WILL INFORMATION GUIDE

A.D.E Wills

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Contents

What is this guide about?

A Will is the only means that provides certainty that your wishes will be met after you die. Over half of the UK adult population do not have a Will. Whilst it is an incredibly important document, many people have either not got around to making one or have deliberately avoided it, either because they feel it is unnecessary or it is complicated; however, the process can be quite simple and it is never too early to make a Will, but it can be too late.

This pack outlines the process involved in making your Will and highlights why you should make a Will and the situation that will arise if you do not do so. It also provides some other aspects you should consider and the need to seek professional advice.

How to use this guide

Read this guide if you are considering making your own Will and want to know how to get started, what you need to consider and how to make your Will legally effective.

We at A.D.E Wills pride ourselves on busting through the legal jargon and making sure Wills are drafted in a clear and understandable manner. As such, legal terminologies are *italicised* throughout this guide as an indicator that it is explained in the Glossary for you.

After reading this guide, you will have a better understanding of how to get started in writing your own Will. To help you further in this process, we have included a directory of useful organisations to contact and how they can benefit or help you.

If you do require further help and information, please do visit www.adewills.co.uk and see how we can help you get started and finished on making your Will with you.

Do I need to make a Will?

Discussing or even considering Wills, inheritance and what is to happen after someone dies can often be a difficult and distressing topic which people prefer to avoid. However, considering these now whilst you still have the opportunity to do so will make things easier down the line for both yourself and even your loved ones. It is never too early to make a Will, but it can be too late.

Making your own Will is the only way to legally make known your wishes on how your *estate* is to be distributed on your death to the people and causes (such as charities) who mean most to you and who you wish to benefit and help.

Making a Will is more than just writing a document, it means:

- Giving your loved ones reassurance that they are respecting your last wishes after you die, which makes everything so much easier on a personal and emotional level for everyone involved.

- Helping to avoid disputes and friction amongst your family and friends. A badly drafted, outdated or lost Will creates a fertile breeding ground for arguments, stress and breakdowns between family and friends who compete and disagree over who you would have wanted to benefit.

- Giving yourself reassurance and confidence that your property will be passed to the people and causes you care about and want to benefit most.

- Protecting the *assets* in your estate for future generations. A well-structured Will can ensure that property you wish to stay in your family, stays in your family and remains as a family tradition or heirloom, benefitting future generations.

- Outlining your decisions on other aspects such as who you wish to obtain parental responsibility over your children, look after your pets or even funeral preferences. Such provisions can further ease the process for your loved ones.

What if I don’t make a Will?

If you die without having made a valid Will, you are said to die *intestate*. A *partial intestacy* arises where a Will is not drafted effectively so that it fails to dispose of all of the *testator’s assets* or the whole beneficial interest therein. The decisions on how your property is distributed is taken out of your control and is instead divided according to the *intestacy rules*. Your assets will be distributed after all of your debts, funeral and administration expenses, and any taxes have been paid.

The intestacy rules state that:

