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THE ORMEROD RUTTER GUIDE TO:

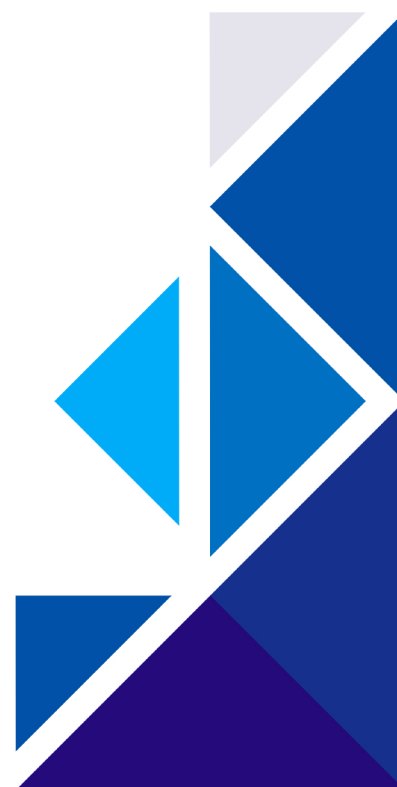
MAKING A WILL

For advice and support relating to your business,
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Ormerod Rutter Guide to Making a Will

October is Free Wills Month in the UK, giving those aged 55 and over the chance to have a simple will drawn up or updated for free.

It's a great time for anyone regardless of age to think about the legacies they'll be leaving behind when they're gone and ensuring that what they have worked hard to earn, goes where they'd like it to go.

Read on for some compelling reasons for putting a will in place, and some considerations to bear in mind when you do:

WHY MAKE A WILL?

To answer this question, it is important to first get a clear understanding of what happens if there is no will in place when you die, or if the will you have is not legally valid. In such cases, your estate will be distributed according to the Rules of Intestacy, and these rules allow for three basic scenarios, depending on what family members you leave behind.

The Rules of Intestacy

Firstly, if you have a spouse or civil partner, they would be awarded either the whole estate in the case of your not having offspring, or the first £270,000 and half of anything that remains, with the other half divided between your children or their offspring. Note that if your estate is worth less than £270,000 or if you have no descendants, only your spouse or civil partner will inherit. It is also crucial to note that if your relationship is not legally recognised, your partner will probably get nothing: the idea of a common-law spouse counts for very little here.

If you are not married or in a civil partnership, your estate will be passed to any living descendants you have (children, grandchildren, or great-grandchildren). Where there are none, parents would be next in line to acquire the whole estate; if neither is alive, it is the siblings or their offspring that stand to inherit, or failing that, half siblings. Grandparents, then uncles and aunts or cousins and their children, similarly only get a look in once it is established that there are no closer blood relations available.

The third scenario occurs once that list of relatives is exhausted. Assuming the closest living family members you have are your parents cousins or beyond, all your wealth and belongings would go to the Crown.

In short, with no will in place, just a handful of your family members – at most – would receive a windfall and the rest, as well as friends and favourite causes, would be left out altogether.

Remember Children in a Will

The raising of any child under 18 whose parent has died typically becomes the sole responsibility of a surviving parent but under conditions where this not possible and you have no legal guardians in place, decisions on who raises your child would be made by the Courts and might involve care. Being a godparent or the equivalent is not a legally recognised role, so nominating your trusted friends and relations as guardians in your will can be a very important step in safeguarding your children's futures.

What About Inheritance Tax?

The first £325,000 of an individual's estate can be gifted tax-free. Once that threshold has been reached, however, the remainder is subject to inheritance tax at a rate of 40% unless it is going to a spouse or civil partner, or a registered charity or community amateur sports club, none of whom are liable for inheritance tax. This consideration can influence decisions you make on the structuring of your assets, maximising the benefit of what you leave behind to those you love.

WHAT CAN YOU GIFT IN A WILL?

It is useful to start with a clear idea of what your estate might look like when you die. The items you own such as jewellery and clothing, furniture, electrical items and so on can of course be included in your will to be distributed to any named individuals, or to contribute to the overall value of the estate. Not all types of assets and liabilities are as straightforward, though, and some could fall outside the remit of a will, requiring them to be dealt with separately.

