

Making a Will

Making a Will is one of the most fundamental aspects of estate planning, yet many people do not appreciate its importance.

It is an essential document that seeks to ensure your assets are distributed in accordance with your wishes.

You will thus be assured that you have made proper provision for all those you feel should benefit, and you choose the executors and trustees who will carry out your wishes.

It is also an opportunity to plan the distribution in a tax-efficient manner, particularly with regard to inheritance tax (IHT).

A Will can also appoint guardians of infant children, besides making appropriate financial provision for them.

Intestacy rules

In the absence of a Will, the intestacy rules for surviving spouses or civil partners are as follows. Please note that this is only an extract of the provision, it is essential that you execute a will in order to avoid any of these intestacy rules applying.

England and Wales

Where there is a surviving spouse only he/she receives the entire estate.

Where there are children the surviving spouse receives the personal property of the deceased, plus £250,000 with an entitlement to half the remainder.

The children become entitled on attaining the age of 18 to half of anything over £250,000.

Scotland

Where there is a surviving spouse only, they receive the entire estate. However, where children, parents or brothers and sisters of the deceased survive the surviving spouse gets:

- The interest in their house up to £473,000. If the house has a greater value then a cash alternative is available
- Furniture and household goods up to £29,000
- A legacy of £50,000 if there are children or £89,000 otherwise.

The balance of the estate is shared between the children if there are any, and between the parents and siblings (including their surviving children if siblings have pre-deceased) if there are no children.

Northern Ireland

Legacies of £250,000 as above for England and Wales

If there are children surviving, the surviving spouse or civil partner takes

1. the personal chattels absolutely

2. the legacy as above free of inheritance tax and costs, with interest at 6% per annum from the date of death and
3. an absolute interest in one-half of the residue of the estate, where only one child of the intestate also survives
4. an absolute interest in one-third of the residue of the estate, where more than one child of the intestate also survive

If a child of the intestate predeceases him leaving issue who survive the intestate, the surviving spouse or civil partner takes the same share as if that child had survived the intestate.

Other circumstances lead to different allocations. If there are no surviving relatives, the estate passes to the Crown!

Using the IHT exemption

Although a gift to your spouse will be exempt on your death, it will be of course added to his or her estate, and is likely to increase the IHT payable when they die.

It can often make good sense, therefore, to make provision for gifts to others, usually your children, to the extent that this is appropriate.

Currently most transfers of property between spouses or civil partners are exempt from IHT and CGT if the transfer takes place in the deceased's lifetime. This means that when one partner dies leaving some or all of their property to their spouse/civil partner they may not make full use of their £325,000 nil-rate band.

It is possible to transfer unused nil-rate band allowances between spouses or civil partners. The rules apply to allow a claim to be made to transfer any unused IHT nil-rate band on a person's death from the estate of their deceased spouse/civil partner where the second death occurs after 9 October 2007.

The amount of the nil rate-band potentially available for transfer will be based on the proportion of the nil-rate band unused when the first spouse or civil partner died. If on the first death the chargeable estate is £150,000 and the nil-rate band is £300,000, then 50% of the original nil-rate band is unused. If the nil rate band when the surviving spouse dies is £325,000, then that would be increased by 50% to £487,500.

Any claims for transfer of unused nil-rate band amounts can be made by the personal representatives of the estate of the second spouse or civil partner to die when they make an IHT return. The rules apply to all surviving spouse/civil partner estates from 9 October 2007, including those when the death of the first spouse/civil partner occurred prior to that date.

Generation-skipping

If your children are sufficiently well provided for, you may consider providing for grandchildren, present and future.

This will ensure that property reaching the grandchildren will avoid at least one charge to inheritance tax that would otherwise have arisen on the death of their parent(s).

Discretionary Will trust

To preserve flexibility, you may consider leaving the decisions to trustees nominated by you. They can take into account the circumstances following your death, and allocate property in a fair and tax-efficient way.

The trustees will usually be guided by a (non-binding) letter of wishes.

Safekeeping and review

Your signed Will should be lodged safely so that it can be readily retrieved after your death. All those who need to know should be told where it is.

It will also assist your executors greatly if you produce a data sheet, a simple summary of your financial affairs (see below).

You should review the contents of your Will regularly, particularly following significant tax changes or changes in your personal or family circumstances. You should also update your financial data sheet, preferably once a year.

Insurance policies

It is important that the proceeds of life policies should be written in trust for the benefit of named relatives rather than form part of your own estate.

Contents of financial data sheet

- Location of Will and other personal documents
- Funeral and other wishes
- Details of executors, solicitor, accountant, bankers, etc.
- Tax district and reference
- Details of main assets
- Details of mortgages and lenders
- Details of other liabilities
- Pension/insurance arrangements
- IHT history - gifts in the last 7 years.