



The Westminster Society

Your Learning Disability Network for London 

Making a Will and leaving a legacy



This booklet has been produced for the supporters of:



The Westminster Society

Your Learning Disability Network for London



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Why should I make a Will?

Writing a Will is the only way that you can be certain that your wishes will be followed after you die. If you don't make one, part or all of your estate may go to people who you never intended to benefit. By writing a Will you will be able to protect the future of your loved ones and appoint people you trust to manage your affairs once you are gone.

If you die without making a Will (intestate), your estate will be dealt with according to law. Usually, this means your estate will be left to your next of kin, leaving out other family and friends who you may have also wished to benefit.

A Will ensures that your possessions and property are distributed according to your particular wishes. Without a Will, there is no guarantee that your estate will be dealt with as you intended.

Writing a Will is the only way to ensure that what you leave behind is distributed according to your wishes.



How should I make a Will?

The best way to make a Will is to see a solicitor. Although your intentions may be simple, the legal formalities and language required are complicated and must be carefully followed.

The average cost of making a Will is £80, so it is an inexpensive way of ensuring your wishes are carried out. The Law Society can provide you with a list of solicitors in your area.

Writing a Will is easy and inexpensive when drafted by a properly qualified professional. You should check that the professional you choose:

- Is trained and qualified to write a Will
- Has undertaken ongoing training to write Wills
- Has professional indemnity insurance of at least £2 million
- Is a member of an organisation that has an independent complaints procedure.
- Solicitors who are members of the Society of Trust and Estate Practitioners and will writers who are members of the Institute of Professional Will writers meet these requirements.

In order for a will to be valid, it must be:

- Made by a person who is 18 years old or over;
- Made voluntarily and without pressure from any other person;
- Made by a person who is of sound mind. This means the person must be fully aware of the nature of the document being written or signed and aware of the property and the identity of the people who may inherit;
- In writing;
- Signed by the person making the will in the presence of two witnesses;
- Signed by the two witnesses, in the presence of the person making the will, after it has been

signed. A witness or the married partner of a witness cannot benefit from a will. If a witness is a beneficiary (or the married partner or civil partner of a beneficiary), the will is still valid but the beneficiary will not be able to inherit under the will.

Although it will be legally valid even if it is not dated, it is advisable to ensure that the Will also includes the date on which it is signed.

As soon as the Will is signed and witnessed, it is complete.

If someone makes a Will but it is not legally valid, on their death their estate will be shared out under certain rules, not according to the wishes expressed in the Will.



What should I include in a Will?

To save time and reduce costs when going to a solicitor, you should give some thought to the major points which you want included in your Will. You should consider such things as:

- How much money and what property and possessions you have, for example, property, savings, occupational and personal pensions, insurance policies, bank and building society accounts, shares
- Who you want to benefit from your Will. You should make a list of all the people to whom you wish to leave money or possessions. These people are known as beneficiaries. You also needs to consider whether you wish to leave any money to charity
- Who should look after any children under 18
- Who is going to sort out the estate and carry out your wishes as set out in the will. These people are known as the executors.

Some common mistakes in making a Will are:

- Not being aware of the formal requirements needed to make a Will legally valid
- Failing to take account of all the money and property available
- Failing to take account of the possibility that a beneficiary may die before the person making the Will
- Changing the Will (if alterations are not signed and witnessed, they are invalid)
- Being unaware of the effect of marriage, a registered civil partnership, divorce or dissolution of a civil partnership on a Will
- Being unaware of the rules which exist to enable dependants to claim from the estate if they believe they are not adequately provided for. These rules mean that the provisions in the Will could be overturned.



Who are executors?

Executors are the people who will be responsible for carrying out your wishes and for sorting out the estate. They will have to collect together all the assets of the estate, deal with all the paperwork and pay all the debts, taxes, funeral and administration costs out of money in the estate. They will need to pay out the gifts and transfer any property to beneficiaries.

