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Why make a will?

This information, from the HM Courts & Tribunals Service, applies to the law of England and Wales only. It is not intended to be legal advice, nor a substitute for seeking appropriate professional advice about the disposal of your assets. Probate Service staff are not able to give advice on whether you should make a will, nor its contents.

Wills

People do not like thinking about death and the effects it has on those they leave behind, but it is something that has to be faced eventually. It is natural that you should wish your property and assets to pass on your death to whomever you choose. By making a will you can ensure that your assets go to those you wish should have them.

There are some assets that cannot be given away in your will (e.g. property you hold in joint names **usually** passes automatically to the other joint owner) but most of your property can be dealt with by a will.

What is a will?

It is a legal declaration of how you wish to dispose of your property on your death. In order for it to be valid it must comply with certain requirements.

Who can make a will?

Generally speaking, anyone over the age of 18 and of sound mind. However:

- It is possible for members of the armed forces to make a Will under the age of 18 but legal advice should be sought in these circumstances
- Under the provisions of the Mental Health Act 1983, the Court of Protection may approve the making of a will, or a codicil to a will for someone who is mentally incapable of doing so themselves.

Guidance about how a mentally incapable person can make a will or codicil

What makes a will valid?

- It must be in writing, should appoint someone to carry out the instructions (an executor) and dispose of possessions/property
- It must be signed by the person making the will (the testator), or signed on the testator's behalf in his or her presence and by his or her direction. This must be done in the presence of two witnesses who then sign the will in the presence of the testator.

Who can be a witness?

Anyone who:

- Is not blind
- Is capable of understanding the nature and effect of what they are doing

However, a witness should not be:

- A beneficiary in the will; or
- Married to, or be the civil partner of, a beneficiary

In these circumstances the will remains a valid and legal document, but the gift to the beneficiary cannot be paid.

Example:

Sally is an 83-year-old widow. She doesn't have any children and her only living relative, her sister Maria, lives in Australia. Sally gets on really well with her neighbours, Kate and Sue and wants to leave them something when she dies. Sally instructs a solicitor to draft her will splitting her estate equally between Kate and Sue.

Once Sally has approved the will, she makes her own arrangements for the will to be signed and witnessed. Sally knows that neither Kate nor Sue should witness her will. However, she doesn't know that Kate and Sue's husbands, David and Simon, should not witness the will either. Consequently, David and Simon witness the will.

When Sally dies the gifts to Kate and Sue will fail because their husbands witnessed the will and Sally's estate will pass under the **intestacy rules** (the rules which apply where there is no will or no valid will).

Intestacy Rules

What happens if a will is not valid?

It is disregarded and the deceased person's property is distributed in accordance with the intestacy rules

What if I don't make a will?

If you don't leave a valid will your estate will pass in accordance with the intestacy rules. The intestacy rules set out who is entitled to inherit from your estate if you don't leave a valid will.

If you are married or are in a civil partnership, the first person entitled to your estate under the intestacy rules is your spouse/civil partner, but he or she will not necessarily inherit the whole of your estate (the Civil Partnership Act 2004 came into effect on 5 th December 2005 and gave same-

sex couples the right to register their partnerships, giving them broadly the same legal rights as married couples).

The amount your spouse/civil partner would inherit depends on how much is in your estate and which of your blood relatives survive you. Assets held in joint names usually pass automatically to the other joint owner(s) and do not form part of your estate (if you are unsure about the type of joint ownership you share with another, you should consider seeking legal advice).

For the dates of death prior to 1 February 2009

- Where the net estate is not more than £125,000 - Everything to spouse/civil partner.
- Where the net estate is over £125,000 - the first £100,000 plus personal possessions to the spouse/civil partner.

Other things you should consider about the effects of the intestacy rules

If any of the following circumstances apply to you, the intestacy rules may not cater for your situation in the way that you would wish:

You are living together but are not legally married or in a civil partnership but wish your partner to inherit some or all of your estate.

