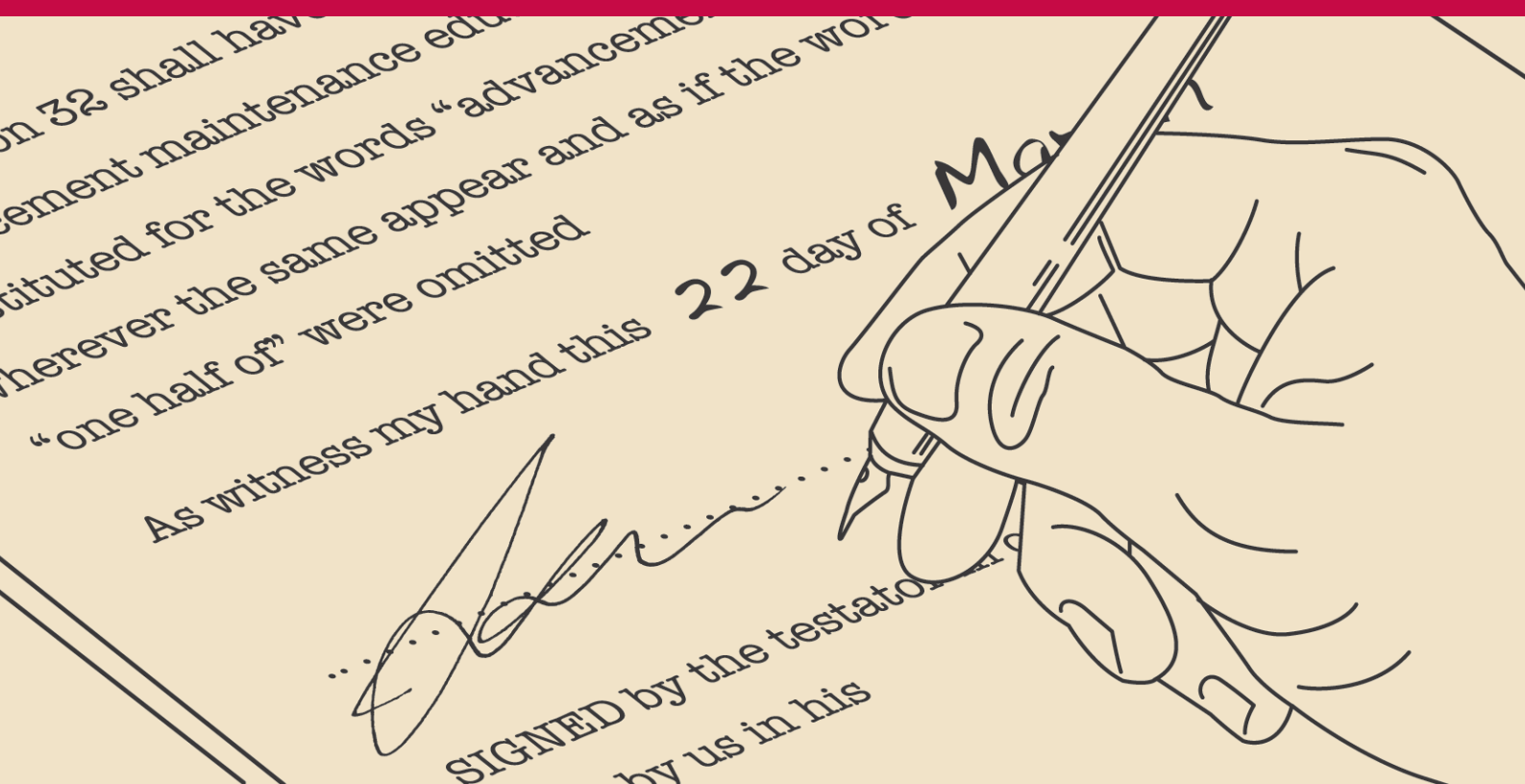


# Making a Will



## Understanding the process

Advice for older people

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- Check Your Tax
- Claiming Disability Benefits
- Questions on Pensions
- Thinking About Money
- Making a Will

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- Fitter Feet
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- Healthy Eating
- Staying Active and Independent
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Leaflets are free of charge and available from the Information Resources Team at the address on the back page, email [adviceleaflets@helptheaged.org.uk](mailto:adviceleaflets@helptheaged.org.uk) or call 020 7239 1845.

*Making a Will* was printed in April 2009. The information given in this leaflet is accurate at time of printing. However, things do change so it is important that you seek professional advice on your personal situation.

If you would like this leaflet in another format, such as large print or audio tape, please contact the Information Resources Team on **020 7278 1114**.

This advice leaflet is not a comprehensive statement of the law in this subject. Age Concern and Help the Aged cannot give individual legal or financial advice.

