

England & Wales Edition

Will Writing: The dos and dont's

Create a professional Will now!

Clive Barwell

Introduction

I am a Registered Trust & Estate Practitioner and have been advising on Wills, Trusts, Probate, and Estate Planning since 1971. As a qualified member of the Society of Trust & Estate Practitioners (STEP), I comply with their Code of Professional Conduct. I am a former Chair of STEP Yorkshire.

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Important note

The information in this guide is based on the author's understanding and interpretation of current England & Wales law as at the date of publication.

References throughout this guide to “spouse”, includes Civil Partners.



The service

Later in this guide, I'll introduce the Online Will from Private Client Online (PCO), and I work with PCO who draft most legal documents for me, including Wills.

Who is Private Client Online?

PCO is essentially a technology business with experienced, qualified solicitors at one end of the process and me at the other end, acting as their ears, eyes and legs. PCO delivers peace of mind for clients through its unique combination of experienced advisers and easy-to-use technology.

Do I need a Will?

The quick answer is, "Yes". Your death will be a stressful time for your nearest and dearest without leaving them a financial headache as well.

If you are married with children, then it is quite possible your spouse won't get everything. Joint assets (held in an undivided form) pass by survivorship outside of your Will or the Laws of Intestate Succession, but anything you own individually is caught. If you die Intestate, your spouse will receive your personal possessions, £322,000 (increased from £270,000 in July 2023) and half the remainder, with your children receiving the other half at age 18.

There's an immediate IHT consideration because, if the half going to the children exceeds the available NRB(s) there would be tax payable.

There's also a couple of other issues to consider. Firstly, will your spouse remarry and, if so, are you happy that their inheritance from you isn't protected for your children? Secondly, there's the question of whether 18 is the right time for a potentially substantial inheritance for your children?

A Will can ensure everything benefits from spouse relief, is protected from remarriage, and can specify the age at which children should inherit.

Can I write my own Will?

Again, the quick answer is, "Yes". Endless Will packs claim to have the answer but there are too many traps for the unwary, and the decisive test is only after you die, so far too late to rectify any mistakes!

The beauty of PCO's online service recommended here is that whilst you prepare the draft, through a guided, online process, a qualified solicitor casts a weather eye over the result to make sure it looks sensible.

Deed of Variation

If you haven't updated your Will and it is considered unsuitable by your Executors and/or beneficiaries after your death, it is possible to change it via a Deed of Variation. This must be done within 2-years of death and can only be done if all the affected beneficiaries have capacity. It is, however, better and more cost-effective to get it right during your lifetime!



So, what are the dos and don'ts?

A Will isn't a tablet of stone

So many people have written a Will when their first child arrives and then don't visit it again. As a minimum, you should get your Will out every 5-years and make sure it is still appropriate. Think about all the dos and don'ts in this publication and critically review your Will.

Don't forget, if you marry any existing Will is immediately revoked (unless it is in anticipation of that marriage). Divorce doesn't invalidate the Will but that's an obvious time for a review.

Executors

The Executor(s) is/are the people you ask to manage your financial affairs after your death. They don't need any previous experience or specialist knowledge because they can buy-in all the technical expertise they need. An ability to deal with paperwork, form-filling, and to be familiar with the Internet are useful skills to have.

It is best to have someone from a younger generation as at least one Executor, although that is unlikely if you are also appointing Guardians. Something to change at a future revision.

A beneficiary can also be an Executor. What a beneficiary can't be is a witness to the signing of the Will.

Don't forget to ask your nominated Executor(s) if they are okay with their appointment before committing them.

Do I need to appoint a professional?

The quick answer is, "No". A professional will often charge a "responsibility" fee in addition to a time-costed fee, or even a percentage of the value of your estate.

As already stated, if your friends and/or family act as Executors, they can buy-in expertise if it is needed. However, if you foresee problems with your extended family being able to agree what is to happen after your death, then a professional Executor, as an independent arbitrator, may be useful, if not essential. PCO is available to act in such circumstances.

Probate

The application for Probate is the formal Court confirmation of the validity of a Will and, consequently, the appointment of the Executor(s) following death.

This is the Executor(s) first and key task; finding the last Will, gathering details of the estate, dealing with any Inheritance Tax (IHT) issues, and then applying for Probate.

With my help, in many previous cases, cost savings have amounted to several thousand pounds compared to solicitor quotes.

Recordkeeping

We are living in an increasingly paperless society impacting every aspect of our lives. This makes it hard for us to stay on top of everything and to ensure that our vital information can be appropriately accessed by others.

As a part of my service, I will introduce you to an arrangement that will help you provide all the relevant information to Executor(s), Attorney(s), and/or family members at the appropriate time.

Do I need to specify precisely who has what?

The quick answer here is, “No”. It doesn’t matter whether it is Aunt Nelly’s ring, a particular bank account, or the shares in your favourite company, if the item doesn’t exist at the date of your death, the intended beneficiary misses out.

If it’s a family heirloom, or something you’ve promised someone, then do specify to whom it should go. In this way you’ll avoid any family squabbles after you’ve gone. However, don’t feel the need to list everything; a letter to your Executor(s) left with the Will is often adequate and certainly easier to update.

When the time comes, your Executor(s) will gather everything you then own, pay your funeral bill and any outstanding accounts, and distribute the remainder to your chosen beneficiaries. This is why accurate recordkeeping, especially in our digital world, is essential.

Can I leave a cash sum to a beneficiary?

