



Planning for your future

Option One: Do Nothing and have no Will at all (Intestacy)

If you die without a legally valid Will in place, your estate will be distributed in accordance to the rules of intestacy.

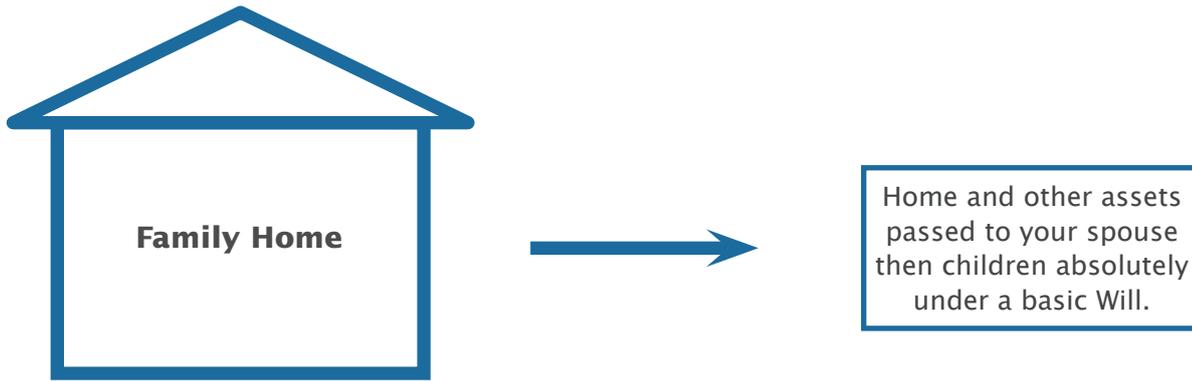
In addition to your estate being distributed in accordance with the intestacy laws, if you die intestate your next of kin have very few rights to deal with financial matters until appointed by the court as administrators of your estate.



Keep in mind that all joint assets pass by survivorship, giving no protection at all after the first death.

If you have no Will in place, your assets are exposed to many avoidable risks and costs on your death, as well as to changes in the government's decisions on who should benefit.

Option Two: Make a Basic Will



Why make a Basic Will?

Without a valid Will, your estate will be distributed in accordance to rules of intestacy. By making a Will you will have certainty regarding who your estate will go to. You can also appoint people of your choice in various capacities, such as executors or guardians of any children under the age of 18.

A basic Will is the simplest type of Will. It would make provision that everything would be passed to your spouse and or children if your spouse had already died. A Mirror Will "reflects" the wishes of both spouses and the clauses are the same in both Wills.

What are the main clauses in a Basic Will?

Executors:

An Executor is someone who is named in the Will as responsible for dealing with the estate and carrying out the instructions in the Will. You can only appoint an Executor in a Will. Without a Will, an application would have to be made to the court for an "Administrator" to be appointed. This could lead to delays and someone you don't know or trust could be appointed. The role can be demanding and take time to complete. It is a responsible role and trusted people should be chosen. These could be family members or friends.

Appointing Guardians:

If you have children under the age of 18, it is very important to include a guardianship clause in your Will. A guardianship clause will give you peace of mind that you have made appropriate arrangements for your children and who will be taking care of them. Without naming guardians in your Will, the court would consider all the circumstances and decide who would look after your children.

It is also a good idea to consider naming substitute guardians in your Will in case your first choice of guardians cannot act for you (for whatever reasons).

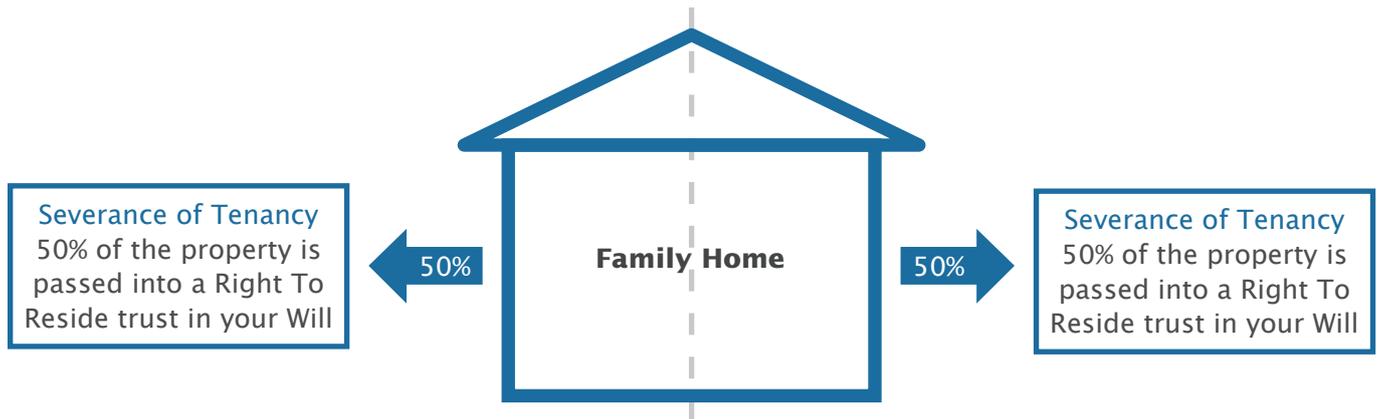
Specific Gifts:

Without a valid Will you cannot bequeath any property or monetary gifts to anyone. Your estate would be divided in accordance with the intestacy rules (see previous page). By making a Will you can bequeath items or money to whomever you want including charities and organisations. Your chosen Executors would ensure the gifts are distributed according to your wishes. Specific gift clauses can also minimise family disputes over items such as jewellery, art or stamps.