## Contents

Why make a will?	page 4
Wills for couples	page 6
Intestacy and what happens if you do not leave a will	page 6
If you live in Scotland	page 8
If you live in Northern Ireland	page 9
Choosing executors and trustees	page 10
Appointing professional executors and trustees	page 12
Choosing witnesses	page 12
What do you own?	page 12
Overseas assets outside England and Wales	page 14
Inheritance Tax	page 14
Trust funds	page 19
Drafting a will	page 22
Storing your will	page 22
Codicils and rewriting wills	page 23
Changing a will after death: deeds of variation	page 23
Wish lists and contact details	page 24
Mental incapacity	page 24
Living wills and advance directives	page 26
Jargon buster	page 26
Useful contacts	page 28

**This guide will help you prepare for the process of making a will. The explanations of the often complex issues relating to wills are brief but will give you a basic understanding of what is involved.**

Writing a will that accurately reflects your wishes, while at the same time saving unnecessary taxes going to the government, is not easy. It requires an extensive knowledge of an ever-changing taxation system, and of the laws that apply to estates.

This guide highlights issues that you need to think about, some of which may not have previously occurred to you. It highlights areas in which you will need to seek professional advice so that you end up with a will that reflects what you want to happen to your estate after you die.

## **Why make a will?**

### **Peace of mind**

Having worked hard to earn a living and to gather around you the things you enjoy, you will want them to be appreciated by those to whom you leave them. Writing a will enables you to plan what will happen to your money and possessions (your estate), so that you can live the rest of your life without worrying about the future.

Dying intestate (not leaving a will) may cause problems for those who will have to deal with your affairs, because they may not be sure of how you want your estate distributed after your death. They will be obliged by law to deal with the estate and distribute it in a particular way, which may not be what you would have chosen.

### **Avoiding disputes between relatives**

Disputes over wills can drive families apart and may need a lawyer to resolve them. Leaving a will removes any doubt about to whom you want to leave your money and property.

## Giving pleasure to your beneficiaries

It can be hard for those who care about you to raise the subject of your death, but if they do not know your wishes they may worry about how you would like your estate distributed after you have died. Deciding whom you want to leave your possessions to (your beneficiaries) will give you the peace of mind of knowing that they will go to the people you intended. In fact, giving away some of your possessions now can be a way to reduce the amount of tax that will need to be paid on your estate. Some people decide that they would like to give away various items sooner rather than later, to save Inheritance Tax. However, it is worth seeking professional advice about this, to be sure that it is what would suit you best.

## Saving on Inheritance Tax

If you do not take professional advice about how best to plan your financial affairs before death, and leave a properly drafted will, it is possible that some of your estate will go to the government in unnecessary tax, especially Inheritance Tax.

Not everyone pays Inheritance Tax. It only applies if the value of your estate is above a certain level, which increases every year. You may be able to do some things now to reduce the amount that will have to be paid when you die. For example, it might be possible to change the way you own your property (see Inheritance Tax section on page 14).

## Your funeral and what happens to your body

Your will is a good way of letting people know whether you would prefer to be buried or cremated and the type of funeral service and music you would like at your funeral.

## Wills for couples

If your husband, wife or partner, outlives you, you will want them to be able to carry on with as little disruption as possible. This is particularly important if you own the property you live in. Therefore, it is common practice for couples, whether they are married or in a civil partnership, to make 'mirror wills': these usually specify that the first to die leaves everything to the other, and then to the children when both die.

This can be achieved using a very simple type of will. It still allows the partner making the will to make specific gifts to other people and to take measures to avoid excessive Inheritance Tax being taken from his or her estate.

## Intestacy and what happens if you do not leave a will

Intestacy means dying without leaving a legally valid will. If you do not leave a will your money and possessions will be distributed according to the intestacy rules laid down in the Administration of Estates Act 1925, which could mean that people you were not planning to leave anything to may inherit some of your property.

If you have no relatives the Crown (the state, in effect) is entitled to take everything.

Many people assume that if you are married or in a civil partnership your spouse or partner will automatically inherit all of your estate when you die. In fact, they will probably inherit only part of it, which may not be what you want.

From 1 February 2009, if you die without having made a will, your estate will be distributed as follows.

If you have a **surviving spouse** or **civil partner**:

- (a) if you have no surviving children or other relatives, everything goes to your spouse or civil partner
- (b) if you have surviving children, your spouse or civil partner gets everything if the estate is less than £250,000. If the estate is more than £250,000, your spouse or civil partner gets the chattels, which are personal belongings and household goods including jewellery, antiques and paintings. They will also receive the equity in the estate – up to a value of £250,000 and a life interest in half the remainder of the estate. This means that the capital is held for your children, who will get it when your spouse or civil partner dies. Your spouse or civil partner will receive the interest for as long as he or she lives. The other half of your estate will be given to your children immediately, or held for them in a statutory trust until they reach the age of 18 (see below for information on statutory trusts)
- (c) if you have no children or grandchildren but your parents outlive you, your surviving spouse or civil partner gets everything if the estate is less than £450,000. If the estate is less than £450,000, your spouse or civil partner gets the chattels, the first £450,000 of any savings or property, and half the remainder. Your parents get the other half. If you have no surviving parents, any surviving brothers or sisters will receive the parents' share unless they are under 18, in which case it is held for them in a statutory trust (see below) until they reach that age.

