Factsheet 7

Making a will

July 2024

About this factsheet

This factsheet explains what you should think about when making your will and how to make sure that the will is legal, effective, and your wishes are carried out. It includes general information about choosing executors, finding professional help with writing a will, and what happens if you do not make a will.

The factsheet contains information about the use of video conferencing to witness a will being legally made following measures introduced in response to the Covid pandemic. This is no longer possible. See section 7 for more details.

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

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

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

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

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

1 Making your will

It is important to make a will for many reasons. You may want to be sure who inherits your assets, or protect your estate from Inheritance Tax, or you may want to pass specific items onto children or other relatives.

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

You can write your own will and you can buy packs from shops or online to help you do this. However, except in the simplest cases, it is generally advisable to use a solicitor who specialises in drafting wills. If there is a problem with the drafting or formalities of your will, it may preve Tf1 0 9(g)-3(o)-4(i)12(n)-3(g)-3(drv)9(

3 Making a valid will

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

it must be in writing and you must intend for this to be your will

it must be signed and witnessed, see section 6 and section 7

you must be over 18 years, unless on military service

you must have mental capacity to make a will and understand its effect

you must not have been pressurised into making the will by someone else, and

you must have full knowledge of, and approve, the contents of the will.

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

4 How to make a will

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

4.1 Use a solicitor

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

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

Solicitors are regulated by the Solicitors Regulation Authority and must carry professional indemnity insurance. This means that a regulated

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Check if the solicitor is a member of the
Inheritance Quality Scheme

Care should be taken with any lump sums of money payable on your death, for example, from a pension or a life policy. These often pass *letter of wishes* (see section 5.2.1) or are held in trust setup with the pension company managing the policy.

There may be practical and tax benefits in having such death benefits not passed via your will. This type of payment is not always made into your estate and may be paid to other beneficiaries by the pension or life policy provider. It is important to understand where this type of payment goes in the event of your death to ensure it reflects your wishes. As such, it is advisable to seek specialist advice if this applies to you.

Assets other than pensions and life policies in your sole name usually fall into the will and so your will should specify the beneficiaries.

5.2 Legacies

A gift made in a will is known as a *legacy* . Think about whom you want to benefit from your will, whether these are individuals, for example, family and friends, or an organisation such as a charity and the most effective way of leaving them a legacy.

Remember your circumstances may change significantly by the time of your death. Make sure your will is drafted so it does not present problems if, for example, a beneficiary dies before you, or your estate is worth significantly more or less than when you made your will.

If you want to leave specific things to specific people, ensure you give sufficient details so there is no doubt about 95(b)-3(t)6(a)-3(b)--5(u)-3(r)-6(a)0(0 0 00008871 0 595.32 84

Some potential problems to think about include:

the person named to receive items is under no legal obligation to

6 Signing the will

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

Just because you are physically unable to sign a will does not mean you lack mental capacity to do so. However, you must have the mental capacity to make the will, otherwise it is invalid. The test for determining whether a will signed on your behalf is valid is that while you were physically unable to sign the will, you did have the mental capacity to make the will, the contents reflected your wishes, and all other formalities were complied with.

Any will signed on your behalf must contain *attestation clause'*, stating you understood the contents of the will before it was signed. There are different attestation clauses for differing circumstances e.g. blind, illiterate, physically incapacitated or unable to understand English.

Testamentary capacity

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

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

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

7 Witnessing the will

Your signature must be witnessed by two people who physically see you sign your will. The witnesses and their husbands, wives or civil partners must not benefit from the will. It is important that your witnesses are not people to whom you intend to leave any of your estate. If there are legacies for the witnesses or their spouse or civil partner, and the rest of the will is valid, the witnesses lose their entitlement to their legacy.

All three people (you and the two witnesses) must be in the room at the same time when signing. *attestation clause'* in which the witnesses confirm you signed the will in their presence.

9 Where to keep your will

Your will should be kept at home safely in a waterproof and fireproof container, or lodged with a solicitor or a bank who may charge for this service. Alternatively, it can be lodged for safekeeping at the Probate Registry. A fee of £22 is charged when the will is deposited. Tell your executors where the will is held.

When solicitors make a will, they normally keep the original and send you a copy. They may suggest the will is registered with the National Will Register to help ensure the will is not overlooked. You are entitled to the original if you wish to hold it. It is important to keep the original will safe.

If you have wishes about your funeral, you can write a letter to your executor setting them out. Keep this letter with your will. Alternatively, include this information in the will itself, and make sure the people who you want to arrange your funeral know you have done this. However, it is important to be aware that funeral wishes are not legally binding.

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

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

10 Taxes on your death

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

Some assets, such as agricultural property and trading business assets can benefit from IHT relief which reduces the amount of IHT payable on your death. For the 2024/25 tax year, the IHT threshold, or Nil Rate

Offices of the Official Solicitor and the Public Trustee
www.gov.uk/public-trustee-executor-will
Email enquiries@ospt.gov.uk

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

Probate Registry
www.gov.uk/wills-probate-inheritance

non-contentious grants of representation

Our publications are available in large print and audio formats

Next update July 2025

The evidence sources used to create this factsheet are available on request. Contact *resources@ageuk.org.uk*