

LAWPACK

Do-it-yourself



Will Kit

Guidance Manual

Important Facts about this Lawpack Kit

This Lawpack Kit contains the information, instructions and forms necessary to make your own Will in England, Wales, Northern Ireland or Scotland. It is important that you read and follow the instructions in 'How to use this Kit' on page 5.

There is an infinite number of provisions a person may make in a Will. The Will Forms included in this Lawpack Kit cover the most common ones, but we do not cater for all circumstances.

The information this Kit contains has been carefully compiled from reliable sources, but its accuracy is not guaranteed, as laws and regulations may change or be subject to differing interpretations. This is particularly true for any figures given, which are stated liable to change in the next Budget. The law and all figures are stated as at 1 February 2012.

Neither this nor any other publication can take the place of a solicitor on important legal matters. This Lawpack Kit is sold with the understanding that the publisher, authors and retailer are not engaged in rendering legal services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

As with any legal matter, common sense should determine whether you need the assistance of a solicitor rather than relying solely on the information and forms in this Lawpack Kit.

We strongly urge you to consult a solicitor if:

- substantial amounts of money or property are involved;
- you do not understand the instructions or are uncertain how to complete and use a form correctly;
- what you want to do is not precisely covered by the forms provided;
- you and your spouse have different domiciles;
- you own or have an interest in property abroad or have written a Will abroad.

The contents of this Manual have been approved by Leolin Price QC and Richard Dew of Ten Old Square, Lincoln's Inn, under English law, by Tughans solicitors under the law of Northern Ireland, and by Neill, Clerk & Murray, solicitors, under Scottish law.

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Loose-leaf forms

For England & Wales and Northern Ireland:

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| Will Form 1 – Simple Gift of the Residue | 1 copy |
| Will Form 2 – Residue to an Adult but if he/she dies to Children | 1 copy |
| Will Form 3 – Residue Direct to Children | 1 copy |

For Scotland:

| | |
|--|--------|
| Will Form 1 – Simple Gift of the Residue | 1 copy |
| Will Form 2 – Residue to an Adult but if he/she dies to Children | 1 copy |
| Will Form 3 – Residue Direct to Children | 1 copy |

Domicile

Consider whether the Will Forms for England, Wales & Northern Ireland or for Scotland are appropriate for you. It is important that you use the Will Forms applicable to where you are domiciled, because the law differs between the different jurisdictions.

Domicile is essentially – but not only – a question of where your permanent home is. If you have spent your whole life in one country and you consider that country to be your home, the position will be clear: that country will be your domicile. If you, or (when you were young) your parents, have moved countries, you should consider the paragraphs below in order to decide where your domicile is. If the situation is complex, or if you are in any way unsure, you should take legal advice.

At your birth you acquired a ‘domicile of origin’. This is the domicile of your father if you were legitimate, or of your mother if you were not.

Your domicile may have changed later if two conditions were satisfied: first, that you resided in a different country; and second, you intended to reside there permanently or indefinitely. This is a ‘domicile of choice’. Before you were 16, your domicile changed if – and only if – the domicile of your father, if you were legitimate, or your mother, if not, changed.

A domicile of choice may be abandoned if you no longer reside in the country and no longer intend to reside there permanently or indefinitely. If no new domicile of choice is acquired then the domicile of origin arises.

This is an excerpt from Lawpack’s *Last Will and Testament (DIY Will) Kit*.

To find out more about writing a Will quickly and inexpensively, [click here](#).

Making your Will in England, Wales & Northern Ireland

Why a Will is important

Without a valid Will you cannot control who will inherit your property after your death. Should you die intestate (without a Will), your property will be distributed according to law, which is likely to be inconsistent with your personal wishes. In some cases your estate may go to the Crown instead of the people you want to benefit. By making a Will you can determine precisely who will inherit your property and let your loved ones know that you have considered their needs.

Equally important, you can determine who will administer your estate and who will act as guardian for any minor children you have if they are left without a surviving parent. You can also use your Will to express your preferences for burial or cremation. In addition, making a Will gives you the opportunity of reducing your Inheritance Tax liability. This is particularly important if you have substantial assets.

When you die leaving a valid Will that appoints one or two executors who are still living at the time of your death, legal ownership of all of your property passes automatically to those executors. In order to prove that they have the right to deal with your property, they must apply for a legal document confirming their right to do so from the Probate Registry. This process is called 'obtaining probate'.

What is intestacy?

If you die without making a Will, or if your Will is invalid, you die intestate. The management of your estate is then placed in the hands of administrators who are appointed by the court and who are likely to be close members of your family. The administrators distribute your estate according to the rules of intestacy.

The rules are complex, but broadly speaking the bulk of your estate will go to your spouse (including a registered civil partner*) or, if none, to your children (whether or not they are adults) and, if none, to other blood relatives. The effect of the rules depends partly on the size of your estate. If your estate is large (currently more than £250,000 where there are children – even if they are adults – and £450,000 where there are none), less than you expect may go to your spouse. So it is always prudent to have a valid Will rather than rely on the intestacy rules.

