

Wills Fact Sheet

The questions which you might want answering. . .

Why should I make a Will?

1. To make sure that your assets go to the people that you wish to benefit from your estate

Contrary to popular belief if you are married or in a civil partnership and you die, and have not made a Will, your estate does not necessarily pass to your surviving spouse or civil partner in its entirety. Where you have not made a Will the law, under what are known as the Intestacy Rules, decides for you the division of your estate upon your death.

If as an example at the date of your death you are married or in a civil partnership, you have two children and you have not made a Will your estate would be divided in accordance with the Intestacy Rules which would dictate as follows:

Your surviving spouse or civil partner would receive all your personal chattels; £125,000 absolutely (or the entire estate if less); and receive what is known as a "Life Interest" in one half of the residue (if any). Your two children would each receive one quarter of the remaining one half of the residue (if any) on statutory trusts plus the other half of the residue (which would be on trust for your surviving spouse or civil partner) on statutory trust upon the death of you surviving spouse or civil partner.

The Intestacy Rules provide for a different outcome as to the division of your estate based on your specific circumstances at death.

If you do not wish the law to decide for you who benefits, and to what extent, upon your death we would advise that you give serious consideration to making a Will.

2. To try and possibly mitigate any inheritance tax that may be chargeable to your estate upon your death

The inheritance tax nil rate band threshold at which your estate shall then have start to pay tax at a rate of 40% on that "top slice" of your estate value is currently £285,000. This is set to increase as from 6th April 2007 to £300,000. If your estate is over this threshold you may wish to either review your existing Will arrangements or alternatively look to make a Will with a view to possibly mitigating your liability to inheritance tax by adopting a particular structure to your Will. We can, of course, advise you on the various options.

3. To try and protect assets and keep a degree of control over assets, for adults, younger adults and minors

Contrary to HM Revenue and Custom's popular belief we are not all out to save as much tax as possible. Some individuals place heavy weight and emphasis on being able to utilize Trust arrangements within their Wills and lifetime to try and control and or protect assets from adults, vulnerable adults, young adults, minors etc but at the same time still allowing them to have the benefit of those assets without having absolute control and ownership. We can advise you on the various Trust options and the resulting general tax implications of such Trust structures.

4. To try and make sure that family members know your wishes

We are of the opinion that Wills should not to be viewed as something just for individuals with considerable wealth nor should it be acceptable to say "I don't need one as I haven't got anything to leave." Even if this were true your wishes concerning your funeral, burial, wake etc still need be documented. At the time of a passing of a loved one it can be a highly traumatic time which can be made harder if they have not documented within a Will or otherwise their wishes as to their funeral. Again we are here to discuss the various options open to you in this regard.



If I am going to make a Will what do I need to consider?

1. The size and composition of your estate in monetary terms

We would suggest that this is one of your first considerations when you are looking to make a Will. By understanding the value and structure of your estate we can advise you as to whether it would be suitable to look at any options relating to inheritance tax mitigation. See below for further details.

2. Executors and Trustees

These are the individuals who are going to be responsible after your death with dealing with the payment of the funeral, realizing your assets, paying off all and any such debts and making sure that your wishes set out in your Will are dealt with correctly. You can look to appoint your surviving spouse, your children (subject to them having attained the age of majority at the date of your death), relatives, friends and if you wish to have a professional Executor/Trustee Leathes Prior (in the form of one or more partners) can appointed to act on behalf of your estate.

The minimum number of Executors/Trustees you can appoint is, of course, one and we would recommend a maximum of 4. You can either appoint them to act as both your executors and trustees or you can divide out those functions, it is entirely up to you. It is ordinarily the case that the individuals you appoint act as both your Executors and Trustees to keep matters simple, however this is entirely up to you.

3. Burial / cremation / wake wishes

Whether you wish to be simply cremated and or have your ashes scattered in your favourite place it is highly advisable to place such wishes within your Will.

4. Guardianship

If you have children under the age of 18 you shall need to give due consideration to who you would wish to appoint as guardian(s) for your child or children in the event that you predeceased them.

