

Factsheet 7

Making a will

July 2022

About this factsheet

This factsheet explains what you should think about when making your will and how to make sure that the will is legal, effective, and your wishes are carried out.

It includes general information about choosing executors, finding professional help with writing a will, and what happens if you do not make a will.

This factsheet also contains information about using video conferencing to witness a will being made legally. These measures were introduced in response to the Covid pandemic. See section 7 for more details.

For information on dealing with an estate, see factsheet 14, *Dealing with an estate*.

The information in this factsheet is applicable in England and Wales. In Scotland and Northern Ireland, contact Age Scotland or Age NI for more information. Contact details can be found at the back of this factsheet.

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 contact one of the independent organisations listed in the *Useful organisations* section.

In Wales, Age Cymru Advice can give you contact details for a local Age Cymru.

Contact details for any organisation mentioned in this factsheet can be found in the *Useful organisations* section.

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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 according to intestacy rules. This means your estate is divided in a pre-determined way and this may not be to the people who you wanted to benefit. It may not be carried out in the most tax-efficient way.

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

It is important to note your actions whilst you are alive can affect whether your will takes effect as you plan after your death. For example, if you exclude someone from your will that you have been maintaining (e.g. allowing them to live with you for a long time without paying rent or giving money to someone regularly), or if you promised an asset to a certain person but then change your mind, they may be able to make claim against your estate after your death.

A solicitor can advise you on these aspects and how you can mitigate or reduce the risks of a claim against your estate being successful.

2 What happens if you die without a will?

If you die without making a will, you are said to have died "*intestate*". In this situation, your estate is divided up according to the rules of intestacy, which strictly governs how assets are shared out.

If you have a spouse or civil partner and have children, your spouse or civil partner inherits all your personal possessions and the first £270,000 of your estate plus half of the remainder. In most cases, your children inherit the remaining half of your estate. If you have had a child who has died before you, leaving their own children, their children will inherit in their place.

If you have a spouse or civil partner and do not have any children, they inherit the whole of your estate and possessions. If you and your partner are not married or in a civil partnership and they are not in your will, they have no automatic right to inherit anything, even if you have children and have lived together for a long time.

See section 9 of factsheet 14, *Dealing with an estate*, for more information about the rules of intestacy.

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
- it must be signed and witnessed, see section 6 and 7
- you must be over 18 years, unless on military service
- you must have mental capacity to make a will and understand its effect
- you must not have been pressurised into making the will by someone else, and
- you must have full knowledge of, and approve, the contents of the will.

At the beginning of the will, you should make a statement that this will revokes all other wills. Official government guidance recommends you should destroy your old will by burning it or tearing it up.

4 How to make a will

There are various options open to you if you want to make a will.

4.1 Use a solicitor

Unless your will and circumstances are very simple, it is advisable to consult a solicitor who specialises in writing wills. For example, it is a good idea to use a solicitor if you intend to leave significant sums of money to people other than those who might expect to inherit it such as your husband or wife, or if you own foreign property or business, or you want to set up a trust. A poorly drafted will can cause unexpected difficulties or outcomes when your estate is settled, so using a suitably qualified solicitor is often a good idea.

A solicitor may visit in your own home, care home, or hospital if necessary. The cost of making a will varies according to its complexity. Ask at the start exactly what the cost will be. Many firms act on a fixed fee basis.

Solicitors are regulated by the Solicitors Regulation Authority and must carry professional indemnity insurance which means that a regulated solicitor's advice is insured.

Check if the solicitor is a member of the Law Society's Wills and Inheritance Quality Scheme (WIQS) or the Society of Trust and Estate Practitioners (STEP). These are recognised quality marks for professionals who draft wills and deal with estates after your death.

For more information, see www.lawsociety.org.uk/public/for-public-visitors/common-legal-issues/making-a-will or call 020 7242 1222.

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

4.2 Other professional will-writing services

Other will-writing services can be provided by people who are not qualified solicitors. They may be cheaper than solicitors but are not regulated in the same way and may not have comparable experience, skills, qualifications, or insurance. Always check for any extra charges that might be applied.

You should check they have insurance to cover the cost of any losses resulting from mistakes in the drafting of your will. Some charge fees for storing your will, which most solicitors do not. Ensure they have adequate secure facilities if they store your will.

If you store your will with them, ensure you tell your executor, family and friends of the full details of the company and where the will is. Keep a copy of the will in a safe place.

Problems may occur if a will-writing company goes out of business and it is not possible to locate the will.

There are two voluntary regulatory bodies that will-writers can join, called The Society of Will Writers, and the Institute of Professional Will Writers. They have Codes of Practice and require members to have professional indemnity insurance. Contact them to check if someone is a member.

