# factsheet

Age UK
The new force combining Age Concern and Help the Aged

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# Making a will

## About this factsheet

This factsheet explains what you should think about before making your will; how to decide whether to use a solicitor; and how to make sure that the will is effective and your wishes are carried out.

It includes information about choosing executors, finding professional help with writing a will and what might happen if you don't make a will.

For information on dealing with an estate, see Age UK's Factsheet 14, *Dealing with an estate*.

The information given in this factsheet is applicable in England. Different rules may apply in Wales, Northern Ireland and Scotland. Readers in these nations should contact their respective national offices for information specific to where they live – see section 12 for details.

If you need further information or advice, see section 12 for details of how to order other Age UK factsheets and information materials. You will also find the telephone numbers for Age UK Advice there.

If you need more detailed advice tailored to your personal circumstances or representation, it is often best to find a local service offering this. Age UK Advice can give you contact details for a local Age UK, or you could contact one of the independent organisations listed in section 11.

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# 1 Recent developments

- In a recent decision by the High Court in *Ibuna v Arroyo*, it was decided that the order of priority in the Intestacy rules for appointment of an administrator, may be disregarded if the clear intentions of the deceased are that he or she prefers a particular person, not listed in the order of priority under the Intestacy rules.

- In the case of *In Re Northall*, the Court decided that even though a mother owned a property as Joint tenants with her son, it could not be assumed that the son would be solely entitled to the proceeds of sale of the property under the rules of Joint Tenancy. As he was unable to provide evidence of his mother giving him the right to keep the proceeds for himself solely.

- . In the very recent case of *Wharton v Bancroft and Others,* the High Court created an exception to the golden rule that, where a person is old and unwell, it is advisable to have a medical practitioner testify to their capacity to make a will. In that case the Court decided that a Solicitor who prepared a will at the dying man's death bed, to reflect his wishes to leave his estate to his second wife without a medical practitioner's certification, acted properly. This being inspite of the will having been changed to exclude his first wife -and his children with her.

- In another case, *Rudyard Kipling Thorpe (Litigation Friend of Leonie Leanthie Hill) v Fellowes Solicitors LLP*, the High Court, while considering the application of the "Golden Rule" - as described above- in transactions involving the sale of property by an older person, decided that to have this requirement in property sales, would be both insulting and unnecessary. The reason being that the fact that a person is suffering from dementia, should not mean that they are incapable of understanding every decision that they make, especially a property sale.

- The Ministry of Defence is publicising a little-known legal exemption from the payment of Inheritance Tax, on the estate of Military servicemen who die in active service. This is contained in section 154 of the Inheritance Tax. Representatives of servicemen who die in service are being advised to contact the Service Personnel & Veterans Agency, Joint Casualty and Compassionated Centre (JCCC) to apply for the exemption in the first instance.

# 2 Making your will

You can make your own will, and packs to help you do this are available from stationery shops. However, except in the simplest cases, it is generally advisable to use a solicitor. If after your death there is a problem with the drafting or formalities of the will it may prevent your wishes from being carried out and cause difficulties for those left to sort out your estate.

# 3 What to include in your will

There are certain things to think about before you make your will. Even if you use a solicitor, or another professional will-writing service, it will help to have thought these things through before any appointment.

## 3.1 Your estate

You should think about what is likely to make up your estate when you die, and how you would like to distribute this. Your estate is everything you own at the time of your death, including your money, possessions, property and investments. Before your estate is distributed to your beneficiaries (the people you are leaving things to), all your debts must be paid including funeral expenses.

You should also take into account any property you own jointly. Property can either be held as joint tenants or tenants in common. If property is held under a joint tenancy your share will pass automatically to the other owner on your death; you cannot leave your share to someone else in your will. If it is held under a tenancy in common you can leave your share to someone else and they will become tenants in common with the other person on your death. The type of joint ownership you have will depend on what was agreed when you bought the property.

If you have a joint bank account, money in the account automatically passes to the other account holder on your death, so you can't leave it to someone else in your will.

