WILLS

Why when & how

Everything you need to know about how to protect your loved ones with your Last Will & Testament.

Written by
Mr Jim Emsley LLB (Hons)

E.L.M LEGAL SERVICES

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SilverWood

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Introduction

Everyone should have a Will, and yet research has found that nearly two-thirds of adults in the UK don't have this essential document in place.

Having a valid Will not only ensures that your estate passes to those you wish to leave it to, it can also put the right arrangements in place for your children, save money by planning for Inheritance Tax and minimise the risk of a family dispute arising after your death.

One reason that so few people have a Will may be that it is a subject that no one particularly likes to think about, while another reason is that often people don't know where to start in writing one. This guide will explain why a Will is so important and how to go about creating one, as well as answering the most frequently asked questions.

If you want help or guidance in writing a Will and would like to speak to an expert, E.L.M Legal Services will be happy to answer your questions. We offer a service that allows you to plan your estate and create the right Will for your situation from the comfort of your own home via video.

For a no-obligation discussion, call us on **0117 952 0698** or make a FREE Will enquiry.

What is a Will?

A Will is a legal document that leaves all of your money and possessions, known as your estate, to the people of your choice and tells your loved ones what arrangements you have made for them and for the distribution of your estate.

The Wills Act 1837 gives everyone aged 18 or over the right to dispose of their property as they see fit by making a Will, provided they have the mental capacity to understand its effect. It also sets out a number of requirements for a Will to be valid, as follows:

- A Will must be in writing;
- It must be signed by the testator, or person making the Will, or at their direction and in their presence;
- The person making the Will must intend that their signature gives effect to the document;
- The Will must also be signed by two witnesses who are both present at the same time and see each other sign;
- The witnesses must sign or attest the Will or acknowledge their signature in the presence of the testator.

As well as bequeathing your possessions, you can also make certain appointments and leave instructions in your Will, including the following:

Executors

Your executors are trusted representatives who will deal with the winding-up of your estate after your death. As well as the administration, they will be ultimately responsible for distributing money, possessions and other assets to your beneficiaries.

Set up a trust and appoint trustees

Your Will can create a trust to distribute money to those whom you would like to benefit from your estate. A trust can be used as part of an efficient tax plan or to provide funds for children until the age at which you decide they can inherit money outright.

One of the advantages of leaving money in a trust is that the trustees will have the power to decide whether money should be distributed for a particular purpose and the trust fund or capital can be protected from frivolous spending.

When setting up a trust in a Will, you will need to name trustees whom you have the confidence will be able to look after the money and administer the funds as you would wish.

Guardians

If you have children below the age of 18 or who are older but unable to care for themselves, you can use your Will to appoint guardians to make decisions on their behalf and to pay any related expenses.

Funeral arrangements

Your Will can contain details of what sort of funeral you would like, as well as whether you would like a burial or cremation and where you would like your final resting place to be. While this will not be legally binding on your executors, it can be helpful for those left behind to have some guidance.

Letter of wishes

You can also write a letter of wishes to be put with your Will. This can include anything you would like to say to your loved ones, such as an explanation for your bequests or why someone has been left out of the Will.

Remember, if you have questions about what to include in your Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants.

What will happen to your estate if you don't make a Will?

If you die without a Will in place, then your estate will pass to family members in accordance with the Rules of Intestacy (the Rules).

The Rules make no provision for cohabiting partners or step-children, even if you have a close familial relationship with them.

Without a Will, your estate will pass in accordance with the Rules as follows:

- All of your personal possessions and belongings to your spouse or civil partner;
- The first £270,000 of your estate to your spouse or civil partner;
- If you have children (to include adopted children) then half of the remaining estate to your spouse or civil partner;
- The remaining half of your estate split equally between all of your children.

If you are married or in a civil partnership and have had no children, then the whole of your estate will pass to your spouse or civil partner;

- If a child has predeceased you, their share will pass to their children;

- If you are neither married nor in a civil partnership, your estate will be split between any children you may have.

If you are neither married nor in a civil partnership and you have no children, your whole estate will pass to your relatives in the following order:

- Parents;
- Siblings;
- Half-siblings;
- Grandparents;
- Uncles and aunts or their children.

Those entitled to inherit your estate under the Rules will receive the money as soon as they are 18. If you make a Will, you can choose the age at which people inherit. For example, you may feel that your children will make better choices if they inherit at the age of 21 or 25.

If you die without a Will, then those left behind will also have to establish who should administer the estate. The Rules set out in order of priority who has the right to be the estate's administrator and carrying out the winding-up of the estate, to include collecting in all of the assets and distributing the estate to those entitled to inherit it.

