

## Your Will

### YOUR WILL

In the United Kingdom, every individual is allowed to leave his or her estate to whomever they want on their death. This is achieved by preparing a Will. Wills vary in complexity due to what is intended to be achieved, but in essence all have the same basic features.



#### TESTATOR

A Testator is the person who makes the Will. They need to have 'Testamentary Capacity' to do this. Testamentary capacity is the legal term used to describe a person's legal and mental ability to make or alter a valid Will.

The Testator would need to consider the following aspects when preparing a Will:

- Executors
- Guardians
- Legacies
- Residue
- In which Country does the Testator own assets

#### REVOCATION

The Will would always specifically revoke any previous Wills and confirm that this is the latest Will. This is to ensure that there is no confusion as to which Will is the correct one when you die.

#### FOREIGN ASSETS

In most cases a Will dealing with assets in each Jurisdiction is best advice.

If you have a foreign Will then it is imperative that the UK Will and the foreign Will do not revoke each other.

If you have assets across different countries in Europe, you might be able to make use of a European Regulation called 'Brussels IV'. This allows your assets across different countries to be dealt with under one Will. We do not know what effect Brexit will have on this legislation.

Brussels IV does not change the Tax rules in any European country.

#### EXECUTORS

Executors are the people who will be responsible for administering your estate. They are responsible for contacting all of the asset holders (e.g. banks, investment companies, land registry, etc.) to advise them of the death and then collect in the assets. They will deal with the Legacies (if any) and then distribute the Residue in accordance with the terms of the Will.

Part of the responsibility also entails ensuring that your Tax affairs are up to date and liaising with HMRC if necessary.

As Executors, they will have their own responsibility with HMRC and may need to correspond with them even if your own affairs are in order.

**Executors can be individuals or professionals.**

#### GUARDIANS

On your death, it is not automatically assumed that your 'Next of Kin' will become the Guardian(s) of your minor children - they would need to apply to the Courts for this to have any effect. Appointing a Guardian in your Will is one of only a limited number of ways which is accepted by the Courts.

#### Children Act 1989 Section 5(5).

If the children are minors on your demise, then the Trustees nominated in the Will, will manage the Trusts containing the assets left to your children.

#### 18 - 25 Child Trust

This defers the age of Inheritance to the chosen age.

## TESTAMENTARY EXPENSES

These are costs that are associated with your estate as a result of your death. In most cases, these will include:

- Your Funeral costs;
- Any debts you may have outstanding, including mortgages and credit card debts;
- Ongoing fees that need to be paid while the estate is being administered;
- Professional fees for administering your estate (e.g. Solicitors fees);
- Any Inheritance Tax that may be due.

## LEGACIES

These are specific items or fixed sums of money that are left, normally, to individuals or charities. These Legacies will legally belong to the recipients the moment you die, even though it may take some time to actually pass the items (or money) to them.

## RESIDUE

This is what is left in the estate after the Testamentary Expenses and any Legacies are dealt with. It is not necessary to list these assets individually as it will cover whatever has not already been bequeathed by the will (e.g. the Legacies). In fact, it is better not to list the assets in case you do not own those assets at the time of your death. Once the Residue is distributed, the administration of the estate is brought to an end.

### Leaving your Residue to Charities as well as other people

If you leave your Residue to a mixture of Charities and other individuals (not your spouse), the Tax consequences could be very complex and unintended due to the Charities not being liable to Inheritance Tax. We will draft your Will(s) so that only the non-charity Beneficiaries pay the Inheritance Tax due **before** they receive their Inheritance.

## FORMALITIES

There are certain formalities that need to be adhered to when signing your Will. More detailed instructions are provided in the sheet 'Important notes on signing your Will'.

This sheet contains only general planning and is not to be construed as advice for any personal planning. Each strategy recommended is based on individual circumstances.

## LOST WILLS

If your Will cannot be found when you die, then it may be presumed that you deliberately 'destroyed it' with the intention of revoking it. This may not be your intention, but the result may be that your estate passes to unintended Beneficiaries under the Rules of Intestacy. To avoid this occurring, you may like to consider storing your original documents with us.

You will receive a certificate confirming the documents we hold for you and who your Executors should contact following your death.

## FURTHER OPTIONS

A basic Will is not necessarily the most Tax efficient way of distributing your estate. It is really only suitable in limited circumstances. More detailed Wills allow you to consider all or some of the following provisions:

- Business / Agriculture clause dealing with assets that attract Business or Agriculture Relief;
- Life Interest in Property Trust gives a right to reside for either life or a specified period;
- Protecting assets in the hands of Beneficiaries from possible creditors (e.g. Divorce, Bankruptcy, Care Home Fees, etc.);
- Limiting your exposure to Inheritance Tax;
- Limiting your Beneficiaries' exposure to Inheritance Tax;
- Tax efficient ways of protecting business assets.

## OTHER TRUSTS

Instead of leaving assets to specific individuals, it is possible to leave assets to one (or more) Trusts. The Trust(s) would hold the assets on behalf of the individuals you choose so that it offers some protection rather than if the assets belonged to the individuals. Trusts have the added benefit of being Tax efficient and can reduce Inheritance Tax for your future generations. See also Key Features and Benefits sheets 101, 102, 104, 109.

## RNRB

A lineal descendent needs to inherit for the RNRB to apply. See Key Features and Benefits sheet 25.