

WHY MAKE A WILL?

Intro :

Many people express reluctance to make a will, for a variety of reasons:-

- Too expensive
- Too complicated
- Seems/Feels morbid
- May tempt fate – superstition
- Assume that everything will go to spouse/partner/children etc anyway

Do any of these concerns add up to much?

- Not expensive - £175 plus VAT for one, £300 plus VAT for a pair
- Need not be at all complicated – use relatively little jargon, or at least ensure it is explained
- Not morbid to want to ensure that those that you love and care for are properly provided for in the event of your death
- Don't be ridiculous
- Not necessarily – intestacy rules carry some nasty surprises

Who can make a will?

Anyone who is over 18 (unless serving in armed forces), so long as not:-

- Mentally incapacitated

Who should make a will?

- Everyone!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

What if I do not make a will?

If you do not make a will, then your estate (all of your assets at death) will be distributed according to the "Intestacy Rules". These rules are relatively complicated, however essentially:-

- If you leave a spouse and children - £125,000 to spouse, plus a life interest in half of the remainder. The children would then receive the rest of the estate on trust until they reached 18 and the capital of the spouse's life interest on her death

- If you leave a spouse and no children - £200,000 to the spouse, plus half of what's left over (absolutely – not just a life interest). The balance would go to your parents or (if they have already passed away) your siblings
- If you leave children and no spouse – your entire estate would go to your children in equal shares

As you can see, it is not safe to assume to whom your estate would be paid, should you die without making a will.

In particular, if you are unmarried, your partner (even if they live in the same house as you) would not automatically receive any payment from your estate at all.

We do not want to be alarmist about a subject as delicate as the passing away of a loved one; however there is a real danger that if you do not make a will, then your family could be faced with a very difficult situation if the intestacy rules do not divide up your estate as you would have liked.

Can a Will be challenged?

There is an Act of Parliament known as the Inheritance (Provision for Family and Dependents) Act 1975. Some changes were made to it by a later Act of Parliament (passed in 1995) and the net effect of these two acts is as follows:-

If you are an eligible applicant (see below) and the deceased did not make reasonable financial provision for you, then you can make a claim through the courts, requesting that the division of the estate be altered. There may have been a will, or an intestacy and a claim can be made in either case.

Eligible Applicants:-

- Spouse
- Former Spouse who has not already re-married
- Co-habitee (i.e. anyone who for a period of two years immediately preceding the date of death was living in the same household as the deceased as husband and wife)
- Children
- Any person treated by the deceased as a child of the family
- Any other person who was being maintained in whole or part by the deceased immediately before the date of death

Other issues:-

- The claim must be commenced within 6 months of the date of death
- The court will consider the financial resources of the person claiming against the estate, other sources of income and capital, the moral obligations that would/should have been on the deceased, the value of the estate

(i.e. how much money is really available for re-distribution), any physical/mental disability of the claimant and any other factors deemed to be relevant

- The definition of “reasonable financial provision” is slightly different for a surviving spouse. They would be entitled to expect a higher level of financial support than other categories of claimant and the court would interpret the definition of “reasonable” more generously in favour of such a claimant

Changing a Will

Before you pass away and provided you have not become mentally incapacitated, you can always amend your will. This can be done in one of two ways:-

- A new will – you can make an entirely new will, revoking the old one and replacing it with the new one
- A codicil – this is a short document that makes a small number of specific changes to the will (e.g. increase the value of a gift or replace an executor). This does not revoke the existing will and only alters those sections specifically referred to

Once you have passed away, your will can in fact (under the current law) be changed in three separate ways

- Deed of Variation – This can be made within 2 years of the date of death and any gift or sum passing to a beneficiary (whether under the will or by the intestacy rules) can be varied in favour of somebody else, either in whole or in part. The gift would not be treated as a gift by the original beneficiary but rather a distribution from the estate of the deceased and would therefore be part of the deceased’s tax position, not that of the original beneficiary
- Disclaimer – This is less flexible than a deed of variation. Although it can be oral or written, you cannot disclaim a gift in part – it is all or nothing. In addition, you cannot disclaim in favour of somebody else – you simply disclaim and the gift passes either according to the substitute provisions of the will or according to the intestacy rules
- Claims under the Inheritance (Provision for Family and Dependents) Act 1975 (see above)

Some general points

- **Who should I appoint as my Executor(s)?**
This should be somebody who you trust to properly administer your estate, settle debts and tax and distribute the estate according to your wishes. It is an important and sometimes burdensome task and should not be undertaken lightly. Check with the person you intend to appoint that they are happy to act, as they could refuse to do so at a later date. It is generally recommended that you appoint close family members, as they will be best placed to know about your estate and family.

In addition, you may wish to appoint a professional (such as a solicitor or accountant), particularly if the estate and/or will is especially complex

- **What if a beneficiary cannot be located?**

Your executors would have to make extensive searches and ultimately, depending on the circumstances, take out protective insurance or obtain a court order

- **When and how often should my will be updated?**

If you get married – marriage revokes any previous will

If you or a beneficiary change their name

If one of your executors dies or becomes unable to act (for example due to mental or physical incapacity or leaving the country)

If a beneficiary dies

If property referred to in your will is sold or altered in nature

If your estate increases significantly in value (particularly if it increases beyond the inheritance tax threshold)

If you divorce

- **What do I do now?**

Please contact **Joanne Cornwell** either on her direct dial number – (0118) 974 7540 or e-mail to joannec@cplaw.co.uk to discuss your requirements for a will.