The order of priority for becoming the Administrator is:

- Surviving spouse or civil partner;
- Children;
- Parents;
- Siblings;
- Other relatives.

If the person entitled to act as administrator does not want to, then the next person on the list can take on the role.

If you would like to talk to someone about how to put a valid Will in place to look after your loved ones then click HERE to set up a free, no-obligation discussion with one of our experienced consultants.

Can you write your own Will?

It is possible to write your own Will, in fact there are many boilerplate examples available to encourage you to do just that. However, creating a Will that is clear, unambiguous and correctly worded is not easy and a simple mistake can lead to legal difficulties for your family at a time when they least need them.

A Will that is incorrectly drafted or incorrectly executed could be classed as invalid, meaning that your estate will be administered in accordance with the Rules of Intestacy. If you have tried to leave a gift to someone who then loses out, they may consider legal action.

An expert Will writer will take your financial circumstances into account when drawing up your Will and ensure that it is both tax-efficient and legally valid. The service is not expensive and, when weighed against the sometimes considerable tax savings, it is well worth using a professional.

Your Will writer will also ensure that your Will has been properly executed and witnessed. Without this, again, the document will be invalid.

A professionally drawn up Will goes a long way to avoiding family disputes after a death. Even if someone was not included when they had expected to be, if the document is clear and solidly drafted, then they are less likely to challenge it.

If the document is a self-drafted Will with any weak areas a legal challenge is more likely. Legal disputes can be lengthy and expensive, tying up an estate for years in some cases, and depleting the funds it contains as the estate is forced to pay for legal representation to defend any court action.

As well as being extremely costly and time-consuming, contentious probate can be very destructive to family relationships. Over the time taken to settle a court case, positions can become entrenched and family members can become very bitter. Recent research has found that one person in 20 has had a legal dispute over an estate. Many of these would no doubt have been avoided if a robust, well-drafted Will had been put in place.

Remember, if you have questions about how making a valid Will with a professional input can help save both time and money then click HERE to set up a free, no-obligation discussion with one of our experienced consultants.

Provision for children

Your Will can make detailed provision for any children you have who are under the age of 18 or who are unable to make their own decisions.

The first provision you should make is the choosing of a guardian or guardians to care for your children and to make day-to-day decisions on their behalf. This could include deciding where your children will live, where they will go to school and decisions regarding healthcare and religion.

If you die without making a Will or without naming a guardian, the court will decide who looks after your children in the event that both of their parents are deceased. This is the case, even if a relative steps forward and offers to care for them. The court may choose to place your children with that relative, but there is a chance that they may make a different decision if you have not made a Will specifying who you wish to take on the role.

As well as choosing a guardian, you can also appoint trustees to take care of the money that you have left to support your children. It will be their job to invest the money and to release funds to the guardians as needed to support your children until they reach the age at which you would like them to inherit.

The trustees can release the money in the trust fund to pay for your children's day-to-day expenses and they will also consider requests

for larger items, for example, tuition fees or a car.

In appointing trustees, you should choose someone who you believe will exercise caution in administering the trust fund. They will need to be seen to be acting fairly and treating all of your children equally, particularly when agreeing to larger items of expenditure.

If you have questions about how to include your children in your Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants about leaving assets to your children.

Creating a Will trust

You can use your Will to create a trust for a number of purposes. As above, you can put money into a trust for your children, until you feel they are old enough to inherit.

A Will trust can also protect money and property from being spent where you wouldn't wish it. An example of this is leaving your share of a property in trust for your spouse or partner. This allows them to live in the property for as long as they wish, but with it ultimately being left under the terms of your Will, for instance to your children.

Case study: the sideways disinheritance trap

Remarrying in later life can cause problems for your family unless you look after your children's interests when making your Will.

If you leave your home and assets to your new spouse or partner, then your children could miss out on inheriting anything, even if your new spouse or partner has made a Will leaving everything to your children in due course, as they could simply change their mind or spend the money.

By way of example, if Mr and Mrs Abbott are married, and Mr Abbott dies leaving everything to his wife, the family might

expect her to leave everything to their children when the time comes.

But if Mrs Abbott remarries, her marriage will automatically invalidate any existing Will. If she has married Mr Thompkins and she then dies without making a new Will, the bulk of her estate, if not all of it, will pass to Mr Thompkins.

Mr Thompkins may choose to leave everything to his children. If he fails to make a Will, then everything will pass to his children on his death in any event, and this will not include any step-children.

In this event, Mr and Mrs Abbott's children will receive nothing.