Disadvantages of making a Basic Will:

A basic Will does not offer any protection for your assets where there is a change in circumstances, such as the remarriage of a surviving spouse which can cause sideways disinheritance (see next page). Also, should a surviving spouse require care then the whole estate including the family home will be assessed and used to pay for it.

Option Three: Protective Trust Wills



Protective Trust Wills (PTW) are more powerful than basic wills and can safeguard your assets for many years. They enable you to put in place arrangements to take care of your loved ones even after the death of your partner.

In many ways, a PTW is very similar to a basic Will. It appoints Executors and specifies how your estate will be distributed on your death. Similarly, it can also contain guardianship clauses and specific gift clauses. However, there are several advantages to be gained by including such clauses in your will to protect your assets from various scenarios. Such protection is not afforded by a simple basic Will.

What does a Protective Trust Protect?

Sideways disinheritance:

Sideways disinheritance means that chosen beneficiaries could be side-stepped by a change in circumstances. For example, marriage revokes any Will previously made (unless it is made in contemplation of marriage). If your assets pass into a trust after your death, your surviving partner cannot affect how those assets are distributed once they die. Your wishes are already in effect. You can enable your partner to enjoy the asset while they are alive and choose whom it will pass to once they die, for example children or grandchildren.

Simple Scenario: Mr & Mrs Smith make Mirror Wills together leaving everything to each other and then on to the children. Mrs Smith dies and Mr Smith inherits everything. After five years he remarries. His new wife has a son from a previous marriage. The act of marriage revokes any Wills in place so they both need to make a new Will. They make a Mirror Will leaving everything to each other and then to the children equally. Mr Smith dies and his surviving spouse inherits everything. She later changes her Will leaving everything to her son. On her death Mr Smith's children do not inherit at all (sideways disinheritance).

A PTW would have prevented this from happening and ensured all children would have benefitted from their parent's estate.

Long term care:

After your death, if your surviving partner goes into care, you can ensure that the assets that belong to you are not available for payment of your surviving partner's care costs. You can thus preserve your assets for your chosen beneficiaries.

Disadvantages:

By changing the equitable ownership of your property from joint tenants to tenants in common you may increase the need for the property to pass through probate on the first death. Please note: New mortgages and equity release plans may not be available in respect of properties held in trust.

You should also consider that you and your partner will both lose the right to automatically inherit the property on the death of the first one of you to die. Instead, you will each be dependent on the other to leave you a right to reside in it. In this respect it is important to note that anyone can amend or revoke their own Will at any time.

Protective Trust Wills for joint or single owned property

Jointly owned property

Any asset that is jointly owned, such as a house or a bank account, passes automatically to the survivor on the death of a joint owner. For some clients this will be what they want to happen, but consideration must be given to the threat of 'sideways disinheritance'.

It is always possible the joint owner will remarry and want to share assets with their new family, or inadvertently leave them to a new spouse because they have not made a new Will. Wills are automatically revoked on marriage. If there are children from previous marriages the survivor may decide to prefer their own over their former partner's, or they may just be persuaded to alter their Will in someone else's favour.

By 'severing the tenancy' of a jointly owned property, and preferably registering this with the Land Registry so that each party owns a defined share (usually 50:50), that share can be left only to the beneficiaries they have chosen in their Will.

We would apply to HM Land Registry on your behalf. Once the joint tenancy is "severed" you would become tenants in common.

The survivor can be granted the 'right to reside' in the property for a fixed term or for their life, or until they go into care. They can usually downsize if they want to, but it must eventually pass to the specified beneficiaries you have chosen in your Will.

Solely owned property

If you want to ensure particular assets go to particular people after your death you must make a Will. If you want someone to benefit from an asset (perhaps by living in your home after your death or getting the income from an asset) but don't want them to own it outright or be able to sell it, then your Will can contain a 'term interest', 'life interest' or 'discretionary trust'. You can give directions about who the asset eventually passes to and when.

If one or more of your potential beneficiaries is disabled a vulnerable beneficiary trust can be established which has certain tax advantages and can protect any means-tested benefits they are in receipt of. It is important to take specialist tax advice in these circumstances as there can be an effect on the beneficiaries' tax as well.

**For more information or to arrange a FREE consultation,
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