- You are legally married or in a civil partnership and have children and you wish your spouse/civil partner to inherit all of your estate.
- You have no living relatives and wish to leave your estate to your friends or to a charity (the Crown may take your estate if you die leaving no will and no surviving relatives).
- You are legally married or in a civil partnership and you don’t wish your spouse/civil partner to inherit anything.
- You are legally married or in a civil partnership but have no children.
- You are legally married or are in a civil partnership and have children from a previous relationship and you wish to ensure that your children receive something from your estate.
- You have dependant relatives e.g. children under 18, elderly relatives or relatives with a disability who have special needs and you want to make sure that they are looked after and provided for. (If you make a will you can appoint guardians to look after your children and set up trusts in your will to provide for dependants
- Your estate is large and may be liable for Inheritance Tax and you may wish to make arrangements for tax planning.

Making a will

How can I make a will?

- There are several options:
- See a solicitor
- See a professional will writer
- Do it yourself using a pre-printed will form available from stationers
- Do it yourself using a sheet of plain paper

Which is best for me?

That is for you to decide, but before doing it yourself, please bear in mind the option of seeking

professional advice. A solicitor or professional will writer should be able to advise you on the best way to draw up your will so that it properly reflects what you want, and most importantly that it is valid. They can also help you with inheritance tax planning and setting up trusts. Doing it yourself may be fine for you, but if you make a mistake, it can be costly and distressing for your beneficiaries, especially if your will turns out not to be valid.

Can I change my will?

Yes you can and it is advisable that you review your will regularly to ensure that it still meets your requirements as your circumstances change, otherwise problems or complications can arise.

Example:

Peter makes a will in 1999. He is divorced with a stepson. In the will he makes specific gifts of everything in his estate. At this time, he lives in rented accommodation and is employed as an electrician. In 2002 he starts his own business which becomes successful and by 2004 he is able to buy his own property and holds shares in various companies besides his own.

He realises that he should change his will to reflect his new circumstances, but dies before he has a chance. The specific gifts mentioned in his will are dealt with in accordance with his wishes, but because some of his estate is not specifically covered by the will i.e. the house and business, they will pass under the intestacy rules. Under the intestacy rules, Peter's 89-year-old mother inherits his house and business, which is not what Peter would have wanted. He always wanted his stepson to inherit his house and the business to go to his cousin Paul.

In order for any alterations to be valid, you will need to make another will or if the changes are relatively small, you can make a **codicil**, which forms part of your will (a codicil must be signed and witnessed in the same way as a will). A codicil is a document that makes changes to a will. A codicil does not usually revoke the will but is read in conjunction with the will. A codicil is drawn up and executed in the same way as a will.

It is possible to draw up your will to cover possible future events (such as a beneficiary dying before you, or to make gifts to children or grandchildren born after the date of the will) but you should get advice on such matters as they are not straightforward and will cause problems if not properly worded.

WARNING: Getting married, or entering into a civil partnership after your will is made will generally revoke (cancel) it unless the will says it will not. Divorce or dissolution of civil partnership also affects your will, but does not revoke it. If you divorce or dissolve your civil partnership after your will is made, any reference to your former spouse or civil partner will be treated as if he or she had died on the day that the decree absolute or final dissolution order was made. You should seek legal advice in those circumstances.

Example

Mike and John have been a couple for 10 years. They made wills five years ago leaving their estates to each other. Mike is divorced and has two children and John has a brother.

In early 2006, they enter into a Civil Partnership. Later that year, Mike dies. Both their wills were revoked by the Civil Partnership, and *even though his will still reflected his wishes*, Mike's estate passes under the intestacy rules. As his estate exceeds the amount which can be inherited by his surviving civil partner, his two children share his estate with John.

Can I cancel my will?

Yes, this is known as revoking your will. You may revoke your will at any time, by destroying it, or by making another will cancelling all previous wills.

Where should I keep my will?

Your will may not be required for many years after you make it so it is essential that it is stored safely and that it can be found after your death.

The main storage providers are:

- Solicitors (a charge may be made)
- Banks (charges apply) **(WARNING: do not store your will in your safety deposit box. The box can't be opened until Probate is granted and Probate can't be granted without the original will)**
- The **Principal Registry of the Family Division** (PRFD) (You can deposit your will with the PRFD through any Probate Registry in England and Wales
- Keep it yourself (but make sure your executors know where to find it)

Some key points to remember:

- Be aware of what will happen to your money and possessions if you die without leaving a will. If the provisions on intestacy are not what you want, make a will.
- Do consider taking legal advice before 'doing-it-yourself'. Mistakes can cause real difficulties for your loved ones and you will not be there to put things right.
- If you use an internet site to help you make your will, ensure that it relates to the law of England and Wales.
- Review your will from time to time to ensure it still reflects your wishes and caters for your current circumstances.
- Do not attempt to change your will by simply altering it or writing on it.
- Ensure that your will is kept somewhere safe, and that your executor(s) know where to find it.