There is also the risk that even if Mrs Abbott makes a Will leaving everything to her children, she may end up losing the money she has inherited from Mr Abbott in some way, such as a bad investment or in care home fees.

The answer lies in the creation of a life interest trust in the Wills of Mr and Mrs Abbott. If this is done, then when Mr Abbott dies, his wife can still live in their property for the rest of her life. She will be able to move and buy a new property if she wishes, but on her death, the share that belonged to Mr Abbott will pass in accordance with his Will, usually on to children.

To speak to a Wills expert about ensuring that you safeguard your family's interests, click HERE to set up a free, no-obligation discussion.

Dealing with your property in this way prevents it from having to be sold and used for care home fees or being left to someone else under the terms of the spouse's Will, for example to children they may have from an earlier relationship or to a new spouse.

When creating a trust, you will need to choose one or more trustees to be responsible for the assets in the trust during the period of its existence. Often this will be the same person who acts as your executor, but this does not have to be the case.

The trustee will need to register the trust with HM Revenue and Customs and pay income and capital gains tax in respect of the assets held in the trust as well as preparing annual trust accounts where necessary.

You should ensure that you are clear on the tax implications of creating a trust, both at the present time and following your death. Your chosen trustee will also need to have a clear grasp of the relevant tax rules so that they can pay the right amount of tax at the right time.

If you are considering using a Will trust to protect your assets or as part of Inheritance Tax planning you should always seek legal advice. It is a complicated area and it is important to fully understand the implications of creating a trust and ensure that it is set up in the correct way.

Remember, if you have questions about how to include a Will trust in your Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants about Will trusts.

Choosing your executors

When you write your Will, you must name one or more executors. This is the person who will deal with the winding-up of your estate following your death. It can be a time-consuming and onerous job and you should choose someone whom you trust implicitly, but also whom you feel will have the time and ability to carry out the tasks involved.

You can choose between one and four executors, although it is unusual to appoint more than two. You can name an alternative executor in case your original choice is unable or unwilling to act when the time comes.

The executor's job includes the following tasks:

- Obtaining a copy of the death certificate, either by registering the death or by requesting a copy once the death has been registered by someone else;
- Obtaining the Will;
- Applying for a Grant of Probate, if this is required;
- Placing the required notices in the press;
- Collecting in and valuing all of the assets in the estate;
- Calculating and paying Inheritance Tax and any other tax liabilities and debts;
- Securing any vacant property the deceased may have owned and making sure it is properly insured;
- Clearing and selling the deceased's home;
- Preparing estate accounts;

- Transferring any assets that have been bequeathed such as shares or property;
- Distributing the estate to the beneficiaries named in the Will.

If the deceased owned a number of different assets at the time of their death, winding-up the estate could take a considerable time as each of these have to be identified, valued and sold or encashed or transferred.

The executor you choose needs to be confident that they can carry out the job without difficulty and that they understand the process. There can be personal liability for any loss caused to the estate by an executor, even if it was caused by a genuine mistake. Your executor will also need to have sufficient time available to devote to the process, which could last many months, or even longer.

It is also preferable to choose someone younger than you if possible.

If you do not have anyone suitable, you can appoint a professional executor. This is usually an experienced Wills and probate solicitor whose job involves winding-up estates, to include calculating and paying Inheritance Tax and preparing estate accounts, two of the most complicated tasks.

In the event that you feel that a professional executor might be the best choice for your estate, you should discuss this with your Will writer who will be able to put the necessary arrangements in place.

Remember, if you have questions about how to include the right executors in your Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants about executors.

Leaving assets in your Will

When considering what to leave and to whom you would like to bequeath it, it is a good idea to make a list of your assets and their approximate value.

This could include savings, insurance policies, pension, shares and bonds, property and valuables. You should also list any foreign-held assets, but ensure that you take legal advice about whether these will be covered by your Will. The law in some countries will require you to make a Will there as well as in the UK.

Next, you can list those whom you would like to benefit from your estate, and what you would like to leave them. As well as individuals, you can leave money to charities or other organisations such as a religious or political group.

There are a number of different types of bequest that you can make, as follows:

A pecuniary legacy

A pecuniary legacy is a specified sum of money, for example, '£5,000 to Joan Smith of…'. Your Will can contain as many pecuniary legacies as you wish, of varying amounts.

A specific legacy

A specific legacy is the leaving of a particular item to someone, such

as a piece of jewellery or a painting. The item will need to be clearly identified and ideally easy to locate. A specific legacy can also leave an entire class of items to someone, for example, 'All my jewellery to…'.