Under a statutory trust, part of an estate (after the spouse or civil partner has taken his or her fixed share) is held for children or other beneficiaries until the death of the spouse or civil partner. The spouse or civil partner receives the income from the trust for life. These rules do not apply in **Scotland** or **Northern Ireland**.

If you have no surviving spouse or civil partner, your children will share everything. If any of your children have died, their own children (your grandchildren) will inherit that share.

If you have **no surviving children or other direct descendants** (grandchildren, great grandchildren etc.), your estate will be inherited by your other relatives in the following order:

- (a) your parents
- (b) your brothers and sisters of the whole blood, or their children if your siblings have died
- (c) your brothers and sisters of the half blood, or their children if there is no surviving parent
- (d) your grandparents
- (e) your uncles and aunts of the whole blood or their children
- (f) your uncles and aunts of the half blood or their children
- (g) the Crown.

‘Whole blood’ relatives are related to you by two common relations, whereas ‘half blood’ relatives are those who only share one relative with you where they could share two.

## **If you live in Scotland**

The advice in this guide about the preparation for writing a will, and the lists of information that your will writer will need from you, is the same for Scotland as it is for England and Wales. This also applies to the Inheritance Tax (IHT) system, where the IHT threshold (£325,000 from April 2009) and many other factors such as exemptions and the ‘seven-year rule’ relating to gifts and legacies are the same. Some areas of the law and legal procedures are different in Scotland:

- a child over the age of 12 can make a will
- an inheritance can be taken from the age of 16
- in accordance with the Legal Capacity (Scotland) Act 1991, when a child reaches 16 they no longer have a guardian and can receive inheritances. So if you do not want them to take what they are entitled to at 16, you need to set up a trust and specify the age at which you want the child or children to inherit
- some of the terminology is different in Scotland, such as 'probate' (the administration of an estate), which in Scotland is called 'confirmation'.

## Legal rights in Scotland

In Scottish law you cannot totally disinherit your spouse or descendants in a will. If you have children they will be entitled to a third of your movable estate – that is, everything except land and buildings – and your spouse will be entitled to another third. You can give the remainder to whoever you wish.

If you have no children, your spouse will receive half of your movable estate. If your spouse or civil partner has died, your children will be entitled to half of your movable estate.

The spouse must decide if they wish to take their 'legal rights' in the proportions described above, or to take what they have been left in the will. They cannot take both. This does not apply to property that passes outside the estate, such as payments you may be entitled to from a pension fund, or an insurance company bond.

## If you live in Northern Ireland

In most respects, the laws relating to wills and probate in Northern Ireland are similar to those in England and Wales. Therefore most of the content of this guide will apply. However, there are a few important differences.

- The Administration of Estates Act 1925 applies only to England and Wales. The equivalent in Northern Ireland is the Administration of Estates Act (Northern Ireland) 1955.
- Only executors living outside Northern Ireland, or who are incapable of dealing with their own affairs, can appoint someone to act in their place. Therefore, it is very important that you make sure that the executors nominated in your will are prepared to take on the role and are mentally and physically capable of carrying out the work.
- The system for transferring and registering property is very different from that in England and Wales. Details can be obtained from the Land Registers of Northern Ireland (see the Useful contacts section starting on page 28).
- The distribution laws relating to intestacy vary in that there are no life interests in Northern Ireland. This means that everyone entitled to a part of the estate receives their share immediately unless they are a minor, in which case it will be held in trust for them until they are 18.

## **Choosing executors and trustees**

Executors are the people named in a will who will administer the estate and make the application to the Probate Registry (local sheriff court in Scotland) for the grant that allows the estate to be distributed. Trustees are those responsible for looking after any part of your estate that is put in trust for the benefit of others. Trustees and executors are often the same people.

You should choose executors and trustees who know you well enough to deal with your affairs in the same way you would have done had you been alive, such as members of your family or a younger friend. You could also appoint a representative of a

charity that offers an executorship service. Choose people you trust, who could reasonably be expected to outlive you, and who ideally have some knowledge or experience of dealing with financial matters. It is normal practice to give them the authority to consult and pay professionals out of the estate for the best financial and legal advice.

This is particularly important if you have left assets in trust (for example, to grandchildren under the age of 18), in which case the trustees will have to co-operate with parents or guardians in making financial decisions about the children's welfare or education, for example.

Your executors may be beneficiaries of your will but may not be under 18 at the time of your death.

Being an executor carries great responsibility, so it is advisable to let the people you have chosen know that you have nominated them. You might also check that, if they are not professional, they understand the full extent of their duties and responsibilities and that they will be able to engage professional help (paid for out of the estate), but that they cannot charge for their own time. Using professional help is particularly advisable if the estate is likely to incur tax.

Many people underestimate the amount of work involved in the administration of an estate, and the importance of knowing and understanding the tax rules. Also, it can be hard to find the time to carry out the work, and to cope with the sudden extra responsibility in addition to grief at losing a relative or friend.

## Appointing professional executors and trustees

You may wish to consider appointing a solicitor, bank or accountant as one of your executors. However, do bear in mind that:

- the fees charged by solicitors, banks or accountants may be charged at a percentage of the estate, which may not reflect the amount of work involved
- if the administration of the estate is in the hands of a professional, the other executor (family member, for example) will have limited control over how efficient the professional is being. It is very difficult to take over the administration of an estate from an appointed executor.

