



WILL POWER

ESTATE PROTECTION LTD

How to make a Will



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Why is it essential to make a Will?

Everyone knows what a Will is – most people agree that they need one – but not everyone knows precisely why you need to write a Will or even how to write one.

Many people assume quite wrongly that all their property and money will automatically pass to their spouse on their death, but the truth is that if you don't make a Will the law deems you to have died intestate.

This can be distressing for your loved ones who may suffer financial hardship as a result, at a time when they least need it. So it's crucial to understand how to write a Will and its importance to you and your family.

If you make a Will before you die then the legal process in dealing with your affairs will be much easier (and therefore less expensive) and much simpler for your loved ones to cope with at a time when they will need as little extra stress as possible.

Once done, you can relax, forget about it for the time being (we suggest a review every 3-5 years) and get on with enjoying your life.

What happens if you don't write a Will?

If you don't make a Will and die intestate you risk the adverse consequences, including:

- You have no control over who will inherit what you own. Who inherits what depends on which of your relatives is alive at your death and how large your estate is. Spouses may not receive everything and charities, friends and unmarried partners may receive nothing.
- If you are a parent of young children, then you will have no control over who looks after them when you die. In such circumstances, the courts will appoint a guardian on your behalf – someone you may not have chosen.
- If you are not married/not in a civil partnership and have no Will your partner may be unable to inherit from you, which can create further heartache and financial problems on your death.
- Your estate may have to pay more Inheritance Tax (IHT) than necessary if the value exceeds IHT thresholds and you haven't considered a Will which mitigates IHT for your circumstances. (See Will Power's free [Inheritance Tax Planning Guide](#).)
- Your estate value may be taken into account for future care fees assessments by the Local Authority.
- Your family may have to use additional professionals to advise how the estate should be distributed. Their charges could mount up considerably, leaving less money for your family.

What happens if you do Write a Will?

If you do make a Will, you can rest easy that you and your loved ones have peace of mind:

- You can name the beneficiaries (including charities and friends if you so wish) and you will know with certainty who will inherit from you.
- You can appoint guardians for your minor children who will look after them until they reach the age of eighteen.
- You can distribute your assets in such a way that IHT can be mitigated, and your assets protected.
- Your family will have clear directions on how to deal with your affairs.

What should you include in your Will?

There are several elements it is recommended you consider including when writing your Will:

- Your property, money, possessions, and other assets (make provision in your Will for any that you may not have specified.)
- Your beneficiaries, i.e. the people to whom you wish to leave your property, money, and possessions.
- The details of the people who should be the guardians and look after your children if they are under 18 years of age.
- Your specific funeral wishes, for example, if you wish to be buried or cremated. Your executors are the decision-makers for your funeral arrangements but are not required to heed the wishes stated in your Will. We suggest you ensure your family and executors are aware of any detailed funeral wishes you may have.
- Who you wish to carry out your wishes and administer your Will and estate after your death. These are your named executors.
- They will be required to assemble the assets of your estate, administer the correct paperwork, pay debts, taxes, and funeral costs from the estate monies.
- They will need to distribute the bequest, including charities, and transfer any property to beneficiaries.
- It is common to appoint at least 2, and up to 4, executors (in case an executor dies or is unable to perform their duties) with responsibility for administering your affairs after your death. For example relatives or friends, professionals such as your will writer, solicitor, accountant, or bank.
- Being an executor involves considerable responsibility and time-consuming administration, so it is important to choose executors with whom you have discussed the role and confirmed they are willing to act for you.

Avoiding the Will writing pitfalls

Ensure you are aware of the provisions that make a Will legally valid.

- Over 18.
- Made voluntarily.
- Be of sound mind.
- Sign in the presence of 2 witness (both over 18).
- Signed by 2 independent witnesses, in your presence.
- Witnesses cannot be beneficiaries.
- If you amend your Will, you must repeat the same signing and witnessing process.



There are legal requirements and potential pitfalls to avoid when writing your Will:

- You must be 18 years or over.
- The Will must be in writing.
- You must be of sound mind with the capacity to understand the contents of the Will you are signing, and the Will must be made without undue influence from another person.
- The Will must be signed in the presence of 2 independent witnesses.
- The 2 witnesses must sign the Will in the presence of the person who has just signed the Will.
- A witness (or their spouse) cannot benefit from a Will.

- It is prudent to ensure that the Will includes the date on which it is signed.
- Consider all your property and assets and make provision in your Will for any that you may not have specified.
- Take into account the structure of your beneficiaries, bearing in mind that a beneficiary may die before you.
- Review or update your Will as soon as your circumstances change: death of spouse or partner, marriage, or civil partnership, divorce or separation, additional children or grandchildren, a property move or retirement.
- If you change your Will ensure you make a new Will or 'Codicil' (a formal supplement to your Will) and make certain these changes are signed and witnessed appropriately to ensure the revisions are legally valid. If a complicated change is involved, it is usually advisable to make a completely new Will.
- Generally speaking, we are all free to dispose of our assets as we want to. However, the law does protect people who have been financially dependant on the deceased. This protection comes in the shape of the Inheritance (Provision for Family and Dependents) Act 1975; known as the Inheritance Act.
 - Ensure you are aware of the provisions of The Inheritance Act. Spouses, civil partners and unmarried partners, children, or other dependents may be able to claim if the provisions of the Will are deemed not to have provided adequately for them.
- Consider HMRC Inheritance Tax implications and potential Local Authority Care Fee charges and structure your Will or Trust to mitigate these effects. (See the [Will Power Inheritance Tax Planning Guide](#).)
- Think about structuring your Will appropriately if:
 - You or your spouse may become vulnerable and valuable assets or property may fall foul of latter-day unwise decisions or even fraudsters. (See also [Lasting Powers of Attorney](#).)
 - There is a possibility of bankruptcy, and you wish to protect your assets so ensure they are not seized if you (or your children after your death) should go bankrupt.
 - There may be claims on your estate when you die by people you would not want to inherit (e.g. ex-spouses/partners, estranged children etc.).
 - You have remarried, and you wish to keep your assets for your bloodline. Your assets may go to your new spouse when you die, and your children may be disinherited.
 - You have children with problems (such as alcohol, drugs, or gambling) or those with learning difficulties, who would benefit from some independent control over their inheritance.

