

Wills and probates

What you need to know

Why should you have a will, or ensure the one you have is still valid?

A will is there to ensure that those closest to you are protected, and your wishes respected.

Do you know what will happen to your estate if you die without a will (Intestate)? Does it respect your wishes and does it adequately protect your loved ones?

Intestacy rules

You are married / in a Civil Partnership, no children <ul style="list-style-type: none">Your spouse gets everything	You are married, and no blood relatives <ul style="list-style-type: none">Everything goes to the crown
You are married / in a Civil Partnership, with children <ul style="list-style-type: none">Your spouse gets the first £250000 and a lifetime interest in half the remainder (ie they cannot dispose of the asset)Children get the remainder of the estate; the other half comes to them on second death.	You are NOT married (includes widowed or divorced), with children <ul style="list-style-type: none">Everything goes to your children
You are married / in a Civil Partnership, no children but with parents or siblings <ul style="list-style-type: none">Your spouse gets £450000 and a lifetime interest in half the remainder of the estate (ie they cannot dispose of the asset)Parents, or if none siblings share the remainder, with the other half given to them on second death.	You are NOT married but have relatives <ul style="list-style-type: none">Everything goes to the following, in order of priority (i.e. if you have siblings but no parents, the people remaining on the list get nothing):<ul style="list-style-type: none">ParentsSiblingsHalf brothers/ sistersGrandparentsUncles / aunts (blood relatives)

Note: stepchildren are not considered to be children and will be left out if an estate is handled via intestacy rules unless you have adopted them

What the intestacy law doesn't do:

- It doesn't address your funeral wishes
- It doesn't take your other wishes into account: do you want some money to go to a local charity, a church; would you like to leave a specific item to somebody (it could be a piece of jewellery, a record, a car...)?
- It doesn't address what will happen to young children if they are left without parents (who should look after them?)
- It doesn't address inheritance tax and ways to reduce a potentially high bill
- It doesn't address ways to handle care for the incapacitated

What it does do:

- It dictates how your estate should be allocated
- It allows the government to take ownership of your estate if you have no relatives
- It leaves your loved ones in charge of handling your probate at a very difficult time

What else do I need to know?

- Inheritance tax (IHT) rules
 1. Inheritance tax threshold is currently £312,000, going up to £325,000 for 2009/10
 2. IHT is payable at 40% on sums above the threshold
 3. There is no Inheritance tax to pay between spouses / civil partners and for bequests to charities
 4. Spouses / civil partners can transfer their inheritance tax allowance to each other, enabling the surviving partner to bequeath **up to £624,000**
 5. Part of the tax must be paid before probate is issued, the rest due within 6 months of the end of the month in which the person died. Interest is charge on unpaid tax after that time.
 6. tax is calculated based on the value of the estate on the date of death (not a sale price realised, which could be lower than the value)
 7. IHT on land and property can be paid by instalments, yearly and equal, over 10 years; interests on tax due must be paid during that time. Tax must be paid in full when the asset is sold
 8. a tax form must be completed whether or not IHT is payable

- Probate
 1. Probate is carried out by those named executors in a will, allowing them access to the deceased's assets to dispose of them as per the will's instructions.
 2. The executors (if any named, can chose to administer the estate themselves or use the services of a solicitor) will be issued probate by the Probate Service; they will have to administer the estate: tracing and selling assets, pay tax and debt, and distribute what is left.
 3. IF no will has been left, letters of administration must be applied for in order to gain access to the estate and administer the estate as per the intestacy laws (see above)

It can take several months to administer your estate, particularly if a will has not been drawn stating your wishes. This can potentially leave those left behind without access to resources they might require, such as bank accounts, which become frozen until the probate has been carried out.

- Power of attorney
 1. Would you consider giving somebody the power to act in your name?
 2. Do you understand what powers of attorney (lasting power of attorney or enduring power of attorney) are and their implications?

Finally

1. If you are writing a will, remember those that will have to look after your estate; make it easier for them by naming lay executors (i.e. a friend, a member of your family) who can then decide whether to use the service of a solicitor.

AND do not forget to tell them where your will is. Remember: a copy can be proven true should your original document not be found, but the process will be longer and further affidavits will need to be made in addition to the oath. If a copy is not proven to be true your estate will be dealt with as per the intestacy laws

If you are unsure as to whether you need a will, or if your current will is still valid (for example if you have recently got married, divorced, have had children...), then call Goddard Smith **FREE on 0800 160 11 44** to speak to our specialist solicitors. They will be able to tell you over the phone whether or not you need a will or revised will.

GoddardSmith would also be happy to help you with probate.

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