A residuary legacy

A residuary legacy leaves someone a share of your net estate, i.e. whatever is left at the end of the administration process after all tax liabilities, expenses and other debts have been paid. If you are splitting the residue between more than one person, you would specify the percentage share each is to receive.

You should bear in mind that pecuniary legacies will be paid out first and the residual estate is, by definition, that which is left over. It could be the case that if your financial circumstances change towards the end of your life, for example if a large amount of money is used to pay care home fees, that your residual estate could be much smaller than you anticipated. If this happens, those receiving pecuniary legacies could receive more than those who have been left a share of your residual estate, which may not be what you would have wished to happen.

A reversionary legacy

A reversionary legacy specifies what is to happen to a bequest if your choice of beneficiary dies before you. For example, you could leave your house to your spouse, but in the event that they predecease you, you can leave it to your sibling.

If you do not specify that a bequest is reversionary, then a gift left to someone who has already died may fail or lapse and that item or sum of money will be dealt with as part of the residuary estate. There is an exception to this where a gift is left to the testator's child. If they

predecease the testator but leave children themselves, the gift will pass to those children unless the Will specifically says otherwise.

A trust

When you leave something to someone for the period of their life, with it then passing to a third person, this creates a life interest trust. A common example is leaving your share in a property to your spouse or partner for the rest of their life, but then to your children. This prevents what is sometimes called the 'sideways disinheritance' trap, where a property passes to a new spouse and then on to their children or under the terms of their Will, meaning that the deceased's children miss out.

A life interest trust will protect the asset from care home fees or from being left to someone else when the time comes. It is important to take care when creating a trust to ensure that it is set up correctly. You must also avoid what is known as deliberate deprivation of assets in anticipation of care home fees, which is not allowed and may result in money being claimed back by the local authority. This can be a difficult area and it is advisable to seek legal advice to ensure that the transactions you propose are legal and will not cause difficulty to your estate or your beneficiaries.

A trust can be fixed or discretionary. In the case of a fixed trust, the beneficiary is entitled to a specified share of the trust fund assets, for example, 50 per cent of the trust fund. The right to live in a property during your lifetime is also an example of a fixed interest in a trust.

A discretionary trust gives the trustees some leeway to distribute trust monies as they see fit. They are still required to act in accordance with the document setting up the trust, but they can make decisions as to whether a payment is within the spirit of the trust fund or not.

For example, if a trust fund has been created to pay for education of a number of grandchildren and one of them has requested a car to enable them to drive to college, the trustees would consider whether this was a reasonable expense, within the spirit of the trust. They would also take into account the size of the trust fund and the number of beneficiaries.

The use of a discretionary trust can be useful in providing for children who have not yet been born, by including them in the class of beneficiaries to benefit from the funds.

Tax issues surrounding the setting up and administering trusts can be complex and a trust is not always the most financially beneficial solution. For this reason, it is important to seek legal advice from a Wills, trusts and tax expert to ensure that the Will you put in place is the most suitable option for your circumstances.

Remember, if you have questions about how to give your assets away in your Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants about listing assets in a Will.

Inheritance Tax

Inheritance Tax (IHT) is a substantial tax, payable at a rate of 40 per cent of the value of an estate above the IHT threshold. Many estates pay Inheritance Tax that could have legitimately been avoided.

Your entire estate can be left to your spouse or civil partner free of IHT. Your unused IHT allowance, the amount of your estate below the IHT threshold, will then pass to your spouse or civil partner to be added to their allowance when their estate is administered.

IHT and property

There is the possibility of an extra allowance if property is left, known as the main residence nil-rate band. This is intended to allow people to leave their home to their direct descendants, either children or grandchildren (to include stepchildren, adopted children and foster children), tax-free up to a specified level. As with the IHT allowance, if a spouse or civil partner's estate does not utilise the property allowance because everything is left to the other spouse or civil partner, the property allowance can also be transferred to be used on the death of the second to die.

This allowance tapers off for large estates, where it is assumed an estate is better able to afford IHT. It only applies to a single home, owned by you directly (and not in a trust). It does not have to be your main home, or indeed a property that you have ever lived in and there is no minimum ownership period needed to qualify.

When having your Will drafted, your Will writer will be able to advise you on the best options for your situation to minimise the IHT that will be due following your death.

Case study: Inheritance Tax

By way of example, if your estate is worth £525,000 and you leave your home to your children, assuming a basic Inheritance Tax allowance of £325,000 and a main residence allowance of £175,000, then no Inheritance Tax will be payable on the first £500,000 of your estate.

