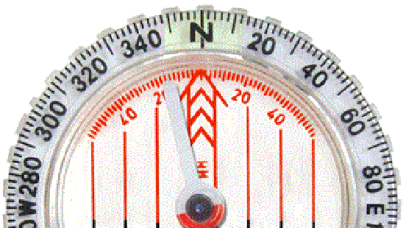
Dixon Stewart
solicitors

Wills



Services

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Wills, Trusts and Inheritance

INTRODUCTION

Making a Will need not be a depressing experience. In some ways Wills are similar to contracts and title deeds, as they are legal documents made to ensure that the correct people become the owners of property and money.

Why make a Will?

If a person dies without having made a valid Will, the law dictates the destination of assets.

Death is inevitably a difficult and emotional time for those you leave behind. You should ensure that additional stress and worry are not added to the natural grief of your loved ones. A Will drawn up by a solicitor will go a long way in avoiding these problems.

Having a valid Will in place should give you peace of mind that your wishes will be dealt with correctly.

A Will can also be used to nominate Guardians to look after your children if they are under the age of 18 years. If you do not do this then the courts may decide the future of your children and your wishes might not be taken into account.

If you have pets, you might wish to specify who would have care of them.

What is my "estate"?

Your estate is everything which you own at the date of your death, which you can leave to whoever you choose in your Will.

For many people, their most valuable asset is their home. Other things include your money, savings, jewellery, car, furniture, and clothes – indeed everything that you own.

If you own your home jointly with another, or have bank or building society accounts in joint names, these assets normally pass automatically to the surviving joint owner and do not pass in accordance with your Will. We shall discuss joint ownership of property later in this brochure.

The proceeds of life assurance policies and lump sums payable under a private pension scheme may or may not pass under your Will. You should check with your insurance company or pension provider as to what would happen in the event of your death.

What happens if I die without a Will?

Your estate would pass in accordance with the complex legal rules, known as "intestacy". The rules are contained in the Administration of Estates Act 1925, as amended, which provides as follows:

- If you die leaving a spouse (or registered same-sex civil partner) and children, then –
    - Your personal belongings (including your car, garden effects, pets, crockery, glass, linen, ornaments, musical instruments, but not anything which is used for business purposes) pass to your spouse (or civil partner)
    - Your spouse (or civil partner) also inherits the first £250,00 of your estate
    - If your estate is worth more than £250,000, the remainder is divided into two equal parts – one of which passes to your children, and the other is held upon trust for your spouse (or civil partner) for the rest of his or her life then to your children

- If you die leaving a spouse (or civil partner) but no children, then –
    - Your personal belongings as defined above pass to your spouse (or civil partner)
    - Your spouse (or civil partner) also inherits the first £450,000 of your estate
    - If your estate is worth more than £450,000, then the remainder is divided into two equal parts – one of which passes to your spouse (or civil partner) absolutely, and the other passes to your parents (if they are still living) or to your brothers and sisters of the whole blood (if they are still living) or to your nieces or nephews of the whole blood.

- If you die leaving a spouse (or civil partner) but no children, parents, brothers and sisters of the whole blood or nieces and nephews of the whole blood, then –
    - Your spouse (or civil partner) inherits your entire estate.

- If you die unmarried (or not in a civil partnership), the your entire estate is inherited by the following:
    1. Your children (or the children of any child of yours who has died before you); or if there are none, then –
    2. Your parents; or if there are none, then –
    3. Your brothers and sisters of the whole blood (or the children of any brother or sister of the whole blood who has died before you); or if there are none, then –
    4. Your brothers and sisters of the half blood (or the children of any brother or sister of the half blood who has died before you); or if there are none, then –
    5. Your grandparents; or if there are none, then –
    6. Your aunts and uncles of the whole blood (or the children of any aunt or uncle of the whole blood who has died before you); or if there are none, then –
    7. Your aunts and uncles of the half blood (or the children of any aunt or uncle of the half blood who has died before you); or if there are none, then –
    8. The Crown.

As you will note, the law is less straightforward than many people think. It is simpler to make a Will stating who you wish to inherit.

What happens if I die without a Will leaving a fiancée or cohabitant?

