

BVA

BANA VAID & ASSOCIATES
— S O L I C I T O R S —

Wills



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GUIDE TO CLIENTS ON WILLS

None of us like to think about death do we? However, deciding what happens to your estate when you die crucially important for ensuring your loved ones are looked after when you're gone and that your assets are distributed as you wish. A Will makes provision for how your estate will be administered and who will be responsible to do this after you have died.

So why make a Will?

It is important for you to make a Will whether or not you consider you have many possessions or much money. It is important to make a Will because:-

If you die without a Will, there are certain rules which dictate how the money, property or possessions should be allocated. This may not be the way that you would have wished your money and possessions to be distributed. Unmarried partners and partners who have not registered a civil partnership cannot inherit from each other unless there is a Will, so the death of one partner may create serious financial problems for the remaining partner. If you have children, you will need to make a Will so that arrangements for the children can be made if either one or both parents die. It may be possible to reduce the amount of tax payable on the inheritance if advice is taken in advance and a Will is made. If your circumstances have changed, it is important that you make a Will to ensure that your money and possessions are distributed according to your wishes. For example, if you have separated and your ex-partner now lives with someone else, you may want to change your Will. If you are married or enter into a registered civil partnership, this will make any previous Will you have made invalid.

So what happens if you die without a Will?

The legal term is that you die intestate. This means certain things will by law happen automatically whether it was your intention or not. This means that you have no control over who will receive your property. A common misconception is that your spouse will inherit everything when you die, even without a Will. This maybe true of assets held jointly, but what if assets are held in your sole name?

If there is no Will the Personal Representative must distribute the balance of the estate according to the rules of intestacy.

If there is a surviving spouse or civil partner with children, the surviving spouse receives:

The first £250,000 of the estate and personal possessions and a life interest in half of the estate, the children sharing the other half.

If there is a surviving spouse or civil partner with no children, but if any of the deceased's parents, brothers and sisters or their children are still alive the surviving spouse receives:

The first £450,000 of the estate, and the personal possessions, and half the rest of the estate, the above relatives (or some of them) sharing the other half.

If there is not a surviving spouse or civil partner, the money is divided equally among the persons, in one of the following groups and taken in the priority shown below, if there are not any surviving relatives in the first group, then the next group take in priority and so on and so forth:

1. Children (But if any child has already died, their share will go to their children)
2. Grandchildren
3. Parents
4. Brothers and sisters
5. Grandparents
6. Aunts and Uncles
7. Nephews and Nieces
8. Cousins

If there are no relatives, The Crown has a right to the whole of the estate. This could mean people benefiting whom you never intended to benefit. Most people would rather name charities to inherit than see their estate passing to The Crown.

In addition a great deal of expense and delay is caused by having to trace any next of kin and in some cases it means that the administration of the estate cannot be completed for many years.

Benefits of making a Will

A. Choose your Own Executors

These are the people that will carry out your wishes and ensure your property goes to whom you intended. This means any personal gifts, mementos you may wish to leave to a specific loved one.

Choosing an Executor is a difficult decision as it must be someone you trust implicitly as they will be responsible for administering your entire estate.

An Executor of a Will can also be a beneficiary. This would include spouses and children (if over 18).

If you have no-one suitable to act for you within your family and friends then you may wish to consider appointing your Solicitor to deal with it all. This is usually the best option where there may be conflicts or arguments between family members or where you are leaving large sums of money to young children which must be placed into a trust. This is a service that we are happy and best qualified provide. It can avoid family members having to take on this responsibility, avoid any family conflicts and can ensure your estate is administered efficiently and effectively.

B. Reducing Your Tax Liability

(i) Transferable Nil Rate Band

The transferable nil rate band (TNRB) was introduced in the Finance Act 2008 and affects inheritance tax on surviving spouse deaths which occur on or after 9th November 2007.

The TNRB is only available to spouses and civil partnerships. Thus, co-habitees, divorcees (who have not remarried) and single (i.e. unmarried) individuals cannot take advantage of the TNRB.