The remaining £25,000 will be subject to the tax at 40 per cent which means that £10,000 will be payable in respect of Inheritance Tax.

If you did not leave your property to your children, then Inheritance Tax would be payable on £200,000 of your estate, which means a tax bill of £80,000.

If you would like to discuss the best way to manage your Inheritance Tax liability, click HERE to speak to a legal Wills and tax expert.

IHT and gifts

If your estate is going to be liable for IHT, you may want to consider gifting assets during your life. However, you cannot simply give away money and assume that IHT will not be payable on it.

There is a limit on the amount that you can give away each tax year

free of IHT. If you do not reach your limit in any particular year, you can carry the allowance forward, but only for one year.

In addition, you can give small gifts of £250 or less, gifts from your income (rather from your savings, and they should not be one-off gifts, but regular maintenance-type payments) and gifts to someone who is getting married. There is a scale in respect of the latter, with a bigger gift permitted to close relatives. Finally, gifts to charities and political parties can be made without incurring IHT liability.

In respect of other gifts, IHT will be payable on a sliding scale if the person making the gift dies within seven years of giving them. Gifts are classed as 'potentially exempt transfers', as they may not attract IHT if the donor survives for seven years or more after making them.

A gift made within seven years of death will be classed as part of the deceased's IHT allowance. If substantial gifts are made, this could mean that a large part of the allowance is used up by the gifts and so the estate will not have much of the allowance left to apply against its value.

IHT on gifts decreases, the longer ago they were made. This is known as 'taper relief' and means that a gift made six years ago attracts less IHT than one made four years ago. The bands are: below three years, three to four years, four to five years, five to six years and six to seven years. This can make calculating IHT on a number of gifts given at different times quite a complex process.

Remember, if you have questions about Inheritance Tax planning and your Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants about Inheritance Tax.

Care home fees

Care home fees can quickly run into tens of thousands of pounds. You may need to sell your property to pay for them.

It may be tempting to give away your home and your money to avoid having to use all of your estate in payment of care home fees, but deliberately reducing your assets so that you cannot pay care fees is not permissible. If the local authority finds you guilty of deliberate deprivation of assets, they can reverse the transactions and use the money to pay for your care.

If you made the transfer a long time before you needed care, this may be acceptable. If you leave it until you are facing the possibility of long-term care, then you are more likely to be investigated and your actions reversed.

Case study: long term care

To ascertain whether you need help with the costs of your care, the local authority will carry out a standard means test looking at the amount of money you have and the value of your home.

By way of example, if Mrs Philips has property and savings worth over the threshold amount (£23,250, as at January

2021), she will need to pay for her care herself and if she does not have enough available cash, her home may need to be sold.

However, if she and her husband have gifted their share of their property to each other by a Last Will and Testament, to be held on trust for life, half of the property will be protected from care home fees. Her husband will be able to continue living in their home. This also means that only half of the value of the property will be included in the means test.

To do this, the property must be jointly owned by the couple as *tenants in common*.

This is called a Testamentary Trust and is effective when one of the parties dies and ultimately protects half the house. There are Lifetime Trusts which can protect the whole house during the lifetime of both parties. These Lifetime Trusts are very useful for protecting the family home from third party assessments and are effective from the date they are signed.

If you would like to discuss the best way to deal with care home fees, click HERE to speak to a legal Wills and tax expert.

Using a professional Will writer

When making a Will it is easy to make fundamental errors which can mean that those you wish to benefit from your estate won't. Common mistakes include only disposing of part of the estate, certain clauses in the Will being unenforceable because they are not worded clearly and the Will being wrongly executed and therefore invalid. If your Will is held to be invalid and no prior Will is in existence, everything will pass in accordance with the Rules of Intestacy.

It is also difficult to put in place the most tax-efficient Will unless you are familiar with the relevant and most recent rules and legislation.

A professional Will writer will work with you to identify your assets and ensure that you can leave them to your loved ones in exactly the way that you want. They will also ensure that your estate can take advantage of any available tax allowances and advise you in respect of estate planning.

They will also be able to guide you in writing a letter of wishes to your family explaining the decisions you have taken with regard to your estate. This, together with a well-drafted Will, will go a long way towards avoiding any disputes.

Conversely, a poorly-drafted or ambiguous Will, or one that is a complete surprise to someone, can often lead to disagreement and upset between family members. As well as damaging relationships,

if this escalates into legal action, the estate can be tied up for a very long time while the courts decide what should be done. The money in the estate will also be severely depleted if the executors are forced to fund a lengthy legal battle.

