

Making a Will

Making a Will lets you decide what happens to your money, property, and possessions after your death. A Will also brings many other benefits, such as certainty for your loved ones and the ability to arrange matters so that your heirs do not pay more inheritance tax than they need to.

Many people assume that making a Will is something to be put off until later life, but it is never too soon to put one in place!

Why do I need a Will?

There are many benefits to [making a Will](#). Many of these are closely tied to the benefits that a Will can bring to your loved ones.

When you have a Will in place, you can feel reassured that your intentions for your estate will be carried out after your death. This can give great peace of mind – knowing that your loved ones will be provided for and that the assets you acquired in life will go to benefit the people whom you wish to receive them.

From your loved ones' point of view, your Will gives them a very clear indication of your wishes after you have gone. This can cover more than you might think, such as:

- Who should deal with your estate (*see page 4 of this factsheet for what is meant by 'your estate'*).
- Who should look after your children if they are still young at the time of your death.
- Who should receive specific items that you own.
- What should happen if the people you want to benefit die before you.
- Whether any 'more complicated' arrangements should be put in place, such as a [Trust](#).

In addition, any inheritance tax to be paid on your estate reduces the value of the assets your loved ones receive. Your Will can allow you to make use of tax-saving provisions so that you can pass as much value as possible on to those you choose to inherit from you.

If you would like to know more about some of the different ways in which you can save tax, have a look at our [factsheet](#) on 'Reducing your Inheritance Tax'.

What happens if I die without a Will?

When someone dies, and they do not have a valid Will, their entire estate will pass according to 'the Intestacy Rules'. This can lead to people inheriting your assets whom you do not wish to, whilst people you actually want to benefit from your estate are left with nothing. The Intestacy Rules can have other unwanted and unexpected effects – for example, it is not

possible for stepchildren to inherit through the Intestacy Rules.

We have made a handy flowchart to explain the Intestacy Rules and [what happens if you die without a Will](#).

However, even if the Intestacy Rules match your wishes, dying without a valid Will can cause other difficulties.

Example

Thomas and Anne are a married couple in their 30's. They have two children Caractacus and Ephygenia, aged 6 and 4. Thomas and Anne know a bit about the intestacy rules and decide that, if they made Wills, they would only leave their property to each other and their children anyway.

Unfortunately, Thomas and Anne are both killed in a car accident. Through the Intestacy Rules, Caractacus and Ephygenia inherit all of their parents' estates in equal shares. However, because Thomas and Anne did not make Wills, no tax-saving measures have been taken. As such, there could be a significant amount of inheritance tax deducted from the assets which the children inherit.

Perhaps even worse, there is no legal indication of who should look after the children now their parents are gone. This could easily lead to disputes amongst the children's wider family over who should become their Guardians.

Who can make a Will?

To make a Will, you must be over the age of 18 and have the required 'mental capacity' at the time.

There is a legal test to determine whether someone has the mental capacity to make a Will. It comes from an old case called *Banks v Goodfellow* (decided in 1870!). Despite its age, the test is still valid law today.

It specifies that the person making the Will must:

- Understand the nature of making a Will and its effects.
- Understand the extent of the property of which they are disposing.
- Be able to comprehend and appreciate the claims to which they ought to give effect.
- Have no disorder of the mind that perverts their sense of right or prevents the exercise of their natural faculties.

Some situations might alter the level of understanding that you must demonstrate for your Will to be valid. If your Will is complicated, you have many assets, and/or there are likely to

be claims on your estate, you will need to demonstrate a greater degree of understanding than someone making a Will in less complex circumstances.

The mental capacity requirement is another reason why making a Will sooner rather than later is a good idea. If you do not make a Will but something happens to mean you are unable to show the required mental capacity, your loved ones may have to apply to make a [Statutory Will](#) on your behalf.

Should I use a solicitor to make my Will?

Writing your own Will or buying a Will Pack from a stationer may be tempting, but there is always the risk that the resulting Will may not have the legal effects which you intend. It might be interpreted in a way which does not match your wishes and it could also end up being invalid. It can therefore end up costing you far more than you saved initially by not taking advice from a professional.

To make matters worse, this might only be discovered when your Will is being followed – in other words, after you have died.

Taking advice from a solicitor, who specialises in this area of law, and is regulated by the Solicitors' Regulation Authority, ensures that your Will reflects your wishes and is legally sound.