The effect of the TNRB is to increase the nil rate band of the surviving spouse on death up to the equivalent of a maximum of twice the applicable nil rate band. The precise amount of the nil rate band available to the surviving spouse on death depends upon the percentage of the nil rate band of the first spouse to die which was unused. Therefore under this regime, any portion of the unused nil rate band of the first death will be applied to the nil rate band available at the date of death of the surviving spouse. This means the nil rate band of the surviving spouse could be as much as £650,000.00 (current individual threshold is £325,000.00) before tax is payable on their death. This is a very simple and useful way of increasing your tax threshold where you may have substantial joint assets.

In view of the introduction of the TNRB it is necessary to review previously drafted Wills to check the applicability of so-called "survivorship clauses". Suitable drafting may mean that in effect in certain circumstances more than two nil rate bands may be available following both spouses' deaths.

(ii) Charities

Many of you may wish to leave a legacy to a charity that is close to your heart. Any gift you leave to a charity is free of inheritance tax and again will reduce your overall tax liability.

C. Appoint Guardians

This is important if you have young children or grandchildren that you look after.

D. Choose and Organise Your Own Funeral Arrangements

This can include:

- Whether you wish to be buried or cremated;
- Whether there should be any form of religious service, and if so, where it should be held and who should conduct it;
- Whether you want flowers or a donation to charity;
- What should happen to your ashes; and
- Whether you wish for a memorial plaque to be placed anywhere.

All of the above decisions can be included in your Will.

E. Make Bequests and Pecuniary Legacies

You can leave items of sentimental value such as jewellery and war medals to particular family members and friends and also leave monetary gifts to friends, neighbours, grandchildren and even future grandchildren. Furthermore, if you are not married and are co-habiting, your partner has no legal right to inherit your estate. In order for them to establish any claim, they may have to rely on the provisions of the Inheritance Act. This would be both cumbersome and very expensive.

F. Protect Your Business Interests

Who will look after your business interests after you die? Could it continue to operate without you? Could it be sold so that your family benefit from the sale proceeds? If so, who would run the business until it is sold? Business people should give consideration to include powers for Executors to run their business until it is sold or appoint separate Executors to deal with this.

If your business owns land, you should take the opportunity to review how the land is owned, and who it would pass to in the event of your death.

The value of your business may be eligible for up to 100% relief from inheritance tax and making a will is an ideal opportunity to take professional advice on your particular financial circumstances, this could save you thousands of pounds.

G. Avoid Dying Intestate

(i) Control Where Your Estate Passes

The law states who would inherit your estate if you die without a Will. This is known as dying "intestate". Without a Will you have no control over this.

The rules of intestacy provide a list of relatives who are entitled to your estate in strict order. Even if you are married, your whole estate does not pass automatically to your husband or wife. Ultimately, this can mean family members you do know or care for could end up inheriting your estate. If you want to be sure who will benefit from your estate you need to leave a Will.

(ii) Providing for a Partner If You Are Not Married

If you have a partner and are not married, the intestacy rules do not provide for your partner. This can leave bereaved partners in difficult financial circumstances. It is essential that in these circumstances to make a Will.

(iii) Who Will Look After Your Pets

You could leave your pet(s) with a cash sum to a named legatee (someone you can trust to give them a good home). Or you could leave them with a cash sum to an appropriate animal charity, such as the Cinnamon Trust or the RSPCA, which runs a re-homing programme.

WHY USE BANA VAID AND ASSOCIATES?

Free initial no-obligation consultation

We are specialist - the law is increasingly complex and it is important to use Solicitors who really know what they are doing. Our partners will deal with your needs.

We offer a full executor service - so if you wish you can appoint BVA to be the executor of the estate on your death.

We offer a FREE five yearly Will review.

We provide FREE Wills and Deeds storage.

We offer competitive prices and excellent value for money.

Bana Vaid and Associates Solicitors offer a specialist Will writing and estate planning service. Our friendly and specialist-team will discuss your requirements and advise you on the best way to achieve your desired results. We can also provide specialist advice on inheritance tax planning and trusts. We understand the anxieties people have about making a Will and will help and guide you through the process in an efficient, relaxed and friendly environment.