4.3 Banks

Most banks and building societies offer will-writing services, but sometimes expect you to appoint them as your executor also. You should consider whether this is appropriate before you agree to this. Remember to ask about charges for this service. Most banks use an external company for will writing services.

4.4 Charities

Some charities offer free will writing services, in the hope you will consider leaving them some money in your will. If your will and circumstances are simple, this may be a suitable option for you. There is no obligation to leave the charity a gift should you choose to take up a free will offer

Free Wills Month is a regular campaign in England and Wales offering free simple wills to people aged 55 years and above.

Participating charities, including Age UK, hope you might donate to them in your will. This is optional and not obligatory. If your will is more complicated, you may be asked to pay the solicitor a fee to recognise this.

Will Aid takes place every November. You can use a local solicitor signed up to Will Aid and instead of paying their fee, you are invited to donate to Will Aid. Funds raised are distributed to participating charities, including Age UK.

4.5 Make your own will

You can write your own will using do-it-yourself will-writing packs or forms you can purchase from stationery shops or online. In principle, you could simply write your will on a piece of paper, provided it satisfies all the conditions in section 3.

However, unless your will and circumstances are very straightforward, this may cause problems when dealing with your estate. For example, if you make any mistakes, for example, spell someone's name incorrectly, miss out important information, or be unclear as to who you want to get what or do what. A professional solicitor or will writer preparing a will for you should take copious and clear notes as evidence of your wishes and confirmation you understand your instructions.

This can be very important in the event of a dispute about your estate after your death. For example, to confirm that you have the requisite mental capacity to make a will, which reduces the likelihood that a claim against your estate is successful.

5 What to include in your will

There are certain things to think about when you make your will. Even if you use a solicitor or professional will-writing service, it helps to think about these things beforehand.

5.1 Your estate

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 money, possessions, property, animals, 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 take into account any property you jointly own. Property can either be owned as '*joint tenants*' or '*tenants in common*'. If you are a joint tenant, your share automatically passes to the other joint tenant(s). You cannot leave your share to someone else in your will.

If you are a tenant in common, you can leave your share to someone else. The type of joint ownership you have depends on what was agreed when you bought the property. It is possible to convert one form of joint ownership to the other. If you are in any doubt, seek independent advice.

If you have a joint bank account, money in the account automatically passes to the other account holder on your death, so you cannot usually leave it to someone else in your will. If you have a joint account for convenience, for example, with an adult child in case of emergencies, but the money is understood to be yours, explain this to the person preparing your will so any necessary documentation can be put in place.

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 according to a separate '*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.

Some potential problems to think about include:

- the person named to receive items is under no legal obligation to distribute them in accordance with the letter. They could keep the items.
- the person named could pass away first or not have the required capacity to carry out the wishes.
- the letter could be separated from the will or lost.

More than one individual can be named to lessen the chance of no-one being alive or capable to carry out the wishes, or you could name the executor appointed in the will to accept the items.

It is not advisable to use a letter of wishes if items are of substantial value or absolute certainty is needed about who inherits specific items but they can be useful to share out everyday belongings.

5.3 Executors

Your will can name up to four executors. Executors are the people you choose to deal with your estate after your death and can be relatives or friends, or a professional such as a solicitor, accountant or bank. You should choose an executor who you trust to carry out your wishes in accordance with the will. You can also name a replacement executor.

Executors can be beneficiaries under the will and people often appoint their spouse, civil partner, or children. Check your proposed executors are willing to take the role before naming them, as it involves significant responsibility.

Consider naming more than one executor in case one dies before you. It may be easier for the executors if there is more than one person to share the work and the responsibility. The executors must deal with day-to-day administration of your estate in the period before it is distributed.

Executors can claim from the estate for reasonable expenses incurred carrying out their duties. They should be aware they can be personally liable if they get any aspect of the estate administration wrong or distribute the estate in the wrong way.

If the estate is large or complicated, or you simply do not wish to burden family or friends with the responsibility, you may want to appoint a professional executor such as a solicitor, accountant, or bank. They charge for the work they do and the costs are met from your estate. Ask for details of likely costs before appointing them to check you are happy. The Law Society has a good practice guide for solicitors when explaining what the costs may be if they are acting as executors.

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

6 Signing the will

You must sign your will, in front of two witnesses present at the same time. The law allows for a will to be signed on your behalf, as long as you are in the room and it is signed at your direction. This usually happens if you are blind, illiterate, physically incapacitated or too unwell to sign.

Just because you are physically unable to sign a will does not mean you lack mental capacity to do so. However, you must have the mental capacity to make the will, otherwise it is invalid.

