

Pardoes
Solicitors

WILLS & PROBATE TEAM

MAKING A WILL

These notes explain some of the more common expressions used in relation to Wills and Probate and we hope you will find them informative and useful.

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1. INTESTACY

- Intestacy arises where someone dies without making a Will. Their Estate passes in accordance with statutory provisions, which can mean a spouse or civil partner may not be entitled to everything and a cohabitee receives **nothing**.
- Personal Representatives of the Estate are also appointed by statutory provisions, and in the event that the Estate is to pass to children under eighteen this will normally be the surviving parent, even if that parent is not or never has been married to the parent who has passed away. **This could mean an ex partner controlling the children's Trust Fund!**
- These problems can be avoided by making a Will which deals specifically with these issues.

2. GRANT OF PROBATE

- Is the document issued to your Executors by the High Court and which authorises them to administer your Estate and carry out the terms of your Will.

2.1 EXECUTORS

- Your Executors are responsible for dealing with the Administration of your Estate by establishing the extent of your assets, discharging any debts, paying funeral expenses, Inheritance Tax, etc. They are also responsible for paying legacies and distributing the rest of your Estate in accordance with your Will.
- Any adult can be an Executor and an Executor can be a beneficiary under your Will. If you intend to leave all or most of your Estate to one beneficiary you may wish to appoint him/her as sole Executor. Otherwise it is usually best to appoint at least two Executors (the maximum is four). Pardoes can be appointed as your Executors and this may be beneficial if your Estate is complicated or the Will may be contested.

2.2 TRUSTEES

- Your Will may create a trust, even if only to hold money for a child beneficiary until they are eighteen. It is your Trustees who would hold and invest the money in the meantime. It is usual to appoint the same persons as both Executors and Trustees, but different people can be appointed if desired.

2.3 GUARDIANS

- It is desirable to appoint guardians if you have children who may be under eighteen at your death. Any appointment will normally take effect only after both parents have died.

2.4 FUNERAL ARRANGEMENTS

- Your Will can set out your wishes as to burial/cremation and funeral formalities. It can also say if you wish your body to be used for transplant surgery or for medical research. However, as the Will may not be read for some time after your death, it is more important to let your family/friends know your wishes.

2.5 LEGACIES

2.5.1 Pecuniary Legacies - these are simple cash gifts to individuals or eg. Charities. Unless your Will says otherwise, these legacies are free of Inheritance Tax. If you wish, you can provide for a pecuniary legacy:

2.5.1.1 to be given priority, in case you do not leave enough to enable all your legacies to be paid in full

2.5.1.2 to increase in amount between the making of your Will and the date of your death, by a fixed annual percentage, or in line with inflation.

2.5.2 Specific Bequests - these are gifts of specified items in your Will, such as jewellery, furniture or land. These gifts are also free of Inheritance Tax unless your Will says otherwise. Specific bequests normally have priority over pecuniary legacies.

2.6 RESIDUARY ESTATE

- this expression means all that remains of your Estate after your Executors have paid:

2.6.1 your debts and funeral expenses

2.6.2 your legacies and bequests

2.6.3 legal fees, etc., on administering your Estate

2.6.4 any Inheritance Tax

It is important to include a residuary gift in your Will and it is usually to provide an alternative, in case your first choice beneficiary dies before you. For instance, you may give your entire Estate to your spouse/civil partner, but if he/she dies before you then to your children and/or grandchildren.

2.7 TRUSTS

- rather than making a gift outright it can be placed into trust so a beneficiary only receives the income from it, with the capital passing to another beneficiary after their death or alternatively with all benefit at the Trustees discretion.

3. INHERITANCE TAX

- is payable at 40% on the value of the Estate at death, together with gifts made in the previous seven years, exceeding the Nil Rate Band (currently £325,000). If your Estate exceeds that value, you may wish to try to reduce the impact of the tax either by disposing of assets now, or by other means. In valuing your Estate, please remember to include, for example, life policies and pension scheme benefits which may form part of your Estate.
- Since October 2007 the unused part of the Nil Rate Band of the first to die can be used by the survivor's estate. Please ask for our Inheritance Tax planning leaflet if you think you will need advice on this subject.

4. LASTING POWER OF ATTORNEY

- when making a Will, you should also consider completing a Lasting Power of Attorney to appoint one or more people of your choice to look after your financial affairs if you became unable to do so because of mental or physical impairment.

If you require any further information then please contact **Damian Gorman** or **Jacqui Hellings** on 01823-446200 or **George Persson Emily Knowles** or **David Martin** on 01278-457891 who will be pleased to assist you.

<http://www.pardoes.co.uk/wills-probate-tax-planning>

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