

Making a will

Have you planned ahead to ensure your loved ones could cope financially without you?

No one likes to think about it but death is the one certainty that we all face. Planning ahead can give you the peace of mind that your loved ones can cope financially without you and, at a difficult time, helps remove the stress that monetary worries can bring.

Planning your finances

Planning your finances in advance should help you to ensure that, when you die, everything you own goes where you want it to. Making a will is the first step in ensuring that your estate is shared out exactly as you want it to be.

If you don't make a will, there are rules for sharing out your estate called the Law of Intestacy, which could mean your money going to family members who may not need it, or your unmarried partner or a partner with whom you are not in a civil partnership receiving nothing at all.

If you leave everything to your spouse or civil partner there'll be no Inheritance Tax to pay, because they are classed as an exempt beneficiary. Or you may decide to use your tax-free allowance to give some of your estate to someone else or to a family trust. Scottish law on inheritance differs from English law.

Good reasons to make a will

A will sets out who is to benefit from your property and possessions (your estate) after your death. There are many good reasons to make a will:

- you can decide how your assets are shared – if you don't have a will, the law says who gets what
- if you're an unmarried couple (whether or not it's a same-sex relationship), you can make sure your partner is provided for
- if you're divorced, you can decide whether to leave anything to your former partner you can make sure you don't pay more Inheritance Tax than necessary

Before you write your will, it's a good idea to think about what you want included in it. You should consider:

- how much money and what property and possessions you have
- who you want to benefit from your will
- who should look after any children under 18 years of age
- who is going to sort out your estate and carry out your wishes after your death (your executor)

Passing on your estate

An executor is the person responsible for passing on your estate. You can appoint an executor by naming them in your will. The courts can also appoint other people to be responsible for doing this job.

Once you've made your will, it is important to keep it in a safe place and tell your executor, close friend or relative where it is.

It is advisable to review your will every five years and after any major change in your life, such as getting separated, married or divorced, having a child or moving house. Any change must be by 'codicil' (an addition, amendment or supplement to a will) or by making a new will.

If you don't have a will there are rules for deciding who inherits your assets, depending on your personal circumstances. The following rules are for deaths on or after 1 July 2009 in England and Wales; the law differs if you die intestate (without a will) in Scotland or Northern Ireland. The rates that applied before that date are shown in brackets.

If you're married or in a civil partnership and there are no children

The husband, wife or civil partner won't automatically get everything, although they will receive:

- personal items, such as household articles and cars, but nothing used for business purposes
- £400,000 (£200,000) free of tax – or the whole estate if it was less than £400,000 (£200,000)
- half of the rest of the estate

The other half of the rest of the estate will be shared by the following:

- surviving parents
- if there are no surviving parents, any brothers and sisters (who shared the same two parents as the deceased) will get a share (or their children if they died while the deceased was still alive)
- if the deceased has none of the above, the husband, wife or registered civil partner will get everything

If you're married or in a civil partnership and there were children

Your husband, wife or civil partner won't automatically get everything, although they will receive:

- personal items, such as household articles and cars, but nothing used for business purposes
- £250,000 (£125,000) free of tax, or the whole of the estate if it was less than £250,000 (£125,000)
- a life interest in half of the rest of the estate (on his or her death this will pass to the children)

The rest of the estate will be shared by the children.

If you are partners but aren't married or in a civil partnership

If you aren't married or registered civil partners, you won't automatically get a share of your partner's estate if they die without making a will.

If they haven't provided for you in some other way, your only option is to make a claim under the Inheritance (Provision for Family and Dependents) Act 1975.

If there is no surviving spouse/civil partner

The estate is distributed as follows:

- to surviving children in equal shares (or to their children if they died while the deceased was still alive)
- if there are no children, to parents (equally, if both alive)
- if there are no surviving parents, to brothers and sisters (who shared the same two parents as the deceased), or to their children if they died while the deceased was still alive
- if there are no brothers or sisters, then to half brothers or sisters (or to their children if they died while the deceased was still alive)
- if none of the above, then to grandparents (equally if more than one)
- if there are no grandparents, then to aunts and uncles (or their children if they died while the deceased was still alive)
- if none of the above, then to half uncles or aunts (or their children if they died while the deceased was still alive)
- to the Crown if there are none of the above

It'll take longer to sort out your affairs if you don't have a will. This could mean extra distress for your relatives and dependants until they can draw money from your estate.

If you feel that you have not received reasonable financial provision from the estate, you may be able to make a claim under the Inheritance (Provision for Family and Dependants) Act 1975, applicable in England and Wales. To make a claim you must have a particular type of relationship with the deceased, such as child, spouse, civil partner, dependant or cohabitee.

Bear in mind that if you were living with the deceased as a partner but weren't married or in a civil partnership, you'll need to show that you've been 'maintained either wholly or partly by the deceased.' This can be difficult to prove if you've both contributed to your life together. You need to make a claim within six months of the date of the Grant of Letters of Administration.

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