The test for determining whether a will signed on your behalf is valid is that while you were physically unable to sign the will, you did have the mental capacity to make the will, the contents reflected your wishes, and all other formalities were complied with.

Any will signed on your behalf must contain an '*attestation clause*', stating you understood the contents of the will before it was signed.

Testamentary capacity

The mental capacity required for making a will is known as '*testamentary capacity*'. In order to show testamentary capacity, you need to know what assets you have in order to give them away. This means you must know what your estate consists of at the time of making the will e.g. what assets you have and the value of each asset.

It must also be shown that you understand the nature and effect of making a will and the claims of those who might expect to benefit from the will. You should not have a mental illness that influences you to make bequests that you would not otherwise have made.

If you have advanced dementia or similar health problems, it may be advisable to have a medical practitioner's statement when the will is signed, certifying you understood the nature of what you signed. In these cases, use an independent professional to draft the will, to advise whether this is necessary, and to take attendance notes of the process.

7 Witnessing the will

Your signature must be witnessed by two people who physically see you sign your will. The witnesses and their husbands, wives or civil partners must not benefit from the will.

It is important that your witnesses are not people to whom you intend to leave any of your estate. If there are legacies for the witnesses or their spouse or civil partner, and the rest of the will is valid, the witnesses lose their entitlement to their legacy.

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 you signed the will in their presence.

7.1 Covid changes for witnessing a will

Changes made due to the Covid pandemic allow different approaches to the witnesses being physically present in the room with you when signing the will. The scenarios below would lead to a properly executed will being made during the pandemic, provided the will maker and the witnesses each have a clear line of sight:

- witnessing through a window or open door of a house or a vehicle
- witnessing from a corridor or adjacent room into a room with the door open
- witnessing outdoors from a short distance, for example in a garden.

Video witnessing of a will

Legislation has been made enabling wills to be legally made using video witnesses. These measures are backdated to 31 January 2020 and remain in place until at least 31 January 2024. This is a very new approach and should only be used as a last resort if possible.

The type of video-conferencing or device used is not important, as long as the person making the will and their two witnesses each have a clear line of sight of the writing of the signature.

Witnessing pre-recorded videos is not permissible. Witnesses must see the will being signed in real-time. You must be acting with mental capacity and in the absence of undue influence.

If possible, the whole video-signing and witnessing process should be recorded and the recording kept safe. This may help a court if a will is challenged, both in terms of if the will was made in a legally valid way, and to detect indications of undue influence, fraud, or lack of capacity.

Stage 1:

You must ensure the two witnesses can see you, as well as each other and their actions. You should ask for the making of the will to be recorded. You should hold the front page of the will document up to the camera to show the witnesses, and then to turn to the page you will be signing and hold this up as well.

By law, the witnesses must see you (or someone signing at your direction, on your behalf) sign the will. Before signing, you should ensure the witnesses can actually see you write your signature on the will, not just your head and shoulders.

If the witnesses do not know you, they should ask for confirmation of your identity - such as a passport or driving licence.

Stage 2:

The witnesses should confirm they can see, hear (unless they have a hearing impairment), acknowledge and understand their role in witnessing the signing of a legal document. Ideally, they should be physically present with each other but if this is not possible, they must be present at the same time by way of a two or three-way video-link.

Stage 3:

The will document should be taken to the two witnesses for them to sign, ideally within 24 hours. They must sign the same document.

A longer period of time between you and witnesses signing the will may be unavoidable, for example, if it must be posted. Remember, the longer this process takes, the greater the potential for problems to arise.

The will is only fully validated when all parties have signed it and it has been properly witnessed. This means there is a risk that if you die before the full process has taken place, the partly completed will is not legally effective.

Stage 4:

The two witnesses must sign the will document – this normally involves you seeing both the witnesses sign and acknowledge you have seen them sign. All parties must be able to see and understand what is happening.

The witnesses should hold up the will to you to show they are signing it and should then sign it. Again, you must see them writing their names, not just see their heads and shoulders.

Alternatively, the witness should hold up the signed will so you can clearly see the signature and confirm to you that it is their signature. They may wish to reiterate their intention, for example saying: “*this is my signature, intended to give effect to my intention to make this will*”.

This session should be recorded if possible.

Stage 5:

If the two witnesses are not physically present with each other when they sign then step 4 must take place twice, in both cases ensuring you and the other witness can clearly see and follow what is happening. While it is not a legal requirement for the two witnesses to sign in the presence of each other, it is good practice.

Consideration may be given to the drafting or amending of the attestation clause in a will where video-witnessing is used. The attestation clause is the part of the will dealing with the witnessing of your signature. For video-witnessed wills, it may be advisable to say virtual witnessing has occurred and details of whether a recording is available.

