




WRIGLEYS
— SOLICITORS —

MAKING A WILL

Client Guide



This guide covers the main questions that our solicitors are often asked about Wills.

Making a Will

This guide covers the main questions that our solicitors are often asked about Wills.

1. Why should I make a Will?

Your Will deals with your money, investments and other property after you have died. It states who gets what, upon what terms and when.

It is always better to have a Will than not to have one but not everyone's circumstances are the same. The "rules of intestacy" which apply when a person dies without a Will can have unexpected and detrimental legal and tax consequences.

Bear in mind that a Will only takes effect on death. Until then, you can change it, and should keep it under regular review to make sure it still reflects your wishes.

2. How can Wrigleys help me make a Will?

Apart from the immediate issue of drafting the Will we also aim to provide extra peace of mind. It's reassuring to know that your estate will be administered as intended. Your chosen executors also need to know that the support they need will be available. We can provide this.

Our objectives are closely aligned with those of our clients and typically include:

- Securing the interests of surviving spouses and partners.
- Making ongoing provision for children and other young beneficiaries.
- Avoiding practical difficulties for beneficiaries.
- Reducing the risk of disputes.
- Cutting unnecessary costs.
- Mitigating the cost of long term care.
- Looking after the financial and other interests of vulnerable people.
- Reducing the potential burden of inheritance tax and other taxes.
- Making charitable donations or founding a new charity.

3. What should I include in my Will?

Key points for you to consider when providing your instructions are as follows:

1. **Executors and trustees.** These are the people you choose to deal with the administration of your estate after you have died. They are also responsible for ensuring that the terms of your Will are carried out. You should aim to appoint at least two executors. Executors are responsible for collecting in your assets, paying your debts and any tax that is due, and distributing your estate in accordance with the terms of your Will. Trustees are usually appointed if any funds need to be

looked after over the longer term. If you want to include trusts in your Will, then the same executors can act as trustees, or you can appoint other trustees.

2. You can appoint **guardians** for any children you may have. Guardians can only be appointed if both parents have died, and they have a duty to care for the children. You do not have to appoint guardians. There are often family members who are prepared to look after children in the worst event. You should also consider separating the care role of guardianship from the financial role of executorship. That reduces the potential risk of conflicts of interest.
3. You need to choose your **beneficiaries**. Your beneficiaries are the people who you want to benefit under your Will. You also need to decide how you would like them to benefit. If they are young or otherwise vulnerable then a protective trust arrangement may be desirable.
4. You can make **gifts of particular items** to close friends and family - and you may also wish to make provision for the care of any pets and other animals you own.
5. You may wish to make **cash legacies**, either outright or into trust.
6. You can specify **where you want the rest of your cash and other assets to pass on death**. It is usual to simply divide up your '**residuary estate**' rather than try and calculate specifically what you will have when you die:
 - **Example one:** For a married couple a simple Will might leave everything outright to each other on the first death and then equally to the children. But this can expose the money of the first to die to third parties. The high cost of the survivor's long term care needs may also be a worry. Other options are likely to be preferred.
 - **Example two:** For a married couple a more suitable Will might leave everything belonging to the first to die upon a protective trust after the first death. Any assets still in the trust when the survivor dies could then pass equally to the children. This benefits the survivor but is much more secure for the other beneficiaries.
 - **Example three:** A single person might want to leave specific cash legacies to close friends and then divide everything else between their nephews and nieces and their favourite charity.
7. In many cases involving a **vulnerable beneficiary** a protective trust is absolutely essential. That is because *outright* gifts to vulnerable people often have negative consequences. Some types of vulnerability are often overlooked. Vulnerability need not necessarily involve 'people with disabilities' as such. Vulnerability can take any number of forms:
 - **Childhood** Until a person attains age 18 they are under various legal disabilities in relation to holding property in their own name and clearly they would be vulnerable to financial exploitation without suitable assistance.
 - **Mental incapacity** This can be permanent or variable e.g. if a surviving spouse needs to enter care as the result of Alzheimer's disease.
 - **Physical disability** This can arise at birth or as the result of injury or illness.
 - **Substance abuse** Drink, drugs and other past and present addictions.
 - **Abusive or difficult relationships** The person you wish to benefit might be exploited and not benefit from the money you leave them.