For a relatively modest sum, you can have a Will drawn up that you can be confident in and that will give you the peace of mind of knowing that your loved ones will be taken care of after your death.

Remember, if you would like to speak to a professional Will writer about creating a Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants.

Adding a codicil

If there are small amendments you wish to make to your existing Will, you can have a codicil drafted rather than a whole new Will. This is a separate document, but it should be stored together with your Will so that your executors are aware of its existence when the time comes. You can make more than one codicil if necessary, as changes arise over time, but to keep things simple it is often recommended to make a new Will, particularly if the changes are more than just minor alterations.

Examples of simple amendments suitable for including in a codicil include updating the name of a beneficiary, altering the amount left to a beneficiary or changing the name of an executor.

The codicil must state that it is a codicil to your Will and identify the Will by reference to its date of execution. It must be clear and unambiguous and state which clause of the Will it revises. The changes need to be well-drafted to avoid any confusion. You should not attempt to amend your Will by writing on it or by crossing anything out.

There is a slight risk in making a codicil that it may be misplaced and that a Will may be proved without anyone realising that there is a codicil in existence. Another point to be aware of is that your Will and any codicils to it will be made public once the Probate Registry issue a Grant of Probate. If you have used your codicil to write someone out of your Will, they will be able to tell. A new Will can avoid this situation.

If you have questions about writing a codicil, then click HERE to set up a free, no-obligation discussion with one of our experienced consultants about adding a codicil to your Will.

Executing your Will

It is essential that your Will is executed correctly otherwise it may be invalid. The document must be in writing and your signature must be on it. Your signature must also be witnessed by two witnesses, or if you have signed the document in advance you must confirm to them, both together, that it is your signature.

They both need to sign the document themselves in your presence and must also see each other sign. They should then add their full name, address and occupation. There is no need for the witnesses to read the Will or to know what it contains, but they must be aware that it is a Will.

The witnesses must be aged 18 or over, sighted and able to sign their name. However, it is essential that a beneficiary under a Will or their spouse or other close relative does not witness it as they would not then be entitled to inherit anything under the terms of it. Ideally, a witness will be completely independent and your Will writer can advise you on this. If you are attending at their offices, they will have witnesses available who can sign.

Any amendments to the Will must be made in ink and initialled by the person making the Will and by both witnesses. It may be advisable for everyone to sign each page of a Will if it has not been professionally bound – for example, if it is just stapled together.

The signing process for a codicil is the same as for a Will. There are separate rules for those who are blind or who are unable to physically sign.

Remember, if you have questions about how to properly sign your Will, then click HERE to set up a free, no-obligation discussion with one of our experienced consultants about ensuring your Will is validly executed.

Storing your Will

Having made your Will, it is important to store it safely and to ensure that your executors know of its existence and where it is being kept. A professional storage facility is preferable as this will have fire safety precautions in place and also be unlikely to lose or damage the document.

At E.L.M Legal Services, we provide our clients with a free Will storage service for your Will and related paperwork in our fireproof storage facility.

You will be supplied with a copy of your Will for your records together with a letter detailing where your Will is stored, which you should place with your important papers so that it will be found when the time comes. Having made a Will, you should try and ensure that at least some of your loved ones know where it is located. If it is missed following your death, your estate could pass under the Rules of Intestacy.

Keeping it in a bank safety deposit box is not a good idea as your executors are unlikely to be able to access it until they have a Grant of Probate – which they cannot apply for until they have your original Will.

If you have questions about storing your Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants about keeping your Will safe and secure.

Reviewing and updating your Will

You should review and update your Will whenever there is a major change in your life circumstances. A marriage, for example, makes any existing Will invalid, with the exception of one made and referred to as being in contemplation of marriage.

Divorce however does not invalidate a Will – it only revokes the clauses relating to your ex-spouse, which could cause difficulty and may even mean that your estate passes in accordance with the Rules of Intestacy.

The value of your estate may change over time, your personal circumstances may alter, new family members may be born or others pass away. HM Revenue and Customs will regularly change IHT thresholds and other financial regulations. All of this means that a Will can become outdated and may not accurately reflect what you want to happen or may not make best use of tax allowances.

At E.L.M Legal Services, we provide a Perpetual Will service. This covers everything you need in respect of your Will during your lifetime, to include a free update service and free storage.

If you have questions about updating or reviewing your Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants.

Living Wills

Also known as an advance decision, a living Will is a completely different document to a Will. It details the medical and healthcare decisions you would like made on your behalf in the event that you are unable to make these choices yourself.

In the event that you do lose the capacity to act, the document will be legally binding upon your medical team and carers.

