Broomhead & Saul
SOLICITORS

Standard **Professional** Wills

Wills Explained

Contents

Introduction 3
What is a Will and why have one? 3
1.1 What is a Will? 3
1.2 Intestacy 3
1.3 Process on Death 3
Basic Components of a Will 4
1.4 Executors 4
1.5 Specific Gifts/Legacies 4
1.6 Residue 4
1.7 Long stop 5
Validity 6
1.8 Capacity 6
1.9 Signing, Witnessing and Dating 6
1.10 Video Witnessing 6
1.11 Marriage and Divorce 7
1.12 Changes or Revisions 7
1.13 Safekeeping 7
Children and Guardians 9
1.14 Gifts to Children under 18 9
1.15 Guardians 9
Special Matters 10
1.16 Trusts 10
1.17 Joint Wills 10
1.18 Property that does not, or may not, pass under the Will 10
1.19 Jointly Owned Property 10
Tax 11
Special Persons 12
1.20 Disabilities 12
1.21 Charities 12
1.22 Rights of Others 12
Standard Provisions 12
Glossary of Terms 12
Example Wills 13
Lasting Powers Of Attorney 15
1.23 Why you need an attorney 15
1.24 What is a Lasting Power of Attorney? 15
1.25 Find out more 16

Introduction

Please look at the index on the previous page and then read the sections that are relevant to you. **Items marked or written in bold italics should be carefully noted because they are particularly important**

Before you read this guide we suggest that:

- List the assets you own.
- Decide in principle who you wish to receive those assets.

What is a Will and why have one?

1.1 What is a Will?

A Will is a document which states how you wish your affairs to be dealt with when you die. By making a Will you can control who will inherit your property and let those you care for know that you considered their needs.

A Will has no effect until death occurs and then only relates to property which the deceased owned at the date of death.

In addition a Will allows you to determine who will administer your estate and may allow you to appoint a guardian for your children. You can also use your will to express your preferences for burial or cremation.

1.2 Intestacy

Intestacy occurs when the deceased person did not make a Will or it cannot be found. Occasionally it can also occur when a Will is invalid or where the beneficiaries under a Will have all died. In all such cases the law directs who should deal with the estate and who (in strict order) should benefit from it.

1.3 Process on Death

When you die everything that you own has to be sorted out. The law lays down a procedure for this called "probate". Under this procedure a court called the "Probate Court" has the duty and power to ensure that this is done legally and properly. If you have made a Will the Probate Court does this by checking that the Will you have made is valid and by giving your Executors legal authority to carry out the wishes expressed in your Will. The court issues a document known as the "Grant of Probate" which your Executors produce to show their rights, in particular, to deal with any property. Thus they can sign the various documents required to sell any property or to transfer it to your beneficiaries. Your Executors have other rights under the law as well. If any dispute or uncertainty arises over the terms of your Will the issue can be referred to the Probate Court for a decision.

Basic Components of a Will

All Wills have certain basic components (although the inclusion of a specific gift is optional):

1.4 Executors

These are the people that you have entrusted to sort your affairs out when you die. It is usual to appoint at least two executors unless you are leaving everything to one person, in which case that person will normally be your executor as well. Their job is to deal with any specific gifts, sell any property and pass the proceeds to your beneficiaries. Your Executors don't need to be legally qualified and they do not have to do all the work involved – for this they can seek legal help. Remember though that the more complex the Will the more difficult it will be for your Executors to sort out. Also remember that your Executors are ***personally responsible*** for ensuring that the work is done.

This is why the Standard Professional Will appoints Broomhead & Saul as professional executors by default. However this is only a provisional appointment: in other words it is merely a fail-safe arrangement. If the lay Executors decide that they do not need our services then they can dispense with our services completely, without having to justify or otherwise explain their position.

In a normal family estate it is quite usual to appoint members of the family to be Executors but their approval should be sought beforehand, and it is wise to let them know where the Will is located. They do not need to know the contents of the Will though. A person cannot act as an Executor if under 18.

1.5 Specific Gifts/Legacies

These are gifts of specific items (or sums of money) which are to pass to specified named people or groups under the Will. Thus a family heirloom or sum of money might be left to a particular son or daughter. In a straightforward Will we suggest that such gifts be limited to perhaps three or four otherwise the Will can become very complex and long. It is often preferable for the Will to refer to a separate list of legacies and specific gifts, which whilst not legal enforceable is almost always honoured by the Executors. This enables the donor to update and amend the list from time to time, without having to go the trouble and expense of making a new will. Quite often, though, no specific gifts are made in a Will in which case the whole of the deceased's property will be dealt with under those parts of the Will relating to the residue.

