

Factsheet 7

Making a will

July 2018

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.

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 you can contact one of the independent organisations listed in *Useful organisations* at the back of this factsheet. 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 make your own will and there are packs to help you do this available from shops or online. 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, its contents.

At the beginning of the will, you should make a statement that this will revokes all others. It is advisable to keep copies of old wills with the most up-to-date version, in case of later disputes about the contents.

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 qualified 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) and/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 that 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 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 become 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 dispose of 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 with your proposed executor(s) they are willing to take this 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, that 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 on the will must be witnessed by two people who physically see you sign your will. They must both be present when you sign. The witnesses must sign the will in your presence.

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.

The witnesses or their husbands, wives or civil partners must not benefit from the will. It is important to select witnesses from people to whom you do not 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.

8 Changing your will

It is a good idea to review your will regularly to ensure it takes into account changes in your life that may mean your will needs updating.

Minor changes can be added using '*codicils*'. 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 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 executor(s) 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 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.

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 2018/19 tax year, the IHT threshold is £325,000, although this may be more if your spouse has already died and/or you are leaving your home or its sale proceeds to children, grandchildren or step or foster children.

From April 2018, there is an extra family home allowance of £125,000 in addition to the existing IHT threshold. This increases annually by £25,000 a year, up to £175,000 in 2020/21.

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.freewillsmoonth.org.uk

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

Institute of Professional Will Writers

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 Court Funds, Official Solicitor and Public Trustee

www.justice.gov.uk/about/ospt

Telephone 020 3681 2762

The Offices of Court Funds, Official Solicitor and Public Trustee was created on the 1 April 2007, when the Court Funds Office merged with the Official Solicitor and Public Trustee.

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 (SFE)

www.solicitorsfortheelderly.com

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.

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 or Age Cymru 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

0800 022 3444

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

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