Teachers Financial Planning

Wills and intestacy

This guide looks at the role of wills in estate planning

A woman in the USA was recently charged with the abuse of a corpse for digging up her father's grave in search of his 'real will'. When opened, the casket revealed his remains, a stash of vodka and cigarettes, but no will. The woman told police she had been prompted to act after she had not received anything when her father died in 2004.

This gruesome tale highlights how far some people are prepared to go to claim an inheritance, as well as how important the will document is to the entire process.

Can you write your own will? Of course. However making it valid, legal, tax-efficient and a true reflection of your wishes is far from easy. Making sure you approach the process correctly can save a lot of time and energy.

What to include in a will

A properly drawn up will should be the primary thing that is needed to determine your wishes after you die. There should be no room for conjecture or varying interpretation. To make sure your loved ones don't get bogged down in legal disputes over what you meant to happen to you assets, you will need to specify the following:

- who the beneficiaries will be
- who you would like to become legal guardian of any children under the age of 18
- who you are nominating to become the executor of your estate
- what should happen if your listed beneficiaries die before you do.

Often, this is a significantly more complex task than it may at first appear. It is recommended that you seek legal advice if you share assets with someone that isn't your spouse or civil partner, you own a business, have children from more than one partner or you live or own property overseas.

There is a difference, however, between a will that includes everything it should and a legal one. Due to the sensitive nature of what is dealt with by a will, making sure it is considered a valid legal document is an important way to close down any possibility of it being contested in the future.

For a will to be legal, you must:

- be 18 or over
- be of sound mind
- compose it entirely of your own choosing
- sign it in the presence of 2 witnesses who are not beneficiaries, spouses of beneficiaries or your family members.

Hiring a professional

In the past, only solicitors could be used to draw up a will that had a chance of standing up to official scrutiny. However, a change introduced on 1 October 2014 allows accredited accountants to prepare a will and undertake probate work.

Using an accountant, rather than a solicitor, can make good sense for many people, particularly those in business or who complete a self-assessment return each year. After all, who knows their financial position, not to mention their personal wishes and preferences, better than their accountant?

However, for administering your estate after your death, it is important to remember that accountants can only deal with uncontested wills - contested wills must still be handled by a solicitor.

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Dying without a will

Considering the central importance of a will in knowing accurately what a deceased person wanted to happen to their assets, it is safe to assume that the process is made significantly more long-term, complex and potentially contentious if there is not one.

The rules of intestacy govern how an individual's estate is divided up if there is no will. These rules underwent significant changes in 2014 so that now the surviving spouse or civil partner is heavily favoured in the intestacy process.

So, if a person was to leave behind an estate worth £750,000, the rules of intestacy dictate:

- if the deceased was married with no children, the entire £750,000 goes to the surviving spouse or civil partner
- if the deceased was married with children, the first £250,000 plus half of the rest goes to the partner and the rest goes to the children
- if the deceased was part of an unmarried couple with no children, the £750,000 goes to blood relatives
- if the deceased was part of an unmarried couple with children, the entire estate goes to the children.

There are variations on these rules in Scotland. Speak to us to see if this affects you.

Have you made a will?

Probably not, if the results of a survey by Opinium Research for unbiased.co.uk are to be believed. In their latest poll of 2,000 adults, less than half had written any sort of will at all. The research found that those closer to retirement age are more likely to have a will, but there is still a significant number who don't. The question is why? Is it because they assume that making a will is going to be difficult or expensive? Or is because they just haven't got around to it?

Already made a will?

If no one knows where your will is, all your plans could amount to nothing. Your wishes will not be known and your beneficiaries could face a huge tax bill. If you want to rest in peace without worrying about being exhumed in the future:

- check now that a copy of your will is where you think it is
- check that it is up-to-date
- let your executors know where it is
- call us to find out about any recent changes in estate planning and inheritance tax (IHT) legislation that may affect you.

Making sure that you know exactly what you are going to have to pass on to your loved ones, and that it is clearly listed in a legally valid will is an important step for everyone to take. The assets that have been built up over a lifetime are of no use to anyone if they are tangled up in long and potentially expensive disputes between those left behind. A valid will ensures that those assets can be put to use as soon as possible.

Valuing an estate

The final step in getting your affairs in order is to try and value your estate and get an idea of what the IHT liability is likely to be on it.

To begin evaluating an estate, you are going to need details of all assets and debts that apply. A person may also be planning on giving away assets as gifts when they die, so these need to be included too. When the gifts and assets are added together and the debts subtracted, you will be left with the total value of the estate in question.

IHT will need to be paid if the value of the estate is more than £325,000, although this threshold can be doubled by transferring an unused threshold between spouses or civil partners.

Over the course of an individual's life, it is often the case that the network of assets and debts built up can be disparate and complicated. It is always recommended that people who are unsure of any part of the process should seek professional assistance.

We can help you plan your personal finances.