

By Email only.

Lutea Instructions for writing a Will

Initial Considerations for drafting Wills

When considering a Will you ought to consider it under the following headings.

Executors

You need to decide who will be the people that will deal with your estate on your death. They will need to collect in all your assets, pay off your debts and your funeral expenses, then hold the balance to be distributed as you express in your Will. Logic dictates that if you are married you would normally have the other of you as an executor, and more often than not if your affairs are valuable or complicated, you may want to include a professional. Other than that a member of the family.

It is sensible also to consider a substitute, so that if any of your initial executors should fail to survive you, or be incapable of acting, then that person would act in his or her stead. A child of the appropriate age or a brother or sister would be normal here, but it is entirely up to you.

Guardians

If you have children under the age of 16 years you ought to consider who would take care of them if your spouse has predeceased you. Again that is normally a member of the family, and their duty would be to take in your children and take care of them. In fact what happens if you die and your spouse has predeceased you is that the children technically become wards of Court and it is for the Court to decide who is the most suitable guardian. Very rarely one sometimes sees two different sets of relatives applying. The guardians are not responsible for the finances, which remains in the hands of the executors, but obviously are expected to deal with payments, etcetera.

In addition to this you might also need to consider appointing local interim guardians in a separate document to take immediate care of your children if the people that you wish to appoint as their Guardians in the event of your deaths live outside of the country where you are residing, which is common for expatriates.

Funeral wishes

Many people express their funeral wishes in their Will. Burial, cremation, burial at sea, your ashes scattered in any particular place (your favourite football ground) are not unusual.

Domicile

It is also common these days to state your domicile, particularly if it is not in the United Kingdom and the law which applies to your Will ought also to be stated as the law of your domicile.

Personal chattels

You need then to think about gifts of personal items such as jewellery. If there are any specific items you would like to leave to any particular person you should state that in your Will or alternatively you can provide that your personal chattels pass to your executors on your death and you ask them to follow any written memorandum you may leave with your Will or papers at your death. If you do this the executors do not have to follow your wishes, but it is surprising if they do not.

Pecuniary legacies

Next you need to think about leaving cash sums, usually to godchildren, grandchildren, charities or the like. You need to set out the amount you want to leave and the name and address of the person concerned. This is something you cannot do by a letter of wishes, you need to stipulate this in your Will. Often people link the pecuniary legacies to the retail prices index, so that it increases as time goes by.

The residuary estate

What is left is your residuary estate. You need to think how you would want to deal with this.

If your affairs and wishes are simple then you can appoint the survivor of you if married or your partner as the sole beneficiary and executor of the Will and only if you are predeceased by them then do other executors need to be involved, with the remainder then passing to children or others as you chose.

Alternatively It is often a good practice, where your affairs are perhaps more complicated, as you are unlikely to know what your circumstances are when you die, to leave your estate in trust with your executors for a two year period, failing which everything passes to your spouse (if that is your wish) or your children, etcetera.

This gives your executors two years in which to decide how best to deal with your estate and it would be normal to leave a letter of wishes which explains your current thoughts and which you can change from time to time without the need to rewrite your Will.

Obviously you need to have confidence in your executors that they will carry out your wishes. If your spouse is one of the executors, and unless you state the executors must act unanimously, your spouse does have a right of veto over any transactions. In particular this gives you the opportunity to carry out any tax planning, but it does require the consent of all the relevant parties and sometimes that is difficult to obtain.

The trust that I mention gives the greatest flexibility and ease to ensure that your estate complies both with your letter of wishes and your circumstances at your death.

Thereafter you need to set out what should happen if not all the estate is distributed within the two year period, which would normally be to leave everything to the other of you, and failing that to your children assuming they attain a certain age (this can be 21 or 25 years) with a further proviso that if any of your children should predecease you leaving children then those children will inherit their parent's share.

Long-stop beneficiaries:

Finally you should consider the apocalyptic situation that you, your spouse and all your children and grandchildren die in a car accident or something similar, in which case you need to consider who else should benefit in that circumstance.

I think that covers all the issues that you ought to think about, but this is purely for guidance and your own circumstances may require something entirely different.

However if you consider it under these headings you should not go far wrong.

To arrange a meeting please contact.

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