- **Financial Risk** Spendthrifts or even ordinary people with their own business may get into financial difficulty. It may be best to consider a protective arrangement so that creditors do not have easy access to your estate when you have died.
- **Means-tested benefits and care issues** If people receive money outright under your Will and they are in receipt of means-tested benefits or means-tested care they may lose that entitlement. A Will must be carefully worded to benefit them without causing the loss of benefits entitlements.

There are many different types of vulnerability and the needs of vulnerable people can also change over time. So the two watchwords for the type of Will-making which we specialise in are 'security' with 'flexibility'.

8. Whatever the reason is for founding a **protective trust**, be that the desire to protect your estate from third parties, care fee planning or to protect the interests of a vulnerable person, the form is similar. Your executors and trustees will be obliged to look after some or all of your cash, investments and other property for your chosen beneficiaries.
 - Protective trusts included in a Will only come into being when you die and your Will comes into force. They only apply to what you leave behind. They do not limit what you can do with your own assets now.
 - If you include a trust in your Will you can, if you wish, leave guidance for your executors and trustees by giving them a '**Letter of Wishes**'. This contains informal guidance explaining how you would like the trust fund to be handled.
9. We will include suitable **administrative provisions** in your new Will. These give your executors and trustees the legal powers they need to deal with everything properly, smoothly and with least cost after you have died.

4. What doesn't my Will cover?

Joint property may pass to a co-owner outside your Will. This can be a complex area, and we will address the issue of jointly owned property as part of the Will making process if it is relevant.

English Wills rarely deal with foreign property. Usually a local Will or equivalent arrangement is required, and this may require advice from a suitably qualified lawyer in the country where the assets are located.

Your Will might not deal with pension or other insurance benefits payable on death, or assets that are included in some types of lifetime trusts. We can advise further and work closely with your financial advisers to ensure that your wishes are met.

5. Can my Will deal with my business assets?

The transmission of business assets sometimes depends upon other legal structures and agreements in place at death. It is not the sole preserve of Wills.

We may need to refer to any relevant partnership agreements, company articles of association and share related agreements. We may also need copies of other contractual arrangements. We can work with relevant fellow professionals such as a family accountant and contract lawyer to help you secure your wishes.

Retaining control of a family business is often a paramount concern for clients.

A suitable trust arrangement in your Will can ease the succession process and help to ensure stability after your death. It may help to secure inheritance tax savings into the long term. It can also allow a breathing space for decisions to be taken about the ultimate destination of business assets because it is sometimes impossible to make a final decision when a Will is made.

6. Will I have to pay Inheritance Tax?

Relatively few estates pay inheritance tax, but where it does apply it can have a substantial effect on the amount that your beneficiaries inherit. The level of inheritance tax related advice you require will depend upon your financial circumstances and personal objectives.

If you have more than a certain amount of value in your estate at the time of your death inheritance tax will apply to the balance. That is subject to the application of certain exemptions and reliefs. Our Wills are typically worded in such a way as to minimise inheritance tax.

We can provide detailed tax planning advice, including advice on lifetime gifts and making full use of your allowances and exemptions.

7. How do I choose my executors?

The executors of a Will are responsible for sorting out all the paperwork on a person's death, This includes applying for probate, collecting in your assets, paying tax and other debts and making distributions in accordance with the terms of the Will.

If, after this is done, ongoing trusts arise under the terms of the Will, for example to benefit a spouse for their life or a class of beneficiaries, then the executors will take on the role of 'trustees' of the assets held in the trust. The trustees become responsible for ensuring that the trust is dealt with in accordance with the terms of your Will.

8. What are the basic legal duties of executors and trustees?

Broadly speaking your executors must:

- Not be undischarged bankrupts or have financial difficulties.
- Not act in conflict with the interests of the beneficiary or profit from their role as trustee.
- Ensure they know what the terms of the Will are and carry them out.
- Ensure that good trust records and accounts are kept and that tax due is paid.
- Take appropriate independent financial advice.
- Take reasonable care. Professional trustees must satisfy a higher standard of care.
- Act jointly. Trustees cannot normally delegate functions to each other. Trustees are jointly liable for mistakes and should therefore act together.
- Ensure the beneficiaries are kept fully informed.

