Why Make a Will and What Should It Include?

If you die without making a Will, your money and possessions - your estate - will be distributed in accordance with the Rules of Intestacy. These rules set out the order in which your relatives will inherit your estate. If you have no surviving blood relatives, your estate will pass to the Crown. The Rules of Intestacy limit the amount that a surviving spouse can inherit, irrespective of the size of your estate or of your family circumstances - and if you are not married, your partner will not be entitled to any share of your estate.

An overview of the **Intestacy Rules** is attached to this factsheet, and if you have no Will it is compulsory reading – many people are surprised to learn that the people they want to inherit may not have any entitlement at all, or could find themselves dealing with trustees appointed to look after their money. Check your position now.

You may decide that you are happy for your estate to be distributed in this way, however there are other good reasons for making a Will such as:

- You can specify who **you wish to benefit** from your estate and how to divide your estate between them to ensure they are provided for.

- You can name **substitute beneficiaries** in case your first named beneficiaries have died before you, for example you may wish to leave cash to specific charities but only if certain members of your family or friends are no longer alive.

- You can name **Guardians** for your children.

- If you have complex family arrangements or children from previous relationships your Will can be drafted to **protect the entitlement** of specific individuals and to make your intentions clear – which could prevent family squabbles after your death.

- If you are not married, you can **provide for your partner**.

- You can name in your Will the **people you trust** to administer your estate and to safeguard your assets, say for your children or for adults who are not able to look after their own affairs. Your Will can be drafted to ensure that the people you select have all the powers that they will require to complete the instructions you have given them in your Will.

- Your Will can also be a powerful **financial planning tool**. You can include trusts to protect your assets for the benefit of loved ones and for future generations and you can maximise the tax efficiency of your Wills to ensure that your chosen beneficiaries, be they family and friends and/or charitable organisations, get the maximum benefit from your estate.

What Happens If You Have No Will?

Need For Review

If you have already made a Will, you should review it regularly to ensure that it is still appropriate. For example if, after you have made your Will, you marry or enter into a civil partnership it will be automatically revoked and the Rules of Intestacy will apply to your estate instead.

If you divorce, any gift to your former spouse will lapse as will any appointment of them as an executor of your Will.

What should I include in my Will?

Your **executors** are the people responsible for administering your estate and ensuring that the instructions in your Will are carried out. They will obtain the Grant of Probate (the proof that your Will is valid), deal with your cash and other assets, pay any debts, sort out and pay any inheritance tax, and distribute your estate as directed in your Will. Unless you have named separate trustees in your Will, your executors will usually also be the Trustees of any trust created in your Will, such as if cash is being held on behalf of children.

You only need one executor, but it is advisable to appoint a minimum of two. You can't have more than four executors. Your Executors should be over 18 years old and may be a beneficiary of your Will.

You should choose people you trust; they should be sufficiently practical to take on the role and who are willing to be named as executors of your will. You can choose family members, friends or professionals such as a solicitor to be your executors. Ideally you should avoid appointing executors of a generation older than yourself – you want them to be around when you're not!

Guardians

If you have children you can name **guardians** in your Will who will look after them if there is no parent still living.

Funeral Wishes and Organ Donation

In your Will you may include your **funeral wishes** or leave any instructions about donating your body for medical research. If you have detailed instructions, you may wish to draw up a separate letter of wishes to be kept with the will. It is a good idea to discuss your wishes with your family or close friends. Decisions regarding funerals or **organ donation** have to be made very soon after death and therefore it is important that your family and executors know that you have left instructions for them or they may not think to consult the Will in the hours after your death.

Specific Gifts

You should consider whether you wish to make any **gifts of specific possessions** such as jewellery or property in your Will. If your estate is likely to be subject to inheritance tax, you should consider whether individual gifts are to be made free of inheritance tax which would then be paid from your residuary

estate or if the gift should bear its own tax. Gifts of personal possessions do not have to be set out in your Will - you may choose instead to list any specific gifts of personal possessions in a side letter (known as a Memorandum of Wishes) which will be kept with your Will. A side letter may be updated at any time without the need to update the Will.

Specific gifts of cash are called **Pecuniary Legacies**. If you leave pecuniary legacies to children you may specify the age at which you wish them to receive the gift, otherwise they will receive the legacy at 18.

Trusts

You may specifically include **trusts** in your Will, or trusts may arise because of the terms of your Will (for example if at your death a beneficiary has not reached the age at which you have specified they may take the gift).

There are a number of trusts that may be suitable for inclusion in your Will depending upon your individual circumstances. Commonly used Will Trusts include:

Life Interest Trusts – these give one beneficiary (the Life Tenant) a right to benefit from an asset without transferring ownership of the asset to that person. Ultimately ownership of the asset will pass to other named beneficiary(ies) (the Remainderman). An example of this is where property or assets are left for the benefit of a spouse and after their death for the children.

