

Why Wills are Important

It goes without saying, that the death of a loved one, especially a partner, is a highly stressful and extremely difficult time. This is only made worse if the deceased person had not made a will (known as dying intestate). Chris Budd examines what should be done in such circumstances.

What happens if a person dies intestate?

If an individual dies without having made a will, there are specific rules in place about who will inherit the estate. For example, if the deceased was married (or in a civil partnership), the first £125,000 goes to the husband, wife or civil partner. In addition, they will receive personal items (including, for example, the car) and interest in half of the rest of the estate.

The remainder of estate is effectively shared by the next of kin in the following order:

- Surviving children (all assumed to be equal shares)
- Grandchildren (if the deceased children had died while the deceased was still alive)
- If no children or grandchildren, to parents
- If no parents, to brothers and sisters (who share the same two parents as the deceased)
- Nieces and nephews (if the brothers and sisters had died while the deceased was still alive)
- Half brothers or sisters (or their children)
- Grandparents
- Aunts and uncles
- Half aunts or half uncles
- The Crown (if there are none of the above)

From this, we can clearly see that the surviving spouse or partner may well not receive adequate financial provision for their future. It is possible to make a claim against the estate, which would usually require the assistance of a solicitor, but this will need to demonstrate that the individual had been 'maintained either wholly or partly by the deceased'. This could be difficult to prove. Such a situation can be simply avoided by making a will.

How is the estate dealt with?

A will appoints an *executor*, which is a person who will deal with the estate of the person who has died. Without a will, an administrator is appointed. Typically, a solicitor will be involved, however the administrator will have significant responsibilities in ensuring the estate is wound up in accordance with revisions outlined above. They will **not** be able to direct the estate, even if they know the wishes of the individual and had discussed this with the deceased person before they died.

As we can see, there are enormous possibilities for family conflict if an individual were to die intestate. For example, what if the dead person had several brothers or sisters, each of whom want to be in charge of the administration or funeral. The Probate Court will ultimately decide who will take responsibility, a complicated process best avoided.

What is a will?

In simple terms, a will is merely an instruction as to how your estate should be distributed on your death.

It is advisable to use the services of a specialist will writer or solicitor. These will typically provide you with a questionnaire, which will guide you through the most important issues that you should cover. You must be at least eighteen years old, and 'mentally capable'.

In addition to this, for the will to be valid it must be in writing, and signed and dated by both yourself, and also two witnesses.

Taxation

The recent budget threw something of a spanner in the works of inheritance tax planning. The full implications are still being assessed and clarified, however if you have already established a will, particularly if this involves utilising trusts, then it may be worth a call to your solicitor to ensure that your will still achieves its objectives.

It is likely that there will still be opportunities for using your will for tax planning, particularly to take advantage of the *nil rate band*. This allows you to pass an amount (£285,000 in the 2006/07 tax year) to your beneficiaries without any tax, with any balance over this amount being taxed at 40%.

Conclusion

Every individual should make a will, no matter their age, or financial position. Not only does this ensure the assets are in the hands of people you would want them to be, but also significantly reduces the headache in sorting out your finances for those you leave behind.

More Information

If you would like more information on how to write a will, and other such issues surrounding the distribution of an estate on death, try the following websites:

- www.clsdirect.org.uk
- www.direct.gov.uk/rightsandresponsibilities/death

In addition, the Community Legal Service (who run the first of these websites) can be contacted on 0845 345 4345

This article is for general information only and you should seek professional advice in respect of your own personal circumstances.

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