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. Minor changes can be added using 'codicils'. A codicil 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 keep the original will safe.

If you have wishes about your funeral, you can write a letter to your executor setting them out. Keep this letter with your will. Alternatively, include this information in the will itself, and make sure the people who you want to arrange your funeral know you have done this.

Do not attach any separate documents to the will itself with paperclips or staples. If they become detached and leave 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.

Do not keep your will in a bank safety deposit box. The bank cannot open the deposit box until the executor gets probate (permission from the court to administer your affairs) and probate cannot be granted without the will.

10 Taxes on your death

Inheritance Tax (IHT) of 40 per cent is payable if your estate is worth more than the IHT threshold. Assets passing to your spouse or civil partner who lives in the UK are usually free from IHT.

Some assets, such as agricultural property and trading business assets can benefit from IHT relief which reduces the amount of IHT payable on your death. For the 2022/23 tax year, the IHT threshold, or Nil Rate Band, is £325,000. The Nil Rate Band can be reduced by gifts you make in the seven years before death (or in some cases more than seven years before death).

The Nil Rate Band may be higher if your spouse has already died, or you leave your home or its sale proceeds to children, grandchildren, step, or foster children. This is the Residence Nil Rate Band which is an extra family home allowance and can provide up to an extra £175,000 tax free allowance in addition to the other Nil Rate Band.

See www.gov.uk/inheritance-tax and seek advice if you are unsure whether your estate is large enough to be liable for IHT. There may be merit in taking advice if you own assets which may qualify for IHT reliefs.

For more information about IHT, see section 6 of factsheet 14, *Dealing with an estate*.

11 Special types of wills

11.1 Privileged wills

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

There are special rules for privileged wills. Seek professional legal advice if you think you can make one of these.

11.2 Discretionary Trust wills

If you wish to leave your estate to vulnerable beneficiaries, you should take legal advice on leaving your estate in a discretionary trust. A trust is when assets are held by one or more people (Trustees) for the benefit of another person or people (beneficiary/beneficiaries).

This can protect assets for the intended beneficiary if they are unable to look after assets themselves. This can include a person who does not have mental capacity to look after money, or a person who is at risk of being exploited if they receive a large amount of money.

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 the next section as mirror wills may change into '*mutual*' wills.

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 each other's benefit 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 benefit under the later will can '*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.

Useful organisations

Citizens Advice

England or Wales go to www.citizensadvice.org.uk

In England telephone 0800 144 8848

In Wales telephone 0800 702 2020

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Free Wills Month

www.freewillsmoonth.org.uk

Free Wills Month is supported by several charities, including Age UK, and runs each March and October offering free wills for people over 55. The scheme is limited to specific towns and cities in the UK which are usually different each time.

Institute of Professional Will Writers (IPW)

www.ipw.org.uk

Telephone 0345 257 2570

Professional body that self-regulates and promotes the profession of will writing. All members have professional indemnity insurance and comply with the IPW Code of Practice.

Law Society

<http://solicitors.lawsociety.org.uk/>

Telephone 020 7320 5757

The representative body for solicitors in England and Wales and has a searchable database to find a solicitor, advice on what to expect, and guides to common legal problems and what to do if things go wrong.

National Will Register

www.nationalwillregister.co.uk/

Telephone 0330 100 3660

Offices of the Official Solicitor and the Public Trustee

www.gov.uk/public-trustee-executor-will

Email enquiries@ospt.gov.uk

Government official who can be an executor if there is no-one suitable to appoint, for example if a beneficiary is an incapacitated adult or dependent child likely to outlive both parents and other close relatives

Probate Registry

www.gov.uk/wills-probate-inheritance

They deal with '*non-contentious*' probate business and issue '*grants of representation*'. Their website has details of storing wills for safekeeping.

Society of Will Writers and Estate Planning Practitioners

www.willwriters.com/

Telephone 01522 687888

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.

Society of Trust & Estate Practitioners

www.step.org

Telephone 020 3752 3700

Solicitors for the Elderly

<https://sfe.legal/>

Telephone 0844 567 6173

National organisation of lawyers providing and promoting independent legal advice for older and vulnerable people, their family and carers.

Solicitors Regulation Authority

www.sra.org.uk

Telephone 0370 606 2555

Provides details of solicitors in your area and assist if you need to complain about a solicitor.

Will Aid

www.willaid.org.uk

Telephone 0300 0309 558

Will Aid is a partnership between the legal profession and nine UK charities, including Age UK.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru Advice

www.agecymru.org.uk

0300 303 4498

In Northern Ireland contact

Age NI

www.ageni.org

0808 808 7575

In Scotland contact

Age Scotland

www.agescotland.org.uk

0800 124 4222

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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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