HENWOOD COURT
FINANCIAL PLANNING
LIMITED

THE IMPORTANCE OF WRITING A WILL

What is a Will?

A Will is just that, a written expression of your will, your wishes and your requirements. It is a legally binding statement of how you wish your assets to be dealt with after you have died.
It is important to keep your will up-to-date because your circumstances change, legacies made in a previous Will may have been impacted by inflation, you may even have arranged to make a gift to someone who has died or your Will may refer to an executor, the person charged with making sure your Will is carried out, who may have died.

You may change an existing Will in two ways, by replacing it with a completely new Will or by adding a Codicil this bit of legal jargon is merely a way of adding new clauses to your existing Will.
After your death, the legal process to establish the validity of your Will is known as probate. If probate is not granted then an administrator is appointed by law to settle your affairs as if you had died without a Will.

What is my estate?

Before you sit down to draw up a Will it is worth spending some time thinking about your estate. This may sound grand but it is simply the legal term that describes your net worth, i.e. it is the total value of everything you own at your death, less any outstanding commitments. Basic estate planning is straightforward and will help you plan what you wish to include in your Wills.
It will also give you some idea of what kind of Inheritance Tax liability your estate may face. Finding this out will give you the opportunity to plan the terms of your Will so that you may take appropriate steps to make sure that your assets go to your nearest and dearest and the taxman gets as little as possible!

You should start by adding up the value of your assets and liabilities, which may include the following:

Assets
1. Your home - sole ownership or jointly owned?
2. Bank and Building Society accounts
3. National Savings investments
4. Life Assurance policies
5. Pension Fund and Union Benefits on death
6. Stocks and shares (including ISAs)
7. Unit Trust investment (including ISAs)
8. Premium Savings Bonds
9. Furniture
10. Interest in other people's estates
11. Property & bank accounts abroad

Any assets which are jointly owned with someone else (a spouse or partner) are usually assumed to be held in joint tenancy. This means that any share held by one automatically passes to the other on death, regardless of any provisions to the contrary in a will. With regard to your property, if this is not what you want to happen then you must make sure that your home is held as a tenancy in common.

Liabilities

1. Mortgage
2. Credit card debts
3. Overdraft facilities
4. Outstanding Loans

Subtract the value of your liabilities from your assets and you'll have a relatively clear idea of what you are worth now. It is likely to be more than you think! Bear in mind also that, other things being equal, what you are worth when you die is likely to be an even larger figure!

Why should I make a Will?

There are several good reasons why you should make a Will. First of all, you get to decide who you leave your property, money and other assets to. Without a will, the Government steps in and divides everything according to strict rules - which could mean family, friends or charities you wanted to benefit would miss out altogether.

Among other reasons you should make a Will, your partner may benefit. If you aren't married to your partner, he/she could end up with nothing if you die without a Will. Even though the Civil Partnership Act has come into force it still makes sense to make a Will.

A Will also means that you may choose your children's guardian. Your children's future can be protected if you choose a legal guardian to be responsible for their upbringing in the event of your death. Of course you need to get the person's permission before nominating them. If you don't specify anyone, it will be left to surviving relatives to sort out who looks after them, and it may end up being someone you would not have chosen yourself.

What happens if I don't make a Will?

No one likes to think about their own death. But making a Will ensures your family won't have to spend months trying to sort out a complicated financial and legal situation after you die. Do you really want them to have the added stress? It seems many of us do according to the Law Society 2 in 3 of us die without having made a Will.

Die without a Will and you die intestate. If this happens, the law of intestacy, which is laid out in the Administration of Estates Act, dictates how your estate will be passed on. It aims, in the first instance, to protect your immediate family any spouse and children. However, bear in mind that unmarried partners and children that are not legally recognised as yours will not be taken into account under the intestacy rules. Quite simply, dying without a Will might not result in your possessions (your estate) being used as you had expected or would have wished.

The intestacy rules assume that all your possessions could be sold by your personal representative to convert your whole estate into cash, which would then be distributed. In practice, most of your assets are likely to be passed on intact according to certain rules.

Your spouse is entitled to all your personal chattels (i.e. personal possessions, such as clothes, furniture, your car etc.). If your estate is valued at £ 125,000 or less, the remaining spouse also inherits the whole estate irrespective of whether there are any children.

If there are children, the surviving spouse is entitled to £125,000 and the household contents and personal effects of the deceased. The rest of the estate is then divided up into two equal parts. One of which will go to the children. The other half goes into a trust. The income from this legal entity will go to the surviving spouse, but the asset will on the death of the surviving partner become entirely the possession of the children.

There are further strict intestacy rules about what happens to your estate if there are no children or if you are single. If you're single with no dependants, your assets go to your nearest surviving living relative. However, if you have no relatives, your estate passes to the Crown (i.e. the government). Do you really want that?

How do I go about making a Will?

A badly prepared Will - or one that is out of date - is often worse than no Will at all. A poorly worded Will or a Will that does not make adequate provision for unforeseen circumstances can cause endless problems and may ultimately be much more expensive and time consuming to sort out. It is up to you, therefore, to make sure you get it right! Having issued that warning, making a Will is fairly straightforward. You could:

1. do it yourself
2. use the services of a will writing company
3. go to a solicitor

A Will makes sure that your estate, after any taxes and debts have been paid, is passed on as you want. You may need legal advice if you want your share of any jointly-owned assets to be inherited by someone who is not the other joint owner.

