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### **GUIDE TO THE PREPARATION OF A WILL**

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

- 1. General Considerations On Drafting A Will**
- 2. Assets That May Be Outside Your Estate (i.e. will not be included within your will)**



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

- **Inheritance Tax**
- **Your House and Ownership; Divorce, Dissolution and Separation**

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

#### **1. General Considerations on Drafting a Will**

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

Your Executors are the people that you choose to carry out the terms of your Will. They can be family members (including your spouse or partner), friends or professional advisors such as accountants or solicitors. They need to be willing to act as your executor and you should seek their permission before including them in your Will. 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 expressed in the Will and the administration of your Estate. Executors who are individuals may instruct solicitors if wished in administering the estate.

If there are minor children or young adults who are not due to inherit until a certain age (between 18 and 25) then the executors will have a further duty which might be quite significant. That duty is a duty to hold the money for such children or young adults until they actually inherit. In such cases the executors 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 an individual or individuals to be a Testamentary Guardian(s). This/these individual(s) 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.

**How should my Will be structured?**

Every case is different and obviously you must decide how your Will should deal with your assets. 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 partner (if any)).

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

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

A Residuary Estate is important because it indicates to whom your Estate should be given after any other bequests take place, and after funeral and other testamentary expenses and debts have been paid. Unless there have been significant specific bequests to other beneficiaries, the Residuary Estate is usually the main part of the Estate. Generally, therefore, it might be given to your partner, if any, or, if that person were to die before you, your children as above.

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

This may need careful consideration. Some items, even if not of value, may 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 items 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 be 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 option 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.

**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 a provision in your Will. You need to bear in mind that, in any event under the powers given to the Trustees, your executors will have extensive powers to advance monies to children for various reasons if they think it appropriate.

**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. The money 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. The executors do though have extensive powers to use money for the children's benefit before they inherit the property.

**Can I then specify when 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" duty towards the children.

## **Apart from the question as to the age when the children should inherit, what else would you advise?**

Generally most parents will leave their Estate to their children in equal shares (after making provision for their spouse/partner). A further decision has to be taken in respect of any grandchildren whether actually born or who 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 parent's share in equal proportions.

## **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 parent's share e.g. a quarter share of your total estate.

## **2. 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 (ie pass to someone on your death outside the provisions of your Will) and you may need to consider these separately:

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

### **Your house**

Your house will not be treated as part of your Estate passing under your Will if it is owned as a 'joint tenancy'. A joint tenancy arises where a property is held by two or more people (up to a maximum of four) as joint tenants. This is a common way to hold property as a couple when you buy a house together, but if you are not certain how you hold your property then please check.

Where there is a joint tenancy the property will be owned in equal shares and, importantly in this context, the property will pass to the survivor(s) automatically on the death of an owner of the property, and not under the Will.

The alternative form of ownership is a 'tenancy in common'. Under this form of ownership the owners may hold in unequal shares, or may have equal shares but have specified that they hold as tenants in common. The significance of this is that an individual's share in a property held as a tenancy in common will form part of his/her Estate and will pass under the terms of a Will.

### **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.

Certain payments, however, such as undrawn pension may form part of the Estate and it is necessary to consider if this is the case.

**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.

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

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

Unless there is an agreement to the contrary, a joint bank account would be dealt with in exactly the same way as a property which is held as a joint tenancy (see above). It would be automatically transferred to the survivor on death. That is regardless of the Will.

ANY LEGAL OPINIONS THAT HAVE BEEN GIVEN IN THE ABOVE TEXT ARE ONLY VALID ON THE DATE OF WRITING – APRIL 2020

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.