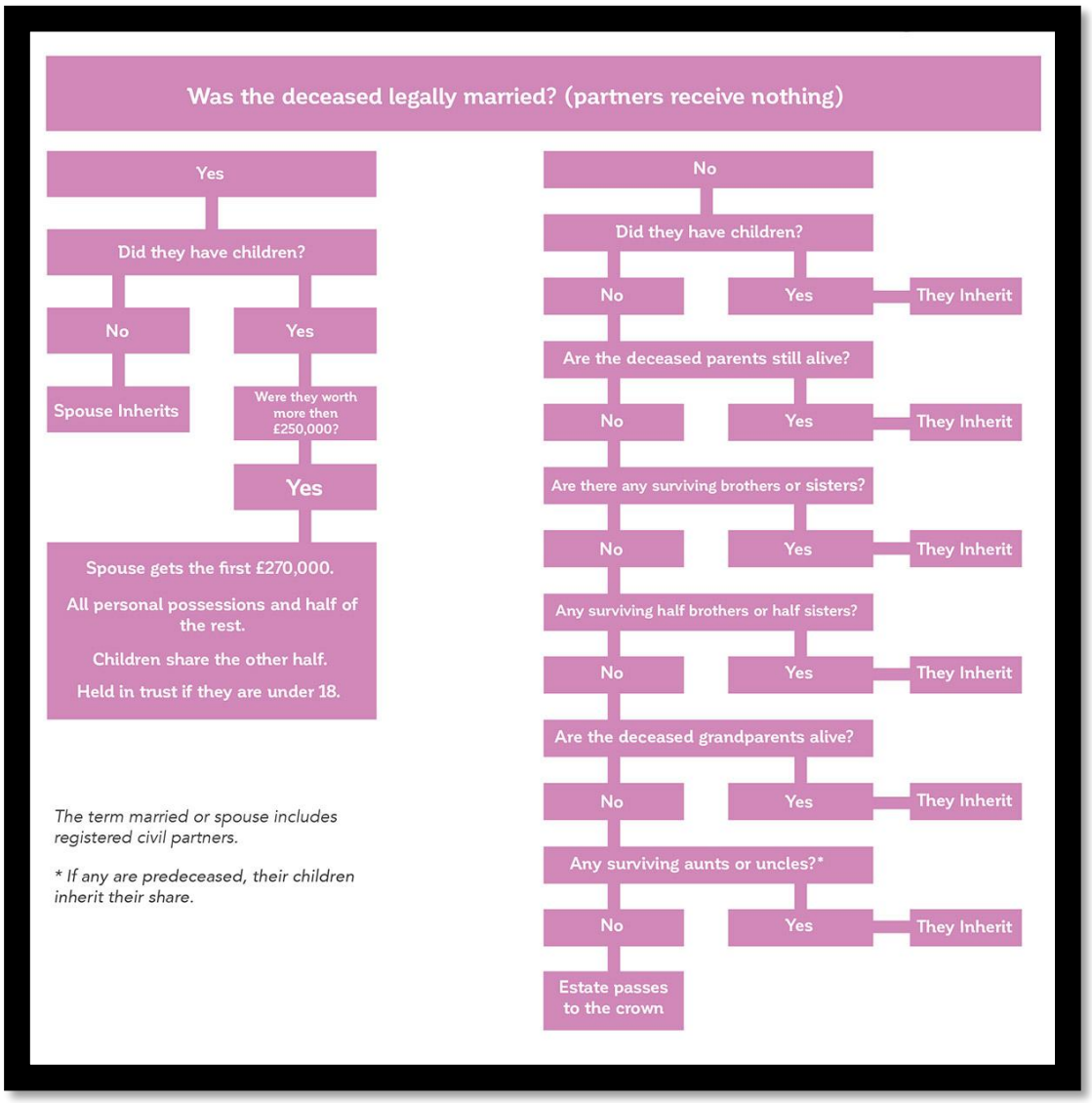
- if you have a spouse or civil partner and children, your spouse or civil partner inherits all of your personal possessions and the first £250,000 of your estate, plus half of anything above this amount. Your children are then entitled to the other half of this balance

- if you have a spouse or civil partner and don't have any children, your spouse or civil partner inherits your whole estate, including any personal possessions

- if you and your partner aren't married or in a civil partnership, they have no automatic right to inherit from your estate if you haven't made a Will. This applies even if you have lived together for a long time or have children together

- if you have no spouse, civil partner or children, other relatives such as siblings or nieces and nephews may have a right to inherit

- if you have no surviving relatives who can inherit under these rules your estate is passed to the Crown.



You may note from this flowchart that certain ones you love and care about are not covered in this flowchart, such as your unmarried cohabiting partner. The rigidity of the rules increases the stress and hardship which can be a worrying prospect. Do not worry if you do not have a Will at the moment, the remainder of this guide will show you how to avoid these intestacy rules and help prepare you to write your own Will.

How to make my Will

The most important procedural aspects in making a Will are that it is written properly and signed properly as this will ensure that things run more smoothly when the time comes. If the procedure is not carried out correctly, then this will create further problems for your loved ones when they come to administer your estate.

There are a number of options available to you in making a Will, including:

1. *Lawyers*

   When you come to write your own Will, it is always best to get advice from a lawyer who specialises in Wills and probate. Solicitors can be useful but generally are not specialists in the area and often cover another legal area, such as family law, and provides Will-drafting services in an ancillary format.

   It is important to choose a lawyer who can help you with your needs but it is important to remember that the Will-writing is not a reserved legal activity and, as such, is not a regulated area. It is therefore important to choose a lawyer who is a member of a society. A.D.E Wills is an example of a specialist Will-writing lawyer who is a member of a society, as a proud member of the Will Writing Society.

2. *Make Your Own Will*

   You can make your own Will through do-it-yourself Will kits and forms available to buy from stationery shops and online. However, whilst this is an attractive option as it appears quick, easy and cheap now, it can cause costly legal problems for your beneficiaries and executor after your death. This is because there is a higher probability of mistakes being made, important details being missed or a lack of clarity in the information used to fill them in.

