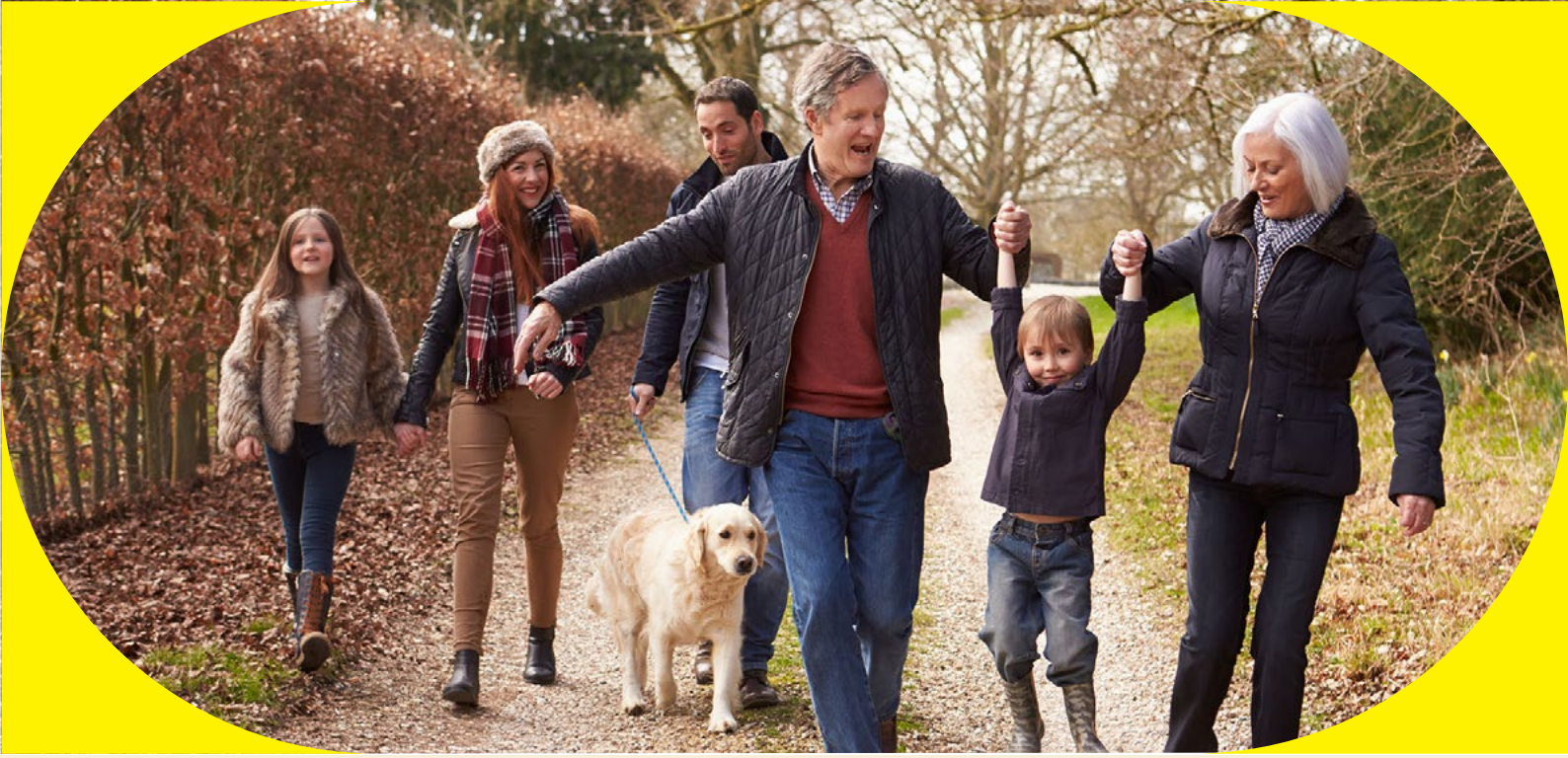

Wills

Making a Will can prevent a lot of arguments and uncertainty between friends and relatives and, more importantly, set out your wishes. There are some common myths around making a Will which we hear frequently from callers to our advice line. We look those myths and the legal issues involved in this factsheet.

