Walker Foster
Solicitors

Making a Will

Essential reasons to make a Will:

- If you hold your property as tenants in common it will not automatically pass to the second owner on death and so to avoid your share of the property and your other assets being distributed in accordance with the intestacy rules which could mean, for instance, your spouse/partner not inheriting all of your estate.
- To ensure that those you wish to inherit your assets on your death actually get them.
- To nominate executors of your choice to deal with the distribution of your estate in the certain knowledge that they will comply with your wishes.
- To nominate your preferred guardians of your children to avoid disagreements or family upsets.
- Make small personal gifts.
- To take advantage of tax saving strategies.

Possible reasons to make a Will (depending on individual circumstances):

- To explain why a possible beneficiary is being excluded to ensure the continuation of a family business.
- To ensure that 'first' and 'second' families are treated fairly to reflect lifetime rearrangement of assets.
- To give specific guidance to executors.

Points to consider

Some issues that will come up during discussions about why you should make your will and why you should put particular provisions in it need to be given considerable thought.

Funeral arrangements

You can specify whether you want your body buried or cremated. You can also state whether you are willing for your body to be used for medical research. You may have other particular wishes to be recorded here.

Executors

This is the person you appoint to safeguard your possessions, pay debts and ensure your instructions in the Will are carried out. An Executor can be anyone, even a beneficiary, over 18 years of age. If you are leaving everything to one person, it is usually convenient to make them the only Executor. With more complicated estates, and particularly where children are involved, it is advisable to have at least two Executors but more can be unwieldy when decisions have to be made. In some cases (eg where matters are likely to be complicated or where there may be family difficulties) it is preferable to appoint professional executors such as the Directors of Walker Foster.

Legacies

You have the ability to leave sums of money or specific gifts. You can leave them, if they belong solely to you, without difficulty. However, you may need to consider if they will be needed by a surviving spouse/civil partner. In such a situation you will need to make some provision, such as a life interest to the survivor, to cover this situation. This is complex and will require input from your solicitor so that the best method can be adopted. Remember that if you leave something to your surviving spouse in the belief that they will honour your wishes in respect of it they are not obliged to do so.

If the gift (particularly of money) is to children, you will have to decide at which age they will be able to fully enjoy it. They may be able to legally force the use of it at 18 but that is no reason to stipulate a later age.

If you are making gifts of specific items such as furniture, jewellery etc, it may be worth considering a 'letter of wishes'. In your Will you give all the items to one person but express the hope that he or she will distribute the items in accordance with any list of beneficiaries and items you may leave at your death. This is a very flexible arrangement. You can change the list at any time without the legal formalities and expense of a Will.

Residue

This is what is left of your estate (except any jointly owned assets), after payment of debts, legacies, any Inheritance Tax, and legal fees. Jointly owned assets usually pass automatically to the other joint owner(s). You must, however, specify who is to inherit the residue, and in what proportions. You should also cover what should happen to the residue if any of these people die before you. If children are to benefit, you can specify the age at which they become entitled. Beware the age point referred to under Legacies above.

Things to remember

On marriage (or remarriage), your old Will is automatically revoked and has no effect. If you die without making a new Will your estate will pass to a list of your relatives specified by law (under the intestacy rules).

On divorce, any gift in your old Will to your ex-spouse is cancelled as is his/her appointment as Executor but the rest of the Will stands. This can create problems and it is better to make a new Will.

If you are not making any provision for a spouse or partner, or a former spouse, or a child, it is possible that he/she could claim against your estate. If this applies to you, you should ask for extra advice about this.

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