You can decide to decline potentially life-sustaining treatment, so it is important that you take the time to consider your wishes carefully and discuss the implications fully with your medical practitioners.

Remember, if you have questions about writing a living Will then click HERE to set up a free, no-obligation discussion with one of our experienced consultants who will be able to advise you.

Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) is also very different to a Will, but it is something that people often consider putting in place at the same time that they make a Will. It is a document giving a trusted representative, referred to as an attorney, the power to act on your behalf in the event that you lose the mental capacity to make your own decisions.

If you are no longer able to manage your own affairs, then no one, not even a spouse or other close family member, has the right to step in and do this for you unless you have signed an LPA. An application would need to be made to the Court of Protection to become someone's deputy. This is far more complicated than the process for registering an LPA and also more expensive, and includes some ongoing costs.

There are two types of LPA – one which relates to property and financial affairs and one in respect of health and welfare.

Property and financial affairs LPA

A property and financial affairs LPA gives your attorney the power to deal with your finances, to include the payment of bills or the sale of your home. If you only want your attorney to be able to deal with certain matters on your behalf, you can specify these.

This type of LPA can be used by your attorney while you still have capacity, if you so wish. This can be useful in the event that you have

difficulty in travelling to the bank and would like someone to be able to do this in your place.

Alternatively, you can specify that the LPA should only be used once you have lost capacity.

Health and wellbeing LPA

A health and wellbeing LPA can only be used by your attorney once you no longer have the ability to make decisions yourself. The LPA can cover aspects of your care such as where you will live, your day-to-day care and activities and your medical care.

You can include permission for your attorney to make decisions about life-saving treatment if you wish.

If you have questions about making an LPA then click HERE to set up a free, no-obligation discussion with one of our experienced consultants who will be able to answer your queries.

Capacity

In order to execute a Will, a codicil, a living Will or an LPA, you must have the mental capacity to do so. In respect of a Will, this is referred to as testamentary capacity. If it can be shown that someone did not have testamentary capacity when they signed their Will, the Will is invalid.

Having capacity means that the person signing the Will understands the nature of the document and its effect and knows the extent of the property that they are giving to their beneficiaries. They also need to be able to appreciate the claims that they should address, for example, to provide for someone who relies on them for support. Finally, they should not have any disorder of the mind that perverts their sense of right or prevents the exercise of their natural faculties in disposing of their property under the terms of their Will.

If there is any likelihood that capacity will be an issue, your Will writer will be able to put in place documentation that can be used as evidence of capacity. This could include a medical certificate of capacity from a GP or a medical specialist and a statement from the Will writer that they believed the testator to have fully understood the effect of what they were signing. A Will writer will always keep notes of their meetings with clients which can also be useful should a challenge arise in the future.

If you have questions about capacity then click HERE to set up a free, no-obligation discussion with one of our experienced consultants who will be able to answer your queries.

Making a Will in modern times

It is now possible to make a Will remotely without actually meeting your Will writer in person or attending their offices. A so-called 'webcam Will' allows you to conduct the entire process from your own home. You can still be assured of a bespoke service and your own dedicated Will writer who will discuss your situation, talk through the options with you and help you through the whole process, but it can be done safely and without the need for travel.

There is also temporary legislation in place allowing a Will to be witnessed via video as well, so that you do not even need to be in the same room as your witnesses.

To take advantage of a remote service, you will need to find a Will writer who specialises in this. E.L.M Legal Services are leading experts in webcam Wills. Not only do we provide friendly, approachable Will writers who are specialists in all areas of Will drafting, but we have the technology in place to share screens of information with you as we go through the details to ensure your Will is exactly right for your circumstances.

If you have questions about making a Will via webcam then click HERE to set up a free, no-obligation discussion with one of our experienced consultants who will be able to talk you through the process and answer any queries you may have.

Peace of mind with E.L.M Legal Services

Putting a valid Will in place means that you can be sure that your loved ones will be looked after following your death and that you have minimised the risk of family disagreements. While making a Will isn't easy, our clients always find that once it has been done and placed safely into storage until it is needed, they have real peace of mind.

As well as a comprehensive Will writing service, we are also specialists in dealing with family and property trusts and trust and estate management services. We can also draw up LPAs on your behalf and advise you on the implications of signing.

We are one of the top five providers of Will writing services in the UK. As a team we are dedicated to providing an excellent and trusted service to all of our clients. We have a rigorous in-house training and development plan which sees all our employees achieve industry-recognised qualifications, including the Society of Trust and Estate Practitioners (STEP) Diploma and Chartered Institute of Legal Executives (CILEx) qualifications. We are also members of the Institute of Professional Will Writers.

