

Factsheet 7 September 2009

Making a will

About this factsheet

This factsheet explains what you should think about before making your will, how to decide whether to use a solicitor, and how to make sure the will is effective and that your wishes are carried out.

It includes information about choosing executors, finding professional help with writing a will and what might happen if you don't make a will.

For information on dealing with an estate, see Age Concern Factsheet 14, *Dealing with an estate*.

The information given in this factsheet is applicable in England. Different rules may apply in Wales, Northern Ireland and Scotland. Readers in these nations should contact their respective national Age Concern organisation for information specific to where they live – see section 11 for details.

For details of how to order other Age Concern Factsheet and information materials go to section 11.

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1 Recent developments

- The amounts that spouses and civil partners are entitled to inherit when someone dies without making a will were increased on 1 February 2009. See section 8 below for details.

2 Making your will

It is possible to make your own will and packs to help you do this are available from stationery shops. However, except in the simplest cases it is generally advisable to use a solicitor. If after your death there is a problem with the drafting or formalities of the will it may prevent your wishes from being carried out and cause difficulties for those left to sort out your estate.

3 What to include in your will

There are certain things to think about before you make your will. Even if you use a solicitor, or another professional will-writing service, it will help to have thought these things through before any appointment.

3.1 Your estate

You should 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 your money, possessions, property 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 also take into account any property you own jointly. Property can either be held as joint tenants or tenants in common. If property is held under a joint tenancy your share will pass automatically to the other owner on your death; you cannot leave your share to someone else in your will. If it is held under a tenancy in common you can leave your share to someone else and they will become joint owners with the other person on your death. The type of joint ownership you have will depend on what was agreed when you bought the property.

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

3.2 Legacies

You should think about who you want to benefit from your will, whether these are individual people or an organisation such as a charity, and what would be the most effective way of leaving them a gift (a gift made in your will is known as a legacy). You should take into account that your circumstances may have changed significantly by the time of your death. You need to make sure your will is drafted in a way that does not present problems if, for example, a beneficiary dies before you, or your estate is worth significantly more or less than at the time you make your will.

One important way of doing this is to name a residuary beneficiary. This is the person or charity that receives the remainder of your estate once any specified gifts have been made. This would prevent what is known as a partial intestacy; see section 9 below for information on intestacy.

If you are leaving specific possessions to specific people, you must make sure that sufficient details are given so that there is no doubt as to the identity of the possessions or to whom you intend them to go. For example, beneficiaries should be identified by their full names and their relationship to you.

3.3 Executors

The will should name one or more executors: these are people you choose to deal with your estate after your death. The executors can be relatives or friends, or a professional such as a solicitor.

You should choose an executor you can trust to carry out your wishes in accordance with the will. Executors can be beneficiaries under the will and often people appoint their spouse, civil partner or children as executors. Check with your proposed executors that they are willing to take on this role before naming them in your will, as it can involve considerable responsibility.

Consider naming more than one executor in case one dies before you. It may also be easier for the executors if there is more than one person to share the work and the responsibility. The executors may have to deal with any day-to-day administration of your estate in the period before it can be distributed. Executors can claim from the estate for expenses incurred carrying out their duties.

If the estate is large or complicated, there may be advantages in appointing a professional executor such as a solicitor, accountant or bank manager. A professional executor will charge for the work they do and these costs will have to be met from your estate. Ask for details of the likely costs before appointing the executor to check that you are comfortable with them.

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

You should contact the office of the Public Trustee for more information before appointing them as executor (see section 10).

4 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 4.1 below)
- you must be over 18 when you make it
- you must have the mental capacity to make the will and understand the effect it will have
- you must not have made it as a result of pressure from someone else.

The beginning of the will should state that this will revokes all others. If you have an earlier will it should be destroyed.

4.1 Witnessing the will

Your signature to the will must be witnessed by two people over the age of 18 who must be present when you sign it. The witnesses must also sign the will in your presence; in other words 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 that you have signed the will in their presence.

The witnesses or their husbands, wives or civil partners must not benefit from the will so it is important to select the witnesses from people you do not intend to leave any of your estate to.

If anything has been left to the witnesses the rest of the will is still valid, but the witness will lose their entitlement to whatever you had intended to leave them. Also, the witnesses must not be the same people as the executors of the will.

5 Using a solicitor

Unless your will is going to be very simple it is advisable to consult a solicitor, especially if you intend to leave significant sums to people other than those who might expect to inherit, eg husband, wife or children; or if you own foreign property or your own business. A solicitor may be prepared to visit you in your own home, care home or hospital. The cost of making a will varies according to its complexity. Ask at the outset what the cost will be.

The Citizens Advice Bureau (CAB) should be able to provide a list of local solicitors.

The Law Society can also provide details of solicitors in your area, including those who specialise in wills and probate.

Solicitors for the Elderly is a national network of solicitors specialising in this area.

See section 10 for details of all these organisations.