Discretionary Trusts – these allow great flexibility as a number of potential beneficiaries are named but payments out of the Trust are made at the discretion of the Trustees who are able to take into account an individual's circumstances after your death. Discretionary Trusts can be used to ensure that the needs of a surviving spouse can be met but that assets not so required can be safeguarded for the benefit of future generations or for beneficiaries for whom, perhaps, due to their lifestyle or relationship choices, receiving a substantial sum outright may not be in their best interests.

The Residue

Everything that is included in your estate that is not given away elsewhere in your Will falls into the **Residue**. The residue is normally the largest part of your estate and therefore your residuary beneficiaries are usually those you wish to benefit most – when the residue is to be divided between several beneficiaries the shares are usually expressed as percentages. You should consider naming substitute beneficiaries who will inherit in the event that your first named beneficiaries die before you. Funeral costs, debts and any inheritance tax are generally paid out of the residue and any specific gifts of assets or of money made in the Will take precedence to the gift of residue.

If your Will contains specific gifts or pecuniary legacies of high value you should review your Wills from time to time, particularly if the value of your estate is reducing, as it is possible that that your residuary beneficiaries may not benefit to the extent that you originally intended.

Inheritance Tax (IHT)

IHT is normally charged at 40% on all assets exceeding a given threshold. This threshold (the Nil Rate Band) is currently £325,000.00.

Spouses or civil partners, charities and qualifying political parties are exempt beneficiaries for IHT purposes so any amount may be given to them without incurring any IHT liability. It isn't uncommon for someone to leave money or assets up to the IHT threshold to their family or relatives, and the balance to

favourite charities, effectively avoiding Inheritance Tax altogether. Children or unmarried partners are not exempt from IHT. Therefore an IHT charge may arise on the death of a surviving spouse when, for example, the combined estates of the parents pass to the children.

Transferable Nil Rate Band

In 2007, legislation introduced the Transferable Nil Rate Band (TNRB). This allows a surviving spouse to claim any unused Nil Rate Band of the first spouse to die. The surviving spouse may claim the unused portions of the Nil Rate Bands of any number of previous spouses (but only if they were widowed and not divorced) but is limited to a maximum of two full Nil Rate Bands.

The effect of this is that a surviving spouse, on current rates, can leave a maximum of £650,000.00 to children or other beneficiaries without incurring any liability to IHT.

HMRC must approve any claim for TNRB and must be provided with information to support the claim, such as marriage certificates, grants of probate, copies of Wills and details of the value of the estate and the gifts made out of it. Such evidence may not easily be come by, particularly for spouses who died many years ago and therefore, if your estate is likely to exceed the NRB efforts should be made to obtain the necessary information in your lifetime, rather than leaving the task to your executors who will have to adhere to time limits for submitting information about your estate to HMRC.

Some assets, such as businesses and agricultural property, may benefit from IHT reliefs. The availability of IHT reliefs will depend upon specific conditions being met and advice should be sought to discuss your individual circumstances.

Charitable Giving

New legislation designed to promote charitable giving has recently been introduced whereby, in broad terms, if a person leaves 10% or more of their net estate to charity, the rate of IHT charged where applicable is reduced from 40% to 36%.

The effect of this reduction in the rate of IHT is that less IHT is due to HMRC than if a charitable gift of a lesser value or if no charitable gift was made in the Will. There will always be a slight decrease in the amount available for distribution to non exempt beneficiaries such as family members but the named charities do benefit substantially by the arrangement.

When determining whether the charitable gift amounts to 10% or more of your net estate HMRC uses a formula which groups the various assets in your estate into different component parts. If you are considering including charitable gifts in your Will please contact us for an illustration of how leaving 10% or more of your net estate to charitable organisations might affect the amount available to your other beneficiaries.

Your Assets

Jointly held Assets

There are two ways to own property (accounts, investments or real estate) jointly:

Joint Tenants – your share of the asset will pass automatically (by “survivorship”) to the surviving co-owner on death – irrespective of any instructions in your Will.

What Happens If You Have No Will?

Tenants in Common – Your share of the asset will pass in accordance with the terms of your Will (or the Intestacy Rules if you have not made a Will). For tax planning and asset protection purposes it is often better to hold property as tenants in common (but make sure you do have a Will!).

If property is held as joint tenants it is usually straightforward to alter the ownership to Tenants in common.

Foreign Assets

If you own property abroad you may well require a Will made in that country which deals with that particular asset. Some countries have laws of succession which specify who will inherit the asset – irrespective of any wishes that you may have set out in your Will. If you do have assets abroad you should seek specific advice to ensure that no asset is left unaccounted for in your Will.

How can Woolley, Beardsleys & Bosworth assist you?

Making a Will is a task that many of us find difficult to think about and easy to put off – particularly if we have complex financial affairs or family circumstances. However the consequences of dying without a Will may prove costly and upsetting – not to you but to your family and friends who are left to deal with the difficulties that arise.

For further information about making a first Will or updating a current Will, you can contact us on 01509 610472, or at www.chestertonhouse.co.uk.

What Happens If You Have No Will?