It should be remembered that gifts in the Will which cannot be identified with certainty when you die will be ignored and fall into your residue.

1.6 Residue

This is literally "what is left" after any specific gifts (if any) have been made. There is no need to list anything in the residue, indeed it is not really possible to do so – it is just whatever you own that has not been the subject of a specific gift.

The residue can be left to more than one person – often it is left between a number of people such as one's children. Particular shares can be specified although it is usual to specify that the residue is to be divided in

equal shares. ***Only those persons alive at the date of death can benefit from the residue (as with any other gift in the will)***. Where the residue is left amongst children it is standard that if one has already died leaving his/her own children his/her gift is then divided equally between those children. (This is called "per stirpes" which literally means stepping into the shoes of). If there are no children of that child then the gift the share is merged into the shares of the other beneficiaries of the residue.

Remember - if you specify an individual by name such as a "my daughter Kerry" then only that person will take the gift. This should be contrasted with an intention to make a gift to "all my children who are alive at the date of my death". Such wording would allow children born later to be included.

1.7 Long stop

Bear in mind that ***no-one who has died before you*** can benefit from your estate. They are removed from the terms of your Will by the effect of the law. Thus if the person to whom you have given your residue has died there will be no-one else for it to pass to, and intestacy would result. If therefore you have only provided for one person to take your residue it is therefore regarded as good practice to add the name of a "longstop" who would benefit from your estate if there is no-one else. This is not quite so important in a joint Will where there is more than one child as the likelihood of this clause being relevant is remote.

Validity

1.8 Capacity

Every adult (over 18) can make a will provided that they are of “sound mind”. This rather old fashioned term means that the person ***must understand that they are making a Will when they do so.*** If there is a history of mental disorder or if an illness that may be affecting your judgement, you should consult a qualified doctor before preparing your Will and before completing and returning the questionnaire.

1.9 Signing, Witnessing and Dating

You must sign your Will in the presence of two witnesses and they must then both sign in your presence and in the presence of each other as witnesses to your signature. They do not need to read the Will though in order to witness your signature.

Use your usual signature, write in ink and date your will. It is effective from that moment. Be sure that the witnesses complete their names and addresses in the space provided. Below you can see a picture of how the completed signed Will should look:

SIGNED by the above-named Testator as his last Will in the presence of us both present at the same time who in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses:-

Testator ......John Black......

Witness (Sign) Jennifer Richardson
Name (Print) JENNIFER RICHARDSON
Address 10 HIGH STREET,
DAWLISH, DEVON

Witness (Sign) Neil Goodwin
Name (Print) Neil Goodwin
Address 28 Barkers Mead
Blackpool

All 3 people must be present at the same time and must see each other sign and you must then date the Will

Your witnesses should be over 18 and preferably neither very old nor hard to trace in case a question should arise later concerning the validity of your Will. A blind person cannot witness a Will.

Warning: It is vital that the witnesses to your Will are ***neither beneficiaries*** under the Will nor the ***spouses*** of beneficiaries. If this happens, the beneficiary will lose the benefit of his or her gift even though the rest of the will remains valid.

An executor (or spouse of an executor) can safely act as a witness unless he or she is also a beneficiary or a professional advisor who charges for his or her services, in which case another witness must be found.

1.10 Video Witnessing

If you need to make a will but you are unable to arrange for witnesses to attest to you signing your will, it is possible to arrange for the witnessing to be undertaken remotely using social media video conferencing.

Broomhead & Saul leads the field, nationally, in the video witnessing of wills. We were the first law firm in the country to develop this service. It was our independent legal research and pro bono legal activism that

led the government to pass emergency Covid-19 related legislation to reform the Wills Act 1837 to expressly sanction our innovative approach. The government even back dated the legal effect of this reform to 31 January.

This firm's Video witnessing is not included in the fixed fee for our Standard Professional Will and is charged for separately. Fortunately, there are also alternative work-arounds, such as through the window Will witnessing that are less time consuming (and thus less expensive) which we would be happy to discuss with you.

1.11 Marriage and Divorce

- Marriage. ***This automatically revokes a previous Will***, unless your Will expressly acknowledges that it is made in contemplation of that forthcoming marriage

- Divorce. This, unlike marriage, does not revoke a previous Will. However, if your former spouse is named as beneficiary, ***he or she will cease to be a beneficiary*** or receive a gift unless your Will expressly provides that the gift should still take effect if you divorce. ***If your former spouse is named executor then upon divorce he or she will no longer be allowed to act as executor or obtain probate of your Will.***

1.12 Changes or Revisions

Never attempt to revise or change your will by just altering it – it may invalidate it. The way to revise an existing will is to prepare a new Will. Always physically destroy any former Will, so that it cannot be mistaken for your most recent Will. Destroy all copies of your former Will as well.