The intestacy rules in a simplified form

Entitlement to the estate of a deceased person who was domiciled in England & Wales, and who did not leave a valid will

This chart is not intended to be a definitive statement of the law covering every set of circumstances, nor is it legal advice.

Please see the Flow chart explaining the process

Deceased person dies leaving these relatives: **Where relatives are shown in bold refer to explanatory note 2**	**After the payment of funeral expenses, tax and all other debts owed by the deceased, the rest of the estate goes to:** **Where relatives are shown in bold refer to explanatory note 2**
A spouse or civil partner (but no **children** or other issue) and either parents or **brothers or sisters of the whole blood** or issue of brothers and sisters of the whole blood who predeceased the deceased	**For dates of death prior to 1 February 2009** 1. where the net estate is not more than £200,000 – everything to spouse/civil partner 2. where the net estate is over £200,000 – the first £200,000 plus personal possessions plus half of the balance over and above £200,000.The other half of the balance over and above £200,000 to the deceased's parents equally; but if no parents then to brothers and sisters of the whole blood and to any children or other issue of brothers and sisters of the whole blood who have predeceased the deceased in equal shares. **For dates of death after 1 February 2009** 1.where the net estate is not more than £450,000 – everything to spouse/civil partner 2. where the net estate is over £450,000 – the first £450,000 plus personal possessions plus half of the balance over and above £450,000.The other half of the balance over and above £450,000 to the deceased's parents equally; but if no parents then to brothers and sisters of the whole blood and to any children or other issue of brothers and sisters of the whole blood who have predeceased the deceased in equal shares.
A spouse or civil partner and **children** **Continued on next page...**	**For dates of death prior to 1 February 2009** 1. Where the net estate is not more than £125,000 – Everything to spouse/ civil partner 2. Where the net estate is over £125,000 – the first £125,000 plus personal possessions to the spouse/civil partner Half of the rest is shared equally amongst the children . The spouse/civil partner gets the income or interest on the other half during his/her lifetime, and when the spouse or civil partner dies, the capital goes to the deceased's children equally.

...continues from previous page	**For dates of death after 1 February 2009** 1. Where the net estate is not more than £250,000 – Everything to spouse/ civil partner 2. Where the net estate is over £250,000 – the first £250,000 plus personal possessions to the spouse/civil partner Half of the rest is shared equally amongst the children . The spouse/civil partner gets the income or interest on the other half during his/her lifetime, and when the spouse or civil partner dies, the capital goes to the deceased's children equally.
A spouse or civil partner (but no **children**), and either parents, or **brothers or sisters of the whole blood.**	**For dates of death prior to 1 February 2009** 1. Where the net estate is not more than £200,000 (for dates of death after 1 February 2009) – Everything to spouse/ civil partner 2. Where the net estate is over £200,000 for dates of death after 1 February 2009 – £200,000, plus half of the rest, plus personal possessions to spouse/ civil partner. The other half to the deceased's parents equally; but if no parents, then to brothers and sisters of the whole blood in equal shares. **For dates of death after 1 February 2009** 1. Where the net estate is not more than £450,000 (for dates of death after 1 February 2009) – Everything to spouse/ civil partner 2. Where the net estate is over £450,000 for dates of death after 1 February 2009 – £450,000, plus half of the rest, plus personal possessions to spouse/ civil partner. The other half to the deceased's parents equally; but if no parents, then to brothers and sisters of the whole blood in equal shares.
Children , but no spouse or civil partner	Everything to **children** in equal shares

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Parent(s), but no spouse or civil partner, or **children**	Everything to parents in equal shares.
Brother(s) or sister(s), but no spouse or civil partner, or **children** or parents	Everything to **brothers and sisters of the whole blood** equally. If there are no **brothers or sisters of the whole blood,** then to **brothers and sisters of the half blood** equally.
Grandparent(s), but no spouse or civil partner, or **children**, or parents, or **brothers or sisters**	Everything to grandparents equally.
Uncle(s), Aunt(s), but no spouse or civil partner, or **children** or parents, or **brothers or sisters** or grandparents	Everything to **uncles and aunts of the whole blood** equally. If there are no **uncles or aunts of the whole blood** , then to **uncles or aunts of the half blood** equally.
No spouse or civil partner and no relatives in any of the categories shown above	Everything to the Crown

