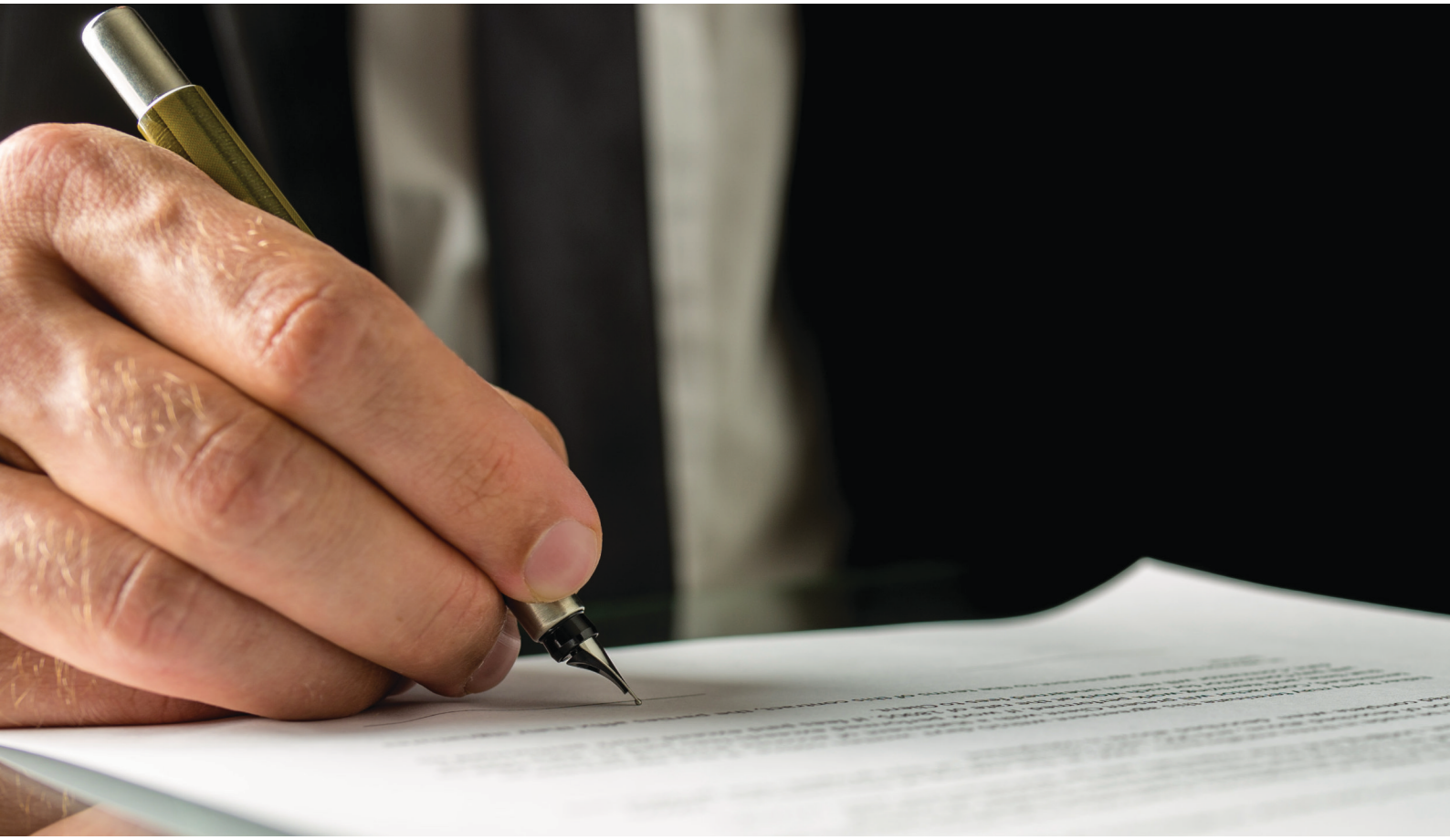
Wills

A brief guide to

>Wills and taking control



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It's time to take control

Everyone over the age of 18 should make a Will. It allows your estate to be administered more easily by your chosen executors and, more important, it ensures your wishes are carried out.

Making a Will is something people put off. That's not surprising as we would all prefer to be thinking about life rather than death. However, dying without making a Will (referred to as 'intestacy') will very likely put an enormous strain on your loved ones. So it really is a very positive and considerate step to take.