You may need to revise your will for any number of reasons:

- Changes in the family – birth of a child, adulthood, death.
- Change in financial circumstances – you may have recently acquired assets which you would like to give to particular beneficiaries.
- Going to live abroad – It is normally desirable to make a will in the country you reside to simplify the administration of your estate. It may also be helpful if you need to establish a change of domicile. Local advice should be sought.
- Marriage or Divorce (see above)

1.13 Safekeeping

Once you have signed and dated your Will, it should be kept in a safe place with your other papers. Nothing should be attached to it or allowed to mark it. For that reason we suggest putting it in an envelope clearly labelled "Will of …………………… Date ……………………".

Do not staple, clip or attach any other document to your will because it may make it invalid resulting in intestacy.

There is no central register of Wills and for that reason it is very important that the Will is kept in a safe place where it can be located by your Executors when you die.

Children and Guardians

Please note that any reference in your Will to “children” will include illegitimate and adopted children. ***Any other children e.g. of your partner or spouse, but which are not of your blood, should be named specifically if you wish them to be included in the Will***. If you wish to exclude particular children you can do so only by naming those who you wish to include. In other words you cannot really put “all my children except……….” That said please bear in mind that excluded children may have a claim against your estate – see below

1.14 Gifts to Children under 18

A child can own personal effects such as clothes and toys but cannot own more valuable assets such as shares or interests in land. Where such assets are gifted to a child, the law requires that they be held on trust for the child until he or she attains 18.

Your Will makes the assumption that you wish your children to take their gifts at age 18. Before that your trustees will have the power to pay over up to half of the capital of the child’s inheritance, or to use the capital for the child’s benefit, but only if they think there are good reasons for doing so. If however you feel very strongly that the age for taking the gift should be raised then please complete section on the form

1.15 Guardians

If you have children under 18 it may be wise to name a guardian to care for them in the event of their being left without any parents. Since a guardian takes the place of a parent, you should choose someone who can offer the best care for your children, such as a close relative who is willing to accept the responsibility. The guardian can also be one of your executors. Always check with your proposed guardian in advance to be certain he or she is willing to act and ***think carefully about how your guardians will afford to bring up your children***.

There are complications if:

- You were not married to the other parent when the child was born;
- You and the other parent have already been or are (after the making of the Will) divorced from each other; or
- A court order already exists or is made in the future relating to where the child is to live or to parental responsibility for the child.

These cases cannot be properly dealt with by a Standard Professional Will and we suggest you take specific legal advice relating to your circumstances.

Special Matters

1.16 Trusts

A trust is a special sort of legal arrangement whereby one person or persons look after property which in reality belongs to someone else. A trust may specify what can or cannot be done with such property and what powers the Trustees have. Simple trusts automatically come into effect when a person dies so that the Executors can look after the property of the beneficiaries until distribution to them or when one of the beneficiaries is under the age of 18. Your Standard Professional Will provides for these where necessary.

More complex Trusts can be created for tax planning purposes or more sophisticated family arrangements. Such a situation might arise for instance where the Testator wished to allow a beneficiary to reside in his house only for that persons life. ***Trusts such as these fall outside the Standard Professional Will scheme*** and you should seek specific legal advice if you think such an arrangement is appropriate.

1.17 Joint Wills

If you are married or have a long time partner you may wish to make a Joint Will. This is often referred to as a "Mirror Will". Such an arrangement consists of two identical wills whereby one person leaves everything to the other and vice versa. ***Please note though that the validity of each Will is not dependent on the other. One Will does not generally restrict the contents of the other and the survivor of the arrangement can always change their Will later.*** If you have specified a joint will on your application you will receive a joint will questionnaire

1.18 Property that does not, or may not, pass under the Will

Property that is situated abroad may not pass under your Will. You should take specific legal advice if you have an interest in property abroad.

Generally, life insurance policies that are expressed to be in trust for the benefit of your spouse and/or children do not pass under your Will and therefore do not form part of your estate.

Your pension rights may pass outside your Will. Your employer should have more details. In many cases, you will be able to name the person who is to benefit from your pension rights, but only in a separate document, not in your Will.

