

# THORNLEYS SOLICITORS

## PRIVATE CLIENT DEPARTMENT

### WILLS AND ESTATE TAX PLANNING



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If you care about the persons who should benefit from your property after your death and you want to avoid unnecessary distress to family and friends, you need to make a Will.

If you don't make a Will, strict rules will determine who gets what, if anything, from your assets when you die and your friends and some of your favourite relatives may get nothing.

The law doesn't automatically recognise live-in partners either. Even if you have lived together for many years your partner may get nothing if you haven't made a Will. If you wish to benefit your favourite charity, you can only do so by making a Will.

Making a Will means you make the decisions about your property. You can set certain conditions and decide who is to receive what! You can decide who is to manage the administration of your affairs after your death and these are called your Executors. In your Will you can include gifts of sentimental items or heirlooms; gifts of money; appoint guardians to look after your infant children and leave money in trust for them until they are older. You can include wishes with regard to your funeral or even the future care of your pets.

Tax planning also plays a very important part in the making of your Will and the possible saving of Inheritance Tax which may be payable from your estate after your death.

If you do not make a Will, the state has to divide and distribute your property when you die, using the Intestacy rules which can often seem very harsh and quite complicated.

Making a Will is a very personal matter and needs to cater for your own personal circumstances and obligations. A Will is one of the most important personal documents you will ever complete. Even if you have made a Will, it is most important that you regularly review it. Family circumstances and tax implications often change, so it is vital that your Will is kept up to date.

## **LASTING POWER**

By completing an Lasting Power you choose who you would wish to look after your affairs and act on your behalf as your Attorney, if there ever comes a time when you either no longer wish or are unable to manage your financial affairs personally.

The Lasting Power can remain in force until your death, even if you become mentally incapable of looking after your affairs personally. In the document you can even stipulate that your Attorney is only to act for you in certain conditions. You may regard the Lasting Power as an 'insurance policy' against problems which may arise in the future. If the Lasting Power is never put to use, so much the better! Once the document has been signed it can be stored away with your Will and only put into effect if needed.

The completion of an Lasting Power does not restrict your right to carry on running your own affairs for as long as you feel able. The appointment of an Attorney simply means that there is someone to take over the running of your affairs when or if you cannot do so personally.

## **COURT OF PROTECTION**

If you or a member of your family become mentally incapable of managing your affairs and have not appointed an Attorney, your finances may be frozen until the Court of Protection appoints a Receiver to act in your affairs. This can be a lengthy and costly process, which could have been avoided if you had prepared a Power of Attorney.

Until such time as a Receiver is appointed to look after your affairs, your bills may not be paid and your obligations not met. Any action that a Receiver may take on your behalf must first be sanctioned and approved by the Court of Protection through the Public Guardianship Office.

## **LIVING WILLS**

There are many treatments today which offer a patient with a serious or terminal illness the chance to live longer. In some cases such treatments may offer little chance of recovery and may have side effects which are considered worse than the illness.

Living Wills (also known as Advance Directives or Advance Refusals) allow you to state which treatments you would or would not want if you became seriously ill in the future and were unable to state your wishes. There are certain restrictions on Living Wills in particular with regard to refusal of basic nursing care, refusing food or drink, or refusing treatment against a valid court order made as a result of your medical condition.

Some people confuse the issue of Living Wills with Voluntary Euthanasia. These issues are separate. If you make a Living Will, you are asking the doctor not to give you any medical treatment. Voluntary Euthanasia is when you ask the doctor to deliberately end your life, which is unlawful.

There is no statute law governing Living Wills. A Living Will can however be legally enforced if it meets certain criteria. It is important to make it clear what circumstances or situations you want the Living Will to apply as this avoids any confusion.

If you have specific wishes with regards to your future medical treatments it is advisable to make your wishes known and put this in writing by making a Living Will. There is a prescribed form of Living Will, which can cater to all your requirements.

