts have been made.

5.2.1 Letter of wishes

A letter of wishes is a confidential document drawn up to accompany a will. The contents of a will are legally binding but the contents of a letter of wishes are not. However, a letter of wishes can be useful in certain situations. For example, you can specify who should inherit household items or personal items such as furniture, ornaments, books or jewellery.

These items have a financial value but it is the sentimental value that leads people to list each item separately in the will, confirming the full details of the person to inherit them. Your will can becomes lengthy and overly cumbersome as a result.

To avoid this, pick a trusted person and name them in your will to receive specific items with a wish that they distribute them in accordance with a separate letter of wishes. This letter is stored with your will.

If you change your mind about who should inherit a specific item, it can be done without altering the will.

Some potential problems to think about include:

- The person named to receive items is under no legal obligation to distribute them in accordance with the letter. They could keep the items.
- The person named could pass away first or not have the required capacity to carry out the wishes.
- The letter could be separated from the will or lost.

More than one individual can be named to lessen the chance of no-one being alive or capable to carry out the wishes, or you could name the executor appointed in the will to accept the items.

It is not advisable to use a letter of wishes if items are of substantial value or absolute certainty is needed about who inherits specific items but they can be useful to share out everyday belongings.

5.3 Executors

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

Executors can be beneficiaries under the will and people often appoint their spouse, civil partner, or children. Check your proposed executors are willing to take the role before naming them, as it involves significant responsibility.

Consider naming more than one executor in case one dies before you. It may be easier for the executors if there is more than one person to share the work and the responsibility. The executors have to deal with day-to-day administration of your estate in the period before it is distributed.

Executors can claim from the estate for reasonable expenses incurred carrying out their duties. They should be aware they can be personally liable if they get any aspect of the estate administration wrong or distribute the estate in the wrong way.

If the estate is large or complicated, or you simply do not wish to burden family or friends with the responsibility, you may want to appoint a professional executor such as a solicitor, accountant, or bank. They charge for the work they do and the costs are met from your estate. Ask for details of likely costs before appointing them to check you are happy.

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

6 Signing the will

You must sign your will, in front of two witnesses present at the same time. The law allows for a will to be signed on your behalf, as long as you are in the room and is signed at your direction. This usually happens if you are blind, illiterate, incapacitated or too unwell to sign the will.

Just because you are physically unable to sign a will does not mean you lack mental capacity to do so. However, you must have the mental capacity to make the will, otherwise it is invalid.

The test for determining whether a will signed on your behalf is valid is that while you were physically unable to sign the will, you did have the mental capacity to make the will, the contents reflected your wishes, and all other formalities were complied with.

Any will signed on your behalf must contain an '*attestation clause'*, stating you understood the contents of the will before it was signed.

If you have a serious illness or a diagnosis of dementia, it is always advisable to have a medical practitioner's statement at the time the will is signed, certifying you understood the nature of what you signed.

7 Witnessing the will

Your signature must be witnessed by two people who physically see you sign your will. The witnesses and their husbands, wives or civil partners must not benefit from the will.

It is important that your witnesses are not people to whom you intend to leave any of your estate. If there are legacies for the witnesses or their spouse or civil partner, and the rest of the will is valid, the witnesses lose their entitlement to their legacy.

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 you signed the will in their presence.

7.1 Covid changes for witnessing a will

Changes made due to the Covid pandemic allow different approaches to the witnesses being physically present in the room with you when signing the will.

The scenarios below would lead to a properly executed will being made during the pandemic, provided the will maker and the witnesses each have a clear line of sight:

- witnessing through a window or open door of a house or a vehicle
- witnessing from a corridor or adjacent room into a room with the door open
- witnessing outdoors from a short distance, for example in a garden.

7.1.1 Video witnessing of a will

Legislation has been introduced enabling wills to be legally made using video witnesses. These measures are backdated to 31 January 2020 and remain in place until at least 31 January 2022.

The type of video-conferencing or device used is not important, as long as the person making the will and their two witnesses each have a clear line of sight of the writing of the signature.

Witnessing pre-recorded videos is not permissible. Witnesses must see the will being signed in real-time. You must be acting with capacity and in the absence of undue influence.