Unmarried persons do not inherit from their fiancée or cohabitant, no matter how long they have been together. Contrary to popular belief, there is no concept in English law as a “common law spouse”.

It is, however, possible for someone who has been living with you as your husband or wife for two years or more to apply to the court to claim money from your estate for his or her maintenance. Further, it is possible for anyone who was financially dependent on you (whether living with you or not, and no matter how long he or she has been dependent on you) to similarly claim maintenance.

Going to court can be a very stressful experience for those you leave behind and may well cause a great deal of tension with your family. It is, therefore, far more sensible to make a Will, clearly stating to whom you want to leave your estate.

MAKING A WILL

The most important question when making a Will is who do you intend to inherit your estate? Will you be leaving everything to your spouse, to children, other family members, to friends or to charity or to a mixture of these?

Couples often wish to leave everything to the survivor when the first of them dies, and couples with children often wish to leave everything to the survivor when the first of them dies and, after the second dies, to the children.

You can divide your estate into whatever proportions you like and leave it to whoever you choose.

Your solicitor will discuss your circumstances and how best your wishes can be achieved.

Beware of Will-writing companies!

You may have seen advertisements for Will-writing companies which make Wills for as little as £20 or £30. We would recommend that you to seek advice from a proper firm of solicitors, because Will-writing companies are usually unregulated and the person making your Will may well not have any legal qualifications. Many people realise when they discuss Wills with us for the first time that there is a lot more to making a Will than they first thought.

Solicitors have to follow strict rules set by the Solicitors' Regulation Authority and are required to have professional insurance. Even if a firm of solicitors were to cease trading storing your Will or other important documents, the Authority will be able to advise which firm has taken over its practice and holds its clients' documents. Whereas, unregulated Will-writing companies are not required to have professional insurance. If such companies go out of business holding your Will, there may be no way of tracing where your Will has gone or, if there is anything wrong with your Will, it may be impossible to make a claim against them.

Avoid home-made Wills!

You may have also seen Will making packs that you can buy from high street stationery shops. We would also advise you to see a solicitor.

Making a Will with a solicitor is probably not as expensive as you might think!

Who are "executors"?

Executors are the people who will be named in your Will with the responsibility of:

- Finding out how much your assets are worth
- Paying for the funeral out of your money
- Applying for a Grant of Probate (if necessary)
- Collecting in your money and cashing in your investments
- Selling or transferring your property
- Paying your bills
- Distributing what is left of your assets to your beneficiaries in accordance with your wishes as stated in your Will

Who can be executors?

Anyone over the age of 18 can be an executor. You could choose your spouse and/or other member(s) of your family. You could appoint a professional person, such as your solicitor or accountant.

A good combination is to have both a family member and your solicitor, so that you have someone who is close to you and knows all about your life, family, assets and wishes, and someone who understands the legal requirements.

Can my executors inherit from me?

Yes. Contrary to what some people believe, executors can (and often do) inherit from a person's Will. The only people who cannot inherit from a Will are the witnesses who sign it (this will be discussed later).

Typical Wills for husbands and wives often state that when the first of them dies, the survivor becomes executor and often also inherits most, if not all, of the deceased's estate.

Who monitors what my executors do with my money?

Your executors are given a great deal of responsibility. If you are appointing members of your family as executors, you might like to consider appointing a professional executor – such as a solicitor – to work alongside your family executors.

Appointing your solicitor as an executor would ensure that a professional is overseeing the administration of your estate. It might also make family disagreements less likely, because proper accounts would be prepared allowing appropriate scrutiny of the division of the estate.

A solicitor acting as an executor would also ensure that your wishes, as stated in your Will, would be followed.

If I name my solicitor as an executor, what happens if, by the time I die, that person has left the firm or the firm itself has ceased trading?

It is possible to state that you are appointing the firm of solicitors as executors, as opposed to naming an individual solicitor. This prevents the problem that a particular solicitor might no longer be around by the time you have died.

It is also usual for Wills appointing solicitors as executors to include the provision that if the practice has later been taken over by another firm, its successor firm would be executors.

Guardians for a child or children under 18

If you have a child or children less than 18 years of age, you should consider naming a guardian or guardians in your Will.

Such person(s) would become responsible for looking after any child of yours if he or she is left without parents.

