



# ESTATE & TAX PLANNING

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## Can you cut your spouse out of your Will?

**While you have the right to leave your money and possessions to whoever you choose, there is a possibility that some close family members could challenge your Will after your death if they have been left out.**

The right of testamentary freedom means that you are entitled to include or exclude anyone when writing your Will.

However, family and those who depend on you for their upkeep may have the right to make a claim against your estate if they believe they have not been left money that they feel they are entitled to in order to meet their needs.

### The Inheritance Act 1975

The Inheritance (Provision for Family and Dependants) Act 1975 allows a spouse, former spouse, child or other dependant to challenge a Will where they can show that they have not been left reasonable financial provision.

Reasonable financial provision is construed as enough money that they do not have to live in poverty, although the exact sum would be calculated by the court.

This means that after your death, your estate could be involved in lengthy and expensive legal action if your spouse, child or other individual who might expect continued financial support makes a claim against it.

### Disinheriting your spouse

If you are going through a divorce and do not wish to leave your spouse anything in your Will, it can be beneficial to agree, if you both have your own wealth, that you do not expect to inherit anything from each other. While this does not guarantee that a claim will not be made, it reduces the likelihood.

### Will planning

There may be various reasons why you wish to leave someone out of your Will and it is a good idea to seek legal advice on how to protect your estate as there are measures which can be taken to try and avoid the risk of legal action.

For example, if you want to leave your home to your children, you could set up a life interest in it for your spouse, to allow them to continue living there for as long as they wish to. Once they die, the property would pass to your children. This means that your spouse could continue to live in their home, but would be unable to sell it and spend the money, for example, on care home fees, and would also be unable to leave it to anyone in their own Will.

It is often a good idea to speak to relatives about your intentions ahead of time, so that there are no nasty surprises and so that you can discuss with them your reasons for your decisions.

# What happens if you can't find a Will after someone dies?

**Dealing with the administration of someone's estate can be easier if they have left a Will. It can also help avoid disagreements between family members. But it is not always easy to find important documents after a death.**

If a loved one has died and you believe they may have left a Will, it is important to make every effort to locate it. This is the document which will name the people they wish to deal with the administration of their estate and act as trustees if required. It will also list those to whom the estate has been left and may even include the deceased's funeral wishes.

## Finding a Will after death

The most obvious place to look is the deceased's home. Even if the original Will isn't there, there may be a copy together with information about where the original is being stored.

Go through any paperwork you can find and make a note of any law firm or bank that the deceased has had dealings with.

Write to those organisations and ask if they have the Will. If they do, and you have been named as an Executor, then you have the right to collect the Will. You would need to provide a copy of the death certificate together with proof of your identification.

If the Will cannot be located, try asking the London Principle Probate Registry if they are storing it, as they are a Wills storage facility. You can also make enquiries of the National Wills Register, which may have details of the document.

## When the Will can't be located

If you have found a copy of the signed Will, but not the original, this can be sent to the Probate Registry with an application for a Grant of Probate. You will also need to send a sworn document stating that

the original cannot be found and giving details of the attempts made to locate it.

The Registry may wish to hear from any potential beneficiaries who would not inherit under the terms of the copy Will.

If neither the Will nor a copy can be found, then the Rules of Intestacy will apply and the estate will be distributed to the close family members listed in the Rules.

## How to store a Will so that it can be found

To avoid complications in estate administration, it is a good idea to ensure that your loved ones know where your Will is stored. If you have the document drafted professionally, your solicitor will also keep their notes of your instructions and discussions with them, which can be useful in the event of any future disagreement over inheritance.

You should also keep details of your Will's whereabouts stored with your important papers so that anyone searching for the document will easily be able to locate it.

Marcus Bishop Associates always offer clients lifetime storage of their Will. Our option overcomes the risk of ever misplacing a Will or loss through fire, flood or theft in your home. We always remind clients of the fact that, if a Will is damaged in any way, then the courts could declare the Will invalid.

**If you would like to discuss your Estate & Tax Planning, call David on 020 8670 0917 or email him at: [david@marcus-bishop-associates.co.uk](mailto:david@marcus-bishop-associates.co.uk).**