Where to store your Will

Keep your Will in a safe place and advise your executors and family members where it can be found.

We advise professional, protected Will storage to ensure it is safe and secure with other important documents.

Will completion

Once you have completed your legally valid Will, ensured it contains the provisions and beneficiaries you have chosen and the executors you have appointed, signed it correctly, and stored it safely, you can feel satisfied that you have supported your loved ones and can now simply forget about it.

You have the peace of mind that you can enjoy your life with your family provided for and if there are no substantial changes in your circumstances, there is a need to look at your Will for another 3 to 5 years, (just to check if there have been no changes or updates, personally or legally.)

What happens when you die?

A Grant of Probate

As discussed, you should have named one or more executors in your Will. An executor is a person, or persons, who you have chosen to administer your estate on your death.

A Grant of Probate is a legal document that may be required to administer your estate when you have died.

Once an executor or administrator has successfully applied for a Grant of Probate (or the Letters of Administration have been obtained if died intestate), they can then arrange the legal, tax and administrative duties involved in the administration of your estate.

How a Grant of Probate works in England and Wales

The executor will need to find out if a Grant of Probate is required, and if it is, it will give them the legal authority to deal with probate and administer your estate.

If you did not have a legally valid Will in place, inheritance law will decide on the appropriate person to administer the estate. This person is known as the administrator, who may need to obtain a Grant of Letters of Administration instead.

When is a Grant of Probate needed?

A Grant of Probate may be required for an estate when:

- There are significant cash holdings in an account.
- Stocks and shares are included.
- Property or land are included.
- There is Inheritance Tax to pay.
- If the above conditions are not applicable, then a Grant of Representation will not usually be required. (However, there can still be situations where this may not be the case, so consulting a Probate specialist is a vital step.)

What happens once a Grant of Probate has been obtained?

Once a Grant of Probate has been obtained, the probate process can get underway, and all the estate administration steps can commence. This may include:

- Locating the beneficiaries and contacting them.
- Collecting in any assets that belong to the deceased.
- Transferring or selling any land or property owned by the deceased.
- Settling any debts on the estate that may still be outstanding.
- Distributing the estate per the terms and conditions of the Will.

Summary

Why is it essential to make a Will?

Many people assume quite wrongly that all their property and money will automatically pass to their spouse/partner on their death, but if you don't make a Will the law deems you to have died intestate.

What happens if you don't write a Will?

If you DON'T make a Will and die INTESTATE and you will have no control over who will inherit what you own.

What should you include in your Will?

Your property, money, and possessions.

Your beneficiaries i.e. the people to whom you wish to leave your property, money, and possessions.

Who should be the guardians and look after your children if they are under 18 years of age.

Who you wish to carry out your wishes and administer your Will and estate after your death. These are your named executors.

Where to store your Will?

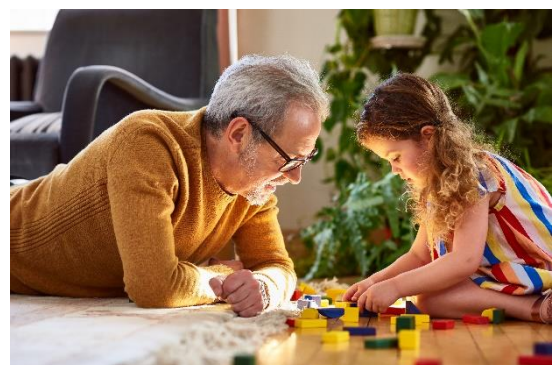
Keep your Will in a safe, secure place and advise your executors and family members where it can be found.

What happens when you die?

Once your executor has successfully applied for a Grant of Probate, they can then arrange the legal, tax and administrative duties involved in the administration of your estate, according to the wishes in your Will.

Make your Will, relax and enjoy life

Once you have completed your legally valid Will, you can essentially forget about it and simply get on with enjoying your life until you need to review it again, normally in 3-5 years.



About Us

Will Power has been helping families take care of their future since 1992 and we have well over 10,000 clients.

You can be sure that once we have spoken with you to consider your family's circumstances we will recommend the most appropriate Will, Trust or Probate services for your situation.

Our advice costs nothing and will not take up a great deal of your time to obtain it.

Contact Us

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Readers should not rely on, or take any action or steps, based on anything written in this guide without first taking appropriate advice.

Will Power Estate Protection Ltd

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Will Power is a member of the Institute of Professional Willwriters and is compliant with IPW code of practice. Our memberships of all the relevant professional bodies ensure that we keep up to date with the latest developments, and our Professional Indemnity Insurance cover means that you can have complete peace of mind in dealing with us. The information contained in this guide is based on appropriate legislation as of September 2021.

All information and ideas presented in this guide are subject to prevailing legislation and tax rules and will be dictated by personal circumstances. You should only use this guide as indicative of what may be the case or what you may be able to do. No action should be taken as a result of anything within this guide. Always seek appropriate advice. You should always take appropriate regulated advice before proceeding to act in any way to deal with any possible IHT liability or requirement you have.