



August 2008

Key Points:

- Replaces previous version dated August 2007

Making your will

This factsheet is aimed at people aged 60 and over.

This factsheet describes the situation in England. Readers in Northern Ireland, Scotland and Wales should contact their respective national Age Concern offices for information specific to where they live.

Contact details are:

The Scottish Helpline for Older People – Age Concern Scotland, tel: 0845 125 9732
(local call rates) Monday to Friday, 10am – 4pm; website: www.olderpeoplescotland.co.uk;

Age Concern Cymru, Ty John Pathy, Units 13/14 Neptune Court, Vanguard Way, Cardiff CF24 5PJ, tel: 029 2043 1555
(national call rate); website: www.accymru.org.uk;

Age Concern Northern Ireland, 3 Lower Crescent, Belfast BT7 1NR, tel: 028 9032 5055
(national call rate), Monday to Friday, 10am - 12pm and 2pm – 4pm, website: www.ageconcernni.org.

Contents

| | |
|---|---|
| 1. Making your own will..... | 3 |
| 2. Witnessing the will | 3 |
| 3. Going to a solicitor | 4 |
| 4. Appointing an executor..... | 5 |
| 5. Revising the will..... | 6 |
| 6. Where to keep the will | 7 |
| 7. Taxes on your death..... | 7 |
| 8. What happens if you do not make a will | 8 |
| 9. Further Information | 8 |
| 10. Further Information from Age Concern..... | 9 |

1. Making your own will

Except in the simplest cases it is generally advisable to use a solicitor to make a will. If, after your death, there turns out to be a problem with the drafting or formalities of the will this may prevent your wishes being carried out and can cause difficulties for those left to sort out your estate. But you can make your own will and pre-printed will forms are available from stationery shops.

This factsheet explains what you should think about before making your will, whether or not you use a solicitor, to make sure that the will is effective and that your wishes are carried out.

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

The will should name one or more executors; these are people you choose to deal with (administer) your estate. The executors can be relatives or friends, or a professional such as a solicitor. See Section 4 for more information about choosing executors. Your estate includes all money, property and possessions owned by you. If you are leaving specific possessions to specific people, you must make sure that sufficient details are given so there is no doubt as to the identity of the possessions or who you intend them to go to. For example, beneficiaries (the people you are leaving things to) should be identified by their full names and their relationship to you. The remainder of your estate which is left once any specified gifts have been made is known as the residue. You must make provision for what will happen to the residue of the estate. You should make sure that it is clear what should happen if one or more of the beneficiaries dies before you do.

2. Witnessing the will

Your signature to the will must be witnessed by two people over age 18 who must be present at the time you sign it. The witnesses must also sign the will in your presence, and there should be an 'attestation clause' where the witnesses confirm that you have signed the will in their presence.

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

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

3. Going to a solicitor

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

The Citizen's Advice Bureau (CAB) should be able to provide a list of local solicitors. Citizens Advice Bureaux are listed in the telephone directory.

The Solicitors Regulation Authority, tel: 0870 606 2555 (national call rate), website: www.sra.org.uk, can provide details of solicitors in your area, including those who specialise in wills and probate. You can also find details of local solicitors in the phone book, or from the Solicitors' Regional Directory which should be available in your local library.

You may be able to get free advice and assistance from a solicitor with making a will under the Legal Help scheme (previously called Legal Aid).

To qualify for this assistance you must be:

- aged 70 or over;
- disabled (within the meaning of the *Disability Discrimination Act*);
- the parent of a disabled child who you intend to benefit from your will; **or**
- a single parent wishing to appoint a guardian in the will.

In addition, your income and capital must be below certain limits in order to qualify for legal help.

You can find a solicitor who can provide advice under the Legal Help scheme through Community Legal Advice, tel: 0845 345 43 45 (lo-call rate), website: www.communitylegaladvice.org.uk.

The Community Legal Advice website also has an eligibility calculator to find out if you meet the financial eligibility requirements for legal aid.

Will-writing services

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

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

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

4. Appointing an executor

You should choose an executor to carry out your wishes, as stated in the will. Executors can be beneficiaries under the will and often people appoint their spouse, civil partner or children as executors. Check with your proposed executors that they are willing to take on this role before naming them in your will, as it can involve considerable responsibility. Consider naming more than one executor in case one dies before you. It may also be easier for the executors if there is more than one person to share the work and the responsibility. The executors may have to deal with any day to day administration of your estate in the period before it can be distributed. Executors can claim from the estate for expenses incurred in carrying out their duties.

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

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

The appointment of the Public Trustee as Executor is not recommended in straightforward estates likely to be distributed immediately to one or two beneficiaries. Further information is available from the Offices of Court Funds, Official Solicitor and Public Trustee , 81 Chancery Lane, London WC2A 1DD, tel: 020 7911 7127; website: www.officialsolicitor.gov.uk.

5. Revising the will

Codicils (supplements to a will) can be added to an existing will for minor changes. These must be signed and witnessed in the same way as the will, but the witnesses need not be the same as for the original will. If anything substantial needs to be changed you should make a new will revoking the former one.

NEVER make alterations on the original document. Any change must be by codicil or a new will.

If you marry, remarry or enter into a civil partnership your will becomes invalid unless it was made in contemplation of marriage or partnership (that is, you were intending to marry or register a civil partnership when the will was made and the will specifically refers to this) and should be revised. Divorce does not automatically invalidate a will but any reference to your former spouse or civil partner (such as appointing them as executor or naming them as a beneficiary) will not be effective. It is therefore usually necessary to change your will after divorce.

