

PEARL & CO

ADVICE CONCERNING MAKING A WILL

This information is provided in order to help you make your Will.

MAKING A WILL

Before making a Will you need to think carefully about which persons depend upon you and who you wish should inherit from your Estate. Make a list of your children, siblings, parents, cousins or anybody else who may depend upon you and who you feel should benefit from your Estate after you die. It is not necessary to specify amounts when making a Will, although you may wish to make a specific legacy to a friend or relative of a specific amount. You may also wish to make a legacy of specific items from your Estate such as jewellery and paintings or other items of sentimental value. However, this is not strictly necessary and if you have nobody in mind then you can leave your Estate to be divided between various beneficiaries and your Estate can be divided into percentage terms.

DO YOU HAVE CHILDREN?

If you have a child below the age of 18 then it is very important to consider appointing a Guardian to look the child to ensure that he or she does not go into council care. The Guardian will ensure the child is looked after properly to ensure that he or she goes to school, is housed, clothed and fed. It is best to appoint a person or preferably a couple who are young enough and well enough and responsible to ensure that your children are properly cared for. You can plan in your Will for the Estate to make a loan to the Guardian to enable him or her to purchase a bigger property while the children require housing and so that when they grow up and they are no longer in need of such accommodation, for the house to be sold and the proceeds split between the Guardian and your children.

INHERITANCE TAX

Inheritance tax (IHT) is charged on Estates where the assets exceed the nil rate band. The nil rate band is currently £325,000.00. The nil rate band increases most years. No inheritance tax is payable where legacies are paid to a spouse/civil partner. Charitable legacies are exempt from IHT.

THE REQUIREMENTS FOR MAKING YOUR WILL

A Will to be valid must be signed at the foot or end and witnessed by two independent persons who are over the age of 18 and have mental capacity. If a Will is made under duress or by force, then it is likely to be successfully challenged. Care should be taken to make sure that the witness to the Will is not mentioned as a beneficiary and is also not a spouse/civil partner of the beneficiary. If a Will is inadvertently signed by a beneficiary or a spouse/civil partner of the beneficiary then it will still be valid but the beneficiary will be excluded from benefiting from the legacy.

REVOCATION OF A WILL

A Will may be revoked by tearing or destroying by the Testator with the intention of revoking the Will. A Will may also be revoked by a later Will which specifically revokes all earlier Wills provided that the later Will is validly signed and witnessed. A Will may also be revoked on marriage, unless it is made in anticipation of a marriage and it specifically states that the Will is made in contemplation of a marriage to the intended spouse who should be named.

APPOINTING AN EXECUTOR

An appointment of an Executor should always be considered and before deciding who the Executor is likely to be you should consult with that person or persons to make sure they are willing and able to act as your Executor. An Executor is not entitled to be paid unless he or she is a professional and there is a clause in the Will which permits charging by the Executor to the Estate. It is always a good idea to name more than one Executor wherever possible, particularly where there are children below the age of 18 who are likely to benefit from the Estate. You can also name an alternative or reserve Executor who can be appointed in the event that the first named Executors either are unable to or are unwilling to act as Executors. It is normal practice for the Executor to also be appointed as Trustee of the Estate but these functions may be split.

CAN MY WILL DEAL WITH FOREIGN ASSETS

The Will can deal with foreign assets provided that the asset is located in a jurisdiction which recognises an English Will.

Advice should always be sought from a foreign Lawyer if you have a property overseas, since some countries do not permit complete freedom when making a Will and certain jurisdictions require provision to be made for certain classes of relatives.

CAN MY WILL BE MADE LIMITED TO THE UNITED KINGDOM?

A Will can be limited to assets within the United Kingdom and, in fact, any other jurisdiction as well. Thus, you may make a Will in this country and also another Will in another country provided that both Wills do not revoke all previous Wills.

CAN AN EXECUTOR BENEFIT FROM MY WILL?

The answer is “Yes” an Executor may benefit from your Will. The only person who may not benefit is a witness or a spouse of the witness to the Will.

WHAT IF I AM BLIND OR CANNOT WRITE MY NAME?

A Will can still be made in these circumstances if the Testator cannot write his name or is blind then the Will will contain a special clause dealing with this eventuality and provided that the correct wording is used, the Will will be valid.