If possible, the whole video-signing and witnessing process should be recorded and the recording kept safe. This may help a court if a will is challenged, both in terms of if the will was made in a legally valid way, and to detect indications of undue influence, fraud, or lack of capacity.

Stage 1:

You must ensure the two witnesses can see you, as well as each other and their actions. You should ask for the making of the will to be recorded. You should hold the front page of the will document up to the camera to show the witnesses, and then to turn to the page you will be signing and hold this up as well.

By law, the witnesses must see you (or someone signing at your direction, on your behalf) sign the will. Before signing, you should ensure the witnesses can actually see you write your signature on the will, not just your head and shoulders.

If the witnesses do not know you, they should ask for confirmation of your identity - such as a passport or driving licence.

Stage 2:

The witnesses should confirm they can see, hear (unless they have a hearing impairment), acknowledge and understand their role in witnessing the signing of a legal document. Ideally, they should be physically present with each other but if this is not possible, they must be present at the same time by way of a two or three-way video-link.

Stage 3:

The will document should be taken to the two witnesses for them to sign, ideally within 24 hours. They must sign the same document.

A longer period of time between you and witnesses signing the will may be unavoidable, for example, if it must be posted. Remember, the longer this process takes, the greater the potential for problems to arise.

The will is only fully validated when all parties have signed it and it has been properly witnessed. This means there is a risk that if you die before the full process has taken place, the partly completed will is not legally effective.

Stage 4:

The two witnesses must sign the will document – this normally involves you seeing both the witnesses sign and acknowledge you have seen them sign. All parties must be able to see and understand what is happening.

The witnesses should hold up the will to you to show they are signing it and should then sign it. Again, you must see them writing their names, not just see their heads and shoulders.

Alternatively, the witness should hold up the signed will so you can clearly see the signature and confirm to you that it is their signature. They may wish to reiterate their intention, for example saying: "*this is my signature, intended to give effect to my intention to make this will*".

This session should be recorded if possible.

Stage 5:

If the two witnesses are not physically present with each other when they sign then step 4 must take place twice, in both cases ensuring you and the other witness can clearly see and follow what is happening. While it is not a legal requirement for the two witnesses to sign in the presence of each other, it is good practice.

Consideration may be given to the drafting or amending of the attestation clause in a will where video-witnessing is used. The attestation clause is the part of the will dealing with the witnessing of the your signature. For video-witnessed wills, it may be advisable to say virtual witnessing has occurred and details of whether a recording is available.

8 Changing your will

It is a good idea to review your will regularly to ensure changes in your life are taken into account that may mean your will needs updating. Minor changes can be added using '*codicils*'. A codicil sets out the changes you are making to your will with the remaining unchanged sections of your will staying in place.

A codicil 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 old 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 made in contemplation of that marriage or partnership and the will specifically refers to this. Otherwise, make a new will.

Divorce does not automatically invalidate a will but 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 during or after divorce.

9 Where to keep your will

Your will should be kept at home safely or lodged with a solicitor or a bank who may charge for this service. Alternatively it can be lodged for safekeeping at the Probate Registry. A fee of £20 is charged when the will is deposited. Tell your executors where the will is held.

When solicitors make a will, they normally keep the original and send you a copy. They may suggest the will is registered with *Certainty the National Will Register* to help ensure the will is not overlooked. You are entitled to the original if you wish to hold it. It is important to keep the original will safe.

If you have wishes about your funeral, you can write a letter to your executor setting them out. Keep this letter with your will. Alternatively, include this information in the will itself, and make sure the people who you want to arrange your funeral know you have done this.

Do not attach any separate documents to the will itself with paperclips or staples. If they become detached and leave 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.

Do not keep your will in a bank safety deposit box. The bank cannot open the deposit box until the executor gets probate (permission from the court to administer your affairs) and probate cannot be granted without the will.

10 Taxes on your death

Inheritance Tax (IHT) is payable if your estate is worth more than the IHT threshold. For the 2020/21 tax year, the IHT threshold is £325,000, although this may be more if your spouse has already died or you are leaving your home or its sale proceeds to children, grandchildren or step or foster children.