You may be able to get free advice and assistance from a solicitor with making a will under legal aid.

To qualify for this assistance you must be:

- aged 70 or over

- disabled (within the meaning of the Disability Discrimination Act)
- the parent of a disabled child whom you intend to benefit from your will or
- a single parent wishing to appoint a guardian in the will.

Your income and capital must also be below certain limits.

You can find a solicitor who can provide advice under the Legal Aid scheme through Community Legal Advice (see section 10). Their website also has an eligibility calculator to find out if you meet the financial requirements for legal aid.

5.1 **Other professional will-writing services**

It is possible to use will-writing services provided by people who are not qualified solicitors. They can be cheaper than solicitors, but they are not regulated in the same way and may not have comparable experience, skills or qualifications.

You should check any extra charges that might be applied; for example, some will charge a fee for storing your will – which most solicitors would not – and make sure they have adequate secure facilities if they are going to store your will. You should also check that they have insurance that would cover the cost of any losses resulting from mistakes in the drafting of your will.

Problems have been reported in the past with will-writing companies going out of business and it not being possible to locate the will. You should ensure that if you do store your will with a will writer, you inform your executor, family and friends of the full details of the company and where the will is kept.

There are two voluntary regulatory bodies that will writers can join – the Society of Will Writers and the Institute of Professional Will Writers. They both have a code of practice and require members to have professional indemnity insurance. You can contact them to check if someone is a member. See the section 10 for contact details.

Banks and building societies offer will-writing services, but will usually expect you to appoint them as your executor as well. You should consider whether this is really appropriate for you before you agree to this.

6 **Changing your will**

Codicils (supplements to a will) can be added to an existing will for minor changes. 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 former one.

Never make alterations on the original document. Any change must be by codicil or a new will.

If you marry, remarry or enter into a civil partnership your will becomes invalid unless it was made in contemplation of marriage or partnership (that is, you were intending to marry or register a civil partnership when the will was made and the will specifically refers to this). You should make a new will in these circumstances.

Divorce does not automatically invalidate a will but any 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 after divorce.

7 **Where to keep your will**

It should be kept at home safely or lodged with a solicitor or a bank. A bank may make a charge for this service. Alternatively it can be lodged for safe keeping at the Probate Registry (see section 10 for details). A fee of £15 is charged when the will is deposited.

Where solicitors make a will, they normally keep the original and send you a copy. You are entitled to the original if you wish to hold it. It is important to keep the original will safe.

If you have particular views about your funeral you can write a letter to your executor explaining how you would like it conducted, and keep this letter with your will. Alternatively, you can include this information in the will itself, but make sure the people who will arrange your funeral are aware that this is what you have done.

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.

8 **Taxes on your death**

Inheritance Tax (IHT) is payable if your taxable estate is worth more than the IHT threshold. For the 2009/10 financial year the IHT threshold is £325,000. Most estates are not worth enough for IHT to be payable and so most of us don't need to worry about it.

Not all of your estate will count for the purposes of calculating IHT, for example anything left to a wife, husband or civil partner is taken off the value of your estate providing you are both permanently resident in the United Kingdom. There are also exemptions for certain gifts, such as any gifts to charities. The value of non-exempt gifts made during the previous seven years may be taken into account in whole or in part depending on how recently the gift was made. This is so that people cannot avoid paying IHT by giving away their estate before they die.

Further information about Inheritance Tax can be found in the *Customer guide to Inheritance Tax* on the HM Revenue and Customs website or by calling the Probate and Inheritance Tax helpline on 0845 30 20 900.

9 **What happens if you don't make a will?**

If you die without having made a will there will be an intestacy. Your property will be divided according to the Administration of Estates Act; this means your property may not go to the people you expected or wanted it to. The way the rules apply to your estate depends on which relatives survive you. A brief indication is given below, but people who are responsible for distributing the estate of someone who has died intestate should seek further advice.

If you are married or have a civil partner and have children, your spouse or civil partner will be entitled to at least the first £250,000 of the estate and all of your personal possessions. Surviving children or grandchildren will be able to claim some of the estate if it exceeds £250,000.

If you are married or have a civil partner and do not have children, your spouse or civil partner will be entitled to at least the first £450,000 and all the personal possessions. Anything else is divided between your spouse or civil partner and your other surviving relatives.

If you are not married or do not have a civil partner, your estate will go to any relatives according to a certain order: ie, if you have children your estate goes to them; if not, it goes to your parents; if you have no surviving parents it goes to any brothers or sisters; and so on. If you do not have any surviving relatives, your estate will go to the Crown.

Another reason for making a will is that you can choose the most suitable person to be your executor to administer the estate. If you don't do this it will be your closest relative (according to a set order) who has the responsibility of collecting in and distributing your estate according to the above rules. For information on who is entitled to apply to administer the estate and how they go about this, see Age Concern Factsheet 14, *Dealing with an estate*.

10 Useful organisations

- **Citizens Advice Bureau (CAB)**

National network of free advice centres.