It is important to note that If you leave property to a  spouse and the marriage is subsequently dissolved or annulled, unless the will specifically provides that it can, the gift will fail and the property will be transferred into what is known as the residuary estate (i.e the properties that are not specifically distributed to anyone). It is advisable for the will to provide for a substitute in case this were to happen.

## 3.2 Legacies

You should think about whom you want to benefit from your will; whether these are individual people or an organisation such as a charity, and what would be the most effective way of leaving them a legacy (a gift made in a will is known as a legacy). You should take into account that your circumstances may have changed significantly by the time of your death. You need to make sure your will is drafted in a way that does not present problems if, for example, a beneficiary dies before you, or your estate is worth significantly more or less than at the time you make your will.

One important way of doing this is to name a residuary beneficiary. This is the person or charity that receives the remainder of your estate once any specified gifts have been made. This would prevent what is known as a partial intestacy; see section 9 below for information on intestacy.

If you are leaving specific possessions to specific people, you must make sure that you give sufficient details to ensure that there is no doubt as to the identity of the possessions or who they should go to. For example, beneficiaries should be identified by their full names and their relationship to you.

## 3.3 Executors

The will should name one or more executors: these are people you choose to deal with your estate after your death. The executors can be relatives or friends, or a professional such as a solicitor.

You should choose an executor you can trust to carry out your wishes in accordance with the will. Executors can be beneficiaries under the will and often people appoint their spouse, civil partner or children as executors. Check with your proposed executors that they are willing to take on this role before naming them in your will, as it can involve significant responsibility.

Consider naming more than one executor in case one dies before you. It may also be easier for the executors if there is more than one person to share the work and the responsibility. The executors may have to deal with any day-to-day administration of your estate in the period before it can be distributed. Executors can claim from the estate for expenses incurred carrying out their duties.

If the estate is large or complicated, there may be advantages in appointing a professional executor such as a solicitor, accountant or bank manager. A professional executor will charge for the work they do and these costs will have to be met from your estate. Ask for details of the likely costs before appointing the executor to check that you are comfortable with them.

As a last resort the Public Trustee (an independent public body appointed by the Lord Chancellor) can act as an executor. It may be appropriate to appoint the Public Trustee as executor if there is no one else able and willing to act as executor or where a beneficiary is an incapacitated adult or dependent child likely to outlive both parents and other close relatives.

You should contact the Office of the Public Trustee for more information before appointing them as executor (see section 11).

## 4 Making a valid will

Certain requirements must be met for a will to be valid:

- it must be in writing
- it must be signed and witnessed (see section 4.1 below)
- you must be over 18 when you make it
- you must have the mental capacity to make the will and understand the effect it will have
- you must not have made it as a result of pressure from someone else.

- You must not have made any gifts in the will based on fraud.

The beginning of the will should state that this will revokes all others. If you have an earlier will it should be destroyed.

## 4.1 Signing the will

You must sign the will, in front of witnesses, however the law allows for the will to be signed on your behalf, as long as you are in the room and it is signed at your direction. This will usually occur if a person is either, blind, illiterate, incapacitated or too unwell to sign the will by themselves. The law accepts this for the reason, that a person being unable to sign a will does not amount to their not having the mental capacity to sign the will. A person making a will must have the Mental capacity to make the will, otherwise the will is invalid.

The test for determining that a will signed on your behalf is valid, is mainly that while you were unable to sign the will, you had the Mental capacity to make the will; that the contents reflected your wishes and that all other formalities were complied with.

Any will signed on your behalf must contain a clause, stating that you understood the contents of the will, before it was signed (known as an attestation clause).

Where you are suffering from a serious illness or dementia, it is always advisable that a Medical Practitioner's statement is obtained at the time the will is signed, certifying that you understood the nature of what you signed.

## 4.2 Witnessing the will

Your signature to the will must be witnessed by two people over the age of 18; they must be present when you sign it. The witnesses must also sign the will in your presence; in other words all three people (you and the two witnesses) must be in the room at the same time when signing. There should be an 'attestation clause' in which the witnesses confirm that you have signed the will in their presence.