5. Gifts of money or otherwise

You need to consider whether you wish to leave any specific gifts (i.e. jewellery, watches, family heirlooms etc) and also whether you wish to make provision for any pecuniary legacies (money gifts) to any individuals

6. Do you wish to leave a life interest in your property or money to anyone?

Instead of giving money or property outright to an individual you do have the option to give them what is known as a "Life Interest" in those monies or property. By doing this you are allowing that beneficiary the right to have the income for life, and if the Trustees agree some of the capital, and then on the death of the Life Beneficiary it can go to another named individual absolutely.

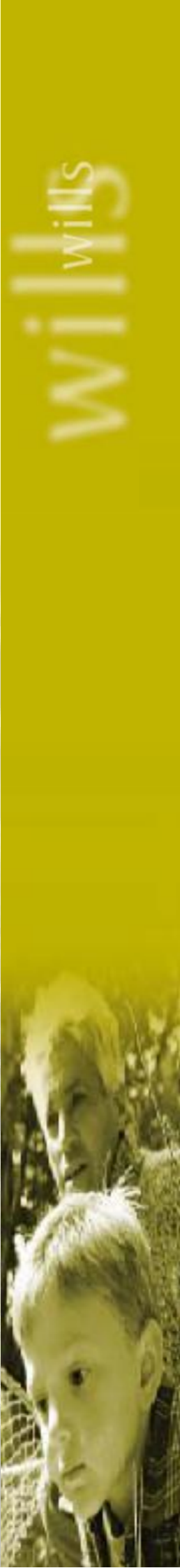
An example of a typical life interest would be where you give your surviving spouse the right to reside in your share of the property (based on you owning it as tenants in common) for their lifetime and then on their demise the property can then pass to any named individuals.

7. Who you wish to inherit the residue of your estate?

Within certain boundaries this can be tailored to your specific circumstances.

8. Business assets?

If you own a business or a share in a business who do you wish to inherit that business or share of the business? Do you wish for the business to be continued or to be wound up? We can also advise you on the other implications for the company/partnership/sole trader.



What if my estate is over the current nil rate band for inheritance tax £300,000 (currently)?

If there is the possibility that upon your death your estate is going to exceed the nil rate band for inheritance tax and shall therefore be chargeable to tax at a rate of 40% on the top slice over £300,000 we can advise you as the various options available to you. A list of such possible options is set out below:

1. Setting up nil rate band Discretionary Trusts within your Wills.
2. Making use in your Will of your nil rate-band to other beneficiaries other than exempt beneficiaries.
3. Lifetime giving. BUT be careful and seek proper advice before gifting assets.
4. Writing assets into Trust.
5. Life insurance to cover any possible inheritance tax that may be payable on your death

Please be aware that the options set out above are not in anyway intended to form a conclusive list and we would advise that you seek proper advice based on your particular circumstances before proceeding to undertake any of the above steps in respect of your estate.

How much will it cost?

This depends on a number of factors and our legal team shall be able to provide you with an estimate by phone or at your meeting.

When I come and see you what do I need to bring with me?

(i) If you are not an existing client of the firm you shall need to either bring with you to any initial meeting original forms of identification or alternatively provide us with you authority to carry out an online secure identification check (£5+ Vat per person). We would suggest that when you make an appointment you enquire as to what are the most suitable forms of identification for you to bring along to the meeting.

(ii) If not currently held with this firm we would ask that you please bring along copies and or your original Wills together with any Codicils and or Letters of Wishes that you have previously executed.

(iii) If not currently held with this firm, and you are possibly looking to amend ownership, we would ask that you please bring along with you your Deeds (if unregistered) or HM Land Registry Office Copy Entries (if registered). If you are unsure as to whether your property is registered or not we would ask that you enquire about this when you make your appointment.

When I have made a Will how often should I review it?

We would advise that you review the existing provisions of your Will to see if it is still up-to-date ever 4-5 years or on the happening of any major event that you think may have an impact on your Wills. Such examples of a "major event" may be a birth, death, marriage, relatively high increase in the value of your estate value, etc.

Who should I now contact?

Please contact William Riley or Hazel Gill who make up our team of specialist private client solicitors on 01603 610911. Alternatively please feel free to complete one of our online enquiry forms at www.leathesprior.co.uk/contact.htm

