WILL WRITING GUIDE
(WILL APPLICATION)

Making Your
Last Will & Testament

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Your Will Be Done...

Your Will is a legally binding document, designed to accurately reflect your wishes upon death, to define your entitled Gifts and Distributions, and to mitigate any Inheritance Tax liability. These same instructions will also ensure, as far as is possible, that your Funeral Wishes are made in advance, that your Estate is Granted Probate as quickly as possible, and that you have done as much as is possible to ease matters for your family, friends, and all others concerned.

Your Will must be clear and unambiguous, and must be acceptable to both the Probate Office (HMCTS) and to the Capital Taxes Office (HMRC). Your Will must also be at hand when needed. A Will that cannot be found is not a Will at all. Furthermore, it is your original, wet-ink signature Will that is required, and a copy is unlikely to be formally accepted. It should therefore be stored within a known and secure location for effective retrieval.

Your Will is entirely individual, and relates only to you and your own estate. You can only use it in respect of any property or assets which you own, or in respect of your share of any joint or multiple ownerships. Your Will may however, be the same as your spouse or partner's Will, in which case it is a Mutual Will – often called Mirror Wills.

Wills are usually valid only within the country in which they are written because they are in effect an enactment of the Laws of that Land. In this regard, the United Kingdom comprises of three separate jurisdictions being England & Wales, Scotland, and Northern Ireland. Likewise, your Estate is defined as being property and assets situated in England & Wales, or residing under English Legislation. Foreign property and assets might not therefore be subject to the terms of your English Will.

Why Make a Will?

Making a **WILL** is the only way to ensure that your wishes are carried out after your death. If you have not made a valid Will, your property will pass according to the Law of Intestacy. This may not be what you would have wished; and in any event it is likely to take longer to materialise without a Will. In the interim your beneficiaries may not be able to draw any essential money from your estate; and it may also lead to both uncertainty and dispute in not knowing how you wanted things to be. In this respect, your Will shows that you cared enough to sort things out in advance.

If you are **SINGLE**, and without any financial dependents, your Will is still valuable both in monetary terms, and in providing some peace of mind for your remaining family and friends.

If you are a **MARRIED COUPLE** or **CIVIL PARTNERSHIP**, don't assume your partner will get everything that you would like them to. All other members of your immediate family may have a potentially valid claim on your Estate.

Furthermore, un-married partners may be treated as a single person, and a surviving partner may get nothing at all.

If you are a **PARENT** with Minor Children under the age of 18, you should consider who would look after your children in the event of your death. This is particularly important for one-parent families or unmarried parents. Appointing a suitable Guardians may be vital for your child's well-being; and without this guidance, the Court will decide upon the future care of your children.

If you are **RETIRED**, it's quite possible that you made a Will a long time ago. It might need updating to include or exclude any changes to your family and friends; and it may also be out-dated as a result of changes in the Law.
If you are sure that you're going to die at some point in the future; you can also be certain that making a Will can only help everyone after you have gone.

Executors (Estate Administrators)

Executors are the appointed Administrators of your Estate whilst the various requirements of your Death are concluded. It is they who will take care of everything that needs to be done, and although this usually only takes a short period of time, the magnitude of this role is often under-estimated at the time of writing a Will.

An Executors duties include the following minimum requirements:

- Registration of Death with the appropriate Department of Births, Deaths, & Marriages; and subsequently obtaining a statutory Certificate of Death.
- Funeral Arrangements as required by Law, and also in accordance with the wishes of the Deceased.
- Grant of Probate which is necessary before any part of your Estate can be accessed or distributed in accordance with the terms of your Will. This involves making an application to the Probate Office by way of several statutory and HMRC Tax forms, in order to obtain a Grant of Probate Certificate.
- Settlements & Distributions. This includes the payment of all statutory fees, taxation liabilities, and funeral expenses; together with the final Distribution of the Estate in accordance with the terms of the Will.

Your Executors should therefore be people and/or firms who you trust; and who you feel confident will be able to administer your Will when the time comes. It is usual to appoint up to 4 Executors.

Personal Executors who do not otherwise benefit under the Terms of your Will might well appreciate some form of recognition for their accomplishment; and Professional Executors usually receive an agreed Fee. Furthermore, Executors may also be Beneficiaries as is often the case with spouses, partners, and adult sons and daughters.

Trustees (Financial Caretakers)

If your Will includes a Trust then you will also need to appoint Trustees. These may be the same persons and Firms as your Executors, and they may only have similar Powers of Authority for similar periods of time - as is the case with an Absolute Trust. More usually however, the role of a Trustee lasts for many years to come - in accordance with the purpose of the Trust; and may also include significant Power of Authority as is the case with a Discretionary Trust.

