

Gebbie & Wilson Newsletter

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Should I Have A Will?

A person who dies with a Will is said to have died **testate**. A person who dies without a Will dies **intestate**. With very few exceptions, it is **always** preferable to have a Will. A Will states your preference as to the distribution of your estate. A Will can and should be changed as your circumstances and preferences change.

Intestate (No Will)

If you die intestate the law provides that certain members of your family who survive you will be entitled to your estate. How much each member receives is determined by rules laid down by Parliament. This is often not what the deceased would wish!

If you died intestate:-

- No account will be taken of your wishes or intentions as to what should happen to your estate.
- In the absence of an executor appointed in your Will, an application has to be made to the Court to have one appointed to administer the estate. This leads to unnecessary delay in completing the administration and distribution of your estate and greater expense.
- An insurance policy (providing cover against the possibility of a Will being discovered after the estate has been distributed) must be obtained from an insurance company in order to safeguard the estate. This is another unnecessary expense.

Testate (With a Will)

With a Will a person has control over how and to whom his or her property shall be distributed after death. There is one exception, you cannot disinherit your spouse or civil partner or your children and they will always be entitled to what is known as Legal Rights (please see our "Family Provision on Death" Newsletter).

Making Your Will

There are a number of aspects you should consider, including:-

- **Executors** – are the people/person you appoint to collect, administer and distribute your estate. This can be, for example, a friend, relative or solicitor.
- **Guardians** – are the people/person who you would wish to look after your children until they are 18 if their other parent does not survive you.
- **Trusts** – can be set up to ensure that young or financially naive beneficiaries are looked after until they are responsible enough to receive their inheritance.
- **Residuary Estate** – is the remainder of your estate after all the debts, funeral expenses, legacies, taxes and expenses of administration have been deducted. You must decide who you want to benefit from the residue and, if more than one person, the share they will each inherit.
- **Inheritance Tax Planning** – considering the potential tax liability on your estate – and ways to mitigate this – is an important element of the Will drafting process

Renewing Your Will

It is important to renew your Will as and when your circumstances change. It should be noted that a Will is not revoked by subsequent marriage or divorce. Conversely, a Will may be nullified by its maker's subsequently born children.

Unmarried partners and same sex partners who have not registered a civil partnership have very limited rights unless there is a Will: so the death of one partner may create serious financial problems for the remaining partner.

For the reasons summarized above, it is very important that your Will is correctly drafted. Because of the legal complexities involved, you are strongly advised to engage a solicitor to help you in this process.

Please make an appointment with one of our Solicitors to discuss making a Will or to renew one which may be out of date. Don't put it off!