   At the end of the day, a Will is a legal document which needs to be written and signed correctly, so it seems only logical that legal advice be sought to ensure it is effective and valid.

Valuing my estate

As mentioned before, a *partial intestacy* arises where the Will fails to cover all of your property so it is essential that your Will covers your whole *estate*. A good way of understanding the nature and extent of your *estate* is to draw up a list of your *assets* and *liabilities*.

Typical *assets* that make an *estate* include:

- Your home, and any other property you own;
- Bank and building society accounts savings;
- National Savings, such as premium bonds;
- Insurance, such as life assurance or an endowment policy;
- Pension funds that include a lump sum payment on death;
- Motor vehicles;
- Jewellery, antiques and other personal belongings;
- Money you are owed by another; and
- Furniture and other household contents.

It is also important that you consider any debts you may have, including:

- A mortgage or equity release;
- A credit card balance;
- A bank overdraft; and
- Loans.

What should I include in my Will?

It can often be difficult to think about what you want, or even need, to include in your Will. Our Wills Questionnaire, which is provided to all our clients when we begin acting for them, covers all the essential considerations about your estate and your instructions which are required to write your Will. This is a very useful means of guiding you as to what is needed and also allows us to produce an effective Will which covers your whole estate and distributes it just how you want it.

Clarity is key when writing your Will. Your Will should include:

- Who you want to benefit from your Will (your *beneficiaries*);
- Whether you wish to give any specific gifts to particular people (*non-residuary legacies*);
- Where the *residuary estate* is to go;
- What you want to happen if any of your *beneficiaries* should die before you;
- Whether you wish to leave any money to charity; and
- Who will deal with your estate after your death (your *executors*).

How to sign my Will

Many believe the hard part is over when the Will written and often overlook the importance of ensuring effective *execution* of the Will. However, incorrect signing of the Will is one of the most common causes of issues when trying to administer an estate. The worrying truth is that if the Will is not signed correctly, it will not be valid and, as a result, your wishes may not be followed.

The legal requirements in signing a Will to render it legally valid are that it must be signed by the *testator* in the presence of two independent witnesses, who must also then sign it in the testator's *presence* – thus, all three should be present in the room together and attentive to the process.

Anyone who is named as a *beneficiary* in the Will, their spouse or civil partner, cannot act as a witness, otherwise they will lose their right to their inheritance. Beneficiaries should not even be present in the room when the Will is signed. This is to ensure that the execution of the Will is as neutral and devoid of bias or vested interests as much as possible. People often choose people close to them to be their executors and often leave them a gift or legacy in their Will for them; for this reason, it is often unsuitable for the *executor* to be a witness to the Will.

What else do I need to think about?

1. *Executors*

   Being an *executor* requires a lot of work and responsibility, so it is important to give careful consideration to who you appoint.

   Things to consider are:

- Their availability and willingness to act, considering the size and nature of your *estate*, including the geographic location;

- The possibility of conflicts of interests, amongst potential executors and beneficiaries, or even just executors;

- The possibility of them predeceasing you; and

- Their costs and remuneration.

The main categories of typical executors are:

- Individuals (relatives and friends);

- Solicitors, accountants or other professionals; and

- Trust corporations, including banks, who are so authorised.

If you have no one who can act as an *executor*, there is a government official called the Public Trustee who can do so for you.

Generally, executors and trustees are not entitled to remuneration for their services, although they can be reimbursed out of the *estate* for expenses incurred in carrying out their duties.

2. Trusts

A trust is a useful instrument for looking after assets for other people, such as someone too young to manage their affairs. If the *beneficiary* under the trust is under the age of 18, then you need to appoint at least two *trustees* or *executors*. Whilst trustees and executors have different roles, people typically choose the same people to fill both roles as they are *fiduciary* roles and so are subject to the same statutory and equitable obligations.

Children or grandchildren with learning disabilities could be left particularly vulnerable by directly inheriting money, so a trust is particularly useful in these circumstances.

3. Inheritance Tax

You do not need to pay any *Inheritance Tax* ('IHT') on the first £325,000 of your *estate*. This is known as the nil-rate band. However, IHT is paid at a rate of 40% on the proportion of your *estate* valued above the nil-rate band.

If you leave your main residence property to your child or grandchild, then you can gain an additional tax-free allowance of £150,000 (tax year 2019/20). This is a relatively new concept and is known as the residence nil-rate band.

There are transfers exempt from IHT. If you leave your whole *estate* to your spouse or civil partner, then there is no IHT to pay. If your spouse or civil partner dies and their *estate* does not use all of their available tax-free allowance, any unused allowance can be transferred to your *estate*.

