

Will Instructions Limited

Wills & Wills Choices Guide

A Will is a written document confirming a person's wishes as to the disposal of their assets on death. In order to be valid under UK law it must be made by an adult (i.e. over 18), with full mental capacity, in writing (therefore a Will on audio or video tape would not be valid) and must be witnessed by 2 independent adults who should not be beneficiaries or spouses of beneficiaries otherwise they will not be able to benefit under the terms of the Will.

A series of Wills may be made throughout life but it is the last valid Will made that will be relevant unless special circumstances apply. A Will can be amended either by Codicil, which is an addendum to a Will, and read in conjunction with it, or by making a replacement Will.

Although it is permissible under UK law to make your own Will this can lead to many problems if any doubt or uncertainty exists as to the terms of the Will and the intentions of the person making the Will. When a Will comes to be dealt with the person who made it is no longer alive and cannot be consulted. For this reason, as well as ensuring proper advice is given and taxation consequences are considered it is generally preferable to seek professional help in preparing a Will.

The following is an explanation of terms commonly encountered in Wills.

Testator (Male)/Testatrix (Female) – the name given to a person who makes a Will. If a person dies without a valid current Will then they are “Intestate”.

Executor (Male)/Executrix (Female) - the name given to a person (or persons) authorised to deal with the administration of the deceased person's estate. A nominated Executor is not bound to administer the estate and can renounce the appointment or can utilise the services of a professional advisor. Any Executor can also benefit under the Will although it would be necessary for the Will to confirm whether or not this benefit was dependent upon them carrying out their responsibilities.

Trustee(s) - this is the title given to a person or persons appointed to look after assets held in trust until sometime in the future when the assets are handed over to beneficiaries. This can result from the terms of the Will such as a Discretionary Trust or from circumstances such as the need to hold assets until minors attain majority. The Trustees can be the same persons as the Executors or can be different persons. By law a trust cannot exist for longer than 80 years unless it is for charitable purposes.

Testamentary Guardian(s) - Testamentary Guardianship' refers to the process whereby a guardian is appointed in a Will for a child by someone in the event of their death and they are the last surviving parent. The guardian may be, for example, a close relative such as a grandparent or sibling. Once this takes effect, the guardian will have the responsibilities and duties towards the child akin to that of a parent.

Beneficiary(ies) - the name given to those persons who receive an asset or financial benefit under a Will or Trust. Various names are given to different types of gift or benefit such as:-Legacy, Pecuniary Legacy, Contingent Legacy, Vested Legacy, Specific Legacy, Bequest, Devise, Annuity, Life Interest, Remainder, Residue etc. and either refer to the type of asset or extent of benefit being given or whether any conditions are attached.



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Lapse - where a gift or benefit fails either by conditions not being fulfilled or by some other situation arising such as the death of a beneficiary.

Issue - this means all lineal descendants of a person and is not restricted to children only but can include grandchildren, great grandchildren etc.

Will Choices (*Will Instructions Limited classifications*)

1. Simple Will

This appoints Executors and leaves the entire estate to a single person/organisation or group of people/organisations and no other legacies or bequests. Individuals would normally inherit at age 18 but a greater age could be stipulated. IHT advice may or may not be needed.

2. Standard Will

This appoints Executors with alternates, appoints guardians for minor children, may leave a small number of legacies/bequests, may include wording concerning disposal of personal effects, and leaves the remaining estate to a single person/organisation or group of people/organisations with alternate provision if beneficiaries do not survive or satisfy certain conditions (such as attaining a specified age). Individuals would normally inherit at age 18 but a greater age could be stipulated. IHT advice may or may not be needed.

3. Complex Will

As for Standard Will above but with the inclusion of clauses relating to Businesses, Trusts (such as Discretionary Trusts) or large numbers of legacies/bequests. Usually would involve IHT advice but may not be needed.

Areas to Consider

Ahead of a discussion regarding your Will, it may be helpful to give some consideration to some or all of the following areas:

- What are your assets?
- Do you have any preference in terms of funeral wishes?
- Who do you want to appoint as Executor(s)?
- If you have children under 18, who would be an appropriate Guardian(s)?
- Are there any specific bequests (e.g. jewellery, cash gifts) you wish to make?
- How do you wish to allocate the remainder of your estate and in what proportions?

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