Explanatory notes

1. Explanation of terms used in the chart:

Words used in everyday language, often have different meanings in the legal sense. The following explanations are intended as a guide rather than strict legal definitions of the words used in this document

- A **spouse** is a person who was legally married to the deceased when he or she died.
- A **civil partner** is someone who was in a **registered civil partnership** with the deceased when he or she died**.** It does **not** include people simply living together as unmarried partners or as 'common law husband and wife'.
- The term **children** includes children born in or out of wedlock and legally adopted children; it also includes adult sons and daughters. It does not, however, include step-children.
- Brothers and sisters of the **whole blood** have the same mother and father. Brothers and sisters of the **half blood** (more commonly referred to as "half-brothers" or "half-sisters") have just one parent in common.
- Uncles and aunts of the **whole blood** are brothers and sisters of the **whole blood** of the deceased's father or mother.
- Uncles and aunts of the **half blood** are brothers and sisters of the **half blood** of the deceased's father or mother.
- **Domicile** is the country or state whose laws apply to you. Usually, this is the law of the place where you were born (your "domicile of origin"), but your domicile can change if you move to another country with the intention of staying there permanently .

2 a. If any of the deceased's children die before him or her, and leave children of their own, (that is grandchildren of the deceased), then those grandchildren between them take the share that their mother or father w**ould have taken if he or she had still been alive. This also applies to brothers and sisters, and uncles and aunts of the deceased who have children - if any of them dies before the deceased, the sha**re that he or she would have had if he or she were still alive, goes to his or her children between them.

The principle applies through successive generations – for example, a **great grandchild** will take a share of the estate if his father and his grandfather (who were respectively the grandson and son of the deceased) both died before the deceased.

2 b. The principle is **illustrated by this example, but as you will see, working out who gets what can easily become very complicated, and legal advice may be needed :**

Thomas was a widower aged 98 when he died without a will. He had had four children, John, Harry, Kate and Mary. John, Harry and Mary were still alive, but Kate died two years before Thomas - she left two daughters, and her son James had already died several years ago, leaving two young sons.

Thomas's estate is divided into four equal shares. John, Harry and Mary each get one share. The other share (which would have gone to Kate if she was still alive) is divided into three equal shares: her two daughters get one share each, and the other share (which would have gone to Kate's son James if he was still alive), goes equally to his two young sons when they become 18. However, if either of Kate's two young grandsons dies before reaching 18, his share will go to the other one.

3. If any of the following situations apply, or if you are in any doubt, you should consider seeking legal advice before distributing the estate of a person who has died without leaving a will:

- The deceased died before 4 th April 1988
- Anyone entitled to a share of the estate is under 18
- Someone died before the deceased and the share he or she would have had goes to his or her children instead (see note 2 for details)
- The spouse/civil partner dies within 28 days of the deceased

4. A spouse or civil partner must out-live the deceased by 28 days before they become entitled to any share of the estate.

5. An ex-wife or ex-husband or ex-civil partner (who was legally divorced from the deceased or whose civil partnership with the deceased was dissolved before the date of death), gets nothing from the estate under the rules of intestacy, but he/she may be able to make a claim under the Inheritance (Provision for Family and Dependants) Act 1975. through the Courts. Anyone wishing to make a claim should consider taking legal advice, as these claims are not necessarily straightforward and can frequently be expensive.

6. Anyone who is under 18, (except a spouse or civil partner of the deceased), does not get his or her share of the estate until he or she becomes 18, or marries under that age. It must be held on trust for him or her until he or she becomes 18 or gets married.

7. Apart from the spouse or civil partner of the deceased, only **blood relatives**, and those related by **legal adoption,** are entitled to share in the estate. Anyone else who is related only through marriage and not by blood (for example, a step-brother or step-sister) is not entitled to share in the estate.

8. If anyone who is entitled to a share of the estate dies **after** the deceased but before the estate is distributed, his or her share forms part of his or her own estate and is distributed under the terms of his or her own will or intestacy.

9. Great uncles and great aunts of the deceased (that is brothers and sisters of his or her grandparents) and their children are not entitled to share in the estate.

Updated: 20 March 2011