FOCUS

SWW

"THE SUCCESSION LAW EMAG"

IN THIS ISSUE:

INHERITANCE TAX: SEEING THE WOOD FOR THE TREES

THE DANGERS OF A DIY WILL

REFLECTING ON MIRROR WILLS

AND MORE...

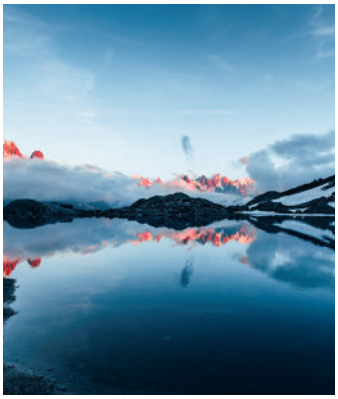
The Society of Will Writers

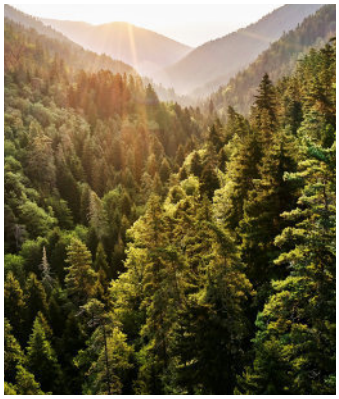
ISSUE 17 | AUTUMN 2021

AUTUMN 2021

CONTENTS

FEATURES





A letter from the Director

Anthony Belcher

Dear reader,
Welcome to the latest issue of Focus SWW, or should I say welcome back – it has been a while! We've got a bumper issue in store for you this time full of all the latest news, features and editorials from The Society of Will Writers and some of our trusted partners.

Focus SWW was the vision of our late Director General Brian McMillan, who had a desire to produce a colourful, inviting, and easy to read magazine for members of the Society and their clients, and now 5 years on it's still in production and still achieving these same goals. Under new direction, the Society continues to thrive and stick to these original values, and the magazine is no exemption. That doesn't mean there isn't room for development and change, and at this point I'd like to formally introduce our new editor, Ruby Nott, who joined the Society earlier this year. Ruby has already given the Society's materials and literature a new lease of life and I'm looking forward to seeing what more she will achieve with this magazine going forwards.

For our members and readers, if the last year or more has taught us anything it's that life is not to be taken for granted, and as we head into what could possibly be another difficult Winter, I have one simple message. Make sure that your estate planning is up to date. The importance of a Will, as well as supporting documents such as Lasting Powers of Attorney is not to be underestimated and shows your loved ones that you cared enough to make plans and not to leave them with the burden of sorting out your affairs after you're gone or when it's too late.

Estate planning is for everyone, regardless of financial or cultural background, every person should have a Will and for the absolute best advice and services, our expert members are where you should turn to. By engaging the services of a member of The Society of Will Writers you can rest easy in the knowledge that your estate planner is fully trained, insured, code compliant and what we call 'Safe to do business with.' Never be afraid to question your estate planner's qualifications or membership status, if ever in doubt you can always contact us, and we will be happy to corroborate.

I hope that the months ahead bring you nothing but good, and I look forward to writing to you again in the next issue in the new year.

Anthony Belcher
Director
The Society of Will Writers and Estate Planning Practitioners

Contact us:

01522 687888
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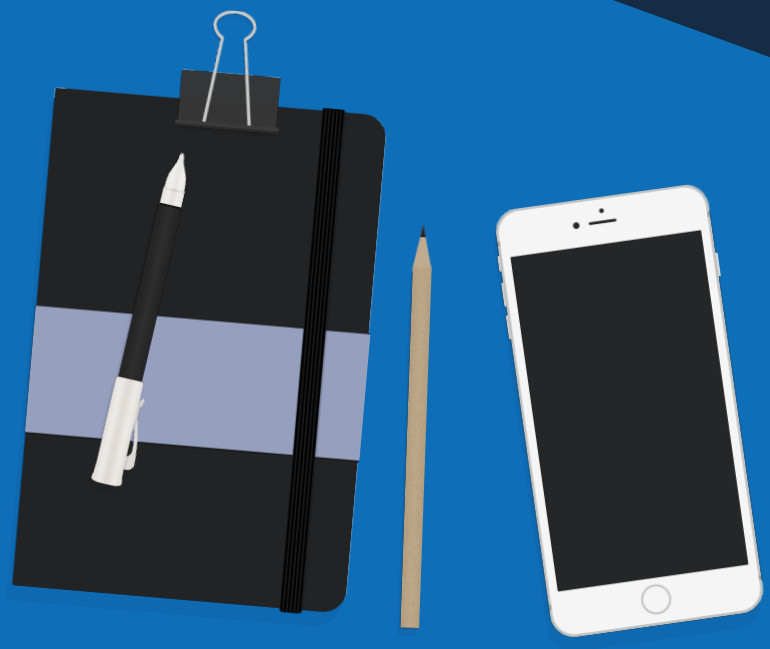
Connect with us:

WANT TO MARKET YOUR BUSINESS WITH THE SWW?

The SWW is pleased to offer a variety of advertising opportunities within Focus SWW as well as across our other platforms.

To find out more information, or to see our media pack and rate card, please contact either info@willwriters.com or call 01522 68 78 88

Quarter, half and full page adverts are available within Focus SWW.
All advertisement sizes and specifications are detailed in our media pack.



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SKIPTON BUILDING SOCIETY Since 1853 | financial planning & advice

How could a financial adviser help you do even more for your clients?

'How can a financial adviser help me?'

This is one of those questions that's hard to give a specific answer to. Everyone has different financial situations, needs and goals and so the support needed from a financial adviser will differ from person to person.

Here at Skipton Building Society, we believe we could help you to provide an additional service for your clients.

And that's why we're thrilled to be working with the Society of Will Writers, to support organisations like yours.

As Estate Planners and Will Writers you carefully guide your clients through the important process of planning their legacy. You provide them with peace of mind about their future plans for when they're no longer here. At Skipton Building Society, we offer advice on investment and pension planning. We're here to help people achieve their future financial goals.

Working alongside each other, we could help you to help your clients even further.

There are varying ways a financial adviser could help your clients

When we talk about circumstances and needs, we're referring to your client's current financial situation and medium to long-term goals. Whether that's planning for a dream retirement, putting money away for loved ones or simply trying to get more from the money they already have.

A financial adviser looks at how to get your client's money working in a way that could help them to achieve their future goals. They could help your clients to look at things in a different way and feel more confident about making financial decisions.

Did you know...

You don't need to be super wealthy to seek financial advice. It's not about having hundreds of thousands to invest on the stock market. Our advice can support people who have a minimum of £20,000 lump sum or £500 per month to invest.

There are many people who are already building a nest egg through workplace pensions. There are also savers who might benefit from maximising the tax allowances available to them,

What does a financial adviser do?

1. They get to know your clients

Financial advice isn't about an adviser diving in headfirst to try and sell your clients a product.

A financial adviser is here to find out about what's important to them.

When your client first meets with a Skipton adviser they'll take the time to find out about their circumstances and what it is they'd like to achieve.

They'll find out about your client's financial position, lifestyle, spending habits and future goals and aspirations.
They're not being unnecessarily nosy. This is all so they can

act in your client's best interests when it comes to building a plan.

2. They come up with a tailored plan

It's only once they've got to know your client that a Skipton adviser will look at coming up with some solutions. A tailored plan that maps out their financial future in a way that they could understand, value and trust.

As part of your client's plan, we might recommend investing to potentially strengthen their finances. At this point we'll talk about the level of risk they're willing to take in return for the potential of higher growth in the long run. We'll also look at how long they're prepared to invest for – which should typically be five years or more.

3. They help to implement those plans

Next we will invite your client back to explain our recommendations in full. We'll explain these recommendations in a clear and simple way.

Good advice doesn't end there either. A financial adviser also understands life has its ups and downs. A divorce, a promotion, loss of income or an inheritance could all impact on a financial situation.

Sitting down with an adviser from time-to-time to talk about priorities could help your client's plan stay structured in the right way to reach their goals.

Do your clients need a financial adviser?

Creating a financial roadmap for the future your client wants involves a close look at their finances.

Yes, your clients could go it alone if they wish. But as they've come to you for help with legacy and will writing planning, they can already see the value of working with a trusted expert like yourself.

When it comes to your financial advice needs, we're here to help your clients in the same way as you're supporting them with their estate planning. They might not realise just how much financial advice could help them, which is where you could offer even more value by recommending our services.

