

# Dealing with a will

*Why should I make a will?*

*Who gets my money if I die without a will?*

*What if I think someone's will is unfair?*



**0845 345 4 345**

[www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

See page 10 for useful phone numbers and website addresses

A free and confidential advice service paid for by Legal Aid

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# Community Legal Advice

This guide has been produced by Community Legal Advice (CLA), a free and confidential advice service paid for by legal aid.

Community Legal Advice provides:

- advice leaflets on a range of topics
- a helpline **0845 345 4 345**
- a website

[www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

People on a low income can get free, specialist legal advice from the CLA helpline.



# Why should I make a will?

When you make a will, you can say how your funeral should be dealt with, and what will happen to your possessions and other assets (your 'estate') when you die. If you die without making a will (called 'dying intestate'), it can be complicated to work out who will get what.

If you die without a will, the law sets out how your estate is to be shared out – which means it might not go to the people you want it to. This could have very serious consequences: for example, depending on your family situation, your husband or wife might have to sell the family home to give your children the money they are entitled to.

This leaflet looks at some commonly asked questions about wills. If you need more help, see the section 'Where can I get further help?' on page 10.

## What makes a will valid?

To begin with, the person making the will must be:

- 'mentally capable' (which means they fully understand what they are doing in writing their will), and
- at least 18 years old (unless they are on active military service).

The will must:

- have been made without 'undue influence' (for example, without a threat from anyone)
- be signed by the person making the will (the 'will-maker' or 'testator') and by two witnesses, who must all be together at the signing, and
- be dated at the time it is signed.

A will doesn't have to be on a special form, or set out in a certain way, but you must take care that it says exactly what you mean and can't be taken any other way. You don't have to use a solicitor to help you write a will, but it's often best to do this to make sure your wishes are clear.

You can't make changes or add things to the will after it's been signed. If you want to change your will, you generally need to make a new one.

## What happens if I die without a will?

If you die without making a will, the law states in order of priority who is responsible for 'administering the estate' (sorting out your money and belongings). The person responsible is called the 'administrator'. The list starts with your husband, wife or civil partner.

If you don't have a husband, wife or civil partner, your children aged 18 or over are responsible. If you have no children of this age, the next people on the list are your parents, followed by your:

- brothers or sisters
- grandparents, and
- aunts and uncles.

## Who gets my money and property if I die without a will?

If you die without a will, your estate is shared out under the 'rules of intestacy'. The administrator must first sell your belongings and cash in assets such as investments. They must then pay off your debts and pay any inheritance tax that is due.

After that, the law says who gets what in different situations, depending on what relatives you have (and relatives of your relatives who are no longer living). In the simplest case, if you have a husband, wife or civil partner but no other relatives, they get everything. (But if you weren't married to, or in a civil partnership with, your partner, they get nothing.)

There are more complicated rules if you have children, or if you have no husband, wife, civil partner, or children. For more about these rules, speak to a solicitor who deals with wills.

Remember that the estate may not go where you might want or expect it to go. So it's important to make a will to make sure your wishes are followed.

## Who has to pay inheritance tax?

Whether or not you, as the executor or administrator, have to pay inheritance tax out of the estate depends on:

- how much the property and belongings of the dead person were worth when they died
- the value of any trust that the dead person benefited from, and
- the value of certain 'gifts' (money or items of value) the person made in the seven years before they died, or longer if they 'reserved an interest'. (An example of reserving an interest would be if they gave away their house on the condition that they were allowed to live there free of charge or for very low rent until they died.)

If all these add up to more than a certain amount (called the 'nil rate band'), the estate has to pay inheritance tax at 40% on the value above this amount. The amount is reviewed every year. It is £325,000 for the year April 2010 to March 2011.

However, the rules about inheritance tax are complicated, so you should get specialist legal advice straight away if you are an executor or administrator and the probate registry tells you that you may have to pay inheritance tax. The cost of legal advice will be paid from the estate.

## What happens to my debts if I die?

When you die, your debts don't die with you – they have to be paid from your estate before the people mentioned in your will get anything.

If there's not enough money to pay all the debts, they must be paid in a particular order. However, your relatives do not 'inherit' your debts if there is not enough money to pay them.

If all the debts can be paid, but there isn't enough money left to pay everything stated in the will, then the 'legacies' (specific amounts of money) will be paid first, and the other people mentioned will get what is left over.

If there is not enough to pay all the legacies, the people entitled to the legacies will get a proportion of what you have left them, depending on how much money is available. The other people mentioned in the will, who you wanted to get the rest, will get nothing.

## How do I deal with the will of a relative who has died?

If you've been named in the will as the person (or one of the people) who will deal with the estate, you're called an 'executor', or sometimes a 'personal representative'.

You and any other executors will probably first need to apply for 'probate' – the official form that gives you the right to deal with the dead person's money and belongings. You may not need to apply for probate if they left very little (say, less than £5,000). You apply to a probate registry for probate.

The **Probate and Inheritance Tax Helpline (0845 302 0900)** can advise about getting probate, and where your nearest registry is.

You must then make a list of everything the person owned, including their savings and investments. You must work out whether there is inheritance tax to pay – see 'Who has to pay inheritance tax?' on page 5. Next you must pay any debts the person had. Finally you distribute their belongings and remaining money according to what their will said.