Common myths

The common myths around making a Will include:

- **"If I make a Will I am more likely to die".**
- **"It doesn't matter because I am married"**
- **"I have a common law wife and she will get everything"**
- **"I don't know who to appoint as executors because my children can't be both executors and beneficiaries"**
- **"I don't want my family to be responsible for my debts"**
- **"I don't have any assets"**
- **"If I make a Will I am more likely to die"**

With the exception of the last one, there are legal arguments in each of the above cases as to why a making a Will would still be a good idea.

In particular, the most important reasons for making a Will can include:

- **Inheritance tax planning.**
- **Making provision for friends and relatives who may depend on you financially.**
- **Making gifts to charity.**
- **Ensuring you have appointed someone to carry out the wishes of your Will.**

Recent statistics show 74 per cent of applications for probate did so with a valid Will, while 21 per cent were for applications where there was no valid Will. Just three per cent of estates where a probate application was made were required to pay inheritance tax.

When do I need to make a Will?

To make a Will you need to be over the age of 18 and of sound mind. It must be made in writing and made freely i.e. not under duress or the influence of any other party.

When to make a Will is a very personal choice, but should be considered:

- **If you get married. This is because any previous Will is automatically invalidated. It is possible to make a Will in contemplation of a specific marriage on a specific date and that would remain valid. This would need to be set out in the Will.**
- **If you divorce. Any previous Will may no longer reflect your wishes, although it is not automatically invalidated.**
- **If you buy a house with a partner and the property is divided in unequal shares. A partner/common law wife has no rights**

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to inherit and may lose their home in these circumstances if no provision is made.

- **If you have children and wish to appoint guardians.**

What should I think about when making a Will?

When making a Will you will need to consider what you would like to do and understand what you can and cannot stipulate in a Will.

In England and Wales, we have testamentary freedom, which means you are not required by law to leave any part of your estate to your family. In some countries, such as France, assets must be divided between close relatives i.e. spouse and children.

However, you do need to consider anyone who you may currently maintain. This may include a spouse, partner, ex-spouse, children or step-children. If that is the case you should consider their right to apply for continued support from the estate under the Inheritance (Provision for Family and Dependants) Act 1975. These cases can be very complex. If you think it may apply, you should take further advice.

You should consider:

- **Who is going to be the executors, trustees and guardians? These can all be the same people but may be different. It is usual for example for any executors and trustees to be the same and guardians can be appointed differently.**
- **Who do you have to consider? Children, spouse, partner and any other relatives. Are you in a second marriage, are there step-children?**
- **What is the value of the estate? Do you need to consider inheritance tax planning?**
- **Do you want to make gifts of money to a charity, friend or relative?**
- **Do you want to make a gift of an item (not money) to a charity, friend or relative?**
- **Who would you like to inherit the remainder of your estate? Do you want to have a substitution clause in the event that a beneficiary dies before you do?**
- **What is the extent of any debts and can these be paid on your death?**
- **Do you have a death-in-service benefit and have you made a nomination as part of that scheme?**

This list is not designed to be exhaustive and different circumstances may apply.

How do I make a Will?

Making a Will is a relatively straightforward process and there are a number of ways this can be done. You can:

- **Instruct a solicitor, which will generally cost in the region of between £150 and £300.**
- **Use a Will writing service, which will generally cost less, possibly in the region of £150.**
- **Check whether you are entitled to a free Will writing service as part of a trade union membership or under any insurance cover.**
- **Check out Free Wills Month here, which happens during March or October**
- **Check out Will Aid here, which runs every November. This scheme asks for a donation of £100 for a single Will and £180 for a couple.**
- **Use an online service provided by a solicitor. This is often cheaper than a face-to-face consultation.**
- **Purchase a Will pack to enable you to write your own Will. This is usually available from the Post Office or online at a cost of around £10.**

In any case, there are detailed rules as to how you sign and witness a Will. They are as follows:

- **It must be in writing.**

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- **It must have been signed by you.**
- **There must be signatures from at least two witnesses who both saw you sign the Will and who both then sign in your presence and in the presence of each other.**

If the Will does not comply with these requirements, it may be invalid and you will be deemed to have died intestate i.e. without a Will.