For example, one in three of us don't know how much we'll need in retirement[1] – it's these sorts of thing we could help your clients with. As well as having the knowledge on the right kinds of products for their particular needs.

How much does a financial adviser cost?

Here at Skipton it costs nothing for your client to find out if they could benefit from financial advice through a free initial consultation. They will need a lump sum of £20,000 or £500 a month to invest. This friendly chat will help clients to find out if financial advice might be right for them.

And as we've established, there's no one size fits all with financial advice. That means if they decide to act on the advice, there's not one exact price – once again it comes down to their specific needs. If a client asks us to implement their plan, then we charge the client a percentage based initial charge.

Paul Fenn, Skipton's Head of Business Development, explains, **"Whilst we can't give them a definite cost until we find out more about their needs, we can promise that any charges will be explained beforehand. There's also no upfront fee for your client to meet with an adviser or to hear our advice either.**

"I am delighted that by working with the Society of Will Writers we can help make financial advice accessible to more people when they need it. Especially at such an important time as writing their Will."

So, now you know a little about Skipton, let's work alongside each other to help your clients even further. To find out more contact James Webb, Business Development Manager on 07800770353.

By investing with our advice, our aim is to grow your client's money by a greater extent than is available through cash savings accounts to help them achieve their goals. Although funds are not like bank and building society savings accounts. It does mean placing your client's capital at risk, as its value can fall as well as rise and they may get back less than they originally invest.

[1] https://www.unbiased.co.uk/news/financial-adviser/one-in-three-brits-don-t-know-how-much-pension-to-save

THE SOCIETY OF WILL WRITERS ANNUAL CONFERENCE 2021

The Society of Will Writers Annual Conference 2021 has now been and gone and it's time to recap what was an extremely successful 24th running of the event.

This year's conference was the first in-person event hosted by the Society in over a year and a half and served for many in attendance as an opportunity to finally meet with people face to face again.
It was great to see so many members learning, networking, and enjoying their time together and all of us here at the Society are looking forward to more of the same in the future. With over 130 delegates checking in on day 1 our initial estimates for attendance figures were completely blown out of the water and in the end, the conference felt like an event ran during what we might have once considered to be more "normal" times.

Overall, the event ran smoothly from start to finish once again thanks to the excellent staff at The Hilton East Midlands Airport, who, in such unprecedented times could not have done any more for us and made us feel as welcome as ever. It's so refreshing to host an event where the facilities are top notch, and where the staff take care of everything you ask, with nothing ever being too much trouble. After a 2-year break, it felt like we'd ran the last conference a week before with how prepared they were, and we cannot thank them enough for all their hard work.

With that said, let's get onto the roundup. I hope you're sitting comfortably because there's a lot to cover!

Day 1 – Talks

Day 1 consists of talks from industry experts and leaders, and we certainly brought out the big guns this year.

Kicking off with the breakfast slot, we had Steve Blofield, founder of Redwood Wills and Trusts and Chairperson for the South Wiltshire and Hampshire SWW Regional Group. We always try to vary our breakfast slot content and this year Steve gave delegates a presentation on producing an estate planning report for their clients' benefit. Accompanied by handouts and worksheets for delegates to take away and utilise, this was a very well-attended session which many found of benefit.

Following registration, I took to the stage myself to give the annual update from the Society, and with only half an hour to cram as much in as possible from the 2-years between conferences, I'd clearly set myself quite the challenge. However, I thoroughly enjoyed the opportunity to be able to reflect on all the good work that our members and partners have been doing, as well as highlighting some of the new projects and initiatives we have coming up over the next year such as improved client satisfaction surveys, industry case studies and a new dual-delivery programme for The College of Will Writing. More on these over the coming months!

I then handed over to Antony Brinkman, Chairman of the SWW Professional Standards Board (PSB) for a brief update on completed projects, such as the Member's Handbook and complaints functions, as well as upcoming projects such as the Best Practice Handbook and membership grade clarifications. The PSB do a lot of great work behind the scenes and an opportunity to show some of this off was welcomed by all.

Antony then moved onto his next presentation titled Professional Services: Knowledge vs. Skills in which he demonstrated how estate planning is a professional service, whereby knowledge and skills often overlap. As such, it often presents problems such as operating from false data, the placebo effect and comfort zones. Each problem demonstrated was accompanied by examples from real-world experience, as well as solutions to overcome and ensure the each will writer is able to get the very best out of their client and provide the very best service to suit.

Rounding off the morning session we hosted Matthew Hill, Chief Executive of The Legal Services Board (LSB). Matthew had been lined up to speak at the since-cancelled 2020 event, so we jumped at an opportunity to invite him back for 2021. Giving insight into the LSB's work on shaping the future of legal services, this presentation was no doubt highly anticipated by all in attendance. After a short presentation on the areas the LSB are looking into, such as consumer redress, technology and diversity, Matthew opened the floor to questions from delegates and I can honestly say I've never seen as many hands fly up so fast at a Society conference! Expertly handled, as you'd expect, delegates went off to lunch with a much better understanding of the LSB's work, and a reassurance that they're communicating and working together with the Society and its members going forwards.

Starting off the afternoon's session we had Siobhan Rattigan-Smith who gave an update on the changes to the Trust Registration Service. This was another highly anticipated presentation as the changes impact all estate planners involved in trusts produced past, present and future. An immensely complex subject full of rules and exemptions, Siobhan's clear explanations of these left delegates feeling much more at ease than before they went in. The Society will be publishing more information on the TRS going forwards, as well as providing talks to regional groups and other content.

Finishing the day we invited Jacob Meagher, barrister, and Lecturer of Law at the University of Brighton. It's always worthwhile having a speaker at conference give a talk on the more practical side of estate planning, and Jacob's talk on When Wills go Wrong: The Aftermath of Drafting went down a treat. Drawing from his own experiences and cases, Jacob's talk covered the Caveat in depth, including its problems and impact, as well as forfeiture clauses and costs. A great way to round off the day leaving delegates with heads full of even more knowledge than ever before.

A quick close to the day's proceedings followed, with thanks given to the speakers, exhibitors, delegates, as well as Society and venue staff before preparations for that evening's private dinner began.

Day 1 – Private Dinner

It must be said that anyone who has never attended the Monday night dinner at conference is missing out. Every year we use this as an opportunity to unwind, enjoy good food and company, as well as entertainment which this year came in the form of illusions by Bradley Duncan and the casino tables making a return, as well as caricatures by Chris Taylor who turned out to be that popular, he stayed up until 12:30am, a full 90 minutes after the dinner ended to draw everyone in the queue! Sandwiched in the middle of what is a very serious and hardworking couple of days, an opportunity to have fun with other members, speakers and exhibitors is something I highly recommend giving a try in future.

Day 2 – Workshops

Choosing who to lead the workshops on day 2 can often be a challenge. Day 1 sometimes comes across as the main event, when often, the workshops provide ample knowledge and provide an opportunity to really get stuck into a particular topic with a speaker on a more personal level thanks to the smaller group sizes. We really put a lot of thought into this year's workshops and the line-up achieved our highest ever day 2 attendance, with some delegates evenbooking for just day 2 alone.
This year's workshops were led by Adam Johnson of Heritage Will Writing, Seb Shakh of WillSuite and Paula Finch of NBM Business Growth, all of whom are conference regulars and have delivered talks in the past, and we were thrilled to have them back once again.

Adam has been delivering online training courses through the College of Will Writing over the last year and has been incredibly popular amongst members. His workshop this year focused on Pensions and Death, providing planning points for estate planners to consider. He even stayed behind to deliver an extra separate session once the workshops had finished, now that's dedication!

Seb has been providing software to the Society and its members in the form of Sure Will Writer – Professional Will Suite since 2017. A man who loves his tech, his workshop went over the impact of technology on will writing, looking at digital assets and blockchain technology, as well as the darker side of things such as deepfake technology. A truly insightful look into what the future might hold for our industry.

Paula is no stranger to working with Society members and has been delivering courses for the college for a couple of years now. Her workshop this year titled Fans, Wills and Success covered how applying the techniques used by some of the world's most successful sporting clubs to your own estate planning business can create your own fan club, leading to greater success. Delegates went away thinking about who their avatar is, a key theme through much of Paula's training. Conference also launched Paula's new course, a 12-week programme for businesses at all stages of growth wanting to really delve into the fan club model. Contact diane@willwriters.com for more details.