6. Where to keep the will

It should be kept at home safely with important papers or lodged with a solicitor or a bank. A bank may make a charge for this service. It can be lodged for safe keeping at the Probate Registry at the Principal Registry of the Family Division, First Avenue House, 42-49 High Holborn, London WC1 6NP, tel: 020 7947 7022; website: www.hmcourts-service.gov.uk/cms/1218.htm. A fee of £15 is charged when the will is deposited.

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

Age Concern publishes a leaflet, *Instructions for my next of kin and executors upon my death* (Ref: IS/18), which can be left in a convenient place to tell your family where all your important documents are, including your will.

This leaflet is available by telephoning 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ.

If you have particular views about your funeral write a letter to your Executor explaining how you would like it conducted, and keep this with your will. Alternatively you can include this information in the will itself, but make sure the people who will arrange your funeral are aware that this is what you have done. Do not attach any separate documents to the will itself with paperclips or staples.

7. Taxes on your death

Inheritance Tax (IHT) is payable on estates whose value exceeds a certain value. For the 2008-2009 financial year the IHT threshold is £312,000. Anything left to a wife, husband or civil partner is taken off the value of your estate for the purpose of calculating IHT liability providing you are both permanently resident in the United Kingdom. There are also exemptions for certain gifts, such as any gifts to charities. The value of non-exempt gifts made during the previous seven years may be taken into account in whole or in part depending upon how recently the gift was made.

Further information about Inheritance Tax can be found in the Customer Guide to Inheritance Tax on the HM Revenue and Customs website: www.hmrc.gov.uk/cto/customerguide/page1.htm. This guide is only available online. Printed information booklets (see Section 9) and a helpline service are available from the Probate and Inheritance Tax helpline on 0845 30 20 900 (lo-call rate).

8. What happens if you do not make a will

If you do not make a will, you die intestate and your property will be divided according to the *Administration of Estates Act*; this means your property may not go to the people you expected or wanted it to. The way the rules apply to your estate depends upon which relatives survive you. A brief indication is given below, but seek further advice if you are in this situation.

If you are married or have a civil partner and have children, your spouse or civil partner will be entitled to at least the first £125,000 of the estate and all of your personal possessions. Surviving children or grandchildren will be able to claim some of the estate if it exceeds £125,000.

If you are married or have a civil partner and do not have children, your spouse or civil partner will be entitled to at least the first £200,000 and all the personal possessions. Anything else is divided between your spouse or civil partner and your other surviving relatives.

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

9. Further Information

IHT [TG] 1: A Guide to Inheritance Tax

IHT [TG] 2: A Guide to Inheritance Tax Procedures

Both available for free from the Probate and Inheritance Tax helpline: 0845 30 20 900 (lo-call rate), or HMRC Inheritance Tax, Ferrers House, PO Box 38, Castle Meadow Road, Notts, NG2 1BB.

10. Further Information from Age Concern

The following factsheets/information sheet may be of use:

| | |
|------------------|--|
| Factsheet 14 | <i>Dealing with someone's estate</i> |
| Factsheet 27 | <i>Planning for a funeral</i> |
| Info Sheet IS/18 | <i>Instructions for my next-of-kin and executors upon my death</i> |

Books

Pay Less Tax - Price: £5.99

Beat the Banks – Price: £5.99

Both available from Age Concern Books. To order, please telephone our hotline (9am-7pm Monday to Friday, 10am-5pm Saturday): **0870 44 22 120** (national call rate), or visit our **website: www.ageconcern.org.uk/bookshop** (secure online bookshop).

If ordering by post, please send a cheque or money order, payable to Age Concern England, for the appropriate amount plus p&p to Age Concern Books, Units 5 & 6, Industrial Estate, Brecon, Powys LD3 8LA.

(Postage and packing: mainland UK and Northern Ireland: £1.99 for the first book, 75p for each additional book up to a maximum of £7.50. Free on orders over £250. For customers ordering from outside the mainland UK & NI: credit card payments only; please telephone the hotline for international postage rates or **email: sales@ageconcernbooks.co.uk**).

If you would like

- to find your nearest Age Concern
- any additional factsheets mentioned (up to a maximum of 5 will be sent free of charge)
- a full list of factsheets and/or a book catalogue
- to receive this information in large print

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ. For people with hearing loss who have access to a textphone, calls can be made by Typetalk, which relays conversations between text and voice via an operator.

Age Concern factsheets and other information materials can be downloaded free from our website at: www.ageconcern.org.uk. To receive a free e-mail notification when new and updated factsheets are published, please either contact the Factsheet Subscription Service on tel: 020 8765 7200 by email: factsheet.subscriptions@ace.org.uk, or sign up on-line.

Age Concern provides factsheets free to older people, their families and people who work with them.

If you would like to make a donation to our work, you can send a cheque or postal order (made payable to Age Concern England) to the Personal Fundraising Department, ACE Freepost CN1794, London SW16 4BR.

Find out more about Age Concern England online at: www.ageconcern.org.uk.

Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age Concern. Whilst every effort is made to ensure accuracy, Age Concern cannot be held responsible for errors or omissions.

No factsheet can ever be a complete guide to the law, which also changes from time to time. Therefore please ensure that you have an up to date factsheet and that it clearly applies to your situation. Legal advice should always be taken if you are in doubt. (*Age Concern England is unable to give financial or legal advice*).

All rights reserved. This factsheet may be reproduced in whole or in part in unaltered form by Age Concern Organisations and Groups with due acknowledgement to Age Concern England. No other reproduction in any form is permitted without written permission from Age Concern England.

Communications Division, Age Concern England, Astral House, 1268 London Road SW16 4ER. Registered charity no. 261794.

SM/LAE
FS7/08/08/01