Gifts to charity are completely exempt from IHT and if your *estate* is liable for IHT and you leave 10% or more of it to charity, then a reduced IHT rate of 36% may be applicable to the remainder of your *estate*.

Gifts made whilst you are still alive, in the 7 years preceding your death, could still be liable to IHT, depending on how much they were and when they were given.

4. Guardians

If you have children under the age of 18, you may want to consider who you would like to bring them up as their primary caregiver on your death.

A *testamentary guardian* obtains parental responsibility when the child in question does not have any surviving parents. If no guardian is appointed, one may be appointed by the Court. Whilst you can appoint a *testamentary guardian* in your Will, you can do so through other means. However, it is usually convenient to make the appointment in the Will so you can accompany it with other information and provisions, such as any related trusts or directions on the child's upbringing (though, such statements of wishes are exactly that, "wishes"; they have no legal effect).

A person may disclaim the appointment so it is important to carefully consider and discuss the appointment with your prospective *testamentary guardians*.

5. Funeral arrangements

Any wishes in the Will regarding funeral arrangements are <u>not</u> binding; however, their views regarding the arrangements and disposal of their body must be taken into account. It is the *executors* and not the *testator* who have the right to dispose of the *testator*'s corpse.

Whilst it is helpful to include your wishes in the Will, it is even more helpful to discuss these with your family so there are no surprises.

6. Important documents relating to your Will

When your executors come to administer your *estate*, it can be really useful if they know where you keep important documents, such as:

- The original copy of your Will;
- Your property deeds;
- Insurance policies;
- Savings accounts and any investments documents;

- Passport;
- Driving licence;
- Mortgage or loan documents;
- Pension documents; and
- Utility bills.

7. Letter of Wishes

This is a confidential document that can accompany a Will. It is not legally binding, but can be useful in listing specific items you wish to give to people and usually covers items of sentimental importance, such as ornaments, furniture or jewellery. However, if these items are worth a substantial amount of money, it is better to deal with these in the Will. As it is not legally binding, it is important you choose someone you trust to carry out your requests.

Glossary

Abatement

If there are insufficient funds in an estate to pay all of the legacies in full, those legacies must abate. That means that they must be reduced proportionately. They abate in the reverse order of distribution. Specific legacies are more protected than general legacies in terms of abatement.

Ademption

Occurs when property gifted in a Will is not in the estate's possession at the time of the testator's death because the property has been sold, destroyed or given away before the testator's death.

Assets

Items of property owned by a person or company, regarded as having value and available to meet debts, commitments, or legacies. For example, cash in bank, investments, property or business, vehicles, pay-outs from life assurance policies.

Beneficiary

A person who derives advantage from something, especially a trust, will, or life insurance policy.

Codicil

An addition or supplement that explains, modifies, or revokes a will or part of one.

Donatio Mortis Causa

A gift of personal property made by someone who expects to die in the immediate future, taking full effect only after the donor dies.

Estate

All the money and property owned by a particular person, especially at death – i.e. the deceased's uncompleted financial matters.

Execution

The putting into effect of a legal instrument or order – i.e. the formal witnessing and signing process which brings your Will into effect and renders it a legally-valid document.

Executor

The individual(s) responsible for administering the deceased's estate in accordance with the instructions as provided in the Will. The executor's authority to deal with the estate derives from the Will and the Grant of Probate acts as confirmation that both the Will and the appointment are valid.

Fiduciary

A person or organisation that acts on behalf of another person(s), putting their interests ahead of their own, with a duty to preserve good faith and trust.

Inheritance Tax

A UK tax levied on property and money acquired by gift or inheritance.

Intestate

A person who has died without having made a Will.

Joint Tenancy

A type of joint ownership of property, where each owner is called a "joint tenant" and each owns the whole of the asset, rather than a distinct fractional share. When a joint tenant dies, the asset in question does not pass to his personal representatives as part of his estate; instead, the asset (usually land, but can be other property types, such as a joint bank account or shares) automatically passes to the surviving joint tenant(s).

Legacy

An amount of money or property left to someone in a Will. *See also Non-Residuary Gifts and Residuary Gifts.*

Letters of Administration

Granted by the probate registry to appoint appropriate people to deal with a deceased person's estate where property will pass under Intestacy Rules or where there are no executors living having been validly appointed under the deceased's Will.

If there is a Will, then the application is for 'Letters of Administration with Will annexed'. The people who obtain a successful grant are called the 'administrators'.