If you are married to the other parent of your child or children (regardless of whether your marriage was before or after your child's birth), then both the mother and father automatically have parental responsibility and any guardian would not become guardian unless the other parent had died also.

If you are not married to the other parent of your child, then the father only has parental responsibility if the child was born after 1 December 2003 and he is named as the father on the Birth Certificate, or, failing that, by making an application to the court.

It is, therefore, advisable to name someone you trust as guardian to potentially look after your child or children. As we have seen, this is particularly important in the case of unmarried couples or single-parent families.

Sentimental items

You might like to consider whether you have any particular belongings that you would wish to leave to certain people.

For example, you might wish to decide which person will inherit a particular ring or perhaps all of your jewellery. You might have an expensive watch that you wish someone in particular to inherit. Or you might have medals (or your father's or grandfather's medals) which you would wish to leave to a certain person.

It need not be jewellery; it could be any item which you wish to leave to a certain person, whether because it is of monetary value or purely sentimental value.

Specific items or a collection of items left in a Will are known as "specific legacies".

You need not name the sentimental items in your Will. Your Will can refer you to a separate list. Your solicitor can advise you about this.

Gifts of fixed sums of money

You might also wish to leave fixed sums of money to certain individuals or to charity. Gifts of fixed sums of money are known as “pecuniary legacies”.

For example, some people might choose to leave (say) £1,000 to each of their grandchildren or their nieces and nephews as a small present, while the bulk of their estate goes to their children.

You should be aware that because such gifts of money are fixed amounts, due to inflation by the time you die they may be worth less than they are now. It is possible, however, to make these gifts index-linked.

The rest of your estate

Whether or not you decide to leave any gifts of specific items or fixed sums of money, the most important decision to make is who you intend to inherit the rest of everything that you own. This is known as your “residuary estate”.

After you have died, any bills you owe, funeral costs, any inheritance tax and the costs of administering your estate will be paid out of your residuary estate (assuming you leave sufficient funds to do so) before it passes to your named beneficiaries.

MARRIED OR UNMARRIED COUPLES

Married couples often leave their estate to their spouse (or partner) when the first of them dies. If you leave everything to your spouse (or partner) as an absolute gift, then he or she will be able to do with it as he or she wishes.

If your spouse (or partner) were to re-marry (or marry) after your death and leave everything to his or her new spouse, then there may be nothing left from your estate to ultimately leave to your children.

If your spouse (or partner) inherits the entire estate, there is also the worry that if he or she spends the last few years of his or her life in a nursing home that all your money could be spent on care fees.

If you would not wish your spouse (or partner) to inherit everything absolutely, you could instead leave it “on trust”. Your spouse (or partner) could receive the interest earned on your savings and investments, and any other income from your estate during his or her lifetime. Further, your executors and trustees could have a discretion to choose whether to give any capital of your estate, if necessary, to ensure that your spouse is not left inadequately provided for. The advantage is that your own Will then determines to whom your estate passes after your spouse has died.

NURSING HOME FEES

Many people worry about the possibility of their home being sold and large amounts of money being spent on nursing home fees if they were to require residential care later in life. Living in a nursing home could cost between £20,000 and £50,000 per year.

At the time of publication of this booklet, if you have assets worth over £14,250, unless you are entitled to NHS Continuing Care (funded by the National Health Service), you would be required to contribute towards your care fees. And if your assets amount to more than £23,250, then you are required to pay all of your care fees.

The value of your home is not taken into account if your spouse still lives there, but, if your spouse has died and you are in a nursing home, then the value of your house becomes relevant.

For this reason, some people decide to transfer the legal ownership of their home to their children (for example) during their lifetime. The problem with this is that the Social Services Department of your local authority has wide-ranging powers to investigate who owns your home and why the ownership was transferred from you to someone else. Unless there is another significant reason why the children should own the property (a typical example being that they paid the purchase price but the legal title was originally in the parents’ names), then the Social Services Department can regard you has having deliberately deprived yourself of a capital asset and treat you as though you still own the property – thus making your assets worth over the limits.

This is where a carefully drafted Will can help. If you own your home jointly with another person (whether as a married couple, unmarried couple or otherwise) you should consider ensuring that the ownership does not automatically belong to the surviving joint owner when the first of you dies.