You may have one or any number of Trustees, although in practice these are often the same Persons and Firms as your Executors. However, whilst there is no law against a Trustee also being a Beneficiary, in practice this may lead to conflicts of interest, and so is not best practice.

Guardians (Child Caretakers)

Guardians are people you nominate to look after certain other people who were previously cared for by you. In this regard, a Guardian may be almost any number of Persons or even Firms of your choice; and they may be appointed to care for anyone of any age that you wish to be looked after.

In common practice however, Guardians are usually Family Members chosen by you to take care of young children or elderly parents. Whilst the latter type of person is not a mandatory requirement - because they have more than attained the Age of Majority of 18; any children aged less than 18 at the time of your Death must have a Legal Guardian.

Legal Guardians are any Persons responsible for and charged with the physical and financial care of another dependent person. English Law bestows this authority and responsibility upon all Natural Parents by default; and it may subsequently be Granted by a Court of Law to other Guardians. It is also a requirement of Law that all Minor Children, and Persons of any age who are Registered as being either (Physically) Disabled or of Mental Incapacity, are under the formal care of an appropriate Guardian.

Whilst the personal aspects of this may be obvious, it is also wise to consider that a Legal Guardian usually has full financial authority too. In practice, this means that they have the discretion to use any assets left by you to your Children or other Dependents, entirely as they see fit. Typically, Legal Guardians are therefore both personal caretakers and Financial Trustees, and should be chosen by you with appropriate care.

Your Estate

Your Estate comprises everything you own either singularly, jointly, or severally with anyone else. Typically, this includes your home and any other property, your personal belongings and home contents, your money and all other financial assets, and any business assets or commercial interests.

For the purpose of valuing your Estate, this will be expressed as a monetary amount by HMRC to ascertain any liability to Inheritance Tax. For all other purposes, your Estate is dealt with either in its current physical and financial status, or if otherwise, in accordance with the Terms of your Will. On this basis, and for the purpose of Distributing your Estate to your chosen Beneficiaries, your Estate is usually dispersed within the following asset categories:

Chattels (Personal Possessions)
Your personal possessions and home contents are known as your Chattels, and are often gifted separately to the main part of your Estate.

You should clearly state any specific items that you would like to give to any particular people; and there are maximums or minimums in this respect. Any Chattels not otherwise specified under the Terms of your Will are dealt with as the main Residue of Estate.

Specific Gifts
In a similar manner to your Chattels, you might like to leave Specific Gifts to certain Persons, Charities, or Organizations. Whilst these are classed by HMRC as Estate Gifts for Inheritance Tax purposes, they are enacted in priority of the Residual Estate Gifts.

You should clearly state the Item/Asset/Monetary Value of any such Gifts, and also detail any special Terms of Inheritance. All other assets not otherwise specified within the preceding Terms of your Will are dealt with as the Residual Gifts of Estate.

Residual Estate Gifts

The remainder of your Estate, which is everything not otherwise gifted as Chattels or Specific Gifts as above, thus become the Residual Estate Gifts.

Unless you stipulate otherwise, every such material or financial item will be given a fair and current monetary value if it does not already naturally have one; and will then be subject to Distribution in accordance with the Terms of your Will. In practice this may either be dealt with literally - by selling or liquidating all material assets for sums of money; or it may be accomplished through any agreed trade-off arrangements. Such agreements may either be formalized, by way of a Trust or Deed of Postponement; or they may simply be enacted by a hand-shake,

Your Beneficiaries will receive your Residual Estate after all Specific Gifts have been distributed. For a family man or woman, your Beneficiaries are likely to be your spouse and, if they die before you, your children and/or grandchildren.

For a single man or woman, this may be quite different. You may also wish to consider who you would like to benefit if none of these apply or survive you.

Business Assets & Excluded Persons

In the interest of maintaining clarity and expediency, you should also specifically state how any Business Assets or Commercial Interests are to be dealt with. Whilst this may be obviously conclusive for wholly owned Assets and Rights, it might be more complex where Joint or Several Ownership exists.

It may also be relevant, particularly in the modern world practice of both separated and second families, to specifically exclude anyone who would have previously been entitled to benefit from your Estate or who may still choose to try and make a claim against your wishes.

Funeral Arrangements & Medical Directives

You may wish to make specific requests and provisions for your Funeral arrangements. This will be of great help and comfort for everyone involved. It is therefore quite common practice to set aside a sum of money to cover immediate costs such as Funeral Expenses and other Statutory Fees; and also to state whether you are to be Buried or Cremated, and how and where this should be.