## Choosing witnesses

You will need two people to witness the signing of your will. The will must be signed by you in their presence (both must be in the room with you to watch you sign).

A witness cannot be a beneficiary, or the spouse or civil partner of a beneficiary, nor can they be under 18 years of age.

## What do you own?

In order to organise your affairs so that an appropriately worded will can be drafted you need first to prepare a list of all the property that you own, and the money, savings and investments you have, plus any outstanding liabilities (mortgages, loans and other debts). Take some time to complete the list opposite, so that you create a clear picture of how your estate is made up. This will help the person who writes the will to see where tax could be saved.

<b>Assets</b>	<b>Jointly Owned</b>	<b>Yours</b>	<b>Spouse/ partner's</b>
Land and property in England and Wales			
Furniture			
Personal effects			
Motor cars			
Bank accounts			
Building society accounts			
National Savings			
Stocks and shares			
Personal Equity Plans and ISAs			
TESSAs			
Life assurance			
Superannuation benefits			
Death-in-service payments			
Interest in another estate or trust			
Cash			
Other assets			
Overseas assets outside England and Wales			
<b>Total</b>			
<b>Liabilities</b>	<b>Jointly Owned</b>	<b>Yours</b>	<b>Spouse/ partner's</b>
Mortgages outstanding			
Credit cards			
Other debts			
<b>Totals</b>			
<b>Net assets less liabilities</b>			

Everyone is allowed to give away gifts of money or property to the value of £3,000 per year immediately free of Inheritance Tax. List below any gifts you have made in the last seven years. Larger gifts may also be made by Potentially Exempt Transfers (see Gifts and transfers, page 16).

Description of gift	Value

## Overseas assets outside England and Wales

If you live in England or Wales and own land, buildings or other assets elsewhere, you must make sure that you take professional advice about whether you need to write a will in that country, specifying what you want to happen to your foreign assets on your death.

However, the value of the assets will be included in your estate in the UK for the purpose of Inheritance Tax. It is also of vital importance to say in your **foreign will** that it relates only to property in that country, and also to include a clause stating that it does not take precedence over any will you have written in England or Wales.

The Law Society (see contact details on page 30) can provide you with details of solicitors who specialise in this area.

## Inheritance Tax

Only estates above a certain value attract Inheritance Tax (IHT). This value is raised each year at the time of the Budget.

However, rising UK property values have brought the estates of an increasing proportion of home-owners within the scope of

IHT. The IHT rules are complicated, so it is important to take advice from professionals when you make your will.

Rather than rushing to give away money or property in order to minimise the tax, you need first to ensure that you have enough for yourself, or for your partner in the event that you die first. Your money, or the value invested in your property, if you own any, might for example be needed to pay for long-term care when you are older.

However, if you are comfortably off and would like to look into minimising Inheritance Tax, some of the key points to think about are outlined below.

### The Inheritance Tax threshold or nil-rate band

Everyone is allowed to leave a certain amount before Inheritance Tax is payable. For 2009–10 this amount, known as the nil-rate band, is £325,000 throughout the UK.

For married and civil partnership couples, provided that at least one partner was living on 9 October 2007, there will be additional (now known as ‘transferable’) nil-rate band on the death of the widow or widower if their partner did not fully use his or her amount. This is calculated by finding out what proportion of the estate was not used on the first death. For example, if, now, on a first death the chargeable estate (the amounts passing to anyone other than spouse or civil partner and charities) is £162,500 and the nil-rate band is £325,000, 50 per cent of the nil-rate band would not have been used. If, when the second death occurs, the nil-rate band has increased to £350,000, the second estate would be entitled to its own nil-rate band plus a further 50 per cent of the **current** amount (not the rate at the time of the first death):

i.e. £350,000 plus £175,000 = £525,000 in total.

It is important to keep clear records of the figures involved on the first estate so that the claim to additional exemption can easily be calculated. Without these records, problems could occur, particularly where the first death occurred before 9 October 2007. It is highly advisable to seek professional advice about Inheritance Tax issues, as it is a very complicated area.

## Gifts and transfers

If your estate is valued at more than the nil-rate level there are many other ways by which you may be able to reduce the amount of tax payable on your estate while you are still living.

For example, the following are free of IHT:

- gifts of money or possessions (£3,000 per year, and any number of smaller gifts of £250 or less);
- gifts made from your income and which are paid regularly;
- gifts to charities (see 'Legacies', page 27).

If you go beyond these limits you will not immediately be liable for Inheritance Tax on the gift, and you do not normally even have to tell HM Revenue & Customs.

However, you will probably have made a Potentially Exempt Transfer (see below) and there may be a tax liability on it on your own death.

Note that a crucial condition that applies to all gifts is that they can be exempt from Inheritance Tax only if you retain no **beneficial interest** whatsoever in the gift: for example, you could not receive any profits from shares you have given away.

