CAMPIONS SOLICITORS
& ESTATE AGENTS

**Nottingham Offices**
**45-49 Mansfield Road,**
**Nottingham, NG1 3FH**
**TEL: (0115) 9247021**
**FAX: (0115) 950 9171**

**Derby Offices**
**Office 18 MARBLE HALL,**
**Nightingale Road**
**DERBY, DE24 8BF**
**TEL: (01332) 742 662**

**wills@campions.co.uk**
**www.campionssolicitors.co.uk**

# GUIDE TO THE PREPARATION OF A WILL


The following Guide has been prepared to show you how we prepare a Will on your behalf and it also highlights the relevant issues that you will need to consider. The guide is divided into 3 sections and they are

**a. General Considerations On Drafting A Will**

**b. Assets That May Be Outside Your Estate (i.e. will not be included within your will)**

**c. Mirror Wills**

We also provide further information available on request on the following:

**d. Inheritance Tax**

**e. Your House, Ownership, Divorce, Dissolution and Separation**

The following are taken into account in the preparation of your Will:-

## a. General Considerations on Drafting a Will

**Can you give me directions as to how a Will is signed (if I am not attending your offices)?**

We normally like you to attend the office to make sure the Will is correctly executed. Sometimes however that is not possible. If you are signing a Will the requirements must be adhered to extremely strictly since otherwise the Will may be invalid. Directions are as follows:

1. You must have two responsible independent witnesses and you must all be present together during the whole time the documents are being signed. A person who benefits in any way under the Will (or the husband or wife of such a person) must not be a witness. Both witnesses must be over the age of 18 years.
2. Then complete the date in the first paragraph of the Will.

3. Next, sign the Will at the bottom of each page and on the last page, where your initials are pencilled or marked. In your signature you should include all of your Christian names or initials.
4. Next the two witnesses should sign at the bottom of each page and on the last page where indicated. Beneath their signature on the last page only they must print their names in full and give their addresses and occupations.
5. Do not alter the Will or in any way mark it or attach anything to it, not even a pin or paper clip which might damage it and so require explanation if it is used after your death. If you do wish the will to be altered, it is much safer to ask us to alter it. However, if you should alter anything, both you and the witnesses must put your initials in the margin beside the alteration.
6. When you have signed and completed it, we either ask you to send the original should you wish us to retain it, or in the alternative a copy so that we can see that you have signed and dated it correctly.

**I understand that every Will contains a Residuary Estate. Can you explain that and why it is important?**

A Residuary Estate is important because it indicates to whom your Estate should be given after any other requests take place. Generally therefore it might be given to your partner, if any, or if that person were to die before you, your children in ways that we have discussed.

**I understand that I need to appoint executors. What are executors?**

Your Executors are the people that you chose to carry out the terms of your will. They can be family, friends or professional advisors such as accountants or solicitors. If a professional person is an executor, they may charge for their services.

**What are the duties of executors?**

Their duties are to carry out all wishes and the administration of your Estate. Clearly they may instruct solicitors.

If there are minor children or young adults who are not due to inherit until a certain age (between 18 and 25) then they will have a further duty which might be quite important. That duty is a duty to hold the money for such children or young adults until they actually inherit. In such cases they have certain powers to handle money and use it for the benefit of the young persons who are to inherit.

**I have minor children. I wish to appoint somebody to look after them (not just the money) if I should die before they become 18. What should I do?**

You need to appoint and individual or individuals to be a Testamentary Guardian. These individuals will then have the care of the children.

If you are separated, divorced or in a Civil Partnership that is dissolved then the Testamentary Guardian has the right to apply to Court for the residence of the child if that is in dispute.

**If my Executors are to receive money on behalf of Minor Children or young adults then what provisions will normally apply?**

A standard Will clause reads:

"The Standard Provisions of the Society of Trust and Estate Practitioners (1st Edition) shall apply with the deletion of paragraph 5. Section 11 Trusts of Land and Appointment of Trustees Act 1996 (consultation with beneficiaries) shall now apply."

These powers can be found under www.step.org/publishing.standard_provisions.aspx. In addition a power is given to consult all beneficiaries (those who are going to receive money under the Trust) who are over the age of 18 years.

**How should my Will be structured?**

Every case is different and obviously you must decide how your Will should be dealt with. However, in cases where you are living with a partner we do find that most people will make their partner the main beneficiary (whether or not they are married to them most of their money in other words will be given to their partners (if any)).

Then there will normally be provision for the children (if any) to inherit if your partner dies before you.

**How generally are the children dealt with?**

The first decision you have to take is how old the children should be before they inherit. Some parents will be happy that their children inherit at the age of 18 years. However, particularly if there is a substantial amount involved, many people are reluctant for their children to inherit the full amount that they might be entitled to until they are aged either 21 or 25 and you can make that provision. You need to bear in mind that in any event under the powers given to the Trustees they do have extensive powers to advance monies to children for various reasons if they think it appropriate.

**Apart from the issue as to the age when the children should inherit is concerned, what else would you advise?**

Generally most parents will leave their Estate to their children in equal shares. A further decision has to be taken in respect of any grandchildren whether actually born or that might be born in the future. A general provision, although not always followed, is that if a child predeceases you (very difficult to contemplate but something that should be put in the Will) and they leave children then their children would inherit the share that their parent (your child) would have received. If there is more than one grandchild they would inherit their parents share in equal shares.