Exhibitors

Conference simply couldn't happen without the support of the companies who come to exhibit. This year we were delighted to bring a host of companies, some new, some familiar, and judging by the buzz in the foyer there's not a single delegate who didn't do business with somebody. Thank you to all the 2021 exhibitors for your support and attendance.

For more information about this year's exhibitors, check out the links below, or have a read of SWW Conference Insight, our dedicated e-magazine featuring articles and promos from exhibitors.

Skipton Building Society
Finders International
Marsh Commercial
SWW Trust Corporation
The National Will Archive
The National Will Register
The Estate Planners Toolkit
Directpay
Peleman
Proffered
Lime Solicitors

Wrapping things up
If you haven't done so already, we'd appreciate feedback on this year's conference which you give us by filling out the form here and returning it to info@willwriters.com. Responses can be anonymous if you wish and all feedback received will help us organise next year's conference, for which planning is already underway. Next year will be the 25th running of the conference and we'll certainly be doing something special for it so keep an eye on our socials, newsletter, and conference page for details over the coming months.

It's quite clear then that conference is truly never not on our minds, which you'd perhaps expect what with it being the biggest the most well-attended event in the Society's calendar. As soon as one finishes, we get to work on the next, but it's easy to forget just how much work goes into planning and running the event and once again the SWW team pulled out all the stops to make this year's a resounding success. Whether it's organising the venue, booking speakers and exhibitors, producing marketing material, or even working the registration desk on the day, each member of the team has played their own part in supporting the event and I for one am extremely grateful for all their hard work.

It's been a tough year and a half for us all in many respects, and it's felt at times like the conference might not happen, so to get there and see all the hard work pay off resulting in a very successful event, clearly demonstrated by just how well received it was by all in attendance makes me feel a great deal of hope for the future. The resilience demonstrated by Society members, partners, and the team here at head office is something to behold, and I can't wait to see what next year holds for us. Hopefully it'll be a bit easier than this one!

Thank you to all those who came to conference, for listening, engaging, and having fun with us over the course of the 2 days, and for your information your CPD certificates will be issued over the next few days (there's quite a lot to do!) If you didn't make it this year you certainly missed out, but I thank you for reading this roundup, and I hope to see you at the 2022 SWW Conference instead.

UNT

IL NEXT YEAR!

WITNESSING A

To be valid a Will must comply with all of the requirements set out below which is found in section 9 of the Wills Act 1837.

No will is valid unless:-

It is in writing and signed by the testator, or by some other person in his presence and by his direction.
It appears that the testator intended by his signature to give effect to the will.
The signature is made or acknowledged by the testator in the presence of two or more witnesses present at the time.
Each witness either:
attests and signs the will; or
acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary.
Let us take a look at each point in more detail below.

The will must be in writing and signed by the testator
The will must be in writing whether this is handwritten or typed. There is no requirement for the will to be written on paper. As long as this can be produced to the Probate Registry this will meet the requirements. In the case of Hodson v Barnes (1926) 43 TLR 71 a will written on an empty ostrich egg shell was once held to be perfectly valid although we are not in any way suggesting that this is the way forward.

The will must be signed by the testator using their normal signature. However, what constitutes a signature has been interpreted fairly liberally by the Courts a following has been accepted past – a mark of any shape, a stamp, inked thumb print.

Where the testator is unable the will, a simple mark is suff to validate the Will as long as tended to be their signature a mark is meant to execute the There may be other circumst where the testator is blind, ill or paralysed which will affect ability to sign the Will. In this the will can be signed on the tor's behalf and a special atte clause must be used.

The intention of the testator The signing of the will by the tor is evidence of his intentio

Witnesses

Both witnesses must be present at the same time and must not leave before the testator has completed his signature.

Where the testator has signed the Will but not in the simultaneous presence of both witnesses then he must acknowledge his signature by words or by conduct in the presence of both witnesses. At the time of the acknowledgement, the witnesses must see or have the opportunity to see the testator's signature. The signature cannot be concealed or obscured in any way or the acknowledgement will not be valid.

A witness may be called upon at a later date to provide a sworn statement (affidavit) to provide evidence of the circumstances of the signing of the Will if there are any problems with the signatures on the Will, doubts as to the mental capacity of the testator at the time the Will was executed, or any claims that the testator was subjected to undue influence.

Who can be a witness?

Anyone can be a witness unless they are blind, as a blind person is unable to witness a "visible act" such as the signing of a Will.

A witness must be physically present and they must also be mentally present. A person who is physically present at the time the testator signs the Will but who is asleep, unconscious, under the influence of drink or drugs, or otherwise lacking in mental capacity is not a good attesting witness as they are not aware of the circumstances surrounding the signing of the Will, and will therefore be incapable of providing a statement as to the valid execution of the Will if called upon.

There is no minimum age requirement to be a witness, but the witness must be aware and competent enough to give evidence, so it is advisable to choose witnesses who are over 18. From a practical perspective, it is also sensible to choose witnesses who are younger than the testator and likely to survive them as they may be required to give evidence after the testator's death.

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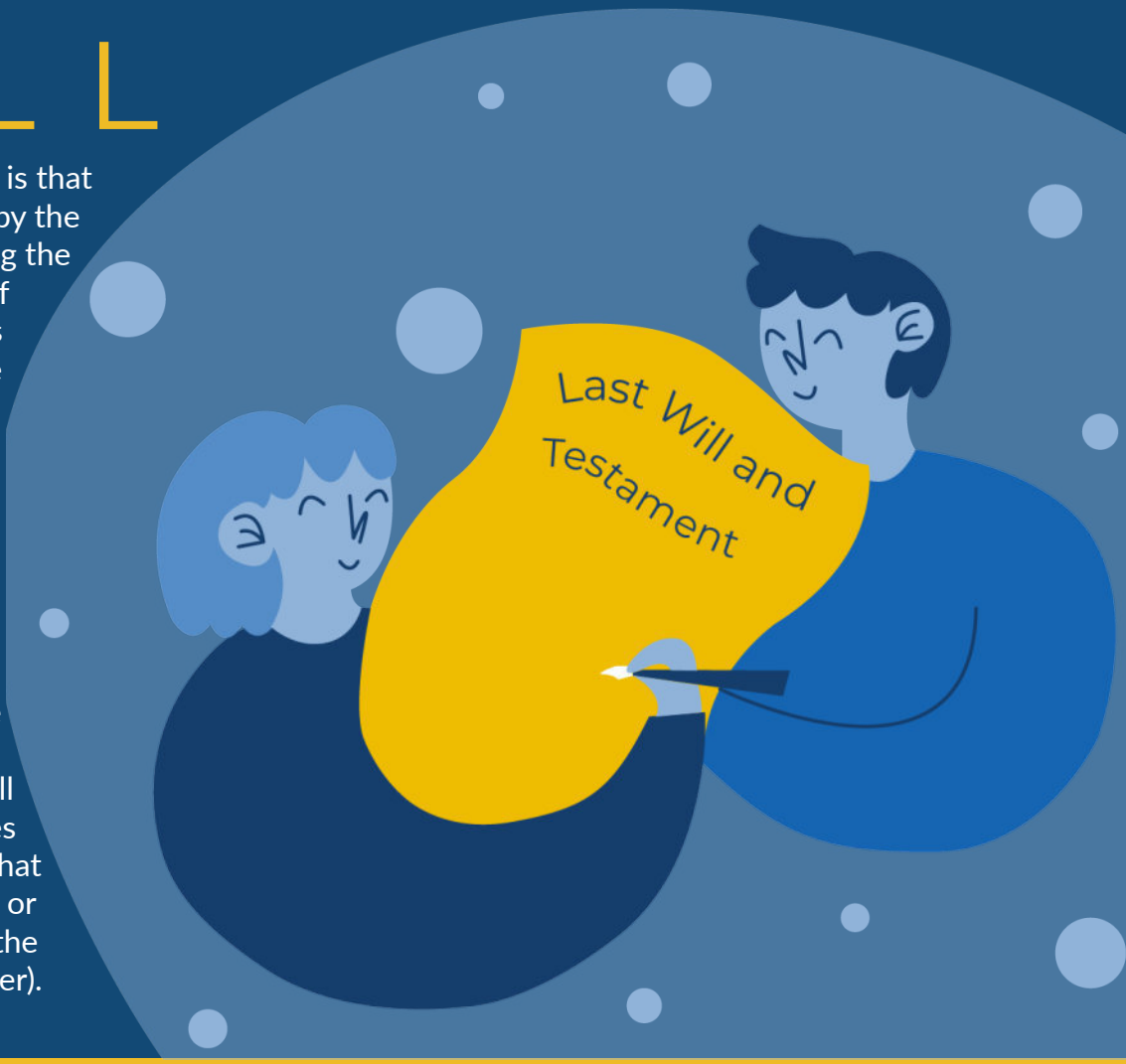
One such requirement is that a Will must be signed by the testator (person making the Will) in the presence of two or more witnesses who are present at the same time.