The quick answer is, “Yes”. Known as a Legacy, or more correctly, a Pecuniary Legacy, it is commonplace for specified sums of money to be left to individuals and/or charities.

Remember, depending upon your age and life-expectancy, you may be trying to second-guess what should happen several decades hence. So, what seems like a reasonable sum now could be a pittance when the time comes and more of an insult than a benefit! What I paid for a nice family home over 50-years ago would hardly buy a serviceable, second-hand car now!

Conversely, if you get too carried away and specify lots of sizeable legacies, and then your estate is depleted by the time you die – just living life, or care costs, for example – the residuary beneficiaries, who are probably your key intended beneficiaries, may get little or nothing! Legacies are the first port of call when it comes to distributing your estate.

What is “Residue”?

After gathering everything, paying outstanding accounts, paying legacies, and satisfying any specific gifts, whatever remains is the “Residue”, which is bequeathed to the residuary beneficiaries. The Executor(s) will distribute this in cash or in kind.

Often, the beneficiaries will be named individuals and/or charities with specified percentages. However, if your family isn’t yet complete, then you may specify, “to such of my children and if more than one in equal shares”, for example. You need to consider the unthinkable of one of your children predeceasing and what should happen to their share. To any children they may have? To the other siblings?

If it is commonplace for your entire family to travel together, or if you have a particularly small family, then consideration of a “Long Stop” is important.

The Long Stop or “Default” is an individual, a group of individuals, and/or a charity you would want to benefit in the event of none of your chosen residuary beneficiaries being alive when the time comes.

Can I exclude a family member?

The quick answer is, “Yes”. Unlike some jurisdictions, including Scotland, where there is at least some element of “forced heirship”, in England & Wales we have “freedom of testamentary capacity”, so we can leave everything to anyone we want. However, there is always a “but”. In this case, the “but” is the Inheritance (Provision for Family & Dependents) Act 1975.

This Act prevents us from failing to fulfil our obligations to anyone who is financially dependent upon us. Consequently, a spouse can make a claim, both on their own account, and on behalf of any minor children, if they have been left no, or inadequate, provision. With a spouse, there is a “cross-check” with what would happen upon divorce, often resulting in up to an equal split.

The key words in the application of the Act are, “financially dependent”, so there is nothing that deals with, so-called, moral obligations. Just because you’ve got three children, for example, doesn’t mean you have to treat them equally. If one is estranged from you, then you don’t have to benefit them, and they may struggle to mount a successful claim under the Act.

I say, “may struggle”, because, in recent cases, the Court has upheld a claim by an estranged child who was otherwise dependent upon State Benefits.

It is advisable to specify in the Will that you are excluding someone from benefit, to make it clear that it isn’t just an error of omission – “My Mum wouldn’t have intentionally ignored me”.

Furthermore, it may be appropriate to include a modest cash sum to make it obvious that this situation has been carefully considered at the point of drafting the Will.



What about Guardians?

If you have young children, then the appointment of Guardians is essential. These are the people you are going to entrust to bring up your children if you're not around. You may need to make them beneficiaries of your estate, especially if they are going to have to move house to accommodate your offspring.

Whether they are beneficiaries or not, it is advisable to appoint them as Executor(s), so they also have control of the finances.

At the risk of stating the obvious, don't forget to ask your nominated Guardians if they are okay with their appointment before committing them.



What is a simple Will?

A “simple Will” is one that fully deals with your estate, following the format I’ve outlined here, so it:

- Appoints an Executor or Executors
- Includes Pecuniary Legacies and/or Specific Gifts, if appropriate.
- Disposes of the Residue
- Appoints Guardians, if appropriate

However, it won’t contain Trusts.

When is a simple Will inappropriate?

If you have any doubts about the suitability of a simple Will for you, or if any of the following scenarios apply to you, then contact me for further advice:

- If you have a complex extended family, following death, or divorce, and remarriage, for example.
- If any of your intended beneficiaries are in receipt of State Benefits and/or have limited capacity.
- If you think you have an Inheritance Tax (IHT) issue.
- If you own a business or a working farm.
- If you are concerned about the impact future care costs may have on your family’s inheritance.
- If you are concerned your beneficiaries could lose their inheritance to divorce or bankruptcy proceedings in the future.

If you think you have an IHT issue, please ask for a copy of my guide on that topic.

Simple Will – Buy now!

If you feel that a simple Will is appropriate for you then please click on this [link](#) to start preparing a draft.

The cost, including VAT, is just £100 for a single Will, or £150 for a couple with “mirror” Wills. The full PCO advised service costs £190 for a single and £300 for mirror Wills, plus VAT. Many solicitors and other Will Writers may well charge more, so this represents a substantial saving.

What you will get:

- Unlimited access to a secure portal.
- Will drafted by a practising solicitor from your input.
- Hard copy posted to you for signature.
- Will commentary and signing instructions.



Can the author help with other matters?

Personally, in conjunction with other trusted partners, there are several legal and other matters I can help with, including:

- Lasting Powers of Attorney (LPAs)
- Advance Directives
- Lifetime Trusts for gifts and loans
- Registering a Trust with HMRC
- Trust Administration
- Trust Investment
- Deeds of Variation
- Applications for Probate
- Mitigating Inheritance Tax.

The above list isn't exhaustive, so if you have a question on any matter raised in this guide, or any other financial matter, please just ask. Remember, the only dumb questions are the ones you don't ask when you have the chance!

Contact me for help and advice on any of these and other related services. Any initial consultation is without obligation, at my expense and your convenience.