Tel: 020 7833 2181 (for contact details only – not telephone advice)

Website: www.citizensadvice.org.uk

- **Community Legal Advice**

A website offering free, confidential and independent legal advice for residents of England and Wales.

Tel: 0845 345 4 345

Website: www.communitylegaladvice.org.uk

Free wills month www.freewillsmoth.org.uk

- **HM Revenue and Customs (HMRC)**

The *Customer guide to Inheritance Tax* is available on the HM Revenue and Customs website at www.hmrc.gov.uk/cto/customerguide/page1.htm

Probate and Inheritance Tax helpline: 0845 30 20 900

- **Institute of Professional Willwriters**

A self-regulating professional body regulating and promoting the profession of will writing; all its members have professional indemnity insurance cover for each will written and have to comply with the IPW code of practice.

Tel: 08456 442042

Website: www.ipw.org.uk

- **Law Society**

The Law Society is the representative body for solicitors in England and Wales. It contains a searchable database to help you find a solicitor, advice on what to expect, guides to common legal problems and what to do if things go wrong.

Tel: 0870 606 2555 (Solicitors' Regulation Authority)

Website: www.lawsociety.org.uk,

- **Probate Registry**

Part of the Family Division of the High Court, this deals with 'non-contentious' probate business (where there is no dispute about the validity of a will or entitlement to take a grant), and issues 'grants of representation' which appoint people known as personal representatives to administer the deceased person's estate. The website page below gives details of storing will for safekeeping.

Tel: 020 7947 7022

Website: www.hmcourts-service.gov.uk/cms/1218.htm

- **Public Trustee**

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.

Tel: 020 7911 7127

Website: www.officialsolicitor.gov.uk

● **Solicitors for the Elderly**

SFE is a national organisation of lawyers providing and promoting independent legal advice for older and vulnerable people, their family and carers. You can use them to find a solicitor specialising in wills and probate.

Tel: 0870 067 0282

Website: www.solicitorsfortheelderly.com

● **Society of Will Writers and Estate Planning Practitioners**

A 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.

Tel: 01522 68 78 88

Website: www.willwriters.com

● **Will aid**

A scheme run every November under which a local solicitor will draw up your will for free in return for a suggested donation to a group of charities.

Tel: 0300 0300 013

Website: www.willaid.org.uk

11 **Further information from Age Concern**

Age Concern publishes a leaflet, *Instructions for my next of kin and executors upon my death* (Ref: IS/18), which can be left in a convenient place to tell your family where all your important documents are, including your will.

Visit the Age Concern website, www.ageconcern.org.uk, or call our national Information Line on 0800 00 99 66 (free call) if you would like:

- to order copies of any of the Age Concern information materials mentioned in this factsheet
- to request information in large print
- further information about our full range of information products
- contact details for your nearest local Age Concern.

Books from Age Concern

Age Concern publishes a wide range of books for older people and those who care for and work with them. The following title may be of particular interest:

Your rights to money benefits 2009/10. All you need to know about the full range of benefits for the over 60s. £5.99 (available June 2009)

To order this book, or to view our full range of books, please visit our website www.ageconcern.org.uk/bookshop or call our book order line 0870 442 2120.

Age Concern and Help the Aged

Age Concern England and Help the Aged have joined together to form Age UK, a single charity dedicated to improving the lives of older people.

Age Concern and Help the Aged across the UK

To find out more about Age Concern and Help the Aged's work in Northern Ireland, Scotland and Wales, contact:

Age Concern Northern Ireland
Tel: 028 9032 5055
Website: www.ageconcernni.org

Scottish Helpline for Older People (Age Concern Scotland)
Tel: 0845 125 9732
Websites: www.olderpeoplescotland.org.uk
www.ageconcernscotland.org.uk

Age Concern Cymru & Help the Aged in Wales
Tel: 029 2043 1555
Website: www.accymru.org.uk

Support our work

Age Concern is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and through our national freephone helpline – the Age Concern Information Line 0800 00 99 66.

If you would like to support our work by making a donation please call Supporter Services on 020 8765 7527 (national call rate, Monday to Friday 9.15am–5pm) or visit www.ageconcern.org.uk

Legal statement

Age Concern England (charity number 261794) has merged with Help the Aged (charity number 272786) to form Age UK, a charitable company limited by guarantee and registered in England: registered office address 207-221 Pentonville Road, London, N1 9UZ, company number 6825798, registered charity number 1128267.

Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age Northern Ireland, Age Cymru.

Disclaimer and copyright information

This guide is not a comprehensive statement of the law in this subject and Age Concern and Help the Aged cannot give individual legal or financial advice. Some rules may have changed since the publication of this guide. If you have any queries that this guide does not answer, seek further advice from one of the organisations suggested.

Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age Concern and Help the Aged. While every effort is made to ensure accuracy, Age Concern and Help the Aged cannot be held responsible for errors or omissions.

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