It is also possible to die partially intestate. This occurs if you fail to deal with all of your property in your Will or if a particular beneficiary dies before you.

You should avoid intestacy if you make a valid Will in accordance with the instructions in this Lawpack Kit.

*Since 2005 it has been possible for same-sex partners to register their relationships, so becoming 'registered civil partners'. For many purposes, and for most of the rules related to Wills and intestacy, registered civil partners are treated in the same way as spouses.

Who should make a Will?

Every adult can and should make a Will. Minors, i.e. those under 18, generally cannot make a Will as they are not deemed competent. (Except in Northern Ireland, where a married minor or a minor who has been married may make a valid Will.)

The only qualifications necessary are that you are of legal age and of sound mind. If there is a history of mental disorder or if an illness may be affecting your judgement in any way, you should consult a qualified doctor just before preparing your Will. This will help establish your competence and will be useful should your Will be contested later on the grounds of mental incapacity.

If you are married, both you and your spouse should prepare Wills. This is true even if marital assets are primarily in the name of one spouse. Usually you will wish to name your spouse as your main beneficiary and include an alternative gift to take effect if he or she predeceases you. The same applies to registered civil partners.

If you are not married but are living with someone and you want that person to benefit from your estate, it is particularly important to make a Will. This is so because the rules of intestacy make *no provision* for unmarried partners (other than registered civil partners). If you were to die intestate, your partner would receive nothing from your estate.

How long is a Will valid?

Once prepared, your Will is valid until revoked, which may occur in one of four ways:

- 1 By destruction, combined with the intention to revoke.
- 2 By making a new Will that revokes the old Will. The Lawpack England, Wales & Northern Ireland Will Forms all contain the phrase, 'I revoke all previous wills and codicils' in order to do this and will revoke any previous Wills you have made.
- 3 By marriage or remarriage, unless your Will expressly states that it is made in contemplation of that forthcoming marriage.
- 4 By entering into a registered civil partnership, unless your Will expressly states that it is made in contemplation of that forthcoming registered civil partnership.

Except in one of the above circumstances, your Will remains valid for an unlimited period of time. Note that a divorce does not revoke a Will – but see opposite.

When is it necessary to prepare a new Will?

You may need to revise your Will for any number of reasons. Common occasions for reviewing a Will include:

- **Changes in the family** – a baby is born, a child becomes 18 (or perhaps some significant later age), or there is a death.
- **Marriage** – automatically revokes a previous Will, unless your Will expressly states that it is made in contemplation of that forthcoming marriage. It is always safer to prepare a new Will upon marrying.
- **Civil partnership** – registering a civil partnership has the same effect as marriage.
- **Divorce** – unlike marriage, a divorce does not revoke a previous Will. But if your former spouse is named as a beneficiary, then upon divorce he or she will cease to be a beneficiary or receive a gift

unless your Will expressly provides that the gift should still take effect if you divorce. If your former spouse is named executor, then upon divorce he or she will no longer be allowed to act as executor or obtain probate of your Will. It is best to make a new Will whenever you get divorced.

- **Dissolution of a civil partnership** – the dissolution of a civil partnership has the same effect as a divorce.
- **Separation** – does not have the effect on a Will which a divorce has, so it is best to review the Will as soon as separation occurs.
- **Change in financial circumstances** – you may have recently acquired assets which you would like to give to particular beneficiaries, or perhaps due to hard times your estate may have become insufficient to provide for the legacies you have made.
- **Changes in taxation** – if your estate is large enough (or becomes large enough) to attract tax, new taxes or reliefs or changes in the rates may call for changes in your Will.
- **Going to live abroad** – it is normally desirable to make a Will in the country where you reside to simplify the administration of your estate. It may also be helpful if you need to establish a change of domicile. Local advice should be sought.

In any case, it is a good idea to review your Will at least every year, so that it is always up to date.

Preparing to make your Will

Before making your Will, consider carefully what you wish it to contain. The two principal decisions are: first, who should manage your property and distribute your property according to the terms of your Will (your executor) and second, how you wish your property (i.e. everything you own) to be distributed after your death.

Before you make your Will:

- List the assets you own.
- Decide who is to receive those assets.

Make an inventory of your property, whether in your name alone or owned jointly with others. In this Manual you will find a template Property Inventory form to help you. You can also download a copy of this form (see enclosed flyer).

Then decide how you wish that property to be distributed. You can make gifts of specific property to particular people, as well as gifts of sums of money to particular people. Items or money that you do not specifically allocate will form the 'residue' of your estate and you must decide who is to receive this.

If you make no provision in your Will for someone who is financially dependent on you, that person may have a claim against your estate. That can also apply to a person you are living with including, but not limited to, civil partners, spouses and children. Where this risk exists, you should always consult a solicitor to assist you in drafting your Will.

It is always best to draft your Will as simply as possible in plain English. Avoid the use of legal words and phrases if you do not understand precisely what they mean.

Executors and trustees

An executor is a person named in your Will as having the responsibility of managing your property after your death and distributing that property according to the terms of your Will. That person will have to

collect in and preserve your assets, pay all relevant taxes and liabilities, obtain a grant of probate, sell those assets that need to be sold, and finally distribute your assets to your beneficiaries.