You may also choose to Donate your living organs or deceased body to be used for the benefit of other living people or medical advancement. Within reason, you can be as specific as you like about this.

Inheritance Tax (IHT)

Inheritance Tax is a Death Duty levied by HMRC upon the Value of your Estate in excess of the prevailing Inheritance Tax Allowance. In most cases it must be paid within six months of the Date of Death irrespective of the state of access to the value of your Estate. Furthermore, it is the responsibility of your Executors to make this payment, and no allowances or remissions will be permitted simply because they do not have access to the Estate Assets.

It is unlikely, but not improbable, for any significant financial difficulties to arise over Inheritance Tax if sufficient forward planning is put in place. This primarily means making a Will so as to minimize any delays in obtaining Probate; and ensuring to the best of your ability, that sufficient funds will be made available to settle an expected liability.

If your Estate, combined with that of your simultaneously deceased Spouse or Civil Partner amounts to more than the prevailing IHT Allowance, your Estate is likely to be subject to the payment of Inheritance Tax on the excess amount.

Each and every individual Person in England & Wales has their own **Inheritance Tax Allowance** of **£325,000** as at **6th April 2021**. Any and every amount of your Estate valued in excess of this figure is potentially and probably liable to Inheritance Tax levied at a rate of 40% on the total excess value.

Until recently, it was necessary for a Married Person or Civil Partner to use their own IHT Allowance upon their Death; otherwise, this allowance was foregone completely. It was a case of use it or lose it. Since April 2007 however, the Married Persons or Civil Partners IHT Allowance may be deferred until used upon the Death of the Widow/Widower. This amounts to an effective Tax Transfer, and thus Inheritance Tax for Matrimonial Partners does not become liable until both Persons have died, and only then applies to an Estate value in excess of **£650,000** as at **6th April 2021**.

Furthermore, if you own your own home (Main Residence) and you leave it to your Descendant Children/Grand-Children, you are granted a further **£175,000 IHT Allowance** taking your total allowance to **£500,000** so long as your Total Estate Value is not more than **£2 Million.** Thus a Married or Civil Couple have a total Inheritance Tax Allowance of £1 Million again provided the Total Estate Value is not more than **£2 Million**

This has negated the need for many previous IHT Trusts; although not completely removed their necessity or use as they are frequently utilized for other similar Financial Estate Planning purposes.

When making your Will, please complete the Estate Valuation page carefully so that we can help you plan your finances efficiently and appropriately – especially concerning future Inheritance Taxation liability.

Lifetime Storage

Last but not least, a Will that cannot be found is not a Will at all. It is not acceptable to tell a Court what the Will said; nor is it usually valid to present a copy of it. In this respect, think of a Will as a £500,000 note. You either have it or you don't!

It is therefore necessary to ensure that you Will is kept somewhere safe, and that it can be found as and when it is needed. You may be happy to simply store your Will at home or an Executors home, but it would be preferable in most cases, to use a secure storage facility.

HM Courts & Tribunals Service enables you to safely store your Will and any other important documents up to a maximum capacity of an A4 envelope. There is a nominal one-off fee for the whole of your life; and the service also includes the Registration of your Will in England & Wales to verify the existence of your Last Will & Testament in the event of any doubt or dispute. We can arrange all this for you at your request.

Dying Intestate

The flow chart on the back page shows you what usually happens if you die without having made a Will.

This is called Intestacy, and whilst in some instances it might not cause any serious problems; more often than not it does. At the very least it incurs unnecessary delays in obtaining Probate and uncertainty for your family dealing with your death; and in more serious cases it can result in family disputes, contentious court proceedings, and even misappropriation of the value of your Estate.

There is a very appropriate saying in the Financial Planning industry, and it is this:

"Right Money; Right Time; Right Hands"

This is a very good summary phrase of the value of a Will and/or a Trust.

If you have not already done so, then maybe now is the time to spend a little effort and money to help protect a relatively large amount of money and to give to your family some peace of mind at a time when it may be most appreciated.

Being a qualified member of the **Society of Will Writers**, we are proficient and happy to help you write **your Last Will & Testament.**

Fees & Charges

Our current Will Writing Fees and Service Charges are as follows:

• Single Will	£125.00	Each Document
• Joint Mirror Wills	£175.00	Pair Documents
• Power of Attorney	£110.00	Each Document
• Trust Deed	£275.00	Each Document
• Documents Storage	£45.00	Each Person