Who to choose as executors

It is not necessary to appoint more than one executor although it is advisable to do so, for example, in case one of them dies. It is common to appoint two, but up to four executors can take on responsibility for administering the Will after a death. The people most commonly appointed as executors are:

- Relatives or friends
- Solicitors or accountants
- Banks
- In England and Wales, the Public Trustee or in some cases the Official Solicitor if there is no one else willing and able to act.

It is important to choose executors with considerable care since their job involves a great deal of work and responsibility. You should always approach anyone you are thinking of appointing as an executor to see if they will agree to take on the responsibility. If someone is appointed who is not willing to be an executor, they have a right to refuse.

If an executor dies, any other surviving executor(s) can deal with the estate. If there are no surviving executors, legal advice should be sought.



Do I need to use a solicitor to make a Will

There is no need for a Will to be drawn up or witnessed by a solicitor. If you wish to make a Will yourself, you can do so. However, you should only consider doing this if the Will is going to be straightforward.

It is generally advisable to use a solicitor or to have a solicitor check a Will you have drawn up to make sure it will have the effect you want. This is because it is easy to make mistakes and, if there are errors in the Will, this can cause problems after your death. Sorting out misunderstandings and disputes after your death may result in considerable legal costs, which will reduce the amount of money in the estate.

It is also possible to write a Will online, but you should remember that a Will is an individual and personal document that is tailored to suit your particular needs, which may be difficult for an online system to cater for.

Homemade Wills, including the 'over-the-counter' templates available in many shops, can lead to very expensive problems that sometimes cannot be rectified. Important details can be left out, or the Will could be invalid or lead to unexpected tax bills, for example.

Dealing with these issues may demand professional advice and can cause a lot of distress for those involved. We would therefore always recommend obtaining the advice of a solicitor.

You should remember that a solicitor will charge for their services in drawing up or checking a Will. They should give you the best possible information about the cost of their services. They should give you this at the beginning of their work with you.

When it is particularly advisable to use a solicitor

There are some circumstances when it is particularly advisable to use a solicitor. These are where:

- You share a property with someone who is not your husband, wife or civil partner

- You wish to make provision for a dependent who is unable to care for themselves
- There are several family members who may make a claim on the will, for example, a second wife or children from a first marriage
- Your permanent home is not in the United Kingdom
- You are resident here but there is overseas property involved
- There is a business involved.

If you are a member of a trade union, you may find that the union offers a free Will writing service. A union will often use its own solicitors to undertake this work.

There are books and websites which provide guidance on how to draw up a Will. These can help you decide if you should draw up your own Will and also help you decide if any of the pre-printed will forms available are suitable.

Will-writing services are available. However, Will-writing firms are not regulated by the Law Society so there are few safeguards if things go wrong. If you decide to use a Will-writing firm, you should consider using one that belongs to a trade association with a government approved code of practice.

How much does it cost?

The charges for drawing up a Will vary between solicitors and also depend on the complexity of the will. Before making a decision on who to use, it is always advisable to check with a few local solicitors to find out how much they charge.

In England and Wales contact the Law Society for details of a firm near you:

www.lawsociety.org.uk or call 020 7242 1222

In Scotland contact the Law Society of Scotland:

www.lawscot.org.uk, or call 0131 226 7411

You may have access to legal advice through an addition to an insurance policy which might cover the costs of a solicitor preparing or checking a Will. If you are a member of a trade union you may find that the union offers a free Wills service to members.

It is also worth you giving some thought to what you want to say in the Will before seeing a solicitor. This should help reduce the costs involved.

In Northern Ireland, you may be able to get help with the legal costs of making a Will under the green form scheme. In England and Wales, the legal help scheme only covers the making of a Will if you are eligible on financial grounds and are:

- 70 or over; and/or
- Disabled; and/or
- A parent of a disabled person and wish to provide for that person in the will; and/or
- A single parent who wishes to appoint a guardian in your will.



How do I change a Will?

You may need to alter the terms of your Will as circumstances change. This is easy and your solicitor can help you to do this by adding a codicil to your Will.