Who can be a witness to my Will?

There must be at least two witnesses to your Will. Any adult, except someone who is blind, can be a witness. That person must see you actually sign your Will. The Will is not valid if the witness does not see you sign or if you sign after the witness.

Witnesses do not have to see the contents of the Will and you do not have to tell them what has been written. They are only witnessing your signature and to be able to testify (if necessary) that you signed the Will freely and voluntarily.

Who cannot witness my Will?

You should not ask anyone to witness your Will who is likely to be a beneficiary i.e. someone you have left any money or property to. You should also make sure that you do not ask anyone who is the husband or wife of an intended beneficiary.

If this happens, the Will remains valid, but the gift you intended to make to the beneficiary will be invalid and may pass to another member of the family.

Do I need to store my Will with anyone?

We are frequently asked if there is a central Will register - often in cases where someone has died and the relatives are looking for a Will. What this highlights is that people are often reluctant to discuss making a Will and, if one is made, they are equally reluctant to discuss where it is kept.

There is no requirement for you to store the Will in any particular place and there is no central registry for Wills. The usual choices are to:

- **Put it in a safe place and let others know where that is. You might want to consider a small fire-proof box.**
- **Store with a bank or building society. There may be a charge for this.**
- **Store with your solicitor. There may be a charge for this.**
- **Store it with the Probate Service, for which there is a charge of £20. See here for further details.**

I have already made a Will. Can I change it?

A Will is not a forever document. As your children grow up, or relationships change, it may not suit your circumstances. You may get divorced and have a new family or, equally, you may just change your mind about what you wish to do.

To make changes, you can either rewrite the Will or arrange for a codicil to be drafted. A codicil is generally used if small changes are to be made. Larger, more significant, changes are usually achieved by rewriting the Will. When someone dies it is the most recent Will which is valid and used by the executors to administer the estate.

I'm still not sure I want to make a Will. What happens if I don't?

If you die without a Will, it will be referred to as dying intestate. In this case, the statutory rules of intestacy

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will apply to who inherits your assets and who will act to administer your estate and distribute those assets to those entitled to have them.

The intestacy rules can be quite complex and much depends on the relationship between the deceased and other relatives. In general terms, any spouse or civil partner will inherit the majority of the estate, although there is a financial ceiling which could leave them financially disadvantaged and not what you planned.

After a spouse or civil partner, the assets will pass to your children, parents and then more remote issue.

If you have a friend or relative who has died intestate there is a useful interactive tool to assist on the .GOV website here.

What happens to my jointly owned property when I make a Will?

Owning a property jointly with someone else can sometimes be complex. You need to be aware there are two types of joint ownership known as a joint tenancy or tenants in common. This has nothing to do with anything tenant related.

What it means is that if you own a property as joint tenants, on the death of one of the joint owners, the surviving owners will inherit the deceased's share. This happens by operation of land law and is not related to the contents of any Will.

If you own a property as tenants in common, often because of a second marriage or an unequal contribution to the purchase price, it means that in the event of the death of any of the joint owners, the surviving joint owners do not inherit the deceased parties share. That share will form part of their estate and pass to beneficiaries under the terms of any Will or the rules of intestacy.

Should you wish to change any of the above arrangements and leave a share in a jointly owned property to someone other than your co-owner or spouse, please call the legal helpline.

What happens to property I own in my sole name?

Any property that you own in your sole name forms part of your estate and can be gifted under the terms of your Will. If you don't make a will the property will pass to those entitled to inherit under the rules of intestacy.

If you are an unmarried couple who live together but the property is in your sole name, without a Will your unmarried partner will not inherit the property should you die and will have no right to remain there. In these circumstances you may want to leave all or part of the property to your surviving partner or you may wish to leave it to any children.

You may also want your partner to be able to live in the property as long as they wish to do so even if they own just part of it or none of it. This is called a lifetime interest to occupy. The right can be set in place until a certain point in time, such as any children leaving home, or your partner remarrying, in which case the interest in the property would move those who have an interest in the property.

This is a very complex arrangement, and you should speak to the helpline for advice and guidance.