

# MAKING A WILL

## Clough & Willis' Ultimate Guide



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There's been a lot of coverage in the press recently about making a Will and ensuring the process is safe as many clients don't understand the process and are getting ripped off by unscrupulous firms. Panorama, the BBC's flagship current affairs show, screened a programme in August 2010 on the topic so we have put together our top tips on what security a Will gives you and what to look out for!

### The Benefits of Having a Will:

#### It avoids the Intestacy Rules

If a person dies without making a valid Will, their estate is distributed in accordance with the Intestacy Rules. These rules are horribly outdated and do not, for instance, currently recognise co-habitation or step-children. Contrary to what many people think, they also do not automatically hand all the deceased's assets to your spouse if you have one.

#### Choice of Executors

When you die someone needs to take charge of sorting everything out. It is a responsible and demanding job so you are able to select the most appropriate person for this and appoint them in your Will. You can also select appropriate substitutes if your first choices can't or won't act.

#### Choice of who takes care of your young ones

If you die when your children are still minors, you will need to consider who should be given the task of taking care of them and whether they will need financing to take on this responsibility.

#### Choice of Beneficiaries

The main task of a Will is to determine who gets what when you're gone. You are free to choose who inherits your estate and in what proportion. A Will can be structured to accommodate your wishes.

#### Control and the opportunity to consider wealth and tax planning

Sophisticated Wills can exert your control over your assets even when you're gone. This is achieved by the use of trusts, which may help protect wealth in a number of circumstances such as:

- Keeping your estate from undesirable spouses or partners of your children;
- Keeping your estate out of the divorce or bankruptcy of your children
- Structuring your wealth to be managed efficiently for disabled beneficiaries.

Drafting a Will could also lead to important tax considerations, which may need further lifetime planning.



# Making a Will – The Possible Pitfalls

## Beware of unregulated Will writers

Solicitors are the only Will writers out there regulated by law. They also provide the best possible indemnity cover to their clients. Other organisations may only have self-regulation and little or no insurance cover should things go wrong.

## Off the shelf packages

Many non-legal organisations now offer Will packages. Many of these packages are sub-contracted to lawyers for them to produce. What they do not provide, however, is specific advice about what would be the most suitable structure for you. The message here is therefore: take care of what the packages don't give you and choose carefully.

## DIY formalities

A Will must be drafted and signed in a particular way to be legally valid. It must be carefully worded and executed otherwise any mistake or ambiguity may invalidate some, or all, of the document.

## Marriage and divorce

It is important to remember that marriage revokes (cancels) a Will. Even if the contents are the same, a new Will needs to be signed following marriage unless the Will is specifically drafted in contemplation of a particular marriage. However, a Will is not revoked by divorce but the divorce would have the effect of treating the former spouse as having died before you, unless a contrary intention appears in the Will.

## Claims

Making a Will to disinherit family members or those who have come to rely upon you for money may not ultimately work. The law provides an opportunity for certain people to make claims against your estate if they feel they have not been adequately provided for by your Will. However, a carefully structured Will may reduce or extinguish the chance of such a claim (or the amount awarded from your estate).

For further information on Wills, please contact a member of our team



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