Liabilities

Something a person or company owes, usually a sum of money. Liabilities are settled over time through the transfer of economic benefits including money, goods, or services.

Non-Residuary Legacies

Specified gifts for beneficiaries. The type of non-residuary legacy affects the protection of the property in question regarding abatement.

Demonstrative Legacies

A general legacy but where there is a particular fund provided to satisfy it.

General Legacies

A gift of property not distinguished in the Will from property of a similar kind.

Pecuniary Legacies

A gift of money.

Specific Legacies

A gift of a particular item of property distinguished in the Will from any other property of the same kind owned by the deceased.

Partial Intestacy

Where a Will fails to dispose of all the testator's assets or the whole beneficial interest therein.

Personal Representative

An umbrella term to cover the executor or administrator of the estate of a deceased person.

Probate

The judicial process whereby a Will is "proved" in a court of law and accepted as a valid public document that is the true last testament of the deceased.

Applying for the legal right to deal with someone's property, money and possessions (their 'estate') when they die is called 'applying for probate'. If the person left a Will, you'll get a 'grant of probate'. If the person did not leave a will, you'll get 'letters of administration'.

Residuary Beneficiary

A beneficiary who has been left a percentage of what's left in the Estate after all debts and expenses have been settled. They are called residuary beneficiaries because they receive the residue of the Estate.

Residuary Estate

The rest of a deceased person's estate which is left after the payment of specific gifts, debts, funeral expenses and inheritance tax.

Tenancy in Common

Joint ownership of property where each owner owns a separate share in the property. On the death of one of the tenants, their share passes to their beneficiaries in accordance with their will or intestacy.

Testamentary Capacity

A person's legal and mental ability to make or alter a valid Will. If the person making the Will ('testator') lacks testamentary capacity at the time that the Will is executed, the Will is invalid. The test for capacity to execute a valid Will is based in case law which requires that the testator must:

- understand the nature of the Will and its effects;
- understand the extent of property/assets he has;
- understand the post-death claims he must consider; and
- have no disorder of the mind.

Testamentary Guardianship

The process whereby a guardian is appointed for a child by someone in the event of their death. The guardian may be, for example, a close relative such as a grandparent or sibling.

The nominated person is called the ‘testamentary guardian’.

Testator

A man who has made a Will or given a legacy. The female version is “testatrix”.

Trustee

An individual person or member of a board given control or powers of administration of property in trust with a legal obligation to administer it solely for the purposes specified. A trustee holds legal title to the trust property but must only use the property for the beneficiary’s benefit.

Useful Organisations

A.D.E Wills

Provides specifically-tailored services for you, ranging from online advice consultations to drafting and executing your Will with you, so you are knowledgeable and confident in making your Will.

07368 526296
www.adewills.co.uk

Age UK

Provides advice and information for older people through their advice line, publications and website.

0800 169 65 65
www.ageuk.org.uk

Citizens Advice

A national network of advice centres offering free, confidential, independent advice, face-to-face or by telephone.

In parts of England, it is available on **03444 111 444**.

Free Wills Month

Several charities join together to offer those aged 55 and over the opportunity to have their Wills written or updated free of charge by selected solicitors in locations around England and Wales.

www.freewillsmonth.org.uk

GOV.UK

The official Government website that provides information on public services such as legal advice and legal aid, benefits, jobs, pensions and health services. You can use the search function to access the legal aid eligibility calculator.

www.gov.uk

The Law Society of England and Wales

The representative body for solicitors in England and Wales. The body provides information on legal issues, including making a Will. Contact them or use the 'find a solicitor' search tool on their website to find a solicitor.

020 7320 5650
www.lawsociety.org.uk/for-the-public

Mencap

A charity focused on supporting people with learning disabilities.

0808 808 1111
www.mencap.org.uk

Probate and Inheritance Tax helpline

Provides information and advice on probate and Inheritance Tax, as well as contact details for local probate registries.

0300 123 1072

Public Trustee

Government official who can be an executor if there is no one suitable to appoint.

020 3681 2759
www.gov.uk/public-trustee-executor-will

Solicitors for the Elderly

An independent, national organisation of solicitors, barristers and legal executives who can provide legal help to older and vulnerable people, their families and carers.

0844 567 6173
www.sfe.legal

Solicitors Regulation Authority

The independent regulatory body of the Law Society of England and Wales.

0370 606 2555
www.sra.org.uk

Will Aid

A partnership between the legal profession and nine UK charities to help people have their Wills written professionally.

0300 0309 558
www.willaid.org.uk