Some gifts are only **potentially** exempt from Inheritance Tax; only after seven years is no IHT payable. These gifts are called **Potentially Exempt Transfers (PETs)**. If you die within seven

years of making the gift a system called **taper relief** (reducing tax liability) determines the amount of tax payable. This means that if you have made the gifts in excess of the nil-rate band (hence subject to IHT) and you die after three years, from the **fourth** year the IHT liability is reduced by 20 per cent each year. Thus after seven years no Inheritance Tax would be due at all.

Great care is needed with PETs. They are not as straightforward as they may appear, and it is possible that an apparent Inheritance Tax saving may not be allowed as such by HM Revenue & Customs.

If you die within seven years of making a PET, its value when the gift was made will be taken into account in calculating the Inheritance Tax on your estate. **Taper relief** applies after the third year, but only if you have made gifts above the Inheritance Tax threshold, and does not therefore have much application in practice.

It should be noted that gifts made in your lifetime take advantage of the 0 per cent tax rate available within the nil-rate band. They may therefore be free of tax themselves, but cause additional tax to be payable by the beneficiaries under your will.

### Giving away property

For most people their home is their most valuable asset, and the one that brings many people into the Inheritance Tax bracket.

Your prime concern should be to safeguard yourself, and your partner, rather than to minimise IHT for those who will inherit from you. However, if your home becomes too big for you to cope with, or deteriorating health means that you need to move to another type of accommodation, you may wish to consider passing it on to your children or grandchildren, unless of course you decide to sell it and buy another property.

You can transfer the ownership of your main home to someone else, but there could be problems in the future if you are still benefiting from it. This is not a problem if you have moved to more suitable accommodation, but if you continue to live there, even for fairly short periods, the gift of the property will be subject to Inheritance Tax unless you pay rent at the market rate to whoever you have given it to.

If you have a second home that you no longer use you may consider transferring it to one of your children or grandchildren. However, again, you must not retain any benefit from it. You can still visit, but if you stay for extended periods it may still be subject to Inheritance Tax unless you pay a full rent for using it. There will also be implications for the person you gave the home to; if they receive an asset, such as a property, it could well affect any benefits they were entitled to. It is therefore worth getting advice on what the best arrangement will be.

This is also a complex area because although there are things you can do to minimise Inheritance Tax, Capital Gains Tax can become an issue. Always take professional advice before making any decisions about what to do with property.

### Assets not included in your estate

Some assets will not be counted as part of your estate, and therefore will not be subject to Inheritance Tax if you leave (or 'nominate') them to a particular person. These may include:

- payments from friendly societies
- death-in-service payments (although there can be exceptions)
- some National Savings if the nomination was made and registered before 1981.

It is important though to seek professional advice on this as it can vary from scheme to scheme.

## Insuring against Inheritance Tax

Many insurance companies offer policies to cover some of the Inheritance Tax that will have to be paid on your estate. As with other types of insurance, you pay a monthly premium while you are living so your beneficiaries should have less to pay when you die.

In short, there are many ways of making tax savings but in most cases there are strict conditions, so you should seek professional advice to make sure you are benefiting from all the available allowances.

## Trust funds

Putting assets into a **trust** fund is a way to leave part or all of your estate to someone, or a group of people such as grandchildren, while retaining control of the fund. It is also a useful way of providing for your grandchildren's education. Although it may be subject to Inheritance Tax it may be a lot less than if you gave the money as a direct gift (see Taxation of trusts, page 21).

Trust funds are also an appropriate way to provide for relatives who are disabled, or in need of support because they are not able to look after themselves.

The people who look after the assets in trust are the **trustees** (see Choosing executors and trustees, page 10). Ideally, they will work closely with the guardians, who are responsible for the general welfare, education and development of the beneficiary. The person who drafts your will should help you decide on the limits of the trustees' powers and how much flexibility they have. The aim should be to make enough money available through a regular arrangement to look after the beneficiary's general needs while allowing the trustees the flexibility to allocate extra funds if and when the guardians feel this is necessary. For example, a

disabled person may need to purchase medical equipment such as a specialised wheelchair.

## Types of trust

There are four main types of trust, all designed to cater for different needs and with varying tax benefits. They are normally defined as:

- **bare trusts** These are very straightforward. The trustees hold whatever assets are in trust until the beneficiary reaches 18 (or earlier if the trustees so decide). The beneficiary can then take full possession of them.
- **life interest trusts** In this kind of trust the assets, which may be property or money, are held for the eventual benefit of someone, but they will not receive the assets until the person with the 'life interest' (normally your spouse or civil partner) has died. For example, if the asset is a property, you can give it to your children but stipulate that your spouse or civil partner is allowed to live there for the rest of his or her life. On his or her death, and after all taxes are paid, the trustees will release the property or other assets to the beneficiary.
- **discretionary trusts** These let the trustees allocate the funds in trust at any time as they see fit, according to the needs of the beneficiaries. Or they can let interest accumulate and invest the capital so that the fund grows. The time (or age) after which the beneficiaries may have assets released to them by the trustees is specified in the will.
- **trusts for bereaved minors** These have replaced **accumulation and maintenance trusts** as a way to pass on assets to children while retaining control of the fund. Before the April 2007 Budget it was possible to stipulate that

children would not inherit until they reached the age of 25, but there may now be additional Inheritance Tax to be paid on larger trusts if you wish to postpone entitlement to that age.