What is a witness? A witness is a person who signs the Will to verify the signature of the testator. The witnesses sign to confirm that they have observed the testator while he signed his Will (although the witnesses do not need to know that the document is a Will or its contents or sign in the presence of one another).



Lastly, another practical tip is to avoid using a witness from another country since it could be difficult to locate them and communicate with them due to time difference which could subsequently delay the administration of the estate.

A person who is a beneficiary or the spouse of a beneficiary under the Will should not be a witness as under section 15 of the Wills Act 1837, gifts to attesting witnesses are void, and any gifts in the will made to them will fail.

Example

Danielle (testator) leaves Amy her friend, a gift of money in her will for the sum of £4,000. Amy was asked to be a witness to Danielle's will. Danielle passes away soon after. As Amy is a beneficiary in the will her gift, in this case, will be forfeited and she will not be entitled to it.

It is important during attestation meetings to ascertain who the witnesses are and their relationship to the testator and beneficiaries to prevent the above from occurring.

For practical reasons witnesses should be independent persons who are not mentioned in the Will. Family members witnessing the will could cause problems and therefore a potential delay in the administration of the estate. Potential witnesses could be friends, neighbours or even work colleagues.

Whilst we are aware there have been changes to the requirement of witnesses being present due to the introduction of video witnessing, the advice is still for witnesses to be physically present where possible and video witnessing should only be used as a last resort

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LPA IN P

What is an LPA

A Lasting Power of Attorney (LPA) is a legal document which allows a person (otherwise known as the donor) to appoint someone they know and trust to make decisions on their behalf should they become unable to do so in the future. This person is called an attorney. Attorneys must always act in the best interest of the donor.

There are 2 types of LPA:-

Health and Welfare
Property and Financial Affairs

However, for the purposes of this article, we will be looking at Health and Welfare LPAs only.

What decisions can be made by your attorneys on your behalf with a Health and Welfare LPA?

Having this LPA in place will give your attorneys the authority to make the following decisions on your behalf:

Day to day decisions such as exercise, dietary requirements and care
Arrange medical or dental care
Make decisions on life-sustaining treatment
Where the donor lives i.e. relocation into a care home or sheltered accommodation.

The LPA will allow you to set out any preferences you would like your attorneys to be aware of. Preferences are non-binding wishes that you would like the attorneys to keep in mind when making decisions on your behalf. We have set out some examples below:-

"I would like my pets to live with me for as long as possible. If I go into a care home, I'd like to take them with me."

"I prefer to live within 5 miles of my sister NAME."

"I would like to have regular haircuts and manicures."

You can also set out instructions in the LPA which are legally binding and what your attorneys must follow. We have set out some examples below:-

"My attorneys must ensure I am only given vegetarian food."

"My attorneys must not decide I am to move into residential care unless, in my doctor's opinion, I can no longer live independently."

When does it come into effect?

A Health and Welfare LPA will only come into effect once the donor loses mental capacity.

What is the cost to register the LPA and what is the turnaround time?

NSEQUENCES OF LTH AND WELFARE PLACE?

A Health and Welfare LPA can only be used once it has been registered with the Office of Public Guardian (OPG).

There will be a registration fee payable to the OPG when the LPA is submitted to them. The current cost is £82 per LPA. If you are on a low income or receive benefits, you may be eligible for fee remission. An additional form (Form LPA120) will need to be completed if you are applying for reduced fees.

Registering your LPA with the OPG can take up to 16 weeks or possibly longer, depending on the volume of applications they receive, so it is important you register your LPA as soon as possible.

What Happens if you don't have a Health and Welfare LPA?

It is a common misconception that a Health and Welfare LPA is only needed for those that are of an older age. The reality is that capacity could be lost at any time due to a serious accident, stroke or even a degenerative condition such as Alzheimer's.

If you should lose capacity and there is no Health and Welfare LPA in place, your family and friends will not have automatic authority to make decisions on your behalf with regards to your health and welfare. Instead, others could make decisions for you and the decisions made may not be what you would have wanted, i.e. social services decide where you live and what care you receive, or you may be resuscitated against your wishes. This can cause disagreements between family members and professionals about what is best for you. Having an LPA in place prevents those disagreements whilst ensuring loved ones who are best placed to look after you if you lose capacity are legally able to do so.

Is there a way for someone to make decisions on my behalf after I have lost capacity if I do not have a Health and Welfare LPA?

Yes. If capacity is lost and there is no LPA in place, a friend or family member can apply to the Court of Protection to be a Deputy for you and make decisions on your behalf.

However, this is a long but also expensive process. The process can 6 months or even more, so it is cheaper and more effective to have an LPA in place.

To put an LPA in place, please contact one of our members today.

In our first article of the year, we looked at the reasons why you should make a Will (if you have not already of course) and what a Will enables you to do i.e. appoint guardians and specify how your estate should be distributed and who to. As we discussed in the article, you have the option of seeing a professional to write your Will, who will carry out a full fact find with you and then provide you with expert advice to cater to your personal circumstances. Alternatively, you can write the Will yourself.

With Covid-19 restrictions and the need to socially distance, you may think writing your own Will is the best and safest way to record your wishes. However, DIY Wills are not always the best approach and can come with risks.

Here are some of the issues that could arise.

You may own a business and have an IHT issue – do you know any reliefs that could be available to you?

You may have a large estate and not know how to be IHT effective i.e. using trusts

You may exclude children from your Will and not know the true consequence of this decision

Your Will may not be legally valid – was it witnessed and signed correctly?

You have minor children but no guardian has been appointed to look after your children in the event of your death

No one has been appointed to distribute your estate after your death

You may have a child with a gambling problem but gift the money to them directly knowing they could use it for their gambling addition without being aware of a trust which you could put the money into that will be managed by someone else (trustees)

You may gift something in your Will which is unclear and could lead to conflict

You may ask your spouse to witness your Will when they are due to inherit under the Will causing any gift to them to fail

For more information on the above, please see a previous article of ours on DIY Wills, here.

It's all well and good us telling you about the pitfalls of DIY Wills, but let's take a look at a very recent High Court case where the issue of a DIY Will made headlines when Terri Tibbles was awarded her father's entire estate at a value of £300,000.

Terri Tibbles was close to her father William who was a car dealer and she expected to

THE DAN

inherit his estate when he died in 2018 at the age of 75. William had made a Will in March 2017 and alongside his Will was a letter of wishes in which he stated Terri's twin sister Kelly, along with his other daughters Cindy and Susan "had been a disappointment to him." The same letter of wishes also referred to his son Paul being financially secure.

Three days after William's death a second Will was found which was written on a piece of paper that appeared to be torn from a notebook and this was handed to his solicitors. This Will left his entire estate to be shared equally between Kelly, Susan, Cindy and Paul. Terri had been completely disinherited. Paul was named as the executor of the Will and when questioned, Paul maintained the Will was validly signed and witnessed the day before his father went into hospital. He also stated the other sisters had looked after his father during his final months and that his father was determined to amend his existing Will.

The Will was challenged by Terri on the grounds that "it would have been totally uncharacteristic for him to prepare a DIY Will, considering his long history of previous dealings with solicitors. The document could just as well have been written and signed by anybody."

Judge Marsh ruled in Terri's favour on the grounds that following expert evidence, the handwriting was not that of William nor was the Will signed by him. There was also no evidence of it being written at William's dictation nor any explanation as to why Terri was being disinherited.

The ruling was made last year but the Will has only now been admitted to probate.

In any event, there is no substitute for professional advice. Only by seeking a professional to write your Will can you be sure your last wishes will be recorded correctly, giving both you and your loved one's peace of mind that your affairs are in order. To write your Will, or to update and existing Will, find a member in your area today by clicking here. Simply enter a name, service, or even a postcode and search radius and our map will show you who is nearby.

IGERS OF A DIY WILL

WHAT AFFECT DOES MARRIAGE AND DIVORCE HAVE ON YOUR WILL?