The witnesses or their husbands, wives or civil partners must not benefit from the will so it is important to select the witnesses from people you do not intend to leave any of your estate to.

If anything has been left to the witnesses the rest of the will is still valid, but the witness will lose their entitlement to whatever you had intended to leave them. Also, the witnesses must not be the same people as the executors of the will.

# 5 Using a solicitor

Unless your will is going to be very simple it is advisable to consult a solicitor, especially if you intend to leave significant sums to people other than those who might expect to inherit, e.g. husband, wife or children; or if you own foreign property or your own business. A solicitor may be prepared to visit you in your own home, care home or hospital. The cost of making a will varies according to its complexity. Ask at the outset what the cost will be.

The Citizens Advice Bureau (CAB) should be able to provide a list of local solicitors.

The Law Society can also provide details of solicitors in your area, including those who specialise in wills and probate.

Solicitors for the Elderly is a national network of solicitors specialising in this area.

See section 11 for details of all these organisations.

## 5.1 Other professional will-writing services

It is possible to use will-writing services provided by people who are not qualified solicitors. They can be cheaper than solicitors, but they are not regulated in the same way and may not have comparable experience, skills or qualifications.

You should check any extra charges that might be applied; for example, some will charge a fee for storing your will – which most solicitors would not – and make sure they have adequate secure facilities if they are going to store your will. You should also check that they have insurance that would cover the cost of any losses resulting from mistakes in the drafting of your will.

Problems have been reported in the past with will-writing companies going out of business and it not being possible to locate the will. You should ensure that if you do store your will with a will writer, you inform your executor, family and friends of the full details of the company and where the will is kept.

There are two voluntary regulatory bodies that will writers can join – the Society of Will Writers and the Institute of Professional Will writers. They both have a code of practice and require members to have professional indemnity insurance. You can contact them to check if someone is a member. See section 11 for contact details.

Banks and building societies offer will-writing services, but will usually expect you to appoint them as your executor as well. You should consider whether this is really appropriate for you before you agree to this.

## 6 Changing your will

Codicils (supplements to a will) can be added to an existing will for minor changes. These 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 anything substantial needs to be changed you should make a new will revoking the former 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 it was made in contemplation of marriage or partnership (that is, you were intending to marry or register a civil partnership when the will was made and the will specifically refers to this). You should make a new will in these circumstances.

Divorce does not automatically invalidate a will but any 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 after divorce.

## 7 Where to keep your will

Your will should be kept at home safely or lodged with a solicitor or a bank. A bank may charge for this service. Alternatively it can be lodged for safekeeping at the Probate Registry (see section 11 for details). A fee of £15 is charged when the will is deposited.

Where solicitors make a will, they normally keep the original and send you a copy. You are entitled to the original if you wish to hold it. It is important to keep the original will safe.

If you have particular views about your funeral you can write a letter to your executor explaining how you would like it conducted, and keep this letter with your will. Alternatively, you can include this information in the will itself, but make sure the people who will arrange your funeral are aware that this is what you have done.

Do not attach any separate documents to the will itself with paperclips or staples. If these become detached, leaving marks on the will, it may raise questions about whether a codicil has been lost. This could call into doubt the validity of the will.

## 8 Taxes on your death

Inheritance Tax (IHT) is payable if your taxable estate is worth more than the IHT threshold. For the 2012/13 financial year the IHT threshold has been retained at £325,000. Most estates are not worth enough for IHT to be payable and so most of us don’t need to worry about it.

Not all of your estate will count for the purposes of calculating IHT, for example anything left to a wife, husband or civil partner is taken off the value of your estate providing you are both permanently resident in the United Kingdom. There are also exemptions for certain gifts, such as any gifts to charities. The value of non-exempt gifts made during the previous seven years may be taken into account in whole or in part depending on how recently the gift was made. This is so that people cannot avoid paying IHT by giving away their estate before they die.