The starting point is to establish under what type of co-ownership your home is currently held. Two or more persons who own a property together can either own as “joint tenants” by which when one of them dies the property automatically belongs to the survivor, or as “tenants in common” whereby each person owns a distinct share which can be left to whoever you choose in your Will.

Your solicitor will be able to advise what type of ownership you have by reference to the title deeds.

If you own your home as “joint tenants”, there is a simple procedure whereby it can be converted into a “tenancy in common” so that each owns a distinct share which can be left on trust in your Wills.

Life interest trust / right of residence

Having ensured that the joint ownership is split into two distinct shares as tenants in common, your Will can then make provision for the share of the first of you to die to be held on trust by your executors, who must allow the survivor of you to continue to have full use of the house for the rest of his or her life.

The advantage of this arrangement is that, if the survivor of you enters a nursing home, only the survivor’s half of the value should be taken into consideration.

As well as allowing the survivor of you to live at the property for the rest of his or her life, it is usual for this type of clause to allow the survivor to sell the home and buy another home using the sale proceeds. This is useful if, for example, the survivor of you wishes to move to a smaller property after the other has died.

INHERITANCE TAX

Inheritance tax is payable when a person dies leaving assets worth more than £325,000 (at the time of the publication of this booklet). However, what you leave to your surviving spouse or registered same sex civil partner is exempt from inheritance tax provided it does not exceed £1,000,000 and your spouse or civil partner is domiciled in the United Kingdom.

The rate of tax on any amount over and above the threshold is 40%. No tax is payable on the first £325,000, which is known as the "nil rate band".

Married couples or registered civil partnerships have two "nil rate bands". Therefore, when the second spouse (or civil partner) dies, he or she can leave up to £650,000 without any tax being payable (provided that he or she received the whole of the estate of the first spouse (or civil partner) to die).

If you die after 6 April 2017 owning your own home and you are leaving your home (or your share in it) to your children or grandchildren then your estate should also benefit from the residence nil rate band, which is a further £100,000 in 2017-2018 and which will increase by £25,000 each year until it reaches £175,000 in 2021. Therefore, if you die after 2021, subject to a few provisos, the first £500,000 of your estate would be free from inheritance tax. Further, if the surviving spouse (or civil partner) dies, having inherited the house from the first spouse to die, and leaves it to the children or grandchildren then with both of the couple's nil rate bands and residence nil rate bands combined the first £1,000,000 would be tax-free. However, if the estate is worth more than £2,000,000 then the additional residence nil rate band is reduced by £1 for every £2 over £2,000,000.

If your estate is worth more than the inheritance tax threshold and you give things away during your lifetime to reduce your estate, there are two measures which might prevent this from reducing the tax.

One is the rule relating to "gifts from which you continue to benefit". If you give your home (or indeed any other valuable assets such as antiques, paintings, jewellery, etc) to someone else (such as your children, for example) but continue to use it yourself, as far as inheritance tax is concerned, you are treated as if you still owned the asset(s) given away.

A way of avoiding the value of assets given away which you continue to use from being taxed as part of your estate is for you to pay the market rent to

the recipient(s). You should bear in mind, however, that if you do pay rent, the recipient may be liable to pay income tax on the rent you pay.

You should also bear in mind that the recipient of an asset you have given away may incur a capital gains tax liability if the asset increases in value during his or her ownership.

The other is the "seven year rule". If you give away money or property (without continuing to use it yourself), it will be free of inheritance tax only if you live for at least another seven years. If you die within seven years of making such gift, this is known as a "Potentially Exempt Transfer" and the inheritance tax may be reduced depending on the amount of the potentially exempt transfer and the number of years that have elapsed between the gift and your death in accordance with a descending scale.

You can, however, give away smaller amounts within your annual exemptions.

Your solicitor will be able to advise you about this.

TRUSTS FOR DISABLED PERSONS

If you have a child or someone else close to you who is disabled, whether physically or mentally, and that person receives means-tested state benefits, it is important to consider whether the person might lose his or her entitlement to benefits if he or she were to inherit from you.

