

MAKING A WILL CAN BE GOOD FOR YOU!

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The above heading may seem somewhat strange when many people in fact hold the opposite viewpoint, but it is hoped that the following notes may persuade you that making a Will is indeed good for you. In addition, these notes will help you decide what your Will should contain.

WHY MAKE A WILL?

“It’ll all go to the Wife anyway”

The above comment is often made and is equally often untrue. The law lays down very strict rules as to what happens to a person’s estate if he or she dies intestate (the legal term for dying without leaving a valid Will). Here are some examples of how these rules work:-

Husband dies leaving Wife and children -

Wife gets
Personal belongings
A specified amount which varies from time to time
The income from one half of the balance

Husband dies leaving Wife, no children but brothers or sisters

Wife gets
Personal belongings
A specified amount which varies from time to time
One half of the balance

If, say, in the first example above the home is in the Husband’s sole name and is worth more than the then laid down specified amount, then there could be problems in having the home put into the Wife’s sole name.

“I’ve got nothing to leave”

That may indeed be the case at the time, but consider the following (admittedly rather farfetched, but none the less conceivable) example:-

A person wins the jackpot on the Football Pools or a large prize on the Premium Bonds or first prize in the National Lottery and dies of the shock!

The following example is perhaps less farfetched:-

Great Aunt Fanny dies (with apologies to anyone with a Great Aunt Fanny, may she live a long and healthy life) leaving her long lost Great Nephew her fortune. He, unfortunately, forgets to make a Will and dies soon after.

On a more practical level, there is more to making a Will than just deciding to whom you should leave your estate. Anyone who has young children is, I would suggest, duty bound to appoint Guardians to look after those children in the event of the worst happening. A Will is the place in which to make such provision and may in the long run save any arguments over who should have custody of your children.

Finally, in your Will you will appoint Executors (about which more later) who are empowered to deal with your estate immediately by virtue of their appointment in your Will. If a person dies intestate, no-one has such authority until a Grant of Letters of Administration (the intestate equivalent of a Grant of Probate) are obtained from the Probate Registry.

“I’m too young to worry about having to make a Will”

If you come under any of the following categories then you must seriously consider making a Will, irrespective of your age:-

- (a) You own a property
- (b) You are married
- (c) You have children (whether or not you are married)
- (d) You own a property jointly with someone else who is not your Husband or Wife
- (e) You are living together with someone as Husband and Wife but are not actually married

Don’t forget that a Will can only be made while you are alive, and I make no apologies if this sounds morbid; making a Will is too important to be put off.

“I’ve made a Will - I did it myself using a form I got from the newsagents”

Dangerous this one. At least you have appreciated the need for a Will. The problem is that when people write out their own Wills they use “Plain English” and the trouble with “Plain English” is that it often has meanings which are not intended by the person using it (how do define “my Family”, for example?). Of course, the time when the meaning of a Will has to be decided is after the person has died when it is too late to ask him what he meant by any particular phrase or word.

When lawyers draw up a Will they often use complicated and sometimes archaic language (with even a bit of Latin or Old French thrown in here and there) which Clients often complain they cannot understand. The point is that if there is an argument over the meaning of wording in a Will,

then it is decided by a High Court Judge, and the language used by lawyers in drafting Wills has, through the years (and even centuries), been tried, tested and approved by previous High Court Judges.

A further point to be made about “home-made” Wills is that they are often signed but are not properly witnessed and an improperly signed Will is not worth the paper it is written on. The rules about how a Will is to be signed are very strict indeed. I can personally guarantee that any Will drawn up by my firm and signed in my office will comply with those rules.

“I made a Will years ago”

Well perhaps it is time to consider whether or not your Will should be updated.

Factors to consider are as follows:-

- (a) You’ve got married
- (b) You’ve got divorced
- (c) You’re about to get married
- (d) You’re about to get divorced
- (e) You’ve had children
- (f) Your children are grown up
- (g) One or more of the Executors in your Will has died or is too old to undertake the function of Executor
- (h) One or more of the Beneficiaries in your Will has died
- (i) You’ve become much richer (maybe you want to increase the amount of a legacy)
- (j) You’ve become much poorer (maybe you want to decrease the amount of a legacy)
- (k) Changes in Estate Duty laws (happens about once a year at Budget time)

EXECUTORS

I hope that if you are still reading this you have decided to make a Will and to have it professionally drawn up (if not, proceed immediately to the top of the first page and have another go!). That being the case, your first task is to decide whom to appoint as Executors of your Will.

Executors (there may be one or more of them) have the duty to carry out the terms of your Will. They have to obtain a Grant of Probate (where the size of your estate renders this necessary),

collect in all your assets (selling where necessary), pay your debts (including funeral expenses) and distribute any balance in accordance with your instructions as set out in the Will. They may subsequently become “Trustees” of any part of your estate that has to be held until a Beneficiary (for example, a child) reaches a certain age.