## Special trusts

Two special trusts are treated differently from the ones mentioned above and have preferential taxation arrangements:

- **charitable trusts** for giving away large sums of money, where the trust qualifies as a charity. The charitable status needs to be approved by the Charity Commission.
- **disabled trusts** for looking after those who, due to mental incapacity, are not able to look after their own affairs. This kind of trust can also be used for the benefit of someone who qualifies for Attendance Allowance or Disability Living Allowance.

## Taxation of trusts

How a trust is taxed, and what tax applies (Inheritance Tax, Capital Gains Tax or income tax) depends on a number of factors, such as the type of assets making up the trust, when the assets were put into trust, the value of other parts of the estate that may not be in trust, etc. Also, the income from a trust fund, the interest on capital invested, and profit gained from the sale of property in trust is taxable. There are strict rules to ensure that trust funds are not used as a tax evasion tool, and complex equations for calculating any tax payable. These are beyond the scope of this guide and require professional advice.

Note that a gift to a trust is not a PET and may mean Inheritance Tax has to be paid immediately. It is very important to take professional advice before making any gifts into trust.

## Drafting a will

### Choosing someone to write your will

To write an efficient will you need professional advice from someone who is up to date with the relevant legislation and tax law. 'Off-the-shelf' forms are available, but it is easy to make mistakes when filling them in, or miss out important details, and this can cause problems for your beneficiaries after your death.

You may wish to speak to specialist wills and legacies advisers who work for charities, or solicitors who specialise in wills and probate. The Law Society can provide you with a list of solicitors in your area (see contact details on page 30).

Ask whoever you employ to write your will to send you a copy of their public liability insurance certificate and, if it is a solicitor, their fees sheet, so you know what you will be paying.

### Storing your will

Your will can be stored with your solicitor (who will usually store it free of charge), or for a fee you can store it at the Principal Probate Registry, at a will storage facility, or at your bank.

It can take a while to get access to a will stored at a bank, unless the executor has made face-to-face contact with the bank in advance. However, it is safer than keeping the original will yourself because it should not be stolen, lost or destroyed, or read by anyone other than those who you want to see it.

If you do decide to keep the original will yourself, remember to tell someone you trust where you have put it, so it can be found when you die. This is very important, because if the original, signed will is not found, your estate would normally be treated as

if you had died intestate and your assets might not be distributed as you would have wished. The Probate Registry will normally not accept a photocopy of a will.

## **Codicils and rewriting wills**

You should review your will at least every five years to take account of any changes that may affect it. There may be changes that have occurred among your beneficiaries, for example, or to the laws of wills and probate, or you may have changed your mind about certain things since you first made the will.

You can make alterations to your will by writing a codicil. This is a document that details any changes you wish to make to your will. It should be kept in the same envelope as your original will.

You can use a codicil to increase or reduce legacies, create additional ones, maybe to charities, and change executors if circumstances have changed and the original executor is no longer able, or no longer wants, to act.

To be effective, the codicil must be signed by you in the presence of two witnesses in the same way as when you originally signed your will. The witnesses do not need to be the same ones who signed your will. You can make as many changes as you like, but if you are making many amendments it may be better to draft a new will.

## **Changing a will after death: deeds of variation**

If you do not update your will in the few years leading up to your death, there may have been changes in taxation or in your family situation that you would have taken account of had you reviewed and updated the will. This is very common, particularly when people are very unwell or mentally incapacitated.

In certain circumstances a **deed of variation** can be drafted if your executors can see that the will could have been rewritten to reduce the amount of Inheritance Tax payable from the estate, or that a tax benefit could be achieved by transferring some assets to your grandchildren. The changes made by the deed will be regarded by the Capital Taxes Office of HM Revenue as if the changes had been in your will. The executors of your will would, however, have to get consent from anyone affected by the changes, and, in the case of minor beneficiaries, a court order.

## **Wish lists and contact details**

It is a good idea to create a wish list, separate from your will, giving those closest to you instructions about, for example, the type of funeral you would like and where it is to be held, what you would like to happen to your body, whether you want flowers or donations to a charity. You may also want to leave a list of people or organisations that your executors will need to contact when you die, such as your bank and solicitor.

These wishes may also be in your will, but often people find it easier to keep them separate. The reason for this is that if you change your mind about these wishes you can simply update the wish list, rather than having your will rewritten.

## **Mental incapacity**

Sadly, some people become incapable of looking after their own affairs and someone, normally their next of kin, has to take over their finances and look after them, or arrange for their care. Someone who is already mentally incapable cannot personally make or change a will. However, a statutory will can be drafted by the Office of the Public Guardian (OPG) on behalf of someone

who is not mentally capable of doing so themselves. It therefore makes sense to think about the possibility of future incapacity now.

Until recently, such situations were dealt with by signing an enduring power of attorney (EPA). This was a simple document which could either come into effect immediately or at whatever point in the future when the donor could no longer look after their own affairs.

