



**CLARENCE TRUSTEES**

WILLS, TRUSTS, & PROBATE



# Why Do I Need a Will ?

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# WHY DO I NEED A WILL ?

Most people know what a will is and most, if you ask them, will agree that they need to have one. But worryingly, most do not know why they should make a will without delay and they do not know what will happen to the assets in their estate if they do not have a will.

If you die without a will you are said to have died “intestate” – and if you die intestate then your estate will be distributed according to some arbitrary government rules known as the Laws of Intestacy.

Many assume if they do not have a will that their assets will automatically pass to their spouse – but unfortunately due to the Laws of Intestacy this is not the case.

In addition, those who are left after you have passed away will have a much more difficult time dealing with your estate than they would have had there been a will.

This guide sets out to explain in more detail why it is vital that you prepare a will as soon as possible.

## 1. MARRIED COUPLES

Even if you are married but die without a will (i.e. intestate) the Laws of Intestacy will apply. Under these laws part of your estate could by-pass your surviving spouse and could pass to other family members.

A general rule relating to property held as joint tenants (i.e. held “jointly” as opposed to as “tenants in common” is that on the death of one of the joint owners, the deceased's share of the joint property passes automatically to the surviving joint owner, and is not subject to the Intestacy Rules. Indeed, the property cannot be passed to anyone else under a will or by the Laws of Intestacy.

Where property is not held jointly but is rather held as “tenants in common” then the deceased’s share would not, under the Laws of Intestacy, pass automatically to the surviving spouse and would instead be dealt with as outlined in the rest of this section.

The below outlines how the assets in your estate which are not owned “jointly” with your spouse might be distributed if you are married but die intestate. Where you read the word “spouse” please take this to include a civil partner too.

## **SURVIVING SPOUSE AND SURVIVING CHILDREN**

The spouse takes:

- *The personal effects (the deceased's personal belongings and chattels).*
- *£250,000 free of Inheritance Tax.*

The residue of the estate is then split equally between the surviving spouse AND the surviving children.

## **SURVIVING CHILDREN BUT NO SURVIVING SPOUSE**

Where there is no surviving spouse but there are surviving children, then the estate will be split between the surviving children in equal shares.

## **SURVIVING SPOUSE, NO CHILDREN, PARENT(S) OF DECEASED STILL ALIVE**

If there is a surviving spouse and no children but the deceased has pre-deceased one or both of their parents, then under the Laws of Intestacy the estate will be distributed as follows:

The spouse takes:

- *The personal effects*
- *£450,000 free of Inheritance Tax*
- *One half of the remainder of the estate*

The parents take the other half of the remainder of the estate

## **SURVIVING SPOUSE, NO CHILDREN, NO PARENT(S), BUT SIBLINGS**

If there is a surviving spouse, no children of the deceased, no parents of the deceased, but there are siblings of the deceased then the estate is distributed as follows:

The spouse takes:

- *The personal effects*
- *£450,000 free of Inheritance Tax*
- *One half of the remainder of the estate*

The siblings receive the rest of the remainder of the estate in equal shares.

If there are no surviving siblings their share will go to their children (if any) in equal shares and if there are no children of the siblings then the order in which the rest of the estate must be distributed under the Laws of Intestacy is:

- *Half-brother or half-sisters or their children*
- *Grandparents*
- *Aunts and Uncles or their children*
- *Half-aunts and half-uncles or their children*

## **NO SURVIVING RELATIVES**

If you were to die without a will and had no surviving spouse, no surviving parents, siblings, grandparents, aunts or uncles, then under the Laws of Intestacy the entire estate would pass to:

- *Crown; or*
- *The Duchy of Lancaster; or*
- *The Duke of Cornwall.*

As you can see, should you die without a will your estate will not necessarily pass the way you want it to and it could cause long term complications for your family.

Additionally, you can also see how much more difficult it will be for those who are left to administer your estate after you die.

## **2. UNMARRIED COUPLES**

If you are in an unmarried partnership, only property owned as joint tenants (i.e. “jointly” as opposed to as “tenants in common”) will pass to the surviving partner if there is no will. But property owned solely by one partner will not go to the other partner. This would include a situation where a property is owned as “tenants in common”.

Instead such property will pass to children, then grandchildren (or remoter descendants), then parents, siblings (and the children of any who have died), then grandparents, then aunts and uncles (and the children of any aunts and uncles who have died).