For a free, no-obligation chat to one of our friendly and approachable

team, call us on **0117 952 0698**, email us at **info@elm-online.co.uk** or fill in our Contact Form.

Glossary of commonly used terms

Administrator	The person who deals with the winding-up of an estate when there is no valid Will.
Beneficiary	Someone who has been left something in a Will.
Capital Gains Tax	Tax payable when you sell an asset that has increased in value. The tax is calculated on the amount of the increase.
Chattels	Possessions other than land, such as cars, jewellery, furniture and art.
Codicil	A document changing or modifying a Will.
Court of Protection	A court that makes decisions in relation to people who have lost the capacity to manage their own affairs. The Court of Protection can appoint deputies to act on the behalf of patients and make orders and decisions regarding their affairs.
Deed of Variation	A document varying a Will after death or altering the inheritance of an estate under the Rules of Intestacy.

Discretionary trust	A trust where the trustees can decide when and how much beneficiaries should receive.
Estate	The property and assets left by someone when they die.
Executor	The personal representative appointed under the Will of someone who has died and who will be responsible for winding-up their estate.
Grant of Probate	The grant of authority issued by the Probate Registry to an executor that allows them to deal with the winding-up of an estate.
Guardian	Someone who is responsible for the care and wellbeing of a child under the age of 18.
Inheritance Tax	A tax payable on the value of an estate when its value exceeds a set limit. Inheritance Tax may also be payable on the value of trust assets.
Intestate	A person is intestate when they have died without leaving a valid Will.
Issue	Someone's children and grandchildren, and direct descendants.
Joint tenancy	A type of joint property ownership where, on the death of one owner, the property automatically belongs to the survivor.

Lasting Power of Attorney	A document giving someone the authority to make decisions as to your finances and property and/or your health and wellbeing on your behalf should you lose the capacity to manage your own affairs.
Legacy	A gift left to someone in a Will. A pecuniary legacy is a cash gift, while a specific legacy is an item, such as a property, a painting or a piece of jewellery.
Letters of Administration	The grant of permission issued by the Probate Registry giving an administrator the power to wind-up an estate.
Letter of Wishes/Letter of Intent	A letter placed with a Will that details the deceased's wishes that are not legally binding, such as funeral arrangements.
Life tenant	Someone who has been granted a life interest in a property. They do not own the property and cannot leave it to anyone in their Will, but they have the right to live there during their lifetime.
Office of the Public Guardian	The office that supervises deputies and registers Lasting Powers of Attorney for those who do not have the capacity to manage their own affairs.
Personal representative	The executor or administrator of a deceased person's estate.

Potentially exempt transfer	gift given by someone during their life that may be exempt from Inheritance Tax, provided they live for seven years after making the gift.
Residue	The amount of someone's estate that remains after all of the debts and liabilities have been discharged and any specific gifts have been made.
Revocation	The process of cancelling a Will or Codicil. The person revoking a Will or Codicil must have the mental capacity to do so. It has the effect of making it as if the document never existed, so any previous Will becomes valid once again. Revocation must be carried out in a particular way to be effective.
Rules of Intestacy	The rules that dictate to whom an estate will pass if the person who has died did not leave a Will.
Tenancy in common	Joint ownership of property, where each owner holds a separately identified share. The shares do not have to be equal and can be left in a Will to someone other than the surviving joint owner.
Testator/ testatrix	The person who made the Will, either male or female.
Trust	A way in which property or assets can be held by people known as trustees for the benefit of others, known as beneficiaries.

Trustee	The person who is responsible for looking after trust assets on behalf of the beneficiaries.
Will	The document that allows someone to leave their property and other assets to specified beneficiaries following their death.

Get in Touch Now

Learn how E.L.M. Legal Services can help with your Will. Click HERE to set up a free, no-obligation discussion with one of our experienced consultants.

About E.L.M

Jim Emsley is the founder of E.L.M Legal Services, one of the country's leading Wills and estate planning companies.

With extensive experience in all aspects of planning for the future, from Wills and Lasting Powers of Attorney to trusts and Inheritance Tax planning, Jim is committed to helping families put the right documentation in place to ensure a secure future.

He and his team use the latest technology combined with excellent customer service to ensure clients have the peace of mind of knowing that their wishes are accurately recorded to make dealing with administration as easy as possible when the time comes.

Jim aims to help everyone understand the importance of putting a valid Will in place. He and his team have decades of experience in the sector and aim to make the process straightforward and stress-free for everyone.

To find out more about Jim and E.L.M Legal Services, visit their website.

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