1.19 Jointly Owned Property

If your home is jointly owned with another person it may be owned under a joint tenancy (which means you both own the whole property without a specified share) or under a "tenancy in common" (which means you both own a specified share in the property, say half and half or one third and two thirds). If you are uncertain how your property is owned, you should consult the solicitors who acted for you in the purchase. A bank account is also sometimes held under a joint tenancy. In principle any property can be so owned.

If the property is held under a "joint tenancy", then upon your death your interest in the property ***automatically*** goes to your surviving co-owner. ***This occurs no matter what you may have put in the Will.*** If your property is owned under a "tenancy in common" then you can give your share in the property to whoever you wish under the terms of your Will.

If you wish to do so, you can easily change a joint tenancy into a tenancy in common by presenting your co-owner with a written notice of your intention. It is important, however, that this written notice is given before your death and not in your will. If you would like to change a tenancy in common into a joint tenancy you should seek specialist legal advice.

Tax

Tax advice of any kind is outside the remit of this guide and of the Standard Professional Will scheme. However you should be aware that there may be income tax and capital gains tax payable on any estate. On large estates there may be an Inheritance Tax liability as well. (Inheritance Tax is the modern form of death duty). These are all separate taxes and have different effects on you, your estate and your beneficiaries.

Generally, however, your estate will have no Inheritance Tax liability:

- On everything given to your spouse.
- On any gift to a UK charity.
- If your estate is below the exempt limit for Inheritance Tax. (This changes in the budget from time to time but stands at around £325,000.00 in March 2021)
- On anything given more than seven years before your death
- On gifts made before your death if they did not, in total, exceed £3,000 in any one tax year. Anything given to your spouse does not count for this exemption.

We regret that the Amicus Standard Professional Will service cannot deal with any tax advice specific to you and you should seek professional advice on these matters if you think that they might apply to you. Moreover, because tax laws and rates do change you should review your Will periodically.

Special Persons

1.20 Disabilities

Mental disability affects the capacity of a person to make a Will (see above). Other disabilities may affect the drafting of your Will, particularly if you are hard of sight or blind. If either of these apply please let us know. We can either produce your Will in a large typeface to make it easier to read or if you are blind prepare the Will so that it can be read to you and signed in the correct way.

1.21 Charities

You can give all or part of your estate to a Charity of your choosing. ***If you decide to do this please let us have the full and proper name of your Charity, its address and its Charity number. Without these we cannot prepare your Will***. If you do choose to make a gift to Charity we shall add some special provisions that specify what should happen if your Charity ceases to exist or merges and to ensure that any monies are properly accounted for.

1.22 Rights of Others

If you make no provision in your Will for someone who is financially dependent on you, that person may have a claim against your estate. This can also apply to close relatives or possibly children who you have excluded from your Will. Where this risk exists, you should always seek specialist advice to assist you with your Will.

Standard Provisions

Your will requires certain standardised provisions to make it operate properly. We will include these as appropriate. For ease they will be reproduced in the back of the will document

Glossary of Terms

Adult – under English law, a person aged 18 or over.

Beneficiary – a person who receives a gift under a Will. A beneficiary may also be a person who receives a payment from a life insurance policy or a trust.

Estate – the property belonging to a person at death.

Executor (or **Executrix** if female) – a person named in the Will to manage the deceased's estate.

Guardian – a person with legal control and responsibility for a minor child.

Minor – under English law, a person under the age of 18.

Testator (or **Testatrix** if female) – a person who makes a Will

Witness – a person who signs a will to verify the testator's signature on it.

Example Wills

1. One Part of a "Joint/Mirror Will":

Note: the below Will leaves everything to Mr Black's wife if she survives him and makes her sole Executrix. Only if she fails to survive him does the rest of the Will become effective. This type of Will is common for married persons and families

THIS IS THE LAST WILL OF

JOHNATHON WILLIAM BLACK of 1 Hazel Drive Ilkeston Derby DE85 5KP

1 I REVOKE all former Wills and testamentary dispositions

2 I APPOINT my Wife JANET MARY BLACK to be the sole Executrix and Trustee of this my Will but if she shall predecease me or for any other reason be unable or unwilling to prove this my Will I APPOINT my sons MARK JAMES BLACK and FREDERICK ALAN BLACK to be the Executors and Trustees of this my Will and I DECLARE the expression "my Trustees" (wherever the context permits) shall mean and include the Trustee or Trustees of this my Will for the time being whether original or substituted

3 I GIVE the residue of my estate to my Trustees with power either to sell or retain it and:

(i) To pay my just debts funeral and testamentary expenses and all taxes payable on my death