Many people don't realise the affects getting married or divorced can have on your estate whether you die with a Will or intestate (without a Will).

This article aims to address the ways in which either a marriage or divorce can affect the terms of your Will.

Marriage

A common misconception is that getting married has no effect on an individual's Will, however this is not the case.

Quite simply, marriage revokes your Will unless your Will contains an in contemplation of marriage or in contemplation of civil partnership clause in there.

This can be an issue where someone has remarried and has children from his or her first marriage that should benefit under the terms of the Will. If the current Will does not include an in contemplation of marriage clause it will be revoked and therefore invalid. This means the deceased's assets will pass in accordance with the laws of intestacy.
Example

Tom makes a Will in 2018. 2 years later he meets Rose and they decide to have a lavish wedding on a beach in Mexico. Tom fails to make a new Will after he marries Rose and dies soon after from an underlying health condition.

This means that Tom has died intestate and his assets will pass in accordance with the laws of intestacy. In this case it may work out well for him if his estate was worth less than £270,000 and he wanted it all to pass to Rose but what if he wanted to pass some of his estate to her and some to his parents?

If Tom had made a Will after he got married then his estate would pass in accordance with the terms of his Will.

Contemplation of Marriage or Civil Partnership

Earlier in this article we mentioned that marriage revokes a Will unless the existing Will contains an in contemplation of marriage or contemplation of civil partnership clause in there.

If the testator expects to be married to a certain person at the time the Will is signed, when they do marry, the Will shall not be revoked. The clause will need to include the name of the person the testator expects to marry. If they marry someone else, the Will will be invalid.

Two conditions need to be met in order for this clause to be effective. Firstly, the testator must expect to be married or form a civil partnership with the said person at the time the Will is signed. It cannot be included where the testator believes they will marry this person at some point in the future.

Secondly, it must be clear from the Will that the testator intended that the Will should not be revoked by the marriage or formation of a civil partnership.
What if the current Will contains an in contemplation of marriage clause and the couple go on to have a civil partnership?

If the current Wills include an in contemplation of marriage clause and the couple enter into a civil partnership, their current Wills will be revoked.

Divorce

When a couple commence divorce proceedings, they may decide to update their Wills only once the decree absolute has been received (the document which means you are legally divorced).

Until the decree absolute is issued, you are still classed as legally married to one another which means the spouse can still benefit in accordance with your Will if it is not amended and most people would want to avoid this.

Where a couple have commenced divorce proceedings or even prior to this, our advice is for them to re-write their Wills immediately. Unfortunately, no-one can know how long their life span is and therefore if the spouse was to die before the decree absolute was issued, either with a Will naming spouse as the first level residuary beneficiary or alternatively die intestate, their estate will pass to the spouse which is not what they would have wanted to happen.

It is also wise to sever the tenancy on any jointly owned property held to prevent it passing automatically to the separated spouse. This will enable each spouse to gift their share of the home as they wish to

rather than it passing by survivorship.

Where the Will is re-written during divorce proceedings or even where you separate and do not want the other spouse to benefit from your estate, we would advise an exclusion clause in the Will specifically excluding husband/wife and stating this is not an oversight so the intention is absolutely clear. A letter of wishes should set out in detail the reasons for the exclusion in the event the Will is ever contested by the ex-spouse as this is what the Courts will seek to rely on. There is a risk the ex-spouse could bring a claim against your estate on the basis they have not received reasonable financial provision which is addressed in our article here.

Once your divorce has been finalised and a decree absolute issued, the Will treats the ex-spouse as having pre-deceased you. This means if your current Will lists your spouse to receive your wedding ring or to receive your estate on your death, this gift will effectively fail. The same would apply to any appointments of the ex-spouse as trustee, executor or guardian.

What if I want my ex-spouse to benefit from my Will?

There are instances where the marriage may have ended amicably and they still wish to benefit one another on their death or for the ex-spouse to continue acting as the executor and trustee. Once the divorce is finalised, the ex-spouse is treated as having as predeceased you.

If the intention is for the ex-spouse to benefit from the Will once the divorce is finalised, the following clause would need to be included in the Will.

"Section 18A of the Wills Act 1837 as amended by the Law Reform (Succession) Act 1995 (or any modification or re-enactment) shall not apply to my Will."

Taking Instructions from a Married Couple – Tips for Will Writers

When taking instructions from a married couple, we often get asked how this should be done. Hopefully, the below pointers should give you a good steer.

A couple may come to you wanting mirror Wills. After assessing they have the requisite capacity to make a Will, you can ask them whether they would like to give their instructions in the presence of one another or separately.

Ensure there are no concerns of undue influence during the meeting or there is no pressure being applied by one party to the other as to what their Will should state or who will receive those gifts. If there is, we would advise you stop the meeting and see each of the clients separately.

If they are happy to provide their instructions in the presence of one another, we would advise that at the end of the meeting, you see each of them separately and go through their wishes and confirm this is what they are wanting – you'd be surprised how many people suddenly mention a child from someone else or even a property their partner/spouse knows nothing about.

It goes without saying but you owe a duty of confidentiality to each of your clients and therefore should not discuss the terms of A's Will with B, unless A has provided you with written permission to do so.

When it comes to sending a draft copy of the Will, apply common sense. If the Wills are the same you can send them together. If you have an instance where A has told you of a secret buy to let they have with their sister, send the Wills separately.

Last but not least and we cannot stress this enough, please ensure detailed notes are taken during the meeting.

If you're a couple looking to have your Wills written or updated, speak to a member of The Society of Will Writers who will be more than happy to help. You can use either our Find a Member search, or call the office on 01522 687888 and we will help you find someone in your local area.

What are the Consequences of not Having a Property and Financial Affairs LPA in Place?

We recently looked at the consequences of not having a Health and Welfare Lasting Power of Attorney (LPA) in place, but that's only one of the two types of LPA available. In this article, we'll take a look at the Property and Financial Affairs LPA, and what the consequences of not having one of those are.

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document which allows a person (otherwise known as the donor) to appoint someone they know and trust to make decisions on their behalf should they become unable to do so in the future. This person is called an attorney. Attorneys must always act in the best interest of the donor. It is important to add at this stage that you must have capacity in order to have an LPA put in place.

What decisions can be made by your attorneys on your behalf with a Property and Financial Affairs LPA?

Having this LPA in place will give your attorneys the authority to make the following decisions on your behalf:

Managing bank accounts
Paying bills i.e. mortgage, rent and other household expenses
Claim income and benefits for the donor
Making decisions with regards to the home
Buying or selling property
Managing investments
Insure, maintain or repair the donor's property

The LPA will allow you to set out any preferences you would like your attorneys to be aware of. Preferences are non-binding wishes that you would like the attorneys to keep in mind when making decisions on your behalf. We have set out some examples below:-

"I would like to maintain a minimum balance of £1,000 in my current account"

"I would like to donate £100 each year to Age UK"

"I'd like my attorneys to consult my doctor if they think I don't have the mental capacity to make decisions about my house"

You can also set out instructions in the LPA which are legally binding and what your attorneys must follow. We have set out some examples below:-

"My attorneys must not make any gifts"

"My attorneys must not sell my home unless, in my doctor's opinion, I can no longer live independently"

When does it come into effect?

The donor can decide when they want the attorneys to be able to make decisions on their behalf which is either when the donor has lost capacity or alternatively, as soon as the LPA is registered. What is the cost to register an LPA and what is the turnaround time?

A Property and Financial Affairs LPA can only be used once it has been registered with the Office of Public Guardian (OPG).

There will be a registration fee payable to the OPG when the LPA is submitted to them. The current cost is £82 per LPA. If you are on a low income or receive benefits, you may be eligible for fee remission. An additional form (Form LPA120) will need to be completed if you are applying for reduced fees.

Registering your LPA with the OPG can take up to 16 weeks or possibly longer depending on the volume of applications they receive so it is important you register your LPA as soon as possible.

What Happens if you don't have a Property and Financial Affairs LPA?

It is a common misconception that a Property and Financial Affairs LPA is only needed for those that are of an older age. The reality is that capacity could be lost at any time due to a serious accident, stroke or even a degenerative condition such as Alzheimer's.

If you should lose capacity and there is no Property and Financial Affairs LPA in place, your family and friends will not have automatic authority to make decisions on your behalf with regards to your property and financial affairs. Instead, others could make decisions for you and the decisions made, may not be what you would have wanted. This can cause disagreements between family members and professionals about what is best for you.