It is wise to review your Will whenever you make a significant purchase, such as a house, or there is a change in your family situation, such as a marriage, divorce or birth of a child. If you don't review your Will at these times, your wishes may not be fully reflected in your Will.

You must not change your Will by amending the original Will after it has been signed and witnessed. Any obvious alterations on the face of the Will are assumed to have been made at a later date and so do not form part of the original legally valid Will.

The only way you can change a Will is by making a codicil to the Will or by making a new Will.

Codicils

A codicil is a supplement to a Will which makes some alterations but leaves the rest of it intact. This might be done, for example, to increase a cash legacy, change an executor or guardian named in a Will, or to add beneficiaries.

A codicil must be signed by the person who made the Will and be witnessed in the same way. However, the witnesses do not have to be the same as for the original Will.

There is no limit on how many codicils can be added to a Will, but they are only suitable for very straightforward changes. If a complicated change is involved, it is usually advisable to make a new Will.

Making a new will

If you wish to make major changes to a Will, it is advisable to make a new one. The old will should be destroyed. Revoking a Will means that the Will is no longer legally valid.

When you cancel a Will which contains a codicil, the codicil does not get cancelled automatically, so when you write a new Will it can create inconsistencies and legal problems. To avoid this, make sure that any new Will clearly states that you are revoking all Wills and codicils previously made.



Inheritance tax

If the total value of your estate is over £325,000 (the current inheritance tax threshold), your beneficiaries will have to pay 40% inheritance tax on the amount over £325,000.

This means that if your estate is worth over £325,000, your beneficiaries will only keep £6,000 out of every £10,000 above this limit that you leave. An estate worth £500,000 would incur an Inheritance Tax of £70,000, whilst an estate worth £1M would incur an Inheritance Tax of £270,000.

Married couples and civil partners can combine their tax allowances. This does not raise the inheritance tax threshold to £650,000, but it allows the surviving spouse or civil partner to benefit from any unused portion of their spouse or partner's allowance.

For example, if the first partner's death uses up 50% of their tax free allowance, there will be an extra 50% available on the death of the second partner. In the current tax year, that would provide the surviving spouse with a total allowance of £487,500 (their own allowance of £325,000 plus the transferable 50% of £162,500).

Gifts or legacies to charities in your will are generally exempt from inheritance tax. If you leave a charitable gift it will be deducted from your estate before inheritance tax liability is calculated.



Leaving a legacy to a charity

After you have looked after your family and friends, you may also wish to leave a gift to a charitable cause that is close to your heart. Legacies from supporters make up a very important income stream for many charities.

If you do want to leave a charitable gift when writing a will, the donation can be as small or large as you like.

Gifts to a charity are exempt from Inheritance Tax, which means leaving a charitable gift may reduce the amount of tax your estate incurs. A charitable legacy is also the most affordable way for many people to support their favourite charity with a larger donation than would normally be possible during their lifetime.

By remembering your favourite charities in this way, you are ensuring that their good work lives on.

If you do choose to leave a gift to a good cause, you should make a note of the official charity name, address and registered charity number to give to your professional adviser when writing your Will.

If you want to leave a gift to charity but have already made a Will, you can change your Will using a **codicil** or make a new Will.



Remembering the Westminster Society in your Will

Leaving a legacy to the Westminster Society in your Will is one of the most generous ways you can support children, young people and adults with learning disabilities and their families.

If you would like to make a lasting difference to the lives of people with learning disabilities by remembering the work of The Westminster Society in your Will, simply inform your solicitor of your wishes.

You would be more than welcome to visit The Westminster Society to see first-hand the difference that such a generous donation would make. If you would like to pay us an informal visit, please call us on 020 8968 7376.

There are a number of different ways in which you might choose to remember The Westminster Society.

Types of Legacies

There are 3 types of legacies that can be made in a Will.

A residuary legacy is the gift of the remainder of your estate or a percentage of the remainder of your estate after all other gifts have been distributed and all outgoings deducted. This type of legacy is of greatest benefit to The Westminster Society as its value increases in line with the value of your estate.