(ii) To pay the residue to my said wife JANET MARY BLACK PROVIDED she survives me for thirty days and if she does not to pay the same to such of my said sons FREDERICK ALAN BLACK and MARK JAMES BLACK as survive me and if more than one in equal shares

4 (i) The Standard provisions of the Society of Trusts and Estate Practitioners (1st Edition) shall apply to this Will with the deletion of paragraph 5

(ii) The Trusts of Land and Appointment of Trustees Act 1996 Section 11 shall not apply to this Will

I N W I T N E S S whereof I have hereunto set my hand to this my Will this day of Two thousand and three

2. A Single Will:

This Will is a simple Will for anyone (although the actual gifts might be suitable for a widow (er) or divorced person)

THIS IS THE LAST WILL OF

HENRY NORMAN DAVIES of 43 Sunny Gardens Jesmond Deane Newcastle NE6 2NP

1 I REVOKE all former Wills and testamentary dispositions

2 I APPOINT my son PHILLIP THOMAS DAVIES and my daughter JAYNE KATHERINE SMITH (hereinafter called "my Trustees") to be the Executors and Trustees of this my Will

3 I GIVE the residue of my estate to my Trustees with power either to sell or retain it and:

(i) To pay my just debts funeral and testamentary expenses and all taxes payable on my death

(ii) To pay the residue to such of my said son PHILLIP THOMAS DAVIES and my daughter JAYNE KATHERINE SMITH as survive me and if more than one in equal shares or if neither of them survive me to pay the residue to LESLIE PETER HOPKIN of The Dog Hotel Crickhowell Nr. Abergavenny South Wales.

4 (i) The Standard provisions of the Society of Trusts and Estate Practitioners (1st Edition) shall apply to this Will with the deletion of paragraph 5

(ii) The Trusts of Land and Appointment of Trustees Act 1996 Section 11 shall not apply to this Will

I N W I T N E S S whereof I have hereunto set my hand to this my Will this day of Two thousand and three

Lasting Powers Of Attorney

1.23 Why you need an attorney

Life is unpredictable therefore at Broomhead & Saul we strive to help you plan for your future and anticipate all possibilities.

Most of us prefer to avoid contemplating the likelihood that at some time in the future we may not be able to manage our personal affairs due to age, infirmity or possibly the effects of an illness or an accident.

The longer we live; the more likely it is that we will at some later date be visited by a serious illness or some form of mental incapacity. Those of us who can afford health insurance take it as a given that this expenditure is both a prudent and necessary precaution but many overlook the practical side of their later life needs and requirements. The consequences of failing to set up Lasting Powers of Attorney can be devastating, not just to you but to your family and your business. It would deny you or your family access your bank accounts or to deal with your property or business, or prevent who love and care for from having an influence in important decision about your clinical treatment or care.

Illnesses and accidents can happen to anyone at any time and at any age. Setting up Lasting Powers of Attorney can provide peace of mind not only to you but also to those you love and care for. Having the foresight to set in place these vitally important arrangements to meet this kind of unwelcome contingency, avoids the risk of intense familial disagreements as well as the substantial cost of making a formal application to the court to seek authority to help you at what will probably already be a hugely stressful time.

If you are worried about what might happen should you, or a loved one, become unwell (or if you are concerned about the practical consequences of frailty in old age) and in particular, who would manage your financial affairs or make decisions about your care or medical treatment – then you would be wise to set up Lasting Powers of Attorney.

1.24 What is a Lasting Power of Attorney?

Lasting Powers of Attorney are legal instruments that allow you to prepare for the possibility that at some future date you might be unable to make important decisions or to cope with managing your financial affairs. They invest your close and trusted friends or your relatives a contingent legal authority to either manage some or all of your financial affairs or help make decisions about your health, welfare and clinical treatment..

It only comes into effect if the donor loses the capacity to manage their own affairs.

There are two types of LPA:

- A Property and Financial Affairs LPA
- A Health and Welfare LPA.

It is entirely up to you whether you have one or both and we have the expertise and experience to advise you appropriately.

1.25 Find out more

To find out more in a free without obligation call or to make an appointment to discuss your needs further, please contact us.

Call **01823 288121** to speak to one of our team:

Andrew Lewis, Sue Baker, Michael Fitzgerald, Laura Webber, Sue Baker, Maxine Allen, Angela Clapp

---

This guide is for general guidance only and specific advice should be sought where appropriate.

Broomhead & Saul solicitors

Head office

10 Hammet Street
Taunton
Somerset
TA1 1 RZ

01823 288121