Here are just some things to consider:-

Joint bank account – the bank has the ability to remove access and freeze the account without an LPA, even if you have your money in there
Bills cannot be paid unless a kind family member pays on your behalf – but they will not be able to compensate themselves
Your bank accounts cannot be accessed or managed
Benefits cannot be claimed on your behalf
Your home cannot be sold if you need to move into care
Your mortgage deal may expire and you won't be able to re-mortgage your property

Is there a way for someone to make decisions on my behalf after I have lost capacity if I do not have a Property and Financial Affairs LPA?

Yes. If capacity is lost and there is no LPA in place, a friend or family member can apply to the Court of Protection to be a Deputy for you and make decisions on your behalf. However, this is not only a long but very expensive process which can take 6 months or even more. Therefore, it is cheaper and more effective to have an LPA in place instead.

To put an LPA in place, please visit the 'Find a Member' page of our website to speak to a fully trained, insured and code compliant professional who is a member of The Society of Will Writers.

INHERITANCE TAX: SEEING THE WOOD FOR THE TREES

Woodland makes up 13% of the land in the UK. According to Forestry Commission research conducted in 2020 73% of that woodland is privately owned and managed with the remainder being owned by the Forestry Commission or other similar bodies. There are three ways that woodlands can escape IHT. This article will look at some points on IHT to consider when dealing with woodland.

Firstly, we need to know what the woodland is used for. Is it commercially managed? Is it used as a site for paintballing? Clay pigeon or sport shooting? Luxury forest retreats? Perhaps the wood is harvested and sold? The way the woodland is used is important to establish as this will inform us whether the land is likely to qualify for Business Property Relief (BPR), Agricultural Property Relief (APR) or Woodlands Relief.

For the woodland to qualify for BPR it would need to be commercially owned and managed as a business. Examples of this could be granting shooting rights on the land, using it for camping or outdoor sporting activities like fishing or paintballing, or harvesting the wood to sell in some form.

All other requirements of BPR must be met so the woodland must have been owned by the transferor for at least 2 years.

2. APR

To qualify for APR the woodland must be ancillary to farmland. Not all commercial harvesting of woodlands qualifies for APR as it does not all qualify as 'farming'. If the woodlands are used for Short Rotation Coppice then this is classed as farming so APR may be available. The weakest of the three, woodlands relief is a type of deferral rather than a true relief from IHT. If the woodland can qualify for BPR or APR then this would be better. Unlike the other two types of relief above woodlands relief is only available on death and cannot be claimed when woodland is transferred in lifetime.

Woodlands relief is available where the deceased owned an interest in the land on which the timber has been growing for at least five years or the deceased received the interest in the land by gift or inheritance at any time. If woodlands relief can be claimed then the executors can make an election within 2 years of death to exclude the value of the timber from the value of the estate for IHT. If the timber is disposed of in future the charge to IHT will arise at that point unless the woodland is transferred to the disposer's spouse or civil partner. If there is no disposal between the first death and the recipient's death then the original charge is extinguished.

What makes this a weaker relief is that it only applies to the value of the timber and not the land itself. Additionally, there may be some instances where it is better to ignore the woodlands relief and opt to pay the IHT instead. This may be because the value of the timber is likely to increase in value substantially after death leading to the deferred charge being greater than the IHT that would have been paid if no election for woodlands relief had been made.

If you own woodland and require help on your estate planning or IHT management we would recommend contacting one of our Members for friendly and professional advice. Call us on 01522 687888 or use our Member Search to find someone local to you.

PATENTLY IMPORTANT: DEALING WITH INTELLECTUAL PROPERTY ON DEATH

IN LIGHT OF THE ONGOING INTELLECTUAL PROPERTY RIGHTS DISPUTE BETWEEN SUPERMARKET CHAINS M&S AND ALDI REGARDING AN ADORABLE AND MUCH-LOVED PAIR OF CATERPILLAR CAKES WE HAVE BEEN THINKING ON THE TOPIC OF INTELLECTUAL PROPERTY AND HOW THIS RELATES TO WILLS. INTELLECTUAL PROPERTY CAN FORM A LARGE PART OF A PERSON'S ESTATE ESPECIALLY IF THEY ARE AN AUTHOR OR MUSICIAN. WHETHER YOU'RE #FREECUTHBERT OR #SAVECOLIN, IF YOU HAVE INTELLECTUAL PROPERTY OF YOUR OWN YOU SHOULD CONSIDER HOW YOU WANT TO DEAL WITH AND PROTECT THIS AFTER YOUR DEATH.

WHEN WRITING A WILL IT'S EASY TO FOCUS ON OUR TANGIBLE PROPERTY, THE THINGS WE CAN SEE AND HOLD. HOW CAN WE PROTECT THE FAMILY HOME? WHO DO WE WANT TO INHERIT OUR MONEY? BUT IF YOU ARE A CREATIVE TYPE YOU MAY ALSO POSSESS A WEALTH OF INTANGIBLE ASSETS TOO IN THE FORM OF INTELLECTUAL PROPERTY. THIS CONSISTS OF WORKS UNIQUELY CREATED SUCH AS WORKS OF ART, MUSIC, LITERATURE, BRANDS, OR SOFTWARE. ATTACHED TO INTELLECTUAL PROPERTY ARE A SERIES OF RIGHTS THAT THE CREATOR MAY EXERCISE. THESE RIGHTS MAY BE PROTECTED FOR A NUMBER OF YEARS FOLLOWING DEATH DEPENDING ON THE ASSET, FOR EXAMPLE COPYRIGHTS ATTACHED TO LITERARY WORKS CONTINUE TO RUN FOR A PERIOD OF 70 YEARS FOLLOWING THE AUTHOR'S DEATH.

RIGHTS ASSOCIATED WITH INTELLECTUAL PROPERTY COULD TAKE THE FORM OF:

- COPYRIGHTS
- PATENTS
- TRADEMARKS
- DESIGN RIGHTS
- ARTIST RESALE RIGHTS
- INTELLECTUAL PROPERTY RIGHTS MAY CREATE AN INCOME OF THEIR OWN, OR INCOME MAY FLOW FROM ASSOCIATED WORK IN THE FORM OF ROYALTIES.

WHATEVER THE FORM IT TAKES IT IS IMPORTANT THAT YOUR WILL TAKES ACCOUNT OF THEM SO YOU CAN ENSURE THAT THESE IMPORTANT ASSETS AND ANY INCOME ASSOCIATED WITH THEM PASS TO THE PEOPLE YOU WISH TO BENEFIT FROM THEM OR ARE PROTECTED.

AFTER YOU DIE ANY INTELLECTUAL

PROPERTY FORMS PART OF YOUR ESTATE. IF YOU DO NOT HAVE A WILL THIS MEANS THAT ANY INTELLECTUAL PROPERTY WILL PASS TO THOSE WHO ARE ENTITLED UNDER THE INTESTACY RULES. IF YOU HAVE A WILL BUT MAKE NO SPECIFIC MENTION OF YOUR INTELLECTUAL PROPERTY IT WILL PASS TO THE RESIDUARY BENEFICIARY OF YOUR ESTATE. BY WILL IT IS POSSIBLE TO DIRECT YOUR INTELLECTUAL PROPERTY TO SPECIFIC PEOPLE BY MAKING A SPECIFIC GIFT OF IT.

IT IS EVEN POSSIBLE TO GO ONE STEP FURTHER IN PROTECTING THESE ASSETS BY DIRECTING THEM TO A TRUST. THIS WILL RINGFENCE YOUR INTELLECTUAL PROPERTY AND ALLOW YOU TO EXERCISE A DEGREE OF CONTROL OVER THE ASSETS EVEN AFTER YOU HAVE PASSED AWAY. A TRUST WOULD ALLOW THE TRUSTEES TO USE THE ASSETS TO BENEFIT YOUR CHOSEN BENEFICIARIES, BUT IDEALLY FOLLOWING A LETTER OF WISHES YOU HAVE LEFT THEM GIVING INSTRUCTIONS ON HOW YOU WOULD LIKE THE TRUST TO BE MANAGED.