One way of providing for someone without losing his or her benefits is to leave the money on a discretionary trust. Instead of leaving it to that person outright, your Will would state that you are leaving it to your executors for a number of persons named subject to your executors being able to choose how much to give to each named beneficiary. There is also a separate document made at the same time as your Will called a Letter of Wishes. The Letter of Wishes tells your executors how you wish the person to be provided for.

The person cannot be regarded as entitled to inherit from the trust because your executors have a discretion to decide what to give to whom and when.

One of the disadvantages is that your executors are not legally obliged to following your instructions contained in the Letter of Wishes. For this

reason, it may be a good idea to appoint your firm of solicitors as at least one of the executors so that a professional person has control.

TRUSTS FOR PEOPLE GETTING DIVORCED OR GOING THROUGH BANKRUPTCY

The same type of trust as described above (to ensure that a disabled person does not inherit too much in one go and lose his or her benefits) may be used if someone you wish to inherit from you is going through a divorce or bankruptcy.

SURVIVORSHIP PROVISIONS

Normally your solicitor will recommend including a provision in your Will so that if anyone you intend to inherit from you were to die within a short period of time – usually one month – then nothing passes to that person. This avoids the same inheritance having to go through the legal process known as probate twice and lets you control who would inherit from you in place of that person, rather than it being left to whoever that person has named in his or her Will, or to his or he next of kin in accordance with the intestacy rules.

ADMINISTRATIVE PROVISIONS

If you are leaving anything to someone who is currently a child or young adult, your solicitor will also ask at what age you would wish such person to inherit from you if you were to die while he or she is under-age. Unless your Will provides otherwise, people normally become entitled to their inheritance as soon as they reach 18 years of age.

For this reason, many people when making Wills prefer to increase the age. The majority of people seem to choose to make young beneficiaries wait until they are 21 to inherit outright.

This is not to say that while the person is under the age of 18, or such later age as you choose, they cannot have anything. The law allows executors to give under-age beneficiaries up to half of the money to which they will ultimately be entitled before they reach the age to inherit outright if it is for education or maintenance. Your solicitor will usually recommend inserting

provision in your Will to extend this so that, if necessary, your executors have the flexibility to give all of what the person stands to inherit while under-age.

FUNERAL ARRANGEMENTS

The final item to go in your Will is any requirements you wish to specify in respect of your funeral. If you do not have any views, you do not have to include funeral provisions. However, some people wish to be buried and not cremated, or the other way around. Whatever your wishes are, they can be written into your Will .

The amount of detail you stipulate in respect of your funeral is your decision. For example, you could state which church you wish your funeral service to take place at, which hymns and readings you would like, where you would be buried or, in the case of cremation, what would happen to the ashes. If you have already paid for your funeral, then details of it could be placed with your Will.

Some people wish to leave their organs for donation, and some wish to leave their bodies for medical research.

Funeral wishes, even if stated in a Will, are not legally binding on your executors. Even if your Will states that you are to be buried and not cremated, your executors are not obliged to follow such instructions. If you are concerned, you could make any gifts to your executors conditional on your funeral wishes being followed; therefore if your wishes were ignored your executors could not inherit from you.

WHEN IS IT NECESSARY TO MAKE A NEW WILL

If you get married (or re-marry)

If you have already made a Will, any marriage after your Will automatically cancels your existing will (unless your Will was made shortly before your marriage and contains a special clause in respect of your marriage to that particular person). You will presumably also wish to consider providing for your new spouse.

If you get divorced

If your existing Will leaves anything to a spouse from whom you have got divorced, or appoints that person as executor, then the law treats such gift or appointment as if your spouse had died on the day your divorce was finalised (i.e. the date of the decree absolute).

If you become separated

If you become separated from your husband, wife or registered same-sex civil partner, then he or she may still have a claim on your estate, no matter how long you have lived apart. If you have a new man or woman in your life (to whom you are not married) then that person would not inherit from you without your Will saying so. As you may recall, cohabitants are not entitled to anything if you have not made a Will.

Someone named in your existing Will has died

If someone named in your existing Will has died, you should check with your solicitor whether your Will needs to be updated or whether the rest of it will be adequate notwithstanding the person's death. You may decide that you wish to allocate the gift(s) left to the person who has died to someone else. But you should at least check that the person's death does not leave a gap in your Will, either because of an unallocated share of your estate or the lack of an executor.