Executors can always instruct Solicitors to deal with all the legal work for them. The Solicitors’ charges will be payable out of the estate.

“Who should act as Executors?”

If you are leaving everything to one person who is an adult (for example, your Wife or Husband), then it is quite common to appoint that person to act as sole Executor or Executrix (the feminine of “Executor”).

If you want to divide your estate among more than one person, it is advisable to appoint at least two Executors.

If any Beneficiary is under the age of eighteen years (the age of majority), then two Executors at least should be appointed in any event.

You may appoint one or more Executors to act in the place of any Executor who is unable or unwilling to act.

If you have assets both in this Country and abroad, you should consider perhaps appointing two sets of Executors; one for your assets in this Country and one for those abroad.

You can appoint a professional (e.g. Accountant or Solicitor) to act as an Executor. This is usually advisable only where there are no other suitable persons to act or where your Estate is particularly complicated.

“But surely a Beneficiary cannot be an Executor”

I have heard this comment more times than I have had hot dinners (my Wife keeps a count!). In answer I say that not only can a Beneficiary be an Executor, but that it is often a good idea for a Beneficiary to be an Executor, as it gives the Executor/Beneficiary an incentive to do a good job.

“Should I first check to see if the persons I want to appoint are prepared to act as my Executors?”

There is no point in appointing someone to act as an Executor, only to find (when it is, of course, too late) that he or she is not prepared to act. The same can be said (and even more so) of anyone you are considering appointing as a Guardian of your children.

You will need to obtain the FULL names and addresses of any Executors and Guardians so that they will be correctly described in your Will.

BENEFICIARIES

When you give instructions to your Solicitor to draw up your Will, please consider the following points in regard to those you wish to benefit from your estate:-

- (a) Try and obtain the FULL names of all Beneficiaries so as to avoid any possible confusion as to identity.
- (b) If you are leaving any money to charities, try and ascertain the correct name and address of each charity. Failure to do so might result in the charity not being entitled to the money.
- (c) Decide what you wish to happen to the share of any Beneficiary who dies before you. Should it go to the other named Beneficiaries, to another Beneficiary altogether or to any children of deceased Beneficiary? The last option will probably be the case where the Beneficiary is one of your children.
- (d) There may be persons, for whatever reason, whom you wish specifically to exclude from having any benefit from your estate. You may mention this and the reason for it in your Will in case you are worried that such person may try and sue in the Courts for a share of your estate. There is no guarantee that the person will not be successful (for example, if it is one of your children who has relied on you for his or her upkeep), but any reason you give in your Will for excluding that person will be taken note of by the Court in reaching its decision.
- (e) If there are several specific items of property (for example, jewellery, antiques, etc.) or several legacies of money you wish to give to different persons, it is a good idea to make a list at home and then give it to your Solicitor when you see him. This will save time when the Solicitor takes your instructions.

Please note that whilst your Solicitor can (and should) advise you on the ways and means of distributing your estate and on the possible consequences (tax and otherwise) of including or excluding any Beneficiary, he cannot advise you as to which Beneficiaries should benefit from your estate nor how much should be given to any one Beneficiary.

METHOD OF BURIAL

You may in your Will give instructions that you wish to be buried or cremated and give details of how you wish this to be done (for example, in a particular cemetery or in accordance with the rites of a particular religion). On this I would make the following points:-

- (a) Any such instructions are NOT binding on your Executors or family.
- (b) Wills are often read only after the funeral. By then it is too late to find that the deceased, far from wishing to be cremated, wanted to be buried in the family plot in some foreign country. It is therefore important that any wishes as to mode of burial or cremation be made known to one's nearest and dearest during one's lifetime.

(c) It follows from what I have just said that there is often little point in putting such wishes in a Will.

(d) There may come a time when a law will be passed stating that Doctors shall be able to use the organs of any deceased person for the purpose of transplants unless instructions to the contrary are given by the deceased in either a card he or she might be carrying or in a Will. At present, such a law seems unlikely, but it should perhaps be borne in mind if you have any strong feelings about the use of organs for transplants.

COST

Before asking for an appointment to give instructions to your Solicitor to draw up your Will, enquire about the likely cost. I hope (in the case of my firm, at least) that you will be pleasantly surprised with the information given and will therefore be persuaded that the money spent will be a worthwhile investment.

Remember that Solicitors make far more out of sorting out the estates of those who were unwise enough not to leave a Will than they do in drawing up Wills in the first place.

CONCLUDING REMARKS

I began by saying that making a Will can be good for you. If, after having been kind enough to read these notes, you do not think that the peace of mind brought to one who knows that when his or her time comes (and may it be a very long time in coming) his or her family will be provided for in the best possible way is worth the relatively small investment of time and money in making a Will, then please forgive me for having taken up your time. I wish only to serve your best interests.

Stephen Phillips