There is an extra family home allowance of £175,000 in addition to the existing IHT threshold.

Seek advice if you are unsure whether your estate is large enough to be liable for IHT. Your executor must ensure any liable IHT is paid before distributing the remainder of your estate. For more information about IHT, see factsheet 14, *Dealing with an estate*.

11 Special types of wills

11.1 Privileged wills

A privileged will is a specialised, informal will usually made by serving members of the Armed Forces and support personnel (such as Nurses, Cooks etc), in, or about to be engaged in, active military operations or a Mariner or Merchant Seaman on a voyage.

There are special rules for privileged wills. Seek professional legal advice if you think you can make one of these.

11.2 Joint wills

A joint will is two single wills made by two people (usually spouses) giving instructions about how their properties are to be distributed. This is mostly for convenience purposes and they can be called '*mirror'* wills.

Joint wills can be revoked by either party at any time before death and are valid as long as they follow the format of standard wills. However, see the next section as joint wills may change into '*mutual'* wills.

11.3 Mutual wills

Mutual wills are two or more wills made by people giving instructions based on agreement about how their properties are to be distributed for each other's benefit. Mutual wills are deemed irrevocable. If revoked after the death of one party and new provisions are put in place, any disadvantaged beneficiaries under the first will who do not benefit under the later will can '*enforce'* the terms of the first will.

It is advisable to get legal advice before preparing a mutual will as it is a very technical document with far-reaching implications and must be properly drafted. In some cases, joint wills can become mutual wills meaning both parties and their executors are bound by these wills once one of them has died. This is a very technical area of the law with far reaching implications and legal advice should be sought.

Useful organisations

Certainty the National Will Register
www.nationalwillregister.co.uk/
Telephone 0330 100 3660

Citizens Advice
England or Wales go to www.citizensadvice.org.uk
In England telephone 0344 411 1444
In Wales telephone 0344 477 2020

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Free Wills Month
www.freewillsmonth.org.uk

Free Wills Month is supported by several charities, including Age UK, and runs each March and October offering free wills for people over 55. The scheme is limited to specific towns and cities in the UK which are usually different each time.

Institute of Professional Will Writers (IPW)
www.ipw.org.uk
Telephone 0345 257 2570

Professional body that self-regulates and promotes the profession of will writing. All members have professional indemnity insurance and comply with the IPW Code of Practice.

Law Society
http://solicitors.lawsociety.org.uk/
Telephone 020 7320 5757

The representative body for solicitors in England and Wales and has a searchable database to find a solicitor, advice on what to expect, and guides to common legal problems and what to do if things go wrong.

Offices of the Official Solicitor and the Public Trustee
www.gov.uk/government/organisations/official-solicitor-and-public-trustee
Email enquiries@ospt.gov.uk

Government official who can be an executor if there is no-one suitable to appoint, for example if a beneficiary is an incapacitated adult or dependent child likely to outlive both parents and other close relatives

Probate Registry
www.gov.uk/wills-probate-inheritance

They deal with '*non-contentious*' probate business and issue '*grants of representation*'. Their website has details of storing wills for safekeeping.

Solicitors for the Elderly
https://sfe.legal/
Telephone 0844 567 6173

National organisation of lawyers providing and promoting independent legal advice for older and vulnerable people, their family and carers.

Society of Will Writers and Estate Planning Practitioners
www.willwriters.com/
Telephone 01522 687888

Non profit-making, self-regulating professional body for the will-writing profession. All its members are covered by professional indemnity insurance and have to abide by its Code of Practice.

Society of Trust & Estate Practitioners
www.step.org
Telephone 020 3752 3700

Will Aid
www.willaid.org.uk
Telephone 0300 0309 558

Will Aid is a partnership between the legal profession and nine UK charities, including Age UK.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice
www.ageuk.org.uk
0800 169 65 65
Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru Advice
www.agecymru.org.uk
0300 303 4498

In Northern Ireland contact

Age NI
www.ageni.org
0808 808 7575

In Scotland contact

Age Scotland
www.agescotland.org.uk
0800 124 4222

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The evidence sources used to create this factsheet are available on request. Contact *resources@ageuk.org.uk*