What to consider when making your Will

Many clients ask us about what they should consider when making a Will. Some of the most important points are set out here:

Your Executors and Trustees

Your Executors are the people with the responsibility and authority to carry out the wishes you have set out in your Will. If you create any Trusts in your Will, then you will also have Trustees to appoint. They will be responsible for managing the Trust and holding the assets safely for the Trust's beneficiaries. Often, the Executors and the Trustees will be the same people.

Your Executors and/or Trustees can be anyone aged 18 years or over, whom you trust to deal with your estate after you've gone. You can appoint single Executors and/or Trustees, but we usually recommend appointing at least two people for each role. We also recommend appointing no more than four people to act in each capacity.

Some people choose family members or friends, but in some cases it's sensible to appoint a professional, such as a solicitor, to act as an Executor and/or Trustee. A professional can help to deal with complicated estates and trusts and can also be useful when you need someone impartial to assist your loved ones with their roles. Therefore, in some cases, appointing a

professional makes sense.

Your estate

Your estate can be thought of as everything which belongs to you, including money in bank accounts, property, personal belongings, and other assets. It also includes less obvious items such as debts which you owe at the time of your death, as well as debts owed to you.

When preparing to make a Will, you don't need to go into great detail regarding the size of your estate. You do, however, need to have an idea of what your estate comprises.

Another aspect to consider is whether you own your property and assets in your sole name, or jointly with someone else. This can affect what happens to the property or asset on your death.

As long as you have a rough idea of what is in your estate, your solicitor can help you with the next steps.

Guardians for children under 18

In many cases, if one parent dies then the surviving parent will continue to look after the child or children.

However, what if something happens to both of you? Appointing suitable Guardians in your Will is important to ensure that your loved ones know what your wishes are. It can also avoid disputes between family members.

Sometimes it may also be sensible to prepare a separate Letter of Wishes to convey your particular feelings about your children's upbringing. This could include your wishes on their education and other things that may be important to you and your family.

If you would like more detail regarding this, please read our [factsheet](#) on 'Appointing a Guardian'.

Beneficiaries

Your beneficiaries are the people who will receive your money and property on your death. You must decide whom you wish to benefit from your estate and how you would like to distribute your estate between them.

Almost as important as choosing your beneficiaries, is to consider those who you may wish to leave out. This has the potential to spark disputes after you are gone, especially if the people you leave out are expecting to inherit some or all of your estate.

Excluding people from your Will

Claims against your estate after your death can be costly, reducing the overall value that you pass on to your heirs. Additionally, a successful claim can alter what happens to your assets after you die.

Excluding someone from your Will has to be handled carefully. We can advise you on how best to deal with this, to safeguard as much of your estate as possible for your chosen beneficiaries. Please do not hesitate to [contact us](#) for advice about this.

Additionally, we have provided more information in our [factsheet](#) 'Excluding Someone From Your Will'.

What about Trusts?

In some cases, it is appropriate to set up one or more Trusts in a Will. This could be to achieve an overall objective, or to ensure that young beneficiaries receive assets at a certain age.

Trusts come in a variety of forms – with each with their own uses, advantages, and drawbacks. As such, Trusts are a huge topic. Please feel free to [contact us](#) if you would like to discuss the possibility of creating Trusts in your Will.

We have a range of [factsheets](#) about Trusts on our website. Some of these focus on using Trusts for specific purposes, whereas our factsheet '[Trusts: A Detailed Guide](#)', provides a broader exploration of the subject.

Letters of Wishes and Witness Summaries

In some cases, you may want to create a Letter of Wishes to accompany your Will. This can be used, as mentioned above, to give instructions to Guardians about looking after your children. It can also be used in other ways to help your Executors manage your estate and follow your intentions. If you are creating a Trust in your Will, you might also explain the purpose that you wish the Trust to achieve, or give instructions to your Trustees.

If you are excluding someone from your Will, and you believe they may challenge your Will as a result, a Letter of Wishes can be used to explain your reasons for leaving them out. You might also create a formal Witness Summary to accompany your Will. This can be used as evidence in any court actions which may arise regarding your Will. Your Witness Summary may also be used to set out certain instructions to your Executors.

Will registration

When you make a Will, it is important that your loved ones can find it after you are gone. That way, you can be certain of your Will taking effect.

At Roche Legal, we register all Wills with Certainty, the National Will Register. This provides extra assurance that your Will can be easily located after your death.

How Roche Legal can help



Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this factsheet, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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