At KWW Solicitors we can draft simple Wills, nil-rate band discretionary trust Wills and complex Wills. We can assist you with advice on inheritance tax and tax-efficient Wills.

We also offer:

- Complimentary safekeeping service
- The option of having us act as an executor and/or trustee in your Will
- Referral service to specialist advice on estate planning and inheritance tax mitigation.

We suggest your Will is reviewed every five to seven years, or when there is a significant event such as divorce or the birth of children. Marriage will generally revoke any Will.

The cost of a Will depends on its complexity. A simple will drafted by one of our will specialists will cost from £295 or from £395 for a pair of mirror Wills. (Prices correct as at May 1st 2019).

You can decide who to leave your money to and who will manage your affairs after your death provided you make a Will now.

Why do I need a Will?

The simple reason for having a Will is also the most obvious: to ensure your wishes are fully met after you die. It's the only way to guarantee your estate – which is made up of your money, possessions, property and any investments – goes to the people or causes you care most about.

This should provide financial security to your family and their descendants, while Wills can also be used to outline guardian arrangements for any children under the age of 18.

While on the topic of family, dying without a Will or having an ambiguous will can cause family disputes, so making your wishes clear should mitigate any potential for conflict.

If you're married or in a civil partnership, having a Will is less important as your spouse or civil partner will be your next of kin and beneficiary to at least half of your estate. However, your partner has no right to inherit your estate without a Will if you are unmarried or have not entered into a civil partnership.

How do I make a Will?

A good place to start is to value your estate by drawing up a list of your assets and debts. This is something you should review every time your circumstances change.

Assets usually include any property you own, savings, insurance or endowment policies, pensions that may pay out a lump sum on death, and stocks, shares or investment trusts you may have.
It's also important to take into account any debts, such as mortgages, overdrafts, bank loans and credit cards when calculating the total value of your estate. From there, you need to think about how you want your estate to be distributed and to whom.

Make it clear who stands to benefit from your estate and if you want to make any charity donations. Then it's time to pick the executors of your Will – the people, or person, who will distribute your estate to your beneficiaries after you die. This role should be fulfilled by someone you trust implicitly, although you can appoint up to four executors to manage the administrative work, to check each other and balance judgements.

Tax considerations

When you're thinking about what you want your beneficiaries to receive, you'll need to take the tax on your estate into consideration. Estates above a value of £325,000, or £650,000 for a married couple or civil partnership, could be liable for Inheritance Tax (IHT) at 40% on the excess.

Nil-Rate Band (NRB)

Married couples and civil partners can transfer their unused portion of the tax-free allowance, also referred to as the nil-rate band, to their spouse/civil partner when they die. The NRB is £325,000 per person, so couples can protect up to £650,000 of their estate from IHT on the death of the second spouse. If the first spouse to die leaves money or assets in their Will to members of the family or others, this will be deducted from their NRB. If they use up the tax-free allowance completely, then there will be none of the NRB to transfer to their spouse

Residence Nil-Rate Band (RNRB)

This additional allowance is being phased in from April 2017 to April 2020, starting at £100,000 and rising by £25,000 a year until 2020 when it will be set at £175,000. The current level (June 2019) is £150,000 The rules for this are very complicated and it is basically available only if you have owned a house and have children. The allowance is also transferrable between spouses. We will ensure that any Will we draw up complies, where possible, with the new rules to maximise the IHT allowance available to you.

Inheritance Tax (IHT)

An effective way to plan for IHT is to make gifts while you are still alive. Every tax year you can give away £3,000 of assets and they will not count toward your estate for IHT purposes. If you do not use up the full exemption in one year you can carry it forward, but for one year only. Gifts of up to £250 to an unlimited number of different individuals are also tax-exempt but you cannot use both exemptions to give to the same person. You can also give £5,000 to your children as a wedding gift. Grandparents can give £2,500 and anyone else can give £1,000. Gifts between husbands and wives are always IHT-free as are donations to charities and political parties. If a gift is regular, made out of income and does not affect your standard of living, any amount of money can be given away and ignored for IHT. However, you should take advice from a tax expert before you make regular gifts to ensure they will be acceptable to HM Revenue & Customs.

You can make other tax-free gifts, called Potentially Exempt Transfers, as long as you survive for another seven years. If you die within the seven years and total value of the gifts is more than the £325,000 threshold, you can apply taper relief to any tax owed. The tax on the gift reduces on a sliding scale if it was made between three and seven years previously. If you cannot apply taper relief you add the gifts to your other assets and pay 40% tax on the sum above the IHT threshold.

