



WILLS & PROBATE

November 2019

Choosing the right executor for your Will

When you write your Will, you need to name one or more executors who will carry out the administration of your estate when the time comes. We look at what this entails and what you need to take into account when choosing someone to take on the role.

The executor to an estate has the job of bringing the deceased's affairs to a close and distributing funds to the named beneficiaries. The task can be daunting and take many months, even years, so before appointing someone you both need to understand exactly what it entails.

The role of an executor

There is usually a substantial amount of work involved in winding up an estate. Initially the funeral needs to be arranged and the death registered.

Asset holders need to be notified and the estate valued. Inheritance tax should be calculated and paid, as well as any Income Tax that may be due.

Assets need to be valued, collected in and sold, to include any property, which may need to be cleared and insured in the meantime.

Estate accounts must be prepared and finally the estate is distributed to those named in the Will.

Choosing the right executor

The executor can be held personally liable for any mistakes made during this process, so it is important to ensure that the person you have chosen is willing to take on the role and capable of carrying it out proficiently.

Your executor should be aged 18 or over and have the mental capacity to act on your behalf.

More than one executor

It is usually recommended that at least two executors are appointed in a Will so that if one of them is unable or unwilling to act when the time comes, you still have someone else who can take on the role.

Two executors can act jointly, or one can step back when the time comes and allow the other to do the work alone. You can also name a substitute executor who would only act if one of those named could not.

If you don't have anyone who can act for you

If you don't have anyone willing or able to take on the task, you can appoint a professional executor, such as a probate solicitor, to deal with the administration of your Will.

They will be familiar with the process, able to correctly calculate tax due and draft accurate accounts. A charge is made for the service, but it does mean that your loved ones will not have to struggle with complicated and sometimes frustrating paperwork following your death.

Writing a Will that is future proof

Over time, changes in circumstances can mean that a Will becomes out of date and doesn't accurately reflect your wishes. We look at how to ensure your Will can cope with changes.

It is a good idea to make a Will, even if you are young. It helps keep your financial affairs organised and if anything should happen to you, it will be of comfort to your loved ones to know your wishes. You should review your Will from time to time, and update it if necessary. But careful drafting will help it stand the test of time.

Executors and guardians

When you write a Will you need to appoint one or more executors to deal with the administration of your estate. This can be a time-consuming and complicated job, so you should ensure that whoever you choose is able and willing to take on the role.

Over time, their circumstances may change however, and if you have appointed more than one executor, along with substitutes, then there is a good chance that even if someone cannot act, one of your other choices will be able to take over.

Similarly, if you are appointing guardians for children who are under 18, then you should consider alternatives in case your first choice cannot take on the role.

Beneficiaries

If you leave bequests to children by name, then babies who are born after your Will is written may be excluded.

It is possible to draft a Will that takes into account future births, and includes them alongside those who were already living at the time the Will was made.

Marriage

Although it is possible to take a number of steps to future-proof your Will, you should note that upon marriage or civil partnership, any Will you have made becomes invalid, unless it was specifically made in contemplation of that marriage or civil partnership.

Change in the value of your estate

Over time, your estate may alter in value considerably, for example if you come in to money or if a substantial amount of money is used in care home fees.

This can effect the proportions of any gifts you leave under your Will. Specified sums are paid out first, then the remainder is split between your choice of named beneficiaries. If the amount in your estate decreases, this could leave those inheriting the residue with less than you envisaged them having.

Even if you are confident that you have future-proofed your Will as far as possible, it is still advisable to review it regularly, and re-draft it if necessary.

If you would like to discuss LPAs, Wills or Estate Planning, call David on 020 8670 0917 or email him at: david@marcus-bishop-associates.co.uk.