IS IT VERY EXPENSIVE TO MAKE A WILL?

A Will is not the most expensive document to make but advice should always be obtained from a Solicitor who is experienced in drafting Wills. We, at Pearl & Co., have about 25 years experience of handling Estates and drafting Wills. It is always preferable to use a Solicitor, whenever possible, in making a Will particularly as the language employed is important and incorrect use of language may result in the intended beneficiary not benefiting in the way you intended.

WHAT IF A PERSON DIES INTESTATE?

If a person dies intestate the law sets out the order of priority of persons who may inherit your Estate.

APPLYING FOR A GRANT OF PROBATE

After a person dies the Executors have the task of applying for a Grant of Probate in order to administer the Estate. A Grant of Probate is issued by the Court to enable the Executors to give a valid receipt to all Institutions where assets may be held.

In order to prepare for the Grant of Probate a list of the assets and liabilities needs to be made and where necessary a return made to Revenue & Customs. It is the Executor's duty to apply the terms of the Will in accordance with the wishes of the deceased.

THE FUNERAL

The first obligation of the Executor is to arrange for a funeral of the deceased. If the Will specifies the deceased's wishes these should, whenever possible, be respected. For example, if the deceased was a member of a particular religion it is advisable to liaise with the relatives to make sure that the deceased is buried or cremated in accordance with the rites of the religion to which he or she belongs.

The costs of the funeral are the responsibility of the Executors. These are the first charge on the Estate and must be paid above the claims of any other creditor, even if the Estate is insolvent. If the Estate has no ready money available to pay for the funeral, then most banks will agree to release sufficient funds to pay the Undertaker.

THE HEADSTONE

If the Will provides for the cost of a Headstone to be paid for by the Estate, then arrangements should be made by the Executors for a Headstone to be erected over the grave or if the person has been cremated for a suitable plaque or memorial to be erected in a Garden of Remembrance.

THE INLAND REVENUE ACCOUNT

As mentioned earlier in this guide, the Executors have the obligation to complete an Inland Revenue account. Where the Estate is within the nil rate threshold, then the form to use is an IHT205 which is an abbreviated form of the account.

Where the Estate is above the nil rate threshold then a more detailed Inland Revenue account is required. This is a very detailed form and great care should be taken in ensuring that all assets are listed and, in addition, that the Executors report any gifts the deceased may have made prior to death to make sure that correct disclosure is made to Revenue & Customs.

It is the Executors responsibility and legal duty to pay inheritance tax on the Estate. As the Executors bear personal responsibility for this task, they must make very careful checks of the records of the deceased before completing the form.

PAYING THE INHERITANCE TAX

Inheritance tax is payable upon delivery of the account. This makes it practically difficult for Executors to realise assets in order to pay the inheritance tax. However, the form does contain a section which enables the Executors to apply to Banks and Building Societies to release sufficient funds to pay the tax.

TAX ON THE DECEASED'S RESIDENCE

If the deceased owned a residence, then the Executors can elect to pay the inheritance tax by instalments for a period of 10 years. The first instalment is payable on the six month anniversary following the death and each anniversary thereafter. Interest is payable where tax has not been paid and it becomes charged after six months from the date of death.

OATH FOR EXECUTORS

The Executors will need to make an affidavit confirming that the deceased has died and stating the date of birth of the deceased, his last address and the date of death. The Oath will declare that the Will exhibited is the last Will of the deceased.

The Oath will also declare whether or not there is any minority or life interest arising which continues and also will refer to any land which may have been held by the deceased as Trustee and which continues to be held as part of the Trust following and notwithstanding the death.

The Oath will conclude with confirming whether or not the Estate is within the band when Inland Revenue account is not required to be delivered and where one is required, will state the gross and net values of the Estate. This means that the Estate is declared as having a value before calculating liabilities and a value after the liabilities have been calculated.

DUTIES AFTER THE GRANT OF PROBATE HAS BEEN ISSUED

Once the Grant of Probate has been issued the Executors can then begin the task of collecting any assets and discharging the liabilities of the deceased. Once these have been collected in then the beneficiaries should receive payment of their legacies and inheritance.

**FOR MORE INFORMATION AND TO INSTRUCT PEARL & CO SOLICITORS
PLEASE CONTACT US ON 020 8202 6202**