New additions to your family

The birth of a child or grandchild may lead you to wish to include a gift for that person.

If you change your mind

You are entitled to change your mind about who you wish to leave assets to. You might decide that you wish to name new people to inherit from you. It is sometimes, unfortunately, the case that people fall out and you might wish to allocate a gift left to a certain person in your existing Will to someone else. You might wish to change your mind about gifts which would be left to any charities in your existing Will. A Will is ambulatory and does not take effect until you die; you are free to change your Will whenever you like.

Changes in the value of what you own

If you suddenly come into money, whether through inheritance or winning the lottery, or if perhaps you have lost money, perhaps due to a drop in values or spending a lot of money for whatever reason (perhaps on nursing home fees), then you should might like to have another think about who should inherit what from you.

You may find it helpful to complete the form towards the end of this booklet, which asks you to provide some basis information about yourself, your family, your estate and who you would wish to inherit from you. It is not obligatory to fill this in before seeing a solicitor; your solicitor will, of course, discuss everything with you.

YOUR DETAILS

Mr/Miss/Mrs/Dr/Other:

First name:

Middle name(s):

Surname:

Address:

Postcode:

Home telephone:

Mobile telephone:

Work telephone:

E-mail:

Date of birth:

Previous name(s):

Occupation:

Nationality: | Domicile:

Marital status:

Single ☐ Engaged ☐ Married ☐ Widowed ☐

Cohabiting ☐ Civil partnership ☐ Separated ☐ Divorced ☐

Location of any previous Will:

YOUR SPOUSE/PARTNER

Mr/Miss/Mrs/Dr/Other:
First name:
Middle name(s):
Surname:
Mobile telephone:
Work telephone:
E-mail:
Date of birth:
Previous name(s):
Occupation:

Nationality:	Domicile:

Date of marriage:
Date civil partnership registered:
Have either or you been married before?:

YOUR FAMILY

Your children	
Full name(s)	Age(s)

Your grandchildren	
Full name(s)	Age(s)

Children of your spouse/partner only	
Full name(s)	Age(s)

ASSETS	**Yours only** **£**	**Joint** **£**	**Spouse/partner** **£**
Your home			
Other property			
Property abroad			
Bank accounts			
Building society			
Life policies			
Pension policies			
Premium bonds			
Savings bonds			
Stocks & shares			
Investment portfolios			
Business interests			
Agricultural property			
Trust property			
Belongings			
Other assets			
Total assets			

LIABILITIES	**Yours only** **£**	**Joint** **£**	**Spouse/partner** **£**
Mortgage			
Other loans			
Overdraft(s)			
Credit card(s)			
Other liabilities			
Total liabilities			
Net values estate (total assets less liabilities)			

YOUR WILL

Executors – who will carry out your wishes after your death?

Ideally you should appoint at least two people and you may if you wish appoint this firm to act alone or jointly with any other executor.

Your Executors should ideally not be older than you and should be over the age of 18 years.

Full Name	Full Address	Relationship

Guardians

If you have young children you should appoint Guardians to look after them in the event of the death of you or your spouse. Please give full names and addresses of Guardians.

Specific Gifts

Do you wish to make any gifts of sums of money or items of property? If so, please list what these gifts will be and to whom they will be made.

Residuary Estate – to whom will you leave the rest of your estate?
Your Residuary Estate is all the money and property after payment of your debts (if any), funeral expenses, inheritance tax and any specific gifts or fixed sums of money

Full Name	Full Address	Relationship

Funeral Arrangements

Do you have any specific wishes regarding your funeral arrangements?

You do not have to state any preferences or make any statement as to the arrangements, but it may be that you will have strong wishes and these can be set out in your Will should you so wish.

FURTHER MATTERS YOU WISH TO DISCUSS

These are a few of the items that we will discuss in greater detail when we meet. Should you have any questions, please make a note of them and we will discuss them in detail with you at our meeting.

This booklet is a brief guide only, providing some ideas for you to consider. It is not an exhaustive guide to this area of law and is not intended to provide advice on specific issues or situations.

If you would like further information, please contact us so that we may advise you as to your situation.

We are happy to visit you at home or in hospital. We are happy to provide a free initial interview.

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