WHY MAKE A WILL

1. Why you should make a Will ?

A Will gives you control over who is to receive your money and property after you die. Many people wrongly assume that, even if they haven't made a Will, all of the their property will automatically pass to their spouse, partner or children when they die.

In fact, if you don't make a Will the Intestacy Rules will apply upon your death. These will govern how your estate is divided up and will determine which of your relatives receives how much of your estate. These rules may mean that your spouse does not necessarily receive the whole of your estate when you die and may have to share it with other relatives. This can be particularly harsh if you have remarried and your spouse does not get along with your children from a previous marriage or if you do not have children as your spouse may then have to share with your brothers and sisters and possibly even aunts and uncles. This could result in your spouse having to sell the family home to satisfy the other relatives entitlements under the Intestacy.

If you make a Will you decide who inherits what and you have control over this.

2. Making provision for unmarried partners

If you are not married to your partner they would not automatically receive anything from your estate if you have not made a Will. In certain circumstances they may be able to bring a claim against the estate to ask the Court to make provision for them. The amount that they would receive would be entirely at the discretion of the Court, the procedure is complicated, lengthy and costly and ultimately the costs of the proceedings are likely to be paid from your estate. It is far simpler to make a specific provision for your partner in a Will which provides security and certainty for them and avoids the need for costly Court proceedings following your death.

3. Balancing the interests of spouses and children from previous relationships

A Will can provide that your assets can be used for the benefit of your spouse during their lifetime but that, upon their death the assets are to pass to your children. If you do not make a Will and your spouse receives the majority of your estate under the Intestacy provisions it is possible that they may, on their death, leave all of the assets to a new partner or to their own children from a previous relationship (particularly if your children and spouse do not get along or if their relationship deteriorates after your death).

Even if your spouse does not intentionally fail to provide for your children the Intestacy provisions would not provide for step-children and so if your spouse failed to make a Will anything they had received from your estate would pass to your spouse's blood relatives in accordance with the Intestacy provisions rather than to your children. This can be avoided by the use of a carefully drafted Will which can protect the interests of all parties.

4. Providing for young beneficiaries

Under the Intestacy provisions a beneficiary becomes absolutely entitled to their share of your estate at age 18. If that would result in a significant sum being paid to them this could place the child at risk either because of a reckless use of the money or because they are then vulnerable to others who may seek to manipulate them because of their newfound wealth. In your Will you can specify an age at which you are happy for your children to receive large sums of capital but you can also appoint trustees who may have a general discretion to use money for the benefit of your children at any time it may be needed.

5. How can you protect your home against residential care fees?

If you jointly own your home then a carefully drafted Will can provide for a share in the family home to pass into a trust when the first one of you dies. This would provide for the survivor to live in the home for as long as they wish and can even allow the survivor to move home or downsize whilst ensuring that capital is preserved for your children and this cannot be seized by the local authority to fund the care fees of the survivor. These sorts of trusts can be made extremely flexible to enable the survivor to access capital where there is a need for them to do so but without placing the assets at risk. If you have not made a Will and one of joint owners dies it is then usually too late to try and place any of the assets into trust because the whole of the property then belongs to the survivor and any attempt to place it into trust or give it away may be considered deliberate deprivation of assets and so the assets may not be protected at all.

6. Gifts to charity and tax savings

If your estate is likely to be subject to inheritance tax a clause could be included in your Will to allow your estate to benefit from a reduced rate of inheritance tax subject to certain rules if 10% of the estate is left to charity.

7. Choosing an executor

When you die someone will need to deal with the practicalities and if you do not make a Will you will have no control over who this will be. If you make a Will you can choose who you would like to deal with things and as it is an extremely important role it is essential that you choose somebody who is both sensible and trustworthy.

Your executors are the people responsible for collecting your assets, paying any debts or liabilities of your estate and then putting the terms of your Will into effect. They are responsible for safeguarding your estate and so should be selected carefully. If the estate is complex or if there is friction in the family or between the beneficiaries you may wish to consider appointing a professional executor such as a solicitor.

8. Appointment of guardians

If you have children it is very important to use your Will to appoint a guardian to take care of them if you were to die. The appointment will only usually take effect when both parents have died but may also take effect if one parent survives but does not have parental responsibility for the child or children. The appointment of guardians is not always binding but will be persuasive and a Court will take this into account when deciding who should look after your children when you die.

9. Why should you use a Solicitor?

Homemade Wills carry a significant risk that they may not be valid or that they may not divide your assets as you had intended. Every year we see many homemade Wills that have been incorrectly signed or witnessed or where the words used are ambiguous or misleading (and for this reason particular gifts in the Will may fail completely). The effect of a poorly drafted Will may be that your estate is not divided as you wish or that significant legal costs are incurred trying to put things right or dealing with disputes that arise. An experienced solicitor will ensure that your Will carries out your wishes and is validly executed. They will also be able to advise you upon matters that you may not have considered such as tax planning or protecting your assets.

If you require any further information or you would like to make an appointment to make a Will please do not hesitate to contact the Wills & Probate team at LDJ Solicitors at either our Nuneaton Office (024)76 745000 or Hinckley Office (01455) 637030

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