

# HUNTERS

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## Wills under English law

### Nature of a Will under English law

English case law has described a Will as a privilege which the law grants to a person of sound mind, enabling him, subject to certain limits, to dispose of his estate as he pleases.

In essence, a Will is a written document, which has to conform to certain formalities in order to be valid, by which a person (the 'testator') appoints persons ('executors') to deal with his estate after his death and to distribute it to his chosen heirs ('beneficiaries') in the manner directed by the Will.

In order to be valid under English law a Will must satisfy certain conditions. In summary:

- The testator must be over the age of 18 years, of sound mind and acting voluntarily.
- The Will must be in writing.
- It must be signed by the testator in the joint presence of two witnesses who are over the age of 18.
- The witnesses must sign the Will in the presence of the testator.

### Contents of the Will

The basic requirement is for the testator to appoint executors and dispose of his estate.

The executors (also called 'personal representatives') will be responsible, after the testator's death, for notifying the relevant persons/organisations of the death, completing the requisite Inheritance Tax Return and submitting it to HM Revenue & Customs, arranging for payment of any tax due, obtaining the Grant of Probate (a legal document which confirms the authority of the executors to act in the administration of the testator's estate), collecting in the assets of the estate, discharging its liabilities, and distributing the net estate to the relevant beneficiaries.

The testator may choose to include particular gifts ('legacies') in his Will. These could be, for example, a gift of money or a specific asset. The Will should state who is to benefit from the rest ('residue') of the estate, after discharge of the funeral expenses, debts, administrative costs and other liabilities of the estate, any legacies, and tax. For example, the testator may choose to leave his residuary estate to his spouse or to charity, or to divide it between family members according to specific percentages, or to be distributed to his children when they reach a particular age.

A Will does not come into effect until the testator's death.

## Advantages of making a Will

The advantages of making a Will include enabling the testator to:

- avoid the application of the intestacy rules (default rules which apply where a person dies without a valid Will and which dictate – without regard to need, wishes or tax – who is to inherit the estate and in what proportions)
- revoke previous Wills
- give direction as to the disposal of his remains (for example, burial/cremation)
- dispose of his property according to individual needs/wishes
- include gifts and legacies, for example to friends or charities
- dispose of the estate in a way which mitigates Inheritance Tax
- make arrangements for the testator's business to be continued after his death
- choose executors
- choose trustees (persons to hold some or all of the estate in trust – for example until the testator's children reach a certain age)
- choose guardians (persons to have legal responsibility for the testator's children under the age of 18)
- exercise powers of appointment
- modify statutory provisions which would otherwise apply to the management of the estate.

## Forced Heirship / Inheritance (Provision for Family & Dependents) Act 1975

Whilst English law permits testamentary freedom so that a testator may dispose of his estate as he wishes, this is somewhat restricted by the Inheritance (Provision for Family and Dependents) Act 1975. This Act permits certain categories of person to apply to the Court for an order to change the distribution of the estate which would otherwise apply. The Court will grant such an order if it decides that the disposition of the estate failed to make reasonable financial provision for the applicant.

The categories of applicant include, for example, the deceased's spouse/former spouse, a child of the deceased, a person who was cohabiting with the deceased as their spouse, and a person who was being financially maintained by the deceased before his death. The Court has discretion in reaching a decision but is required to take into account certain criteria, for example the size and nature of the deceased's estate, and the resources and needs of the applicant and of any other beneficiary of the estate.

## Where a person owns assets in more than one country

Where a person owns assets in more than one country, it is usually preferable for them to make a Will for each country in which he owns assets.

Each Will should cover the assets in that country and conform to the Will-making rules in that jurisdiction. This helps save time and expense in the long run as it can take several months for a Grant of Probate to be issued and it would be very time consuming for this to be done in more than one country consecutively.

Furthermore, countries have differing rules about inheritance (for example, some countries do not recognise trusts, or require specific portions of the deceased's estate to pass to specific relatives) so making a Will in each country according to that country's laws ensures that the disposition of the deceased's overall estate is valid.

Where a person has more than one Will in this way, it is crucial that they interlock effectively and that no Will inadvertently revokes another.

## Hunters' expertise

Hunters Law LLP has a long history of advising clients in relation to their testamentary affairs. We have a large team of experienced lawyers who specialise in the writing of Wills under English law, and in advising on all aspects of succession planning and Inheritance Tax efficiency. Many of our lawyers are members of the Society of Trust and Estate Practitioners (STEP), a global professional body of senior professionals skilled in this area of expertise. We have many clients who have assets in, or connections with, other countries, and we are well accustomed to working with our client's advisers in other countries in order to ensure that their worldwide testamentary arrangements dovetail effectively and are valid, appropriate and tax efficient.

Hunters also has substantial expertise in advising in relation to lifetime tax and estate planning (for example to mitigate tax, make provision for children/grandchildren and avoid potential difficulties arising in the event of future loss of mental capacity), and in relation to the administration of estates after death (including post-death variations of Wills or the intestacy rules). In addition, the firm has considerable knowledge and experience in the setting up, management, re-organisation and taxation of lifetime and Will trusts.

## Contacts

In the first instance please contact either of the Joint Heads of the Private Client Department:

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