**How does provision for grandchildren work out in practice?**

If you had left a half share to a child of yours and that child pre-deceased you leaving two children then each child would inherit half of the parents share e.g. a quarter share of your total estate.

**How would you deal with personal effects?**

Sometimes this does need to be considered carefully. Some items, which may not be of value can have significant importance for people and that always has to be considered. We would advise that there are three different ways of dealing with this issue:

- For there to be a list in the Will with reference to certain aspects which are considered to be important.

- For there to be reference in the Will that a list has been given to your executors. That is not quite as strong but so long as there are likely to be no obvious disputes this should be acceptable.

- Personal effects or chattels are given to your executors with a direction that they are divided as they think fit.

If you are sure that there are likely to be no disputes and no issues and you are comfortable with your executors dealing with the matter in this way then the third way may be followed. If you have fears that there may be a dispute then you should use the first method.

**I wish my partner to have the benefit of the house when I die but not to inherit the house which I wish to leave to my children. Can that be done?**

Yes, it can be done. There would have to be a specific clause in the Will to that effect. The Clause that we draw up would allow your partner (or of course any other individual if named) to live in the house and then there would have to be provision for payment of rates and outgoings. Generally the person living in the house would be asked to pay such rates and outgoings.

**In such circumstances, how long would the person living in the house be expected to live there?**

This would be a matter for you but our general suggestion is:

- During their lifetime
- If before when they wish to leave
- Perhaps if he or she remarries or co-habits

**In those circumstances, what happens when the person leaves the house?**

The property would then form part of the general estate and would be left to other persons in accordance with your Will.

**If I leave money to my children and I die whilst they are under 18, will they inherit my money?**

They will not inherit as such whilst they are under 18. it will be left to your executors (called for these purposes your trustees) who will then hold on behalf of your children subject to certain rules. The children will then inherit at the age of 18 years or if you feel it is more appropriate at some later age up to the age of 25.

**Can I then specify which of my children will inherit absolutely e.g. not just in trust?**

Yes, you should normally specify an age between 18 and 25.

**Do my trustees have to act in my children's best interests?**

Yes, they have what is called in law a "Fiduciary" due towards the children.

**How do I deal with the issue of my children's residence if I were to die?**

You may wish your former spouse/partner to have residence. However, if you do not

consider this appropriate then you can specifically appoint what is termed a "Testamentary Guardian" to have the residence of your child or children.

**If my former spouse/partner then applies for the Residence what would happen?**

That person would have to apply to Court as with any other Residence Application and would have to apply against the person who you had appointed as a Testamentary Guardian. As in all cases, the Court would have to decide the issue on the basis of the best interests of the child.

## b. Assets That May Be Outside Your Estate (i.e. will not be included within your will)

**What assets may fall outside my Will?**

The following assets may fall outside your Will and you may need to consider these separately:

- Pensions
- Your house
- Life Policies
- Bank Statements in joint ownership

**If I were to die, how would a lump sum view in respect of my pension scheme be paid?**

It is important firstly that you find out from your pension provider what capital sums may be due either to yourself or to your family upon your death.

Your pension provider is likely to have a scheme whereby you nominate who should receive any lump sums due. This would be independent of your Will.

The other thing that we do need to point out is that if your Estate then exceeds Inheritance Tax threshold of £325,000.00 for a single person or £650,000.00 for two people then Inheritance Tax may become payable. Therefore as part of Inheritance Tax Planning (which this firm will not advise further on) you may have to consider exactly how those lump sums should be left.

**Can you indicate the position with regard to Life Policies?**

Yes but only briefly because we are not financial advisors and you should take advice from your life company or from your financial advisor.

However, as with pensions, payments under life policies can be left to different beneficiaries and you will have to decide on how the matter is dealt with most effectively.

**Can you explain why joint bank accounts might fall outside my estate?**

Unless there is an agreement to the contrary then if you have a joint bank account then that would be dealt with in exactly the same way as a property which is held as a joint tenancy (see above). It would be transferred to the survivor on death.

Again as with pensions these policies may well be dealt with outside of the Will and your Estate.

## c. Mirror Wills

## I have heard of a mirror Will, what are these?

If both you and your spouse/partner decide to make Wills which are identical or virtually identical then an agreement can be drawn up so that after the first persons' death the second person cannot alter their Will.

## Are mirror Wills likely to be enforceable?

Although not certain and subject to certain conditions, it is possible that mirror Wills will be enforceable. This means that if two Wills are made which are identical or very similar and then the first person dies, with the second inheriting, that second person should not alter their Will. The leading recent case on this is Olins v Walters (2007) EWHC 3060CH and further reported at 2009 (EWCA782).

However, the Judgment does make it clear that difficult questions do arise and you can not rely on the second mirror Will to be enforceable.

## If we wish to make a Mirror Will do you further deal with the issue?

If there is to be a mirror Will we think its best that there be a declaration made by both parties that it is intended as a mirror Will. We do provide such a declaration at no extra charge when we prepare your Will.

ANY LEGAL OPINIONS THAT HAVE BEEN GIVEN IN THE ABOVE TEXT ARE ONLY VALID ON THE DATE OF WRITING – SEPTEMBER 2010

IN ADDITION TO THAT NO RELIANCE WHATSOEVER AND NO ACTION MUST BE TAKEN ON THIS TEXT (WHICH IS PURELY FOR GUIDANCE ONLY) WITHOUT OBTAINING FURTHER LEGAL ADVICE FROM EITHER CAMPIONS OR ANOTHER FIRM OF SOLICITORS.