EPAs were replaced in October 2007 by lasting powers of attorney (LPAs). There are two versions of these: those relating to property and financial matters, and those relating to personal care and welfare matters. If you made an EPA before October 2007, it will remain valid.

Although an EPA or an LPA is not part of a will, it is a natural supplement to it. It can be arranged by the person drawing up your will, who will also know about the duties of attorneys, what an EPA or an LPA is, and the procedure for registering it. This information comes from the OPG, from which you can obtain the necessary forms (see contact details on page 31).

The Mental Capacity Act 2005 governs decision-making on behalf of adults who lack mental capacity, both where they lose capacity at some point in their lives and where they were born with an incapacitating condition. It covers all decisions, including personal welfare and financial matters, and includes decision-making on their behalf by attorneys, or court-appointed 'deputies'. It also clarifies the position if a formal process has not been adopted.

Major changes in the roles and responsibilities of the Court of Protection and the Office of the Public Guardian have come about in the course of the replacement of EPAs by LPAs.

## Living wills and advance directives

A living will is used for telling relatives and doctors the extent of the treatment you want if you become ill and whether you want to be kept alive if you have an incurable illness or are not expected to recover from an injury. You can express your wishes in your will or write a specific 'living will'. See Dignity in Dying's contact details on page 29.

## Jargon buster

**Administering the estate** means dealing with the affairs of the person who has died.

**Assets** are valuable things that you own. Your home is likely to be your most valuable asset.

**Beneficiaries** are the people you leave possessions to in your will

**Capital Gains Tax** – a tax paid on anything you sell or give away over £6000. Some of your assets are exempt from this tax.

**Chattels** are tangible, movable property such as furniture, works of art, crockery, jewellery, motor vehicles and items of plant and machinery that are not permanently fixed.

A **deed of variation** is a way for a will to be rewritten if all the beneficiaries agree. It can be a useful way to reduce Inheritance Tax.

**Estate** – this is everything that you own at the time of your death, less what you owe.

**Executors** are people named in a will who will administer the estate

**HM Revenue & Customs** is the government department that deals with tax, including Inheritance Tax.

**Intestate** – dying without leaving a will is known as dying intestate

**Inheritance Tax** is the tax paid on your estate after you die. Everyone is allowed to leave a certain amount before Inheritance Tax is payable; for 2009–10, this amount is £325,000. Inheritance Tax is sometimes shortened to IHT.

**Lasting powers of attorney** are a way to give someone else the power to handle your finances if you become incapable of looking after your own affairs. Lasting powers of attorney (LPAs) replace **enduring powers of attorney (EPAs)**. No new EPAs can be set up, but old ones are still valid.

**Legacies** are gifts of money or property left to someone in a will. They can be left to either individuals or organisations.

**Potentially Exempt Transfer (PETs)** – a gift that is only free from Inheritance Tax if you live for seven years after making the gift. If you die within seven years, a system called **taper relief** works out the amount of tax that is payable on the gift.

**Probate** refers to administering the estate of the person who has died, according to his or her will. In Scotland, this is known as **confirmation**.

**Residue** The residue of an estate is everything that is left when bequests and legacies have been distributed and any debts and other liabilities settled.

**Trustees** are the people responsible for looking after any part of your estate that is put into a trust

**Trusts** are a way to leave some or all of your estate to a person or group of people. A **trustee** will manage it for you. For more information on different types of trust, see pages 20–21.

## Useful contacts

### Help the Aged

The Charity has a unique Will Advice Service through which free, confidential advice can be given to people of state retirement age.

Free advice is available from a team of locally based advisers throughout England, Scotland and Wales. Trained to be aware of issues affecting older people, they will explain the will-making process in plain, jargon-free English or Welsh. They are not tax consultants or financial advisers, but can point out ways of reducing Inheritance Tax liability, including the use of trusts within a will.

The Charity also offers an executorship service. Should you use this service, upon your death the local adviser will secure your home, have valuables stored safely, register the death, make funeral arrangements, clear the house (if required) and provide practical, sympathetic support to those left behind. All the financial aspects of administering your estate will be managed by the Charity's probate legal team. For more information on the executorship service, please contact us using the enclosed form or by calling 020 7239 1965.

Also available from Help the Aged: publications including *Planning for the End of Life* and *Planning for Choice in End-of-life Care* (the latter including information on living wills). To order these or other Help the Aged publications, call **020 7239 1946**.

### Age Concern England

Astral House, 1268 London Road, London SW16 4ER  
Helpline: 0800 00 99 66 Web: [www.ageconcern.org.uk](http://www.ageconcern.org.uk)

### British Humanist Association

1 Gower Street, London WC1E 6HD

Tel: 020 7079 3580 Web: [www.humanism.org.uk](http://www.humanism.org.uk)

### Centre for Biomedical Sciences Education

Queen's University Belfast, Whitla Medical Building,

97 Lisburn Road, Belfast BT9 7BL

Tel: 028 9097 2131

Contact if you live in Northern Ireland and wish to leave your body for medical research.

### The Charity Commission

PO Box 1227, Liverpool L69 3UG

Tel: 0845 300 0218 Web: [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

### Citizens Advice Bureau

See your phone book for your local branch.