Becoming a trustee is not something to be taken on lightly. Please make sure that any family or friends you are thinking of appointing are aware of the implications.

9. What sort of person makes a good executor?

You should make sure that all the people you pick as executors and trustees are:

- Over 18 years old.
- Sensible, practical and efficient when it comes to dealing with financial matters.
- Good with money.
- Independently minded and not subject to any adverse influence.
- Not in any financial difficulty.
- Not likely to fall out with you or your other trustees.
- Able to work with others as a team.
- Only interested in your best interests.
- Not subject to any conflict of interest with you or your beneficiaries.

10. How many executors should I appoint?

You should have at least two executors, but preferably three. If one dies this avoids the survivor having too much control.

11. Should I appoint a professional executor?

Wrigleys do not charge extra for our appointment as executors and trustees. We only charge for any work done in the normal way. Some firms do charge extra by adding a percentage fee based on the value of everything you leave when you die.

Although it may often be best to appoint family members or friends, there are some advantages of appointing a professional executor and/or trustee. This is because:

1. We fully understand the requirements of trust law.
2. We carry professional indemnity insurance.
3. We have in-depth experience of the issues that arise during the administration of an estate.
4. You can gain direct access to your professional trustee as necessary.
5. We are independent and able to take a fair and neutral view when it comes to decision-making.
6. We can help in the avoidance of mistakes. This can save money.
7. It helps lift the burden from family and friends.
8. If there are unexpected complexities we are available to help.

You may wish to receive further information about appointing our trust company Wrigleys Trustees Limited as one of your executors and trustees.

12. How do I change my executors?

Whilst you are alive you can change anything in your Will. But it is best to try to pick the right people at the outset.

13. Why would I include a trust in my Will?

There are **two basic types** of protective trust. The first type is typically used to benefit a surviving spouse (or civil partner) for their life. This is often called a '**life interest trust**' or an '**asset protection trust**'. The second type is a '**discretionary trust**'. Both types can help to protect assets over the longer term.

(A) Life interest trusts.

This type of trust is used to help protect the interests of the ultimate beneficiaries, such as children or grandchildren, from the potentially adverse impact of:

- Other relationships occurring after the death of the first to die.
- The high cost of the survivor's long term care needs.
- Forms of mental, physical, financial or other vulnerability.

Using a trust is considered far more secure than simply passing everything outright to the survivor of a couple or to a vulnerable person.

Using the example of a married couple, the cash and other assets in the sole name of the first to die are used to create a 'trust fund':

1. During their lifetime, the surviving spouse has the right to income generated from the trust fund. This would include the benefit of interest on cash and investment income.
2. The surviving spouse can also have payments of capital made to them at the discretion of the executors and trustees, for example if they need something which they are unable to pay for themselves.
3. If a share in the family home is held in the trust fund the surviving spouse can still live there rent free. If they need to move to live elsewhere the money raised from a sale can be put towards a new property. It can still be held safely inside the trust.

This arrangement can also be reworked for any number of other types of situation but following through our example:

- The surviving spouse or other partner would usually be an executor and trustee of their partner's Will so they are fully involved. They must agree how the trust fund is used. However, if you wish, the role of a surviving spouse or partner can be restricted.
- The capital value of the trust fund should not form part of the survivor's assessable capital for residential home fees. It can also assist the survivor because even if they lose their own ability to handle their financial affairs the trustees can continue to manage the property within the trust.
- With the agreement of all trustees, the trust can be wound up if that is appropriate. That might sometimes have tax advantages for the family.
- When the survivor has died the value in the trust usually passes outright to the other beneficiaries named in the Will. It can, if desired, be transferred into the second type of protective trust perhaps because a vulnerable person, such as a child of the family or a person with learning or financial difficulties, may now be the priority.

(B) Discretionary trusts.