## **PLANNING FOR RETIREMENT AND COMMUNITY CARE ISSUES**

Planning for your retirement and possible long-term care can be a great concern to you or your relatives. We are all living longer these days and it is therefore sensible to plan ahead, so that in our retirement money worries and the possibility of moving into a Residential or Nursing Care home are alleviated. Community care legislation, particularly with regard to the possibility of your having to sell your home to pay for long-term care, can also be rather complicated and cause you concern.

There are many financial packages on the market today and it is important that you obtain professional advice before investing for your future.

## **ESTATE ADMINISTRATION**

The person who attends to the administration of your affairs after your death is known as your Personal Representative. If you have made a Will this person is known as your Executor. Often more than one Executor is appointed to administer your estate. If you have not made a Will this person would be called your Administrator.

It is the job of your Personal Representative to register your death with all the appropriate authorities and financial institutions with whom you were associated and with whom you may have held assets during your lifetime. He or she will need to ascertain all necessary information to obtain, in the majority of cases, a Grant of Probate to your Will. If there is no Will your Administrator obtains a Grant of Letters of Administration. In a few cases, often where the majority of assets are owned jointly, for example by a husband and wife, on the death of the first spouse it may not be necessary to obtain a Grant.

Once a Grant has been obtained from the Probate Registry, your Personal Representative will then be able to administer your estate. He or she will collect in all your assets, and attend to the payment of your funeral expenses, and any outstanding accounts or debts.

It is the responsibility of your Executor or Administrator to ensure that your tax affairs are finalised, often completing final Tax Returns and where appropriate pay any outstanding tax or collect any repayment that may be due to your estate. They will also collect any refunds of Pensions, Insurance Policy proceeds, and possibly even sell your home and contents.

In some cases Inheritance Tax may be payable by your estate. Here your Personal Representative will need to supply detailed information to the Capital Taxes Office, settle any outstanding Tax that may be due and in certain cases obtain formal clearance that all inheritance tax has been paid. If inheritance tax is payable by your estate, until such time as the tax has been settled your personal representative is unable to apply for the Grant of Probate or Letters of Administration.

Once all these matters have been addressed by your Personal Representative, he or she will then be in a position to attend to the payment of any legacies in your Will and distribute your estate to your beneficiaries in accordance with your Will, or if there is no Will in accordance with the Rules of Intestacy.

## **TRUSTS**

The idea of a Trust to many of us is somewhat daunting if we are not familiar with them. However, it is a good idea to be aware of the basic concept, as a Trust may arise in a number of ways, for example under our Will, or where we own property, such as the family home, jointly with someone else.

Put simply, a Trust is an arrangement between a person or persons, who are known as the Trustees and who hold property, for example a house or some money, on behalf of and for the benefit of another, who is the Beneficiary.

If, when Executors have administered an estate, part of that estate (such as a bequest of money) is to be held for someone until they reach a certain age, the Executors will hold it as Trustees. They then have a duty to look after that money for the Beneficiary. The obligations and responsibilities placed on Trustees are considerable, and so you will want to choose your Executors with care when you make your Will.

A Trust is sometimes created in a Will because a Testator wants to provide for a Beneficiary or Beneficiaries and he wishes to leave it up to his Trustees to decide when and how the income and capital of the Trust should be distributed to the Beneficiaries. In other words, the distribution is at the discretion of the Trustees. This type of Trust, known as a Discretionary Trust, is often included in a Will where Inheritance Tax planning is necessary.

As mentioned earlier, a Trust arises where a house is jointly owned. Therefore, if your home is in the joint names of your partner and yourself, you will both hold it as Trustees for each other.

A further situation in which a Trust may be used is when the Trust is set up in your lifetime as opposed to being made in your Will. This is when assets are passed over by someone during their lifetime to Trustees under a Deed of Settlement. An example of this might arise where grandparents want to provide for their grandchildren in a way that is efficient for Inheritance Tax purposes.

Trusts can be very useful, and can save you tax! It is a complex area, it requires careful consideration and professional help is always advisable.



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