

Last Will and Testaments Factsheet

What is a Last Will & Testament?

A Last Will and Testament (Will) is a legal document that states who you wish your assets (Estate) to go to following your death. Whilst many of us realise the importance of writing a Will, few of us actually write one. In fact, it's estimated that only a third of people have a Will when they die.

If no Will exists

If there is no Will when someone dies, their estate is distributed according to the rules of intestacy. These are:

- If you're married, or in a civil partnership AND have children
- Your spouse will receive the first £250,000 of everything in your estate (including all personal possessions).

Anything over £250,000 will be divided in two, with half going to your children at age 18. The remaining half belongs to your spouse under a 'lifetime interest'. This means that the capital cannot be spent but your spouse has a right to a income from it, perhaps through interest on a savings account. On the death of your spouse, this remaining half goes to your children.

If you're married, or in a civil partnership, with NO children

Your spouse will receive all personal possessions and the proceeds of your estate up to £450,000.

Anything over £450,000 will be divided into two - half goes to your spouse and half goes to your parents. If your parents are deceased, this will transfer to siblings or the children of your sibling.

If you're married, or in a civil partnership, with NO relatives and NO children

Your entire estate will go to your spouse.

If you're unmarried person and HAVE children

Your children will receive the proceeds of your entire estate at age 18.

If you're unmarried person with NO children

Your entire estate will go to the following relatives, in this order:

- Your parents.
- If your parents are deceased, your estate will go to your brothers and sisters.
- If you have no siblings, your estate will go to your grandparents.
- If your grandparents are deceased, your estate will go to uncles and aunts.
- If you have no living relatives and die intestate, your estate will go to the Crown.

Benefits of having a Will

Some people will be happy for their estate to be divided according to the rules of intestacy. Others may like to exercise choices such as:

- A choice of who benefits from your estate and to what extent.
- A choice of the age when young beneficiaries will receive their inheritance.
- A choice of who will manage and administer your estate.
- A choice of who will act as guardian to your children before the age of 18.
- A choice to create trusts to safeguard vulnerable beneficiaries.
- An opportunity to reduce the tax paid on your estate.

Writing a Last Will & Testament

It is possible to write your own Will or get a professional to draw one up for you. Professionals include:

- Solicitors: check they belong to the Society of Trust and Estate Practitioners (STEP)
- Professional Will Writers: check they belong to the Institute of Professional Will Writers or the Society of Will Writers. It may also be worth asking for evidence of indemnity insurance and asking what procedures should be followed if there's a problem with the will.
- Banks: check how their will-writing service is regulated and who provides the service.

There are certain requirements for a Will to be valid:

- It must be signed and witnessed (with 2 witnesses in England, Wales and Northern Ireland and 1 in Scotland).
- It must be in writing.
- You must be over 18 to make the Will.

- You must possess the mental capacity to make the will and understand the effect it will have.
- You should not have made it in response to pressure from somebody else.
- The beginning of the Will should state that “this Will revokes all previous Will”. Any previous Wills should be destroyed if they exist.

How to change a Will

It's advisable to review your will every few years, especially when circumstances change (e.g. if you get married, have children or get divorced).

Changes to your Will can be made by codicil (an addendum to the original will) or by writing a new Will. You can also revoke a will by physically destroying it. If the change is relatively straight forward, you can write a codicil and get it witnessed, and keep it with your existing will. However, you should not alter the original will.

If you wish to write a new will, it should begin with a clause stating that it “revokes all previous Wills and codicils”. If the changes are complicated, such as when remarrying, it is probably worth taking legal advice on drawing up the new Will.