YOU SHOULD ALSO CONSIDER WHO YOU WOULD LIKE TO DEAL WITH YOUR INTELLECTUAL PROPERTY RIGHTS IMMEDIATELY FOLLOWING YOUR DEATH. A WILL APPOINTS EXECUTORS TO ADMINISTER THE ESTATE BUT DEPENDING ON THE NATURE OF YOUR INTELLECTUAL PROPERTY YOU MAY ALSO BE ABLE TO APPOINT SEPARATE 'LITERARY EXECUTORS'. THESE SHOULD BE A PERSON OR PROFESSIONAL WHO HAS SPECIALIST KNOWLEDGE THAT MAKES THEM A GOOD CHOICE FOR DEALING ONLY WITH YOUR INTELLECTUAL PROPERTY. THIS LEAVES YOUR ORDINARY EXECUTORS TO DEAL WITH YOUR GENERAL ESTATE.

IN SUMMARY, WHEN WRITING A WILL MAKE SURE NOT TO FOCUS ON ONLY YOUR TANGIBLE ASSETS. CONSIDER WHAT YOU WANT TO DO WITH ANY INTELLECTUAL PROPERTY RIGHTS TOO AND HOW YOU CAN USE YOUR WILL TO EXERCISE SOME CONTROL OVER YOUR CREATIVE LEGACY EVEN AFTER YOU'RE GONE.

TO SPEAK TO A MEMBER OF THE SOCIETY OF WILL WRITERS ABOUT MAKING A WILL, TRY OUR FIND A MEMBER SEARCH, OR CALL US ON 01522 687888 AND A MEMBER OF THE TEAM WILL BE MORE THAN HAPPY TO HELP.

Who is your Will Writer?

- All SWW Members will provide up to date advice in line with current legislation.
- All SWW Members adhere to our Code of Practice.
- All SWW Members complete compulsory annual CPD.
- All SWW Members carry at least £2m of insurance cover.

If you have doubts about an SWW member give us a call on 01522 687888.
If you would like to join the SWW then please email info@willwriters.com for our information pack or application forms.

Provision For Pe

When you think about making provisions for your estate after your death, what will often come to your mind is who should be your executor, trustee, whether there are any money gifts or specific gifts you want to make to family and friends and for those of you with minor children, the appointment of guardians.

Pets (and we mean the cute, furry type) can often be overlooked. However, you will be pleased to know that for those of you who are parents to fur babies or any other animals, you can make provisions for them in your Will.

You should think about who you would want to look after your pets on your death.

You may decide you want your best friend Megan to look after your 3 dogs, 2 cats, 2 rabbits and your guinea pig on your death. However, you may not have spoken to Megan about your intentions and on your death and Megan may decide the responsibility is too much. It is therefore best to speak to your chosen person during your lifetime to ask if they would be willing to take on the role rather than assuming they will accept this responsibility. Remember someone liking dogs is not the same as wanting to have dogs in their own home.

A good idea is also to appoint a substitute beneficiary if the original beneficiary predeceases you or decides at the time that they are no longer able to look after your pets due to illness or just a change of their own circumstances.

The second point to consider is whether you want to make any financial provisions in your Will to care for your pets. Pets can be expensive and costs can include things such as insurance, vet bills and the cost of feeding (especially where your pet is on a particular diet). This is something to consider when deciding who should inherit your pets and you may therefore choose to make a money gift to the beneficiary to assist them with the financial expenses in the care of your pets. We would advise any money gift is made conditional on the basis that the beneficiary chooses to take care of your pets.

An alternative to making a money gift to your chosen beneficiary is to create an animal purpose trust which is a particular type

ets

of trust created for the upkeep of specific animals. For more information on this type of trust, please see our article here.

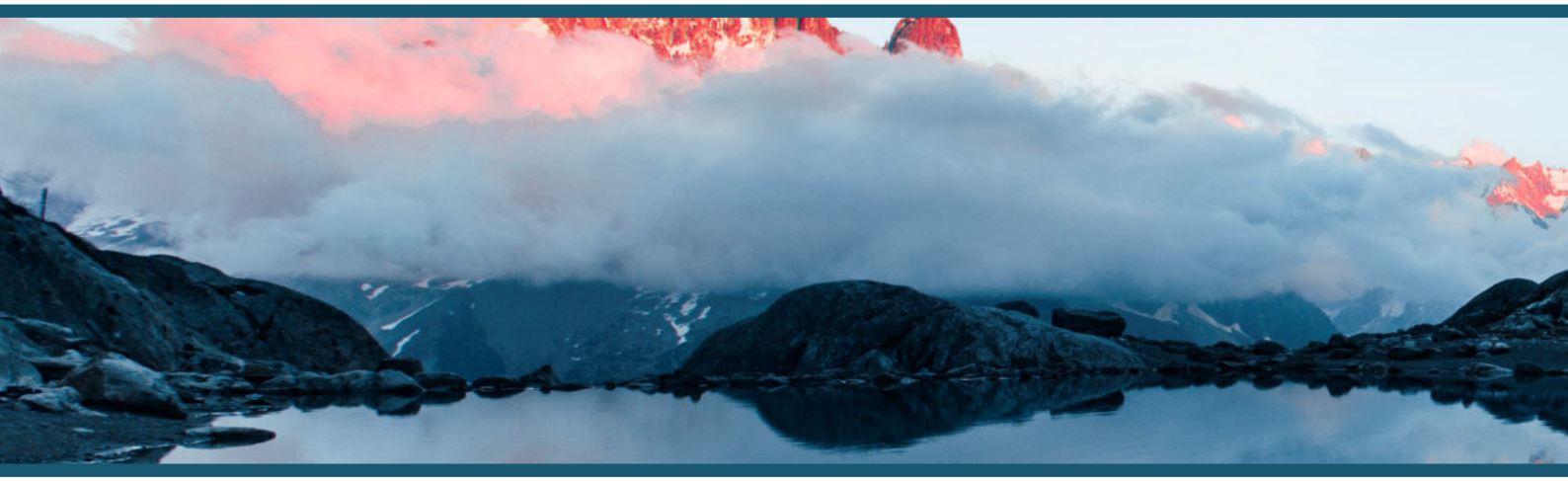
As a pet owner, you may have certain wishes on how you would like your pets to be cared for. This can be set out in a letter of wishes but please keep in mind that a letter of wishes is not legally binding.

If there is no one suitable to take on the care of your pets, you should consider leaving your pets to the care of a charity instead. The RSPCA run a well-known 'home for life' scheme that a person may register their pets with during lifetime. The executors would notify the RSPCA of your death and the charity will aim to suitably rehome the pet. This gives you the peace of mind that your pets will be cared for after your death.

To make or update an existing Will, speak to a member of The Society of Will Writers today. You can either use our Find a member search or call the office on 01522 687888 and we can help you find someone in your local area.

Reflecting on Mirror Wills

When writing wills for couples we often find that the terms of them are largely reciprocal. Usually, these types of paired wills are referred to as 'mirror' wills. Mirror wills must never be confused with 'mutual' or (gasp!) 'joint' wills. These terms are sometimes used interchangeably for mirror wills but this is incorrect as they are each their own distinct thing. This week we will consider these different types of paired wills.



"Although this will is in similar terms to the will of my [wife OR husband] [NAME], we have agreed that either of us can change or revoke our Wills at any time."

Mutual Wills

Mutual wills are often also mirror wills. Mutual wills are executed by two (or more) people and usually confer reciprocal benefits on each other. For wills to be mutual the testators must agree that the wills are mutual, that they will each be bound by the agreement, and that neither party will alter or revoke their will. This agreement should be expressed within the will itself, such as:

"My spouse [NAME] and I have agreed with one another to execute wills in similar terms and have further agreed that such respective wills shall not hereafter be revoked or altered either during our joint lives or by the survivor of us."

It is not actually possible to make a will irrevocable. The survivor could revoke their will and write a new one, and their remarriage would automatically revoke the will just like it would any normal non-mutual will. However, the effect of mutual wills is that equity enforces the agreement against the survivor by way of a constructive trust. The survivor is treated as holding the property on trust for the beneficiaries in the mutual wills so after death their personal representatives will take the assets subject to the constructive trust.

The trust created floats during the survivor's lifetime and only crystalises on their death, so they can spend the assets during their lifetime and their estate can still be depleted by care home fees or bankruptcy. They cannot give away assets to defeat the agreement though.

