



Factsheet 7

Making a will

1 Making your will

It is important to make a will for many reasons. You may want to be sure who inherits your assets, or protect your estate from Inheritance Tax, or you may want to pass specific items onto children or other relatives.

In particular, if you do not make a will, your estate may be distributed

3 Making a valid will

Certain requirements must be met for a will to be valid:
it must be in writing and you must intend for this to be your will

Care should be taken with any lump sums of money payable on your death, for example, from a pension or a life policy. These often pass *letter of wishes* (see section 5.2.1) or are held in trust setup with the pension company managing the policy.

There may be practical and tax benefits in having such death benefits not passed via your will. This type of payment is not always made into your estate and may be paid to other beneficiaries by the pension or life policy provider. It is important to understand where this type of payment goes in the event of your death to ensure it reflects your wishes. As such, it is advisable to seek specialist advice if this applies to you.

Assets other than pensions and life policies in your sole name usually fall into the will and so your will should specify the beneficiaries.

5.2 Legacies

A gift made in a will is known as a *legacy*. Think about whom you want to benefit from your will, whether these are individuals, for example, family and friends, or an organisation such as a charity and the most effective way of leaving them a legacy.

Remember your circumstances may change significantly by the time of your death. Make sure your will is drafted so it does not present problems if, for example, a beneficiary dies before you, or your estate is worth significantly more or less than when you made your will.

If you want to leave specific things to specific people, ensure you give sufficient details so there is no doubt about the identity of the possessions, or who they should go to. For example, beneficiaries should be identified by their full names and relationship to you, and items by way of clear descriptions. In any event, you should always name a *residuary beneficiary*. This is a person or charity that receives the remainder of your estate once any specified gifts have been made.

5.2.1 Letter of wishes

A letter of wishes is a confidential document drawn up to accompany a will. The contents of a will are legally binding but the contents of a letter of wishes are not. However, a letter of wishes can be useful in certain situations. For example, you can specify who should inherit household items or personal items such as furniture, ornaments, books or jewellery.

These items may have a financial value but it is the sentimental value that leads people to list each item separately in the will, confirming the full details of the person to inherit them. Your will can become lengthy and overly cumbersome as a result.

To avoid this, pick a trusted person and name them in your will to receive specific items with a wish that they distribute them in accordance with a separate letter of wishes. This letter is stored with your will. If you change your mind about who should inherit a specific item, it can be done without altering the will.

6 Signing the will

You must sign your will, in front of two wi

Stage 2:

8 Changing your will

It is a good idea to review your will regularly. This ensures changes in your life are taken into account that may mean your will needs updating. Making *codicils* sets out the changes you are making to your will, with the remaining unchanged sections of your will staying in place.

A codicil must be signed and witnessed in the same way as the will, but the witnesses need not be the same as for the original will. If any substantial changes are needed, you should make a new will revoking the old one. Never make alterations on the original document - either add a codicil or make a new will.

If you marry, remarry, or enter into a civil partnership, your will becomes invalid unless made in contemplation of that marriage or partnership and the will specifically refers to this. Otherwise, make a new will.

Divorce does not automatically invalidate a will but reference to your former spouse or civil partner (such as appointing them as executor or naming them as a beneficiary) will not be effective. It is therefore usually necessary to change your will during or after divorce.

9 Where to keep your will

Your will should be kept at home safely in a water and fire-proof container, or lodged with a solicitor or a bank who may charge for this service. Alternatively, it can be lodged for safekeeping at the Probate Registry. A fee of £20 is charged when the will is deposited. Tell your executors where the will is held.

When solicitors make a will, they normally keep the original and send you a copy. They may suggest the will is registered with the National Will Register to help ensure the will is not overlooked. You are entitled to the original if you wish to hold it. It is important to tell your executors where the will is held.

11.3 Mirror wills

Mirror wills are two single wills made by two people (usually spouses) giving instructions about how their properties are to be distributed. They are generally identical except for the position of the names of those doing the wills.

Mirror wills can be revoked by either party at any time before death and are valid provided they follow the format of standard wills. However, see *mutual*

11.4 Joint or Mutual wills

Mutual wills are two or more wills made by people giving instructions based on agreement about how their assets should be distributed for upon their death. Mutual wills are deemed irrevocable which means they cannot be cancelled once one person has died or lost mental capacity.

If revoked after the death of one party and new provisions are put in place, any disadvantaged beneficiaries under the first will who do not *enforce* the terms of the first will.

It is advisable to get legal advice before preparing a mutual will as it is a very technical document with far-reaching implications and must be properly drafted.

Most solicitors will strongly advise against entering into mutual wills and specialist legal advice should always be sought.

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The evidence sources used to create this factsheet are available on request. Contact resources@ageuk.org.uk

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