Further information about Inheritance Tax can be found in the *Customer guide to Inheritance Tax* on the HM Revenue and Customs website or by calling the Probate and Inheritance Tax helpline on 0845 30 20 900.

## 9 What happens if you don't make a will?

If you die without having made a will there will be intestacy. Your property will be divided according to the Administration of Estates Act; this means your property may not go to the people you expected or wanted it to. The way the rules apply to your estate depends on which relatives survive you. A brief indication is given below, but people who are responsible for distributing the estate of someone who has died intestate should seek further advice.

If you are married or have a civil partner and have children, your spouse or civil partner will be entitled to at least the first £250,000 of the estate and all of your personal possessions. Surviving children or grandchildren will able to claim some of the estate if it exceeds £250,000.

If you are married or have a civil partner and do not have children, your spouse or civil partner will be entitled to at least the first £450,000 and all the personal possessions. Anything else is divided between your spouse or civil partner and your other surviving relatives.

If you are not married or do not have a civil partner, your estate will go to any relatives according to a certain order. So, if you have children your estate goes to them; if not, it goes to your parents; if you have no surviving parents it goes to any brothers or sisters; and so on. If you do not have any surviving relatives, your estate will go to the Crown.

Another reason for making a will is that you can choose the most suitable person to be your executor and administer the estate. If you don't do this it will be your closest relative (according to a set order) who has the responsibility of collecting in and distributing your estate according to the above rules. For information on who is entitled to apply to administer the estate and how they go about this, see Age UK's Factsheet 14, *Dealing with an estate.*

# 10 Special types of wills

## 10.1 Privileged wills

A privileged will is a specialised, Informal will which is usually made by serving members of the Armed Forces and support personnel (such as Nurses, Cooks etc), either in or about to be engaged in active military operations (War or Peace-keeping duties) or a Mariner or Merchant Seaman on a voyage.

A privileged will has the following features:

a. It does not have to conform with the formalities that a standard will is required to comply with i.e it does not need to be signed in front of two witnesses; nor does it need to have amendments and alterations witnessed.

b. A privileged will can be oral or written;

c. A person becomes eligible to make a privileged will once he or she has received orders of posting to an operational area or voyage, even if the will is made after the person has concluded the posting/voyage;

d. A person need not have reached the age of 18 to make a privileged will

e. A privileged will remains valid, even after the operations/voyage have ended and till the death of the maker, unless revoked by the maker.

f. A privileged will can be revoked informally, whilst the maker is still in service but once the service has ended, it would have to be revoked formally like a standard will.

g. Inheritance Tax is not payable on the estate subject to a privileged will, if military service was the cause of the maker's death.

## 10.2 Joint wills

A joint will is a single will made by two different people (usually spouses), giving instructions as to how their joint properties are to be distributed. This is mostly for convenience purposes

Joint wills can be revoked by any of the parties, anytime before their death and are valid as long as they follow the format of standard wills described above.

## 10.3 Mutual wills

Mutual wills are two or more wills made by two or more different people, giving instructions – based on agreement- on how their properties are to be distributed for each others benefit. What this means is that A and B agree to make two different wills, in which they instruct that their property is distributed for the benefit of the other on the death of one.

Mutual wills are irrevocable, which means that once made they cannot be revoked after the death of one party. They can however be revoked by all parties agreeing this before the death of any of them. However if the first person to die revokes the will before death, the other person is allowed to revoke the other will.

It is highly advisable to get comprehensive legal advice, before the preparation of a mutual will, because it is a very technical document, with far-reaching implications- if improperly drafted.

## 11 Useful organisations

### Citizens Advice Bureau

National network of free advice centres. Depending on available resources may offer benefits check and help filling forms.

Tel: 020 7833 2181 (for local contact details only – not telephone advice)
Website: www.adviceguide.org.uk

### Free wills month

Free Wills Month is a scheme that is supported by several charities and runs each March and October offering free wills for people over 55. The scheme is limited to specific towns/cities around the United Kingdom, which are usually different each time the scheme runs.

www.freewillsmonth.org.uk

### HM Revenue and Customs (HMRC)

The *Customer guide to Inheritance Tax* is available on the HM Revenue and Customs website at www.hmrc.gov.uk/cto/customerguide/page13.htm.