According to the Law Society, a fairly straightforward will to administer a fairly straightforward estate should cost well below £200 to draw up. It may be advisable to use a solicitor because of the potential pit-falls if a will is not drawn up properly.

When framing the document, you need to have a clear idea of who you'd like to receive what' on your death. You need to bear in mind that the people whom you may want to be beneficiaries, might actually die before you.

If you have small children, it is also a good idea to make it clear in the Will exactly who you would want as guardians were you and your partner both to die together. A fair amount of lateral thinking is required in drawing up an effective Will - you need to be able to take into account all sorts of otherwise unforeseeable events.

Make sure you avoid some of the common Will mistakes such as:

1. leaving money to charities that don't exist actually like 'Cancer Relief' or 'Dr Barbados'
2. not distinguishing family members in the will with the same name
3. not putting the signature in the right place or not all witnesses being present at the same time
4. not taking into account any debts owed

Once the Will has been drafted to your satisfaction, in England and Wales your signature needs to be witnessed by two people who are not beneficiaries. In Scotland only one witness is required but, again, the witness may not be a beneficiary. Although they may not be beneficiaries, you may choose a witness as an executor.

Who should I appoint as an executor?

You are able to choose the people who are responsible for passing on your estate. The legal term for these people is executors. You appoint executors by naming them in your Will.
An executor is the person you leave charge of your estate, to wind it up, pay the taxman (if necessary) and then distribute the balance according to your wishes. This balance is called the residue and is paid out to the beneficiaries, the people nominated in your Will. Being an executor does not stop someone from being a beneficiary in your Will as well.

Most people choose to nominate a solicitor as well as a personal executor when they write a Will. This enables the burden of the work to be shared with a professional who can advise. It also ensures that, if the personal executor is unable to carry out their duties for any reason, there is someone who can carry out the necessary tasks. A solicitor will charge for their advice and work and their fees will be paid out of your Estate.
If you fail to appoint an executor, the High Court will issue a grant of probate and appoint one (generally a bank or solicitor) to act on your behalf.

Can young children inherit?

Children cannot inherit until they reach the age of 18; below this age, any funds of which they are the beneficiaries must be held in Trust.

However, you may feel that 18 is still too young for your children to inherit a large sum of money. If this is the case then, in your Will, you may specify that they do not receive the capital sum until a later age. Your children will be entitled to receive any income from the trust fund as soon as they reach 18. Apart from this, it is up to the Trustees to decide what income and/or capital may be used for the benefit of the children e.g. to pay school fees.

Who should I appoint as a guardian?

If you have children under age 18, you need to think about who will look after them. You do not have to nominate a guardian in your Will but without nominated guardians, the courts will decide who will look after your children. The law also sets out certain requirements where the parents are unmarried or have divorced or separated.

Assuming that either parent has the power to appoint a guardian or guardians on their death, it is usual for such appointments to take effect on the death of the second parent. Usually, especially with very young children, family members may be appointed. With older children, you may prefer to appoint a friend. It is best to limit the maximum number of guardians to two, ideally partners, rather than end up with a committee of guardians. What you want for your children is that they part of a stable environment at what is surely going to be the most difficult time of their lives.

The duties of a guardian are essentially the same as those of a parent although it is quite normal for the financial management of your legacies to your children to be separately run by trustees. In your Will, where your children are under 18 and are to benefit from your estate, you should nominate them as the beneficiaries. The money will be held in trust for them and your nominated guardians may apply to the trustees for any expenses they incur.

What happens if I get married or divorced?

The act of getting married, whether for the first time or on subsequent occasions, automatically revokes any previous Will in England, Wales and Northern Ireland. On the other hand, getting divorced does not off itself cancel a Will although a gift to a divorced spouse lapses, unless a contrary intention appears in the Will.

It makes sense for married couples each to have a Will, even if the terms and conditions are more or less exactly the same. Both of you need to make a Will, two similar Wills are called ‘mirror Wills’.

My partner and I are not married, how is the law different?

The law on intestacy does not currently recognise partners outside marriage. It is even more important, therefore, that unmarried partners do make Wills. The law also does not currently recognise same-sex couples.

However, the Civil Partnership Act gives same-sex couples the right to gain legal status for their relationships through forming a civil partnership. This will formally allow same-sex couples to be entitled to bring claims under the Inheritance (Provision for Family and Dependants) Act 1975. They will apply equally to same-sex and opposite sex couples.

Intestacy provisions are also amended so that if a partner dies intestate the same sex partner, providing there is a formal civil partnership, will be treated in the same way as a surviving spouse.

Where should I keep my will?

In a safe place! But don't forget to tell people that you have made a Will and where you have put it. In practice it makes sense for your executors to have copies of your Will and you may well want a copy on hand as a reference for your own purposes remember that you should keep your Will up-to-date to reflect your changing circumstances and, perhaps, your changing desires as regards legacies.

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