What makes a legally valid Will?

If you feel compelled to draft a legally valid Will on the back of an envelope, you will need to apply strict criteria for it to be binding.

For instance, you must be an adult of sound mind and draft your will voluntarily. The Will must also be made in writing. When you sign it, you will need to be in the presence of two adult witnesses, who also need to add their signatures to confirm they witnessed the process.

Another important thing to consider is that your witnesses, or their married partners if they have any, must not be any of the named beneficiaries in your Will. You cannot make a legally valid Will under duress or with no witnesses present.

The same criteria apply when it comes to reviewing your Will. If you have been diagnosed with dementia or a serious illness, you can still make or update your will as long as you're present, mentally capable of making a Will, and able to direct someone to sign it on your behalf.
Any Will signed on your behalf should also contain a clause saying you understood the Will's contents before it was signed.

Can a Will be updated?

Yes – and you should always update your Will when your circumstances change or, as a rule of thumb, review it every five years. Changes of circumstance could include the birth of a new child or grandchild, getting married or entering into a civil partnership, or even moving house.

It's general practice to add to an existing Will, rather than conduct a wholesale update, and this is known as a codicil. This also needs to be signed and witnessed.

Alternatively, if you need to make substantial changes, you can draft a completely new Will. This new Will must contain a revocation clause to prevent the legal effect of any previous Wills or codicils. Marriage, remarriage or entering into a civil partnership cancels any previously existing Wills.

Divorce does not cancel an existing Will but merely causes any gift to the divorced spouse to no longer be applicable. Whether this is your intention or not, it's generally advisable to cancel and rewrite your Will in such cases.

Consequences of not having a Will

Failure to write a legally valid Will before you die will result in your estate becoming subject to intestacy rules, so it may not go to the people or causes you want. Your estate will then be distributed according to fixed rules and will not take your personal wishes into account.

The following scenarios apply if you die without making a legally valid Will:

The first £250,000 of your estate, plus half of the remainder and your personal possessions, will go to your spouse or civil partner, while any children will receive the other half of the balance.

Where no children are involved, your spouse or civil partner will inherit your whole estate, which includes all of your personal possessions.

If you are unmarried or not in a civil partnership and did not make a Will, your partner will not automatically be entitled to penny of your estate – even if you have children together or have cohabited. In such a situation, your partner would need to make a claim under the Inheritance Act 1975, which could award them some of the estate.

This is also true for any dependant omitted from a Will. Your children stand to inherit your entire estate if your spouse or civil partner dies before you do, and your estate will be equally divided between your children.

Parents, siblings, nieces and nephews are in line to be your next of kin if you don't have a partner or any children when you die.

The simplest way to avoid inheritance tax is to make gifts while you are alive

8 reasons for making a Will

1. Clear and unambiguous instructions

The most important reason to create a Will is that it provides your loved ones with clear and definitive instructions on how you would like your last wishes to be undertaken. This is important as it avoids any unnecessary disagreements occurring at an already difficult time.

2. Appointing the people you trust to administer your estate

A Will enables you to appoint only those people you consider the most capable and trusted to administer your estate as your executor and/or trustee. This does not have to be a relative; it can be your closest friend or a professional, whichever you feel is more capable and/or appropriate.

3. Legacies

A Will is an appropriate way of remembering a person or organisation close to you through leaving a legacy. If you do not make a Will, it is unlikely this person or organisation will be remembered as your
estate will be distributed according to the rules which apply when someone dies without leaving a Will.

4. Tax efficiency

Inheritance tax (IHT) is a great concern for many people. Creating a Will is an effective method to ease these concerns and gain vital advice on how to reduce your liability regarding IHT.

5. Protection for unmarried cohabitants

If you do not already have a Will and you are not married, your partner will not inherit from your estate and therefore could end up in financial trouble. Making a Will is an effective way to ensure they are adequately provided for.

6. Life interests

Life interests can be included in your Will to ensure family members such as young children or elderly
parents are provided for and remain in a home, instead of it being sold.

7. Marriage, divorce and re-marriage

Wills are automatically revoked if you marry or re-marry and are altered if you divorce, unless specifically addressed in your Will. It is essential to create or update your Will so your loved ones are
provided for.

8. Funeral arrangements

A Will is the best way of informing your loved ones of your funeral wishes. This can include any personal preference, be it cremation, burial or even having your body used for medical education purposes.