Probate and Inheritance Tax helpline: 0845 30 20 900

### Institute of Professional Willwriters

A self-regulating professional body regulating and promoting the profession of will writing: all its members have professional indemnity insurance for each will written and have to comply with the IPW Code of Practice.

Tel: 0845 644 2042
Website: www.ipw.org.uk

### Law Society

The Law Society is the representative body for solicitors in England and Wales. It contains a searchable database to help you find a solicitor; advice on what to expect; and guides to common legal problems and what to do if things go wrong.

Tel: 0870 606 2555 (provided by the Solicitors Regulation Authority)
Website: www.lawsociety.org.uk

### Offices of Court Funds, Official Solicitor and Public Trustee

The Offices of Court Funds, Official Solicitor and Public Trustee was created on the 1 April 2007, when the Court Funds Office merged with the Official Solicitor and Public Trustee.

Tel: 020 7911 7127
Website: www.officialsolicitor.gov.uk

### Probate Registry

Part of the Family Division of the High Court, this deals with 'non-contentious' probate business (where there is no dispute about the validity of a will or entitlement to take a grant), and issues 'grants of representation', which appoint people known as personal representatives to administer the deceased person's estate. The website page below gives details of storing will for safekeeping.

Tel: 020 7947 7022
Website: www.hmcourts-service.gov.uk/cms/1218.htm

### Solicitors for the Elderly (SFE)

SFE is a national organisation of lawyers providing and promoting independent legal advice for older and vulnerable people, their family and carers. You can use them to find a solicitor specialising in wills and probate.

Tel: 0844 567 6173
Website: www.solicitorsfortheelderly.com

### Society of Will Writers and Estate Planning Practitioners

A non profit-making, self-regulating professional body for the will-writing profession. All its members are covered by professional indemnity insurance and have to abide by its Code of Practice.

Tel: 01522 68 78 88
Website: www.willwriters.com

## 12 Further information from Age UK

### Age UK Information Materials

Age UK publishes a large number of free Information Guides and Factsheets on a range of subjects including money and benefits, health, social care, consumer issues, end of life, legal, issues employment and equality issues.

Whether you need information for yourself, a relative or a client our information guides will help you find the answers you are looking for and useful organisations who may be able to help. You can order as many copies of guides as you need and organisations can place bulk orders.

Our factsheets provide detailed information if you are an adviser or you have a specific problem.

### Age UK Advice

Visit the Age UK website, www.ageuk.org.uk, or call Age UK Advice free on 0800 169 65 65 if you would like:

- further information about our full range of information products
- to order copies of any of our information materials
- to request information in large print and audio
- expert advice if you cannot find the information you need in this factsheet
- contact details for your nearest local Age UK

## Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our, publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65
Website: www.ageuk.org.uk

In Wales, contact:
Age Cymru: 0800 169 65 65
Website: www.agecymru.org.uk

In Scotland, contact:
Age Scotland: 0845 125 9732
Website: www.agescotland.org.uk

In Northern Ireland, contact:
Age NI: 0808 808 7575
Website: www.ageni.org.uk

## Support our work

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and through calls to Age UK Advice on 0800 169 65 65.

If you would like to support our work by making a donation please call Supporter Services on 0800 169 80 80 (8.30 am–5.30 pm) or visit www.ageuk.org.uk/donate

## Legal statement

Age UK is a registered charity (number 1128267) and company limited by guarantee (number 6825798). The registered address is Tavis House, 1-6 Tavistock Square, London, WC1H 9NA. VAT number: 564559800. Age Concern England (charity number 261794) and Help the Aged (charity number 272786) and their trading and other associated companies merged on 1 April 2009. Together they have formed Age UK, a single charity dedicated to improving the lives of people in later life. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age Northern Ireland, Age Cymru.

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