Property is a good example of this. The sole owner of any property will see it form part of their estate when they die, whereas in property owned together with others, this may not be the case. The key is to know whether you are registered as joint tenants or tenants in common. Check with the Land Registry if you are not sure which arrangement you have, and be aware that you should be able switch to the other type with some legal assistance. In the case of joint tenants, the deceased's share, simply passes to the other property owner(s) with no need for probate and would not be giftable by will. Tenants in common, however, are able to gift their share of a property to third parties (for instance, family members). This subtlety of law can have big implications; in some cases leaving offspring out of pocket.

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Bank accounts, as with property, can be gifted (as whole accounts or the money within them) if the deceased person was the sole account holder but not if they were joint account holders with anyone else. In that scenario, their share of the account would simply pass to the other account holders and not necessarily become part of the estate for the purposes of distributing assets in accordance with the will.

With life insurance policies and death in service bonuses alike, you can usually choose whether you would like them to pass through probate and be gifted in your will, or be held in trust. One benefit of keeping them outside your estate would be that the beneficiaries would be granted faster access to the funds. You may, however, wish to check just who the beneficiaries would be and whether you can change these if desired. Check your named beneficiaries on your pensions, too, if they pay out a benefit in the event of your death. These usually pass outside your will but may still be subject to inheritance tax, depending on the terms of the pension.

The majority of any financial investments you have are likely to be included in your estate, although there are some exceptions to this, so verify whether or not any might be held in trust. Provision should also be made for copyrights, royalties or any other examples of intellectual property that you might hold. They have value which can easily be lost if not written into your will.

Depending what arrangements, you have made with the other stakeholders, any interest you have in a business could be giftable by Will. If you are a business owner, be that a sole trader, partner or shareholder of a limited company, it is a good idea to get some professional advice on what might happen when you pass away. Significant Inheritance Tax exemptions are available for certain business interests, so it is important these are maximised where possible.

Finally, don't forget that apart from taxes, there are likely be debts to be paid out of your estate, too. This is done early in the probate process, before the beneficiaries' shares are calculated.

WHO SHOULD BENEFIT IN A WILL?

Drawing up a list of family members, friends and favourite charities will give you a solid starting point from which to work. You may be concerned about mitigating for different future outcomes, but a good rule of thumb is to let your current situation and sentiments guide you. You can always update your will after major changes in circumstance or family additions – it's advisable to revisit your will every five years or so to make amendments as appropriate.

It goes without saying that choosing who benefits from your estate after your death and in what ways is a matter for you and you alone. No potential beneficiaries need know your intentions before the time comes, and if pressure is put to bear upon you to pursue a particular course of action, the legitimacy of the outcome could be called into question. But having free reign over these decisions doesn't necessarily make them easy to take. You'll likely be keen to ensure no one is overlooked and that each beneficiary receives something commensurate with your familiar relationship, your esteem for them, and/or perhaps with their level of need.

Incidentally, if any of your beneficiaries do have a particularly high level of need or vulnerability, this is another area where trusts come to the fore. They allow for the management of an inheritance by a third party with the recipient's best interests at heart. Trusts are often the most appropriate means of gifting to minors (with their guardians often as trustees so they can make decisions on how the money would best serve the kids) and if you have a child with disabilities, there is even a specially designed Disabled Discretionary Trust to better tend to their specific needs.

HOW DO I WRITE A WILL?

Wills can be drawn up in a number of ways, from writing your own or using online will-writing services to engaging experienced solicitors to prepare your will for you. It is crucial that you end up with a well-written, legally-binding document or it won't be proved and you may as well not have bothered.

You will need to choose at least one executor to apply for probate and administer the estate on your behalf. It's fine for them to be beneficiaries of the will themselves but they must be adults of sound mind who you would trust to carry out this important function. Any trusts will also need named trustees to manage them impartially. These roles are often carried out by close family members and/or friends, but professionals can also be hired.

We're always here to help!

It's clear that Will-writing is an important step to take but it's unfortunately one that too many people put off too long. It has been estimated that one in three UK citizens will not have a will in place at the time of their death.

Don't feel daunted by the task. Call in some expert guidance. Our specialist team at Ormerod Rutter offer personal, tailored advice to help you put the right estate plans in place. We can establish your current situation and what objectives you have, then together devise a plan to help ensure your legacy goes just where you want it to.

CONTACT US

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The information contained in this guide is for illustrative purposes and should not be treated as 'advice' that may be relied upon by individuals or businesses. Specific specialist advice should be sought in relation the information outlined above.



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