There are uncertainties surrounding exactly what property this trust attaches to. There are conflicts of

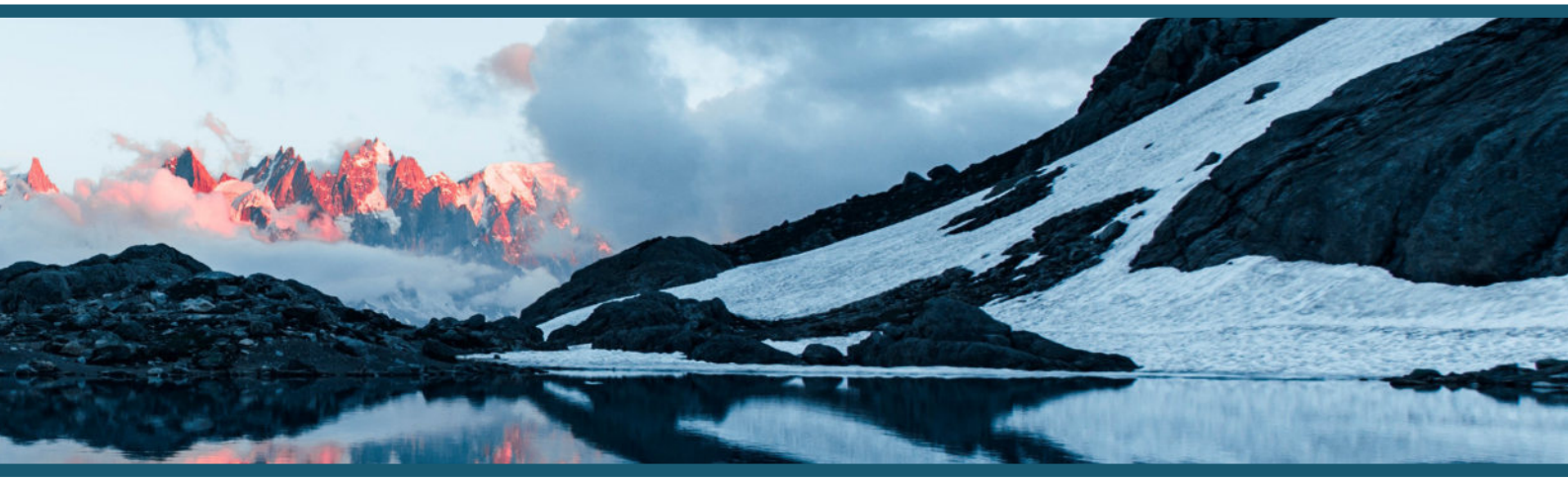
Mirror Wills

Of the three types of paired wills mentioned mirror wills should be the one that Will Writers are most familiar with. These are often drafted for spouses, civil partners, and cohabitants although they are not limited to this. It is less common to see mirror wills being drafted between friends or siblings, but not totally unheard of.

The term 'mirror wills' is a general term and not a legal one so there is no strict definition. To be mirror wills the terms of the wills should be largely reciprocal. The most common example of this is a will for spouses whereby they each appoint each other as executors, leave their estate to each other on first death and then their children on second death.

Some practitioners will only call it a mirror will if the terms of each will perfectly reflect one another. Others take a slightly more flexible approach and will call it a mirror will even if there are some minor differences such as different executors or a few different specific gifts, as long as the bulk of the provisions are reciprocal.

Mirror wills are in reality two separate wills. Each individual is free to revoke or alter their will at any point in future. Executing mirror wills does not imply any agreement between the testators that they intend the wills to be mutual. To avoid any doubt as to whether the wills are mutual some practitioners opt to add a clause to clearly state that the testators are free to amend or revoke their wills. For example:



opinion over whether the property bound is the property received from the first to die as well as the property that the survivor owned at the time of the first death, or whether the trust also attaches to all of the property that the survivor owns at their death, including after acquired property. This could even limit what the survivor can do with their own assets!

They also limit the survivor's ability to change their own will to adapt to changing circumstances or changes in law. Imagine a person unable to change the provisions in their will to take account of the transferable nil rate band, or the residence nil rate band, now left with a will that is less than effective for IHT purposes. Or perhaps unable to direct any assets to trust to protect a child who has become vulnerable.

Mutual wills might look attractive to a person who wants to exercise some control over the destination of their estate even after second death but a Will Writer should advise of the problems this type of will can cause and look for a better solution. IPDI trusts are almost always the better option.

Joint Wills

The joint will is a lesser-known type of paired will which most Will Writers could go their entire career without seeing an example of. A joint will is a will for two people, usually a couple, executed within the same document.

Joint wills are almost always mirror wills, and they can be mutual wills but do not have to be. Although executed on the same document a joint will is the separate will of each individual testator. Provided it is not also mutual each of the testators are free to alter or revoke any part of the joint will which relates to them.

On the death of each testator the joint will is admitted to probate as the will of that individual.

MITIGATING IHT

Inheritance tax (IHT) is payable on death or at certain stages during lifetime. For the purposes of this article we will look at the IHT charge payable on death which relates to the deceased's estate. On death, the executors will calculate the value of the estate and as well as including the value of any assets i.e. property or monies in bank accounts, they are also required to account for any gifts made within 7 years of the deceased's death.

If the value of the estate exceeds the nil rate band (NRB) and residence nil rate band (RNRB), the rate of IHT payable is 40%.

Let's Talk Allowances

On the subject of the NRB and RNRB, each person has a NRB available to them. The current value of the NRB is £325,000 so if the estate exceeds this value, IHT will become payable unless other allowances are available. If the assets fall below the NRB however, no IHT will be payable. It is important for us to add here that the NRB can be reduced by any gifts and transfers made during lifetime.

The RNRB will only be available where a person leaves a "qualifying residential interest" to direct lineal descendants. For a property to be a qualifying residential interest it must form part of their estate at death and must have been used by the deceased as a residence at some point during their period of ownership. It cannot be applied to a property that was bought as a buy-to-let for example.

"Direct lineal descendants" includes children, grandchildren and so on down the line. It also includes spouses and civil partners of the descendants, step-children, adopted children, foster children and children the deceased was the appointed guardian of.

The current value of the RNRB is £175,000 which is capped at the value of the qualifying residential interest.

The NRB has remained at £325,000 since 2009/2010 tax year. The value of the RNRB however, was due to increase in line with inflation based on the Consumer Prices Index but earlier this year, the Chancellor announced that both the NRB and RNRB will remain as they are until April 2026.

Steps to mitigate IHT

Gifts to Spouse or Civil Partner

Any gifts made to a spouse or civil partner are free from IHT due to the spousal exemption. This applies in lifetime and in death.

Example:

Fred and Wilma are married. In Fred's Will, he gifts his entire estate to Wilma on

his death. As we know, Fred and Wilma each have a NRB and RNRB. As Fred has gifted all to Wilma, his NRB and RNRB allowances are unused. However, as they are married at the time of his death, this means that when Wilma dies, her executors can apply for any of Fred's unused allowances to be transferred to Wilma and applied against her estate. At the current rates, this gives Wilma a total allowance of £1,000,000.

please note any unused NRB and RNRB is not transferable between unmarried couples

Small Gifts Exemption

Each person can make gifts of up to £250 per person during the tax year IHT free, providing another exemption has not been used on the same person.

Annual Exemption

As well as the above, each person can give away £3,000 worth of gifts each tax year without them being added to the value of the estate.

If the full £3,000 is not used it can be rolled over to the following year so the annual exemption for the following year will be £6,000. It is important to note that any unused annual exemption can only be carried forward for one year.

Wedding or Civil Ceremony Gifts

In order for gifts under this category to be free from IHT, the gift must be made either before or on the marriage/civil partnership. It cannot be made after the wedding. The gift must also be made on the condition that the marriage or civil partnership actually takes place.

A parent can gift up to £5,000 to their own child tax free.
A grandparent can gift up to £2,500 to a grandchild or great-grandchild tax free.
For any other relationship, a person can gift up to £1,000 tax free.

Assistance for Living Costs

You can make payments to assist with a relative's living costs such as an elderly relative or a child under the age of 18 who is in full time education. These payments are free from IHT.

Gifts to Charity

Gifts made to charities are exempt from IHT.

The rate of IHT can be reduced from 40% to 36% providing 10% or more of the net estate is left to charity.

Gifts to Political Parties

Gifts made to qualifying political parties are IHT free providing the political party at the last general election had either at least two MP's that were elected to the House of Commons or one MP was elected to the House of Commons and the members of the party received at least 150,0000 votes.

Where the estate is of a high value, we would advise you seek advice from a financial advisor who can put some lifetime planning in place. Some Members of The Society of Will Writers are financial advisors or know financial advisors they can put you in touch with. Visit our Find a Member page to search for a member in your area.

If you have any questions about Wills, or any of the content in this magazine, please contact The Society of Will Writers:

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