

## The Cost of Not Writing a Will

The cost of not writing a Will can be twofold:

- Taxation – in the guise of Inheritance Tax (see our IHT Factsheet)
- Personal – in that your estate could end up in the hands of those that you do not wish to inherit your hard-earned assets

This factsheet concentrates on the Personal Issues

### Basic Principles of Succession

**Simplistically:** If you do not make a valid Will your assets are distributed according to the rules of Intestacy unless they are assets which pass independently of a Will/the Intestacy Rules

**Initially:** In English Law there are a class of assets which are left independently of a Will or the Intestacy rules. The main types of assets left in this manner are:

- **Joint Property** – where property is held by two or more joint tenants, on the death of one joint tenant the property passes automatically to the surviving joint tenant/s (where property is held as tenants in common - each owners share is left either by his Will or under the Intestacy rules)
- **Insurance Policies** – where the deceased held a life insurance policy which was written into trust this is distributed independently of the individual's estate on death
- **Pension Benefits** – where an individual dies 'in service', a lump sum may be paid by the scheme trustees directly to the individuals specified beneficiary/ies. As the benefit does not belong to the individual it is distributed independently of the Will/Intestacy.

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If your estate consists of assets mainly held in the above ways a Will is still to be preferred to the implementation of the rigid Intestacy rules in respect of other categories of asset

**No valid Will:** the Intestacy Rules kick in. In short:

- If you leave a spouse and no children – your spouse receives everything
- If you leave a spouse and children – your assets are split between them according to strict rules
- If you leave children but no spouse – each receives an equal share of the estate
- If you leave none of the above – your assets are left to remoter relations in the following order
  - Parents
  - Brothers and sisters
  - Grandparents
  - Uncles and aunts
- If you leave none of the above relations – your assets pass to the crown

It does not matter what your relationship was with those relatives when you were alive, the law dictates who will inherit and how much they will get.

By writing a valid Will you are in control of the way in which your assets are left.

## **Personal Issues**

When a close relative passes away suddenly it can be a shock for the whole family.

My Mum passed away in complicated circumstances nearly two years ago. Mum left a valid Will.

If she had not had a Will her assets would still have passed equally amongst her children under the Intestacy Rules but the process would, potentially, have been more complicated and involved much decision making for her beneficiaries. Having a Will made everything a lot easier to deal with at a time when emotions were raw.

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At the other end of the scale my friend, Sandra, died after a short battle with cancer.

When it was diagnosed it was terminal and she decided to write a Will which was signed just 10 days before she lost the fight.

Sandra bequeathed her entire estate to a mutual friend.

If she had not signed her Will she would have been intestate, and with no surviving relatives all of her property would have gone to the Crown.

Last year alone the crown (the government) received £8million as a result of people not leaving valid Wills.

### **Only with a valid Will can you be certain that your estate will go to the right people**

In your Will you can:

- Bequeath your assets (which are available to be left by Will) to whomever you wish
- Make a bequest to a chosen charity or charities
- Where minor children are beneficiaries, specify how long funds are to be held in trust (to the age that you deem appropriate – on Intestacy the age of inheritance is 18).
- By a Letter of Wishes attached to your Will you may also want to outline personal wishes such as funeral arrangements or arrangements for minor children (a letter of wishes is not legally binding on your executors but is normally influential)
- You can even exclude family members who you don't want to benefit from your estate (this needs to be handled with care)

Even if you have made a will, you need to ensure it is regularly updated.

If you do not draw up a proper Will:

- the rules of intestacy award none of your estate to live-in partners, regardless of the longevity of the relationship.
- Unless you own your home as joint tenants, the house that you share with your live-in partner could potentially be passed onto your children, parents, remoter relations or the state, leaving your partner homeless.
- Your live-in partner may be forced to take your joint children to court to secure even a roof over his or her head
- If you are separated, pending divorce, your estranged spouse may inherit your entire estate
- In the event that both you and your spouse die, you would have no say on who becomes your minor children's guardian.
- You may have personal wishes that cannot be fulfilled without a Will
- Friends or charities would not benefit
- These rules may result in far more tax being payable than if you had planned and made a Will

Failure to have a Will can cause acrimony and complications, you only have to look at the gossip columns to witness the bad feeling caused by deaths without a valid Will. Even stars

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as big as Prince, Bob Marley and Amy Winehouse died without leaving valid Wills and the acrimony can continue for decades.

### **Examples:**

**Bob Marley**, musician, died in May 1981 at the age of 36.

Bob failed to make a Will and died intestate. He left behind an estate worth an estimated \$30 million, a wife and around 11 children with various partners.

Bob's assets would have passed under Jamaican intestate law, which does not favour the widow. An attempt was made to fraudulently transfer his assets to make it more favourable for his widow. These plans were discovered and led to a lengthy legal battle.

The Court advertised for potential heirs to step forward, predictably, hundreds of people claimed to be his offspring in the hope of obtaining a slice of his estate.

Due to not having a Will in place it took 10 years and large legal fees before the estate was finally settled in Court.

This case is yet another reminder of the importance of estate planning.

**Pablo Picasso**, world-famous artist, died on 8 April 1973 leaving an extensive estate.

He did not leave a Will, he died intestate. Picasso had two wives, several mistresses and had both legitimate and illegitimate children. The estate was divided between his children and grandchildren.

Picasso's estate took 6 years to administer at a cost of approximately \$30 million dollars.

With Picasso's immense wealth and future royalties, it would have made sense for him to be advised to make a Will. By making a Will administration of the estate may have been simpler and smoother. It most certainly would have saved significantly in Legal Fees.

**Tara Palmer-Tomkinson**, socialite, died in February 2017 at the age of 45.

Tara had made a Will in 2004 which left her entire estate to any children she may have when they reached the age of 25 years old. At the date of death, Tara did not have any children. Therefore, Tara's estate could not be distributed per her Will and her Will was considered invalid.

Tara died intestate. As a result, her reported £2.3 million estate passed to her siblings instead. It is to be hoped that, in the absence of children, Tara would have wanted her estate to be divided equally between her siblings.

Any uncertainty could have been avoided if her Will had been updated to clearly state her wishes.

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It is vitally important that family members know where your Will is kept and that a duplicate is stored with an appropriate third party.

In this factsheet 'spouse' refers to married couples and those in a registered civil partnership.