

# Making a will

## Initial preparation

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Before giving instructions for a will to be drafted the person who is going to complete it (the testator) should consider, or even prepare a brief summary of, the general nature and extent of their assets and liabilities as well as details of who they wish to benefit under the will. Without such information there is a risk that the will drafted would not operate as intended because of factors unknown to the drafter, such as the impact of tax and loans secured on assets.

The testator should also have, as far as possible, the full names and up-to-date addresses of every person or organisation that they wish to benefit in their will. When an out-of-date address is used, it may involve additional cost to find the beneficiary later.

## More detailed considerations

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The testator may need further advice on issues such as the following:

- **Tax**

The estate may be subject to inheritance tax on death and the amount due could be affected by the terms of the will. The tax consequences of the provisions which the testator wishes to include in the will should therefore be thought about in order that it is drafted in the most tax efficient way, and any appropriate lifetime tax planning measures are considered.

- **The Inheritance (Provision for Family and Dependants) Act 1975**

This act may enable certain persons, including adult children of the testator, to seek additional provision out of an estate after the testator's death. If an application were made under the act it would be likely to involve the estate in expense and may result in a variation of the dispositions made in the will.

- **Jointly owned assets**

If the testator owns assets jointly with another person, for example a home or bank and building society accounts held by husband and wife, then any gift of those assets in the will may not work. The reason is that, depending on how the assets are held, the surviving joint owner could become the sole owner of the asset automatically when the first joint owner dies regardless of the provisions of the will.

If the testator does wish to deal with a jointly-owned asset in their will then they may need to change the basis of ownership.

- **Foreign assets**

The will may not be effective to deal with assets owned which are located outside England and Wales. A further will relating to just those assets may need to be completed in accordance with the law of the jurisdiction in which they are held.

- **Mental capacity**

A will is not valid unless the testator has the necessary mental capacity at the time that it is completed. Of course in most cases it is clear beyond doubt that the testator does have mental capacity. However on some occasions, and particularly where a client is elderly or unwell or has at some time suffered from a mental illness, questions of mental capacity may be crucial. If the problem is not dealt with carefully when the will is made, there is a risk that the will would be challenged after the testator died which could lead to heavy legal costs.

If there is any risk at all that a will may be challenged on the grounds of mental capacity, and in particular if there might be a disappointed beneficiary who could make a claim, medical evidence should be obtained when the will is made. If the testator's own doctor confirms that the testator has capacity at that time then there is much less risk of the will being challenged afterwards.

## Signature of the will

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Once the will is drafted taking account of the above and all other relevant issues, it must be signed and witnessed in a particular way in order to be valid.

The testator must sign in the presence of two independent adult witnesses, neither of who receives a benefit from the will or is married to or in a civil partnership with anyone who does. Each of the witnesses should then sign the will in the presence of the testator and of each other. It is also useful for the witnesses to write their full names and addresses underneath their signatures.

If amendments are required to the drafted will for any reason, both the testator and the two witnesses must initial the amendment.

For further information please get in touch with your usual Ladders contact or via:

**Stratford upon Avon office** – 01789 293259

**Henley in Arden office** – 01564 792261

**Cheltenham office** – 01242 228370

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