

Why you should use a Solicitor to write your Will



Over half of UK adults (59%) do not have a Will. Although it is on most peoples', "to do" list, having a Will drafted is not the most exciting of chores.

However, the consequences of not having a well-drafted Will can be dire. If you die without a Will, known as 'dying intestate,' your property will be divided according to the Rules of Intestacy. This can result in loved ones not receiving part or all your Estate.

For example, if you have lived with a partner for many years, but have not formally divorced from your ex-spouse, under the Rules of Intestacy, your ex-spouse would receive a large portion of your Estate, as unmarried partners are not entitled to inherit under the intestacy rules.

If reading this is enough to convince you that you should organise a Will, you may wonder why you should use a solicitor to advise on and draft the document. After all, you can buy DIY Wills from any branch of WH Smith these days, sometimes for as little as £20. To make a valid Will, you are simply required to state how you want your estate divided and organise two witnesses. How hard could it be?

The danger of DIY Wills

Wills do not have to be complicated. "Vše zene" meaning "All to wife" in Czech, was the shortest valid will in the world. It was written and dated 19th January 1967 by Herr Karl Tausch of Langen, Hessen, West Germany.

However, Wills that seem short and straightforward at the outset can often drain the Estate of hundreds of not thousands of pounds because they are not clear. For example, an often cited badly written will is the 1906 one that read "All to Mother" and ended up as a court case (*Thorn v Dickens*). It was contested because the testator called not only his mother by that title but also his wife – as the mother of his children.

It was unclear which woman he meant by "Mother," but the court decided he did mean his wife and awarded his estate to her. Had he instructed a solicitor to draft his Will, they would have written his wife's name, thereby avoiding any confusion.

The legal requirements of a Will are that it must be:

- In writing; and
- Signed in the presence of two witnesses - who sign and date the Will also;

- Made by a person who is sound of mind and free from duress.

In theory, you could scribble your Will down on the back of a receipt and as long as it was signed and witnessed, it could be considered legally valid.

The reality, however, is although DIY Wills may seem uncomplicated, this is an illusion. In the many years, we have been advising clients on Wills and probate matters, it is seldom that we encounter a DIY Will that did not require our private client team to sort out serious and costly problems associated with it.

Before considering a DIY Will, ask yourself: do I want to reduce my inheritance tax bill? Or leave the family business to my children? How should I manage my property abroad? These are just some of the circumstances where it is crucial to receive experienced legal advice to ensure that you and your loved one's interests are protected after your death.

It is also highly recommended that you seek legal advice if you have children from a former relationship or you and your partner are not married or in a Civil Union. In the latter situation, if your DIY Will is declared void, the laws of intestacy may prevent your partner from inheriting anything under your estate, even if you have been together for decades.

Three benefits of using a qualified solicitor

- **Speed** – experienced private client solicitors draft Wills regularly and have advised all types of people with different circumstances on the best way to structure their document. If you have a step-family, multiple properties, off-shore interests or a business, a qualified solicitor will place your affairs in order swiftly and effectively.
- **Extra support** – it is very rare that a solicitor will not undertake additional work for an Estate and often they will complete actions that a lay person would not know to think of. For example, when one half of a couple passes away, a solicitor will organise the documents needed for the transfer of the inheritance tax nil rate band so when the other spouse dies, the executors don't have to start finding marriage certificates etc.



- **Additional advice** – an experienced solicitor will ask several questions about your situation and help you work out how to structure your affairs as a whole. For example, you may wish to arrange your finances so you can mitigate possible care home fees. Or put your family business or property into a trust. A solicitor will also advise you on creating a Lasting Power of Attorney, to ensure someone can make decisions about health and finances on your behalf, should you become mentally incapacitated.

Bennett Griffin are award winning solicitors based in West Sussex with offices in central Worthing and Ferring. Their experienced and specialist solicitors offer a comprehensive service and will work with you in an honest, considered, and practical manner. The wills, trusts, and probate department is able to advise and assist you in relation to making or reviewing a Will. Contact Bennett Griffin on 01903 229 999 or by email at info@bennett-griffin.co.uk for more information.

The information contained in this article is for general guidance only and is not intended to be legal advice. Professional advice should always be taken on the application of the law in any particular situation.

