

Amicus Law

S O L I C I T O R S

## MAKING A WILL

Bridgwater  
01278 664060

Wellington  
01823 755800

Minehead  
01643 701888

Yeovil  
01935 426047

Martock  
01935 822572

Exeter  
01392 964930

[amicuslaw.co.uk](http://amicuslaw.co.uk)



Without a Will you die intestate and your wealth (or “estate”) passes according to statutory provisions. This can mean a spouse/civil partner may not be entitled to everything and a cohabitee receives nothing. Those who will deal with your estate are also appointed by the statutory provisions. If your estate is to pass to children under eighteen this will normally be the surviving parent, even if that parent is not or never has been married to you, which could mean an ex partner controlling your children’s trust fund! These problems can be avoided by making a Will dealing specifically with these issues.

When making your Will there are various things to consider, including:

- 1     **EXECUTORS** - are responsible for administering your estate by establishing the extent of your wealth, discharging debts, paying funeral expenses, taxes etc. They also pay out any legacies and distribute the rest of your estate according to your Will. Executors must be over 18, but can be a beneficiary of your Will. If you intend to leave all or most of your estate to one beneficiary you may wish to appoint him/her as sole executor. Otherwise it is normal to appoint at least two executors. We can be appointed as your Executors and this may be helpful if your affairs are complicated or the Will may be contested.
- 2     **TRUSTEES** – if your Will creates a trust (even if only to hold money for a child until they are 18) Trustees are responsible for dealing with it. It is usual to appoint the same people as Executors and Trustees, but they can be different.
- 3     **GUARDIANS** – have responsibility for children under 18, but the appointment normally only takes effect if both parents have died.
- 4     **FUNERAL ARRANGEMENTS** - a Will can include funeral wishes and also indicate consent to organ transplant or use for medical research. However, as the Will may not be read for some time

after your death, it is important to let family/friends know of any particular wishes and it is especially important to say so if you wish an unmarried partner to have responsibility for arranging the funeral. We can also put you in contact with undertakers with whom you can pre-arrange your funeral

**5 LEGACIES** – are mainly of two types:

**5.1** cash gifts to individuals or other beneficiaries such as charities. Unless a Will says otherwise, these legacies are normally free of Inheritance Tax. You can also direct that a particular cash legacy has priority (in case your estate is insufficient to pay all legacies in full), or for index linking so the value of the legacy keeps up with inflation.

**5.2** specific gifts such as jewellery, furniture or land. These are also normally free of Inheritance Tax unless a Will says otherwise and usually have priority over cash legacies.

**6 RESIDUARY ESTATE** - this is what remains after your Executors have paid:

**6.1** debts and funeral expenses

**6.2** any Inheritance Tax or other taxes

**6.3** legacies and bequests

**6.4** legal and other costs of administering your estate

It is important to include a residuary gift in your Will and usual to include a substitute beneficiary in case your first choice dies before you. For instance, you may give your entire estate to your spouse/civil partner, but if he/she dies before you then to your children and/or grandchildren.

**7 TRUSTS** – rather than making an outright gift, a trust can be used to hold cash or assets to prevent the beneficiary(ies) having direct access, but with provisions as to who is to benefit from the assets and how, including allowing occupation of a property. They are

also very useful in protecting assets against care fees or in second relationships to ensure assets pass back to your own children in the long term.

At the same time as dealing with your Will we can also advise on:

**Inheritance Tax Planning** – Inheritance Tax is payable at 40% on the value of your estate at death, together with gifts made in the preceding seven years, in excess of the Nil Rate Band (currently £325,000). The value of your estate may include life policies, pension benefits and assets given away that you still enjoy the benefit of. Since October 2007 any unused Nil Rate Band of the first spouse/civil partner to die can be used by the survivor's estate. If your net worth exceeds this you may wish to try to reduce the tax impact by disposing of assets now, or other means. Please ask for our Inheritance Tax planning leaflet for further information.

**Lasting Powers Of Attorney** - when making a Will, you should also consider a Lasting Power of Attorney by which you appoint someone to deal with your affairs if you became unable to do so because of mental or physical impairment. Please ask for our Lasting Powers of Attorney leaflet for further information.

For more information or to make an appointment contact Hilary Quantick at [hilary.quantick@amicuslaw.co.uk](mailto:hilary.quantick@amicuslaw.co.uk) for our Bridgwater and Minehead offices, Alex Parris at [alex.parris@amicuslaw.co.uk](mailto:alex.parris@amicuslaw.co.uk) for our Wellington office, or Stephen Forsey at [stephen.forsey@amicuslaw.co.uk](mailto:stephen.forsey@amicuslaw.co.uk) for our Exeter, Martock and Yeovil offices.

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