As an executor, you are personally liable (responsible) for making sure you follow the law and do what the will says. If you're unsure, get advice from a solicitor – the estate will pay their fees.

## How do I deal with the money and property of a relative who died without a will?

If you're dealing with the estate of someone who's died without a will, you're called the 'administrator'. Unless the person left very little (say, less than £5,000), you'll probably need to apply for 'letters of administration' – the official form that gives you the right to deal with their money and belongings. The **Probate and Inheritance Tax Helpline 0845 302 0900** can advise you about letters of administration.

You must then make a list of everything the person owned, including their savings and investments, and work out whether there is inheritance tax to pay – see 'Who has to pay inheritance tax?' on page 05. Next you pay any debts the person had. Finally, you must distribute their belongings and money according to the 'rules of intestacy' – see 'Who gets my money and property if I die without a will?' on page 04.

As an administrator, you will be personally liable (responsible) for making sure you follow the law and do what the will says. If you're unsure, get advice from a solicitor – the estate will pay their fees.

## What can I do if I think someone's will hasn't been properly followed?

The executors are responsible for making sure that the person's money and belongings are shared out according to what their will says (after any inheritance tax and debts have been paid).

If you truly believe that the executors haven't done this, you'll need to get expert legal advice. You may be able to take legal action against the executor or executors. However, this can be difficult, and you need to be certain of your position and aware of the possible results and costs of any court action.

## What can I do if I think someone's will is unfair?

If you are unhappy because you have been left out of a will altogether or because you have been left without 'reasonable financial provision', you may be able to make a legal claim. But you can do this only if you are a close relative or were supported financially by the person who died.

If you think you are in this position, you should get legal advice. Claiming against an estate is complicated, and there is no guarantee that a court will agree with your claim. Also, you need to get advice quickly: you must start your claim within six months of probate being granted.

## Where can I get further advice?

### Probate registries

The **Probate and Inheritance Tax Helpline (0845 302 0900)** can tell you where your nearest registry is, and can also answer questions and send you information about applying for probate or letters of administration.

You can also find details of your nearest probate registry at the 'Forms and Guidance' section of the **Courts Service** website:

[www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

### Community Legal Advice

If you have a low income or receive benefits, and qualify for legal aid, you can call us for independent advice about debt, education, benefits and tax credits, employment and housing problems.

If you do not qualify for legal aid, or if you have another type of problem, we can put you in touch with other organisations, helplines or local advice services that can help. We also direct you to other legal information resources.

## How to contact us

You can speak to our advisers in several ways:

- Call us on **0845 345 4 345** from 9am to 8pm Monday to Friday, or 9am to 12.30pm Saturday. Calls cost up to 4p per minute from a BT landline. Calls from mobiles are usually more. Worried about the cost? Ask an adviser to call you back.
- Request a callback through our website, [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)
- Text 'legalaid' and your name to **80010** and we'll call you back within 24 hours.

## Help on the internet

Our website [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk) has lots of help, including:

- our online directory of advisers, organised by areas of law
- more information about legal aid and who can get it
- online factsheets and leaflets that you can download on lots of topics, and
- links to specialist organisations, charities and support groups in your area.

## The Law Society

The Law Society is the professional organisation for solicitors in England and Wales. It can give you details of solicitors in your area who deal with wills and probate matters. Phone **020 742 1222** or visit [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

## Can I get legal aid?

If you need help with the costs of legal advice, you can apply for legal aid. Whether you will get it will depend on:

- the type of legal problem you have
- your disposable (spare) income and how much disposable capital (money, property, belongings) you have
- whether there is a reasonable chance of winning your case, and
- whether it is worth the time and money needed to win.

There is an online calculator on our website, at [www.communitylegaladvice.org.uk/en/legalaid](http://www.communitylegaladvice.org.uk/en/legalaid) where you can see whether you could be financially eligible for legal aid.

### What if I think I am eligible?

If you think you could be eligible for legal aid, you should speak to a legal adviser who can deal with legal aid cases. You can search our directory to find an adviser in your area, at the 'Find a legal adviser' section of our website [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk) or call our helpline 0845 345 4 345.

# Help for other problems

This leaflet is one of a series of free leaflets produced by Community Legal Advice giving easy-to-read advice on a range of problem areas. The leaflets in this series are:

- C1 Dealing with rent problems**
- C2 Domestic abuse**
- C3 Fair treatment at work: your rights if you are disabled**
- C4 Your rights at work**
- C5 Dealing with debt**
- C6 Losing your home**
- C7 Claiming benefits**
- C8 Problems with school**
- C9 Mental health laws**
- C10 Community care**
- C11 Divorce and separation**
- C12 Living together**
- C13 Medical accidents**
- C14 Dealing with the police**
- C15 Care proceedings**
- C16 Claiming asylum**
- C17 Removal and deportation**
- C18 Dealing with a will**

You can order any of these leaflets free by:

- phoning **0845 3000 343**
- faxing **0845 5438 258**, or
- emailing [orderleaflets@communitylegaladvice.org.uk](mailto:orderleaflets@communitylegaladvice.org.uk).

All these leaflets are also available in Welsh, Braille and Audio.



The Legal Services Commission manages the Community Legal Service and Community Legal Service Fund (legal aid). To find out more about us, visit [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

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