This type of trust is often included in a Will to help secure the financial interests of a vulnerable person, such as a child or person with learning difficulties. But it can also be useful where a financial decision on the distribution of an estate is best deferred until after the person making the Will, and maybe also their spouse or other partner, has died. It allows a useful 'breathing space'. In particular:

1. A discretionary trust has a number of *potential* beneficiaries. They could be close family members, possibly a vulnerable person, other relatives and maybe a favourite charity. But the choice is up to the individual making the Will.
2. All payments of capital and income from this type of trust are made at the discretion of the executors and trustees named in the Will of the person who has died. So making a careful choice is crucial. Having at least one independent trustee may be an advantage.

3. A discretionary trust can contain a particular sum of money *or* the whole of the estate of a person who has died, *or* a percentage share of the estate.

A discretionary trust is often incorporated in the set of Wills drawn up for a couple to operate after they have *both* died. It can be added on as an extension to a life interest trust at that time. This type of combination protects everything as far as possible for the surviving spouse and any other beneficiaries.

- Because nobody can claim they own any part of the value tied up in the discretionary trust fund 'as of right' it should be as secure as possible from benefits related means-tests and from the claims of third parties.
- The value comprising the trust fund can be used to benefit any beneficiary as necessary. It is particularly useful because it enables the executors and trustees to take account of changing circumstances.
- The trust may be wound up at any time with the trust fund being distributed as appropriate depending upon the circumstances. There may be advantages in retaining it for other beneficiaries e.g. to reduce their own inheritance tax liabilities.
- There may be tax issues that we would need to explore further with you before you decide on which type of trust is most suited to your needs.

'the whole team works well to service the client'

'very efficient team'

Legal 500

Additional Services

We provide our clients with a full range of legal services, to assist them with the management of their financial affairs.

Therefore, you may also wish to consider:

1. Trust administration

You may become liable to submit annual Tax Returns, or want help with investment or budgeting.

2. Property purchase

If you are buying a house, our specialist property team can help.

3. Lasting Powers of Attorney

You may wish to consider putting in place Lasting Powers of Attorney to plan for the future.

This can help to avoid the expensive problems which may arise if you lose mental capacity.

4. Community care

We represent many people in their efforts to secure care services and funding from social services and the National Health Service.

We help people to obtain the services they need and represent them when problems arise.

5. Bringing the Wills of others up to date (to help you retain your right to benefits)

If you inherit any money from a relative, such as a parent or grandparent, you might lose your entitlement to means-tested benefits or Local Authority care funding.

This can be avoided by them putting an appropriate Will in place.

If you require help with any of these matters, please do not hesitate to contact us

The information in this document is necessarily of a general nature. Specific advice should be sought for specific situations.

If you have any queries or need any legal advice please feel free to contact Wrigleys Solicitors

Please respect that this guide is strictly for the use of clients and prospective clients only. Thank you.

© Wrigleys Solicitors LLP

Notes

What our clients say:

"Your professionalism, efficiency and sensitivity have been much appreciated by me and my daughter."

"What we thought when we walked into your office as a daunting task, with your input, has proved to be a much less complicated process."

How will you work with me?

We aim to ensure that the same solicitor advises you from start to finish. You will be able to contact that solicitor directly by phone, email or meet with him or her if you prefer.

This level of service is often difficult to obtain. When you use our services you are not on a conveyor belt. You are treated as an individual.

**LASTING
POWERS OF
ATTORNEY**

PROBATE

**NHS &
SOCIAL
SERVICES**

**PRE-NUPTIAL
AGREEMENTS**

**COURT OF
PROTECTION**

Wrigleys Solicitors LLP

Rotterdam House, 116 Quayside,
Newcastle Upon Tyne NE1 3DY
t: **0191 206 4105**

3rd Floor, 3 Wellington Place,
Leeds LS1 4AP
t: **0113 244 6100**

Derwent House, 150 Arundel Gate,
Sheffield S1 2JY
t: **0114 267 5588**

www.wrigleys.co.uk    



DAA Dementia
Action Alliance

Lexcel
Legal Practice Quality Mark
Law Society Accredited

 **MINDFUL
EMPLOYER**



Visit YouTube to watch our information videos