Web: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### Dignity in Dying

181 Oxford Street, London W1D 2JT

Tel: 0870 777 7868 Web: [www.dignityindying.org.uk](http://www.dignityindying.org.uk)

### Edinburgh Sheriff Court

Commissary Department, 27 Chambers Street,

Edinburgh EH1 1LB

Tel: 0131 225 2525 Web: [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk)

### Help the Aged

Wills and Legacies department, 207–221 Pentonville Road,  
London N1 9UZ

Tel: 020 7239 1965 Web: [www.helptheaged.org.uk](http://www.helptheaged.org.uk)

## Hospice Information

Hospice House, 34–44 Britannia Street, London WC1X 9JG  
Tel: 020 7520 8222 Web: [www.hospiceinformation.info](http://www.hospiceinformation.info)

## Human Tissue Authority

Finlaison House, 15–17 Furnival Street, London EC4A 1AB  
Tel: 020 7211 3400 Web: [www.hta.gov.uk](http://www.hta.gov.uk)

Contact if you live in England, Wales or Scotland and wish to leave your body for medical research.

## Institute of Professional Willwriters

Trinity Point, New Road, Halesowen, West Midlands B63 3HY  
Tel: 08456 442 042 Web: [www.ipw.org.uk](http://www.ipw.org.uk)

## Directgov

Web: [www.direct.gov.uk](http://www.direct.gov.uk)

Directgov is an internet-based government information system bringing together information on all public services.

## The Land Registry

Web: [www.landreg.gov.uk](http://www.landreg.gov.uk)

For local office information look in your phone book or see website.

## Law Society of England and Wales

113 Chancery Lane, London WC2A 1PL  
Tel: 020 7242 1222 Web: [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

## Law Society of Northern Ireland

40 Linen Hall Street, Belfast BT2 8BA  
Tel: 028 9023 1614 Web: [www.lawsoc-ni.org](http://www.lawsoc-ni.org)

## Law Society of Scotland

26 Drumsheugh Gardens, Edinburgh EH3 7YR  
Tel: 0131 226 7411 Web: [www.lawscot.org.uk](http://www.lawscot.org.uk)

## Mencap

123 Golden Lane, London EC1Y 0RT

Tel: 020 7454 0454 Web: [www.mencap.org.uk](http://www.mencap.org.uk)

## National Association of Funeral Directors

618 Warwick Road, Solihull, West Midlands B91 1AA

Tel: 0845 230 1343 Web: [www.nafd.org.uk](http://www.nafd.org.uk)

## The National Society of Allied & Independent Funeral Directors

SAIF Business Centre, 3 Bullfields, Sawbridgeworth,  
Hertfordshire CM21 9DB

Tel: 0845 230 6777 Web: [www.saif.org.uk](http://www.saif.org.uk)

## Natural Death Centre

12A Blackstock Mews, Blackstock Road, London N4 2BT

Tel: 0871 288 2098 Web: [www.naturaldeath.org.uk](http://www.naturaldeath.org.uk)

## Office of the Public Guardian

Archway Tower, 2 Junction Road, London N19 5SZ

Tel: 0845 330 2900 Web: [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

## Probate and Inheritance Tax helpline

Tel: 0845 302 0900

## Society of Trust and Estate Practitioners (STEP) Worldwide

Artillery House, 11–19 Artillery Row, London SW1P 1RT

Tel: 020 7340 0500 Web: [www.step.org](http://www.step.org)

## Solicitors for the Elderly Ltd

Room 17, Conbar House, Mead Lane, Hertford,  
Hertfordshire SG13 7AP

Tel: 0870 067 0282 Web: [www.solicitorsfortheelderly.com](http://www.solicitorsfortheelderly.com)

Help the Aged distributes over 3 million advice leaflets a year. This service is currently provided free of charge, thanks to the generosity of our supporters. If you found this leaflet useful and would like to make a donation, phone 020 7239 1983 quoting ref **IRT** or send a cheque or postal order, for the attention of Information Resources, to the address below.

April 2009

Age Concern England (charity number 261794) has merged with Help the Aged (charity number 272786) to form Age UK, a charitable company limited by guarantee and registered in England: registered office address 207–221 Pentonville Road, London N1 9UZ, company number 6825798, registered charity number 1128267. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age NI, Age Cymru. ID8182 04/09 Copyright © Age UK 2009

Fighting for disadvantaged older people in the UK and overseas,

**WE WILL:**

**COMBAT POVERTY** wherever older people's lives are blighted by lack of money, and cut the number of preventable deaths from hunger, cold and disease

**REDUCE ISOLATION** so that older people no longer feel confined to their own home, forgotten or cut off from society

**CHALLENGE NEGLECT** to ensure that older people do not suffer inadequate health and social care, or the threat of abuse

**DEFEAT AGEISM** to ensure that older people are not ignored or denied the dignity and equality that are theirs by right

**PREVENT FUTURE DEPRIVATION** by improving prospects for employment, health and well-being so that dependence in later life is reduced



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**HELPTHEAGED** WE WILL<sup>®</sup>