In some instances, money may not be paid directly to all your beneficiaries and may be held for their benefit. This is most common where the gift is to minor children or to someone pending their fulfilment of a condition, such as reaching a certain age. If this happens, the money will be paid to the person or persons you appoint as trustee. We recommend that you appoint the same person or persons as both executor and trustee and the Will Forms in this Kit have been drafted to this effect.

Trustees are then responsible for holding the monies and looking after them for the benefit of the beneficiaries. They are entrusted with investing the monies and generally safeguarding them. In some instances, they have the ability to distribute all or part of the monies to the beneficiaries or use them for their benefit if they think this is in the interest of the beneficiaries.

You must appoint at least one executor to carry out the instructions in your Will and it is usual to appoint two. Two executors should be appointed if the Will contains a gift to children, some of whom may be under 18 when you die. You should also appoint a replacement executor in case one of the named executors is, for any reason, unable to act.

The primary concern in selecting executors is that they should be reliable and trustworthy in carrying out your wishes. It is also desirable that at least one executor should know the beneficiaries personally. Often the best way is to appoint the person who stands to benefit most from your Will as one executor, and another relative or close friend as the second executor to assist or to take over should the first be unable to act. A person cannot act as executor while under 18.

The duties of an executor need not be difficult and your executor can use a solicitor to process the necessary probate forms. Always check with your proposed executors in advance to be certain that they are willing to act; a template letter to an executor is provided at the end of this Manual, or you can download a copy (see enclosed flyer for details).

Guardians

If you have minor children, you should appoint a guardian to care for them in the event of them being left without any parents. A guardian acts in your place as a parent and so is given both the responsibility for and the powers to make decisions about your children (i.e. parental responsibility). Guardians are frequently appointed on the understanding that they will personally look after the children in the event of the parents' death. Nevertheless, this is not a requirement of being a guardian, as the guardian's task is to *make the decisions* about where the child lives, with whom, what school they go to and so on.

The guardian is often, but need not necessarily be, the same person as the executor and trustee (see above). Their responsibilities are different: an executor deals with and has responsibility for the financial arrangements, whereas a guardian makes decisions about the wellbeing of the children. If the guardian is not the same as the executor, he or she should be able to cooperate with the executor.

Since a guardian takes the place of a parent, you should choose someone who can offer the best care for your children, such as a close relative who is willing to accept the responsibility. Always check with your proposed guardian in advance to be certain that he or she is willing to act.

The appointment of a guardian is only effective after both parents (who have parental responsibility) die. In order to appoint a guardian you must have parental responsibility, which occurs in the following ways:

- A mother automatically has parental responsibility for her child.
- A father automatically has parental responsibility if:
 - he was married to the mother when the child was born;
 - he later married the mother;

- he was registered as the father on the birth certificate of a child born after 1 December 2003 (15 April 2002 in Northern Ireland);
- he has made a ‘parental responsibility agreement’ with the mother, or a court has ordered that he has parental responsibility.

So, a father who does not meet any of the above criteria does not automatically have parental responsibility over his children, should the mother die.

Step-parents do not have parental responsibility, unless conferred by a parental responsibility agreement or by a court.

Adoptive parents have parental responsibility from the date of the adoption order.

If you need to make a parental responsibility agreement, one can be downloaded free of charge at www.lawpack.co.uk.

There are complications with appointing guardians if:

- you and the other parent have already been or become (after the making of the Will) divorced from each other; or
- a court order already exists or is made in the future relating to where the child is to live or to parental responsibility for the child.

In these cases, we advise you to see a solicitor.

Beneficiaries

Adults

There is no particular complexity in making a gift to an adult, whether a specific gift or a gift of residue. England, Wales & Northern Ireland Will Form 1 provides a simple Will which would apply if all the beneficiaries are adult (i.e. over 18). It would apply, for example, if you wished to give the whole of your estate to your children where all of them are adult.

Minor children

Where you make a gift to children (whether adult or minors) consider whether you wish to name them (e.g. ‘to my children James and Alexander’) or to identify them as ‘my children’. Naming them avoids confusion where, for example, you have step-children you wish to benefit (who might not be considered as ‘your’ children), but it does mean that any children born after the Will and before your death are excluded. If you have any illegitimate children, a gift to ‘my children’ will include them as ‘children’; that form of gift is better avoided and it is better to make any gift to an illegitimate child by naming him or her. A reference to ‘my children’ in your Will will include any children adopted by you.

A child cannot own significant assets, such as shares or interests in land, and so is not capable of receiving them by a Will. If you do leave assets to a child who is under the age of 18 at your death, they will be held on trust for the child until he or she reaches the age of 18. The trustee will essentially hold money that belongs to that child and will have to give it to them on his or her 18th birthday. This does not give rise to particular complexities and causes no difficulties in cases of small gifts (e.g. a sum of £500 to a nephew).

It is though common for parents to want their child or children to not receive substantial assets until they are 18, and often older. It is common for any such gift to be conditional on the child reaching that age so that he or she is not automatically entitled to the money and so if he or she dies before that age,