If there are no living relatives in any of the above classes, then the whole estate will pass to the Crown or the Duchy of Lancaster or the Duke of Cornwall.

### 3. HOW A WILL CAN HELP

If you have a will that has been drafted by a professional will writer it will have a number of benefits and it will provide peace of mind for you - and especially your family when you pass away.

DIY wills or cheap wills almost always turn out to be a false economy, often causing more problems than they solve. A professionally-qualified will writer can prepare a will for you that will:

- *Ensure the people you want to benefit from your estate do actually benefit and in the way that you want.*
- *Make sure your children benefit from your share of the family home should your spouse re-marry.*
- *Appoint legal guardians of your choice to look after any of your children who are under the age of 18 in the event that they are orphaned (as opposed to them being put into care by Social Services).*
- *Exclude specific family members that may be estranged and whom you do not want to benefit from your estate.*
- *Assist with preventing your home being used to fund care home fees charged by the local authority.*
- *Ensure the value of any business you own is protected and that business can continue after your death.*
- *Help reduce the liability of your estate to Inheritance Tax on your estate, possibly the most hated tax of all.*

Finally, if you use a professional will writer to prepare your will they will usually cover other vital matters such as:

- *Attending a meeting with you and your witnesses to ensure that the will is correctly executed. A will that is not executed correctly is not valid and this would result in the estate being disposed of in accordance with the Law of Intestacy.*

- *Ensuring that your will is stored professionally in an ultra-secure environment safe from fire, theft, dampness, and being misplaced. For more about storage of will see our separate guide entitled “Why should I store my will?”*
- *Notify your chosen executors of the will and where it is stored so that when it is finally required they will know that [a] there is a will; and [b] where it is. If a will cannot be located then this will result in the estate being disposed of in accordance with the Laws of Intestacy.*
- *Registering your will with a will registry to further improve the ability to locate the will when it is finally required.*

## 4. EVEN IF YOU HAVE A WILL

You may already have a will. However it is important not just to HAVE a will but to have an APPROPRIATE will. There are a number of circumstances under which you will need to revise your will or under which your existing will may even be invalid:

- *You should consider revising your will if the Executors or Beneficiaries or Guardians in your existing will have passed away. Alternatively they may no longer be appropriate. For example, a person you had previously appointed as Guardian of your children might since have been convicted of a crime and no longer be a suitable Guardian. An Executor named on your will might have lost mental capacity and be no longer able to fulfil the role of Executor. Finally, there may be a Beneficiary in your will whom you no longer wish to benefit from your estate. These matters can only be corrected by writing a new more up to date will that revokes all previous wills.*
- *If you have become divorced since you wrote your will you will almost certainly want to write a new will. On divorce, the person you become divorced from is treated as being dead for the purposes of distributing your estate. If a proportion of your estate was to be left to your ex-spouse this proportion of your estate will have to be dealt with under the Laws of Intestacy.*
- *If you have re-married since you wrote your will your marriage will have automatically revoked the will i.e. having re-married you have no effective will in place. Having been remarried this would be of particular concern because not only would your estate be dealt with under the Laws of Intestacy but a very unjust outcome could result when the estate is distributed. Where a widow or widower or divorced person has remarried, it is advisable not only to draft an appropriate will but also to use trusts in the estate planning to ensure a fair outcome for the new spouse and the children of the deceased or ex-spouse.*

- *You may have children who have special care needs. On inheriting your estate it could be that they would lose certain state benefits that they otherwise might have been entitled to. An appropriate will with a trust in the estate planning would avoid this.*
- *Should your will not have a disaster clause in it you should probably consider writing a fresh one. A disaster clause will specify reserve beneficiaries for your estate in the event of a disaster i.e. if all your beneficiaries are lost together – e.g. in a car accident.*

There are many other events and circumstances that can affect how valid / appropriate your will is. A will is written at a specific point in time when a particular set of circumstances prevail. As life moves on it is necessary to review your will and ensure it still meets your needs – and if it does not, then it should be revoked and a new one written.

## 5. HOW WE CAN HELP

Making sure that you have a will is not enough. It must be the right type of will - one that is professionally drafted to take into account your wishes, and your personal and financial circumstances.

Clarence Trustees can give you the right advice to help you plan your estate to achieve your aims AND provide all the legal documents including your will, any Lasting Power of Attorney, and any trusts that may be required.

In short, we tailor your estate planning and make it work for you and your family.



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