A pecuniary legacy is a fixed sum of money. It is worth remembering that because of inflation, the value of a cash gift can decrease over time, so you may want to review them regularly.

A specific legacy is specific item, such as a property, stocks and shares or a piece of jewellery.

Leaving a legacy to The Westminster Society is easy. Simply inform your solicitor of your wishes and discuss your options.

Your solicitor will need our address and charity number:

The Westminster Society, 16A Croxley Road,
London, W9 3HL

Registered Charity Number: 801081



Suggested wording

Should you wish to remember The Westminster Society in your Will you might wish to take the following wording suggestions for a residuary or pecuniary bequest to your solicitor. They will ensure that your wishes are accurately followed.

1. Residuary bequest

I give% of the residue of my real and personal estate which I can dispose of by Will in any manner I think proper to The Westminster Society for people with learning disabilities (Registered Charity Number 801081) of 16A Croxley Road, London, W9 3HL, and the receipt of the Finance Director or the proper officer at The Westminster Society shall be a complete discharge to my Executors.

2. Specific bequest

I give the sum of pounds to The Westminster Society for people with learning disabilities (Registered Charity Number 801081) of 16A Croxley Road, London, W9 3HL, and the receipt of the Finance Director or the proper officer at The Westminster Society shall be a complete discharge to my Executors.

It is important to ensure that the following clause is inserted, whichever wording you need to use:

If at my death any charity named as a beneficiary in this Will or any Codicil hereto has changed its name or amalgamated with or transferred its assets to another body then my Executors shall give effect to any gift made to such charity as if it had been made (in the first case) to the body in its changed name or (in the second place) to the body which results from such amalgamation or to which such transfer has been made.



Glossary of terms

When it comes to making or amending your will, you may come across some legal jargon. This page should help you to make sense of it all.

Administrator

Someone who is appointed to arrange a person's affairs if they leave no will.

Beneficiary: an individual or organisation who receives a gift in a will.

Codicil

A document which enables a simple update or alteration to an existing will.

Chattels and moveables

Personal possessions, including furniture and car.

Estate

All of a person's possessions at the time of their death, including money and property.

Executor

The person appointed to carry out the instructions in a will.

Intestate

You are intestate if you die without making a will.

Legacy

A gift left to a person or organisation in a will.

Life interest

A two stage legacy, where the first beneficiary is given the use of an asset (e.g. a house) during their lifetime. After their death the asset passes to the second beneficiary.

Pecuniary legacy

A gift of a fixed amount of money.

Probate

The legal procedure to decide whether someone has left a valid will.

Residue

The sum left from an estate when all debts, charges and gifts are deducted.

Residuary legacy

A gift consisting of the residue or part of the residue of an estate.

Specific legacy

A gift of a particular item e.g. jewellery.

Testator (male) or testatrix (female)

The person who is making the will.



Useful contact details

If you would like further information about The Westminster Society, contact us at:

The Westminster Society

16A Croxley Road, London, W9 3HL

Registered Charity Number: 801081

Web: www.wspld.org.uk

Email: legacy@wspld.org.uk

Tel: 020 8968 7376 (Mon-Fri, 9am-5pm)

To find out about Inheritance Tax (IHT), contact:

HM Revenue and Customs

Find out where your local office is via:

Web: www.hmrc.gov.uk

Request leaflets explaining IHT via:

Email: ir.purchasing@gt.net.gov.uk

Phone the Inheritance Tax and Probate Helpline on: 0845 302 0900 (Mon-Fri, 9am-5pm)

To find solicitors in your area and information on making a Will, contact:

The Law Society

Web: www.lawsociety.org.uk

Download the 'Customer Guide to Making a Will' from their website free of charge.

For enquiries call: 020 7242 1222 (Mon-Fri, 9am-5pm)



The Westminster Society for people with learning disabilities
16a Croxley Road, London W9 3HL. 020 8968 7376.
www.wspld.org.uk. westminstersociety@wspld.org

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