

Call Stoke-on-Trent (01782) 639716

## Why You Need A Will

*An Information Guide provided by Rod Jones of Convenient Wills*

A Will protects your  
family and property



### Welcome

Thank you for requesting this guide.

This guide aims to show why having a Will is important. The guide is one of a wide range of guides available from our web site [www.convenient-wills.co.uk](http://www.convenient-wills.co.uk). I hope you find it helpful and informative.

This guide contains general advice. It is not intended as a replacement for receiving professional legal advice - which should be personalised to your specific needs.

We take great care to ensure the technical accuracy of this guide, however we do not accept any liability for any mistake, error, or omission from this guide. Nothing in the guide should be regarded as giving specific advice, and it should not be relied upon as a basis for any decision or action. We regret we cannot accept any responsibility or liability for any adverse outcomes for you or your family, no matter how caused.

*Rod Jones*

Rod Jones A.C.I.B.  
Proprietor of **Convenient Wills**

## Hyperlink Technology

All our downloadable guides and reports use hyperlink technology. This allows you, if you are reading the document direct from a computer with access to the Internet, to click on a hyperlink (indicated with blue, underlined text) and you will be taken through to the appropriate article.

Please note that the guide is not designed to be printed off; if you wish to print off the guide please [contact us](#) and we will send you an amended version.

## We are Here To help

If after having read the guide you still have unanswered questions then please feel free to contact us by e-mail at [info@convenient-wills.co.uk](mailto:info@convenient-wills.co.uk); we will endeavour to help you.

## 1 Common Beliefs

One very common belief is that a Will 'just sets out how a deceased person's estate is to be distributed on their death.'

A second belief is that 'All my estate will go to my spouse anyway, so I don't need to make a Will.'

And a third belief is that 'If I make a will I will die sooner.'

Basing your decision on any one or more of these beliefs (on whether to make a will or not) could create unwarranted and unexpected financial hardship for your surviving family.

A Will can achieve far more than just setting out how a person's estate is to be distributed at the time of their death. Indeed a professionally drafted Will can be a very powerful document as we will now demonstrate.

## 2 The Default Distribution

If a person dies without making a valid Will then they are deemed to have died 'intestate'. Where a person dies intestate their estate is distributed in accordance with the Rules of Intestacy.

The Rules of Intestacy are set out in law. They are fixed, and cannot be varied. They are designed as a 'one size fits all'. Unfortunately, in our experience, very few people wish their estate to be distributed strictly in accordance with these rules.

The Rules of Intestacy set out the maximum amount a surviving spouse or civil partner can receive. Thereafter the estate is distributed to the surviving children, but if there are no children then to the deceased's grandchildren, and if there are no grandchildren then to the deceased's parents. And the list continues until the ultimate beneficiary is the Crown.

The first problem with the Rules of Intestacy is that a surviving spouse does not necessarily inherit all of their deceased spouse's estate. There are circumstances where a surviving spouse is faced with being made homeless as a consequence.

The second failing of the Rules of Intestacy is that a cohabiting partner - irrespective of however long they have been living with the deceased person - receives nothing at all from the deceased's estate. This can have unwanted consequences, including the partner being made homeless.

The third failing of the Rules of Intestacy is that they do not recognise stepchildren. So any stepchild will not inherit from the deceased's estate.

Other failings of the Rules of Intestacy are:

- Equal class distribution: where the estate is distributed to more than one person (e.g. The deceased's nieces and nephews) then the estate is distributed equally between them. Testators often do not wish all beneficiaries of a class (e.g. Children, or nieces and nephews) to benefit equally.
- Inherit at age 18: most parents wish their children to inherit their estate when the children attain age 21. Under the Rules of Intestacy all beneficiaries inherit at age 18. Evidence shows that most 18-year-olds then fritter away their inheritance before obtaining 21.
- No gifts allowed: the Rules of Intestacy do not allow for the provision of making specific gifts. The whole estate is distributed en masse.

Perhaps the biggest failing of the Rules of Intestacy is that the administrators (i.e. The people responsible for sorting out the deceased's estate when no valid Will has been made) have to operate within a very restrictive set of administrative rules. A professionally drafted Will will widen those administrative rules considerably to make life much easier for the executors (i.e. The people responsible for sorting out the deceased's estate when a valid Will has been made). This might not seem obvious until you become the person who has to sort out an estate.

### **3 Additional Reasons to Make Your Will**

Apart from the failings of the Rules of Intestacy highlighted above there are specific reasons why people should make a Will. These though depend upon the specific circumstances of a testator (i.e. The person who makes a will).

The easiest way for you to determine just why you should make a Will is to identify which of the following headings match your own circumstances. The explanation following the headings then explain the implications and potential consequences of you not making a will.

You will probably find that you 'fit into' three or more of the criteria stated. In other words there are three or more reasons why you should make your Will.

#### **◆ Every adult**

By making your Will you can:

- Appoint executors: executors are the people who sort out your estate after your –. You can choose somebody you trust, and who will be discreet. If you die without making a will your next of kin will be expected to sort out your affairs.

- Specify your funeral wishes: you can state whether you wish to be buried or cremated. You can also give additional guidance if you so wish. Providing this information in your Will often avoids family arguments that occur at the time of the testator's death.
- Name your beneficiaries: a Will allows you to stipulate who is to benefit from your estate. Your assets could be your property, personal chattels, savings and investments, life policy proceeds, a trust fund, and may include death in-service benefits. You can make these gifts conditional e.g. The beneficiary must attain a specified age.
- Administrative clauses: you can set out a wide range of powers for your executors that will make their task easier, and also protect your beneficiaries. If you fail to make a Will then your administrators will be forced to operate within the restrictive laws that apply to them.
- Lower costs: it is easier to sort out an estate where a Will has been made. It is also cheaper - which means that your beneficiaries inherit more of your estate.

◆ **I wish to make a donation to charity, organisation, or church**

A Will allows you to make specific gifts to:

- a charity;
- An organisation; or
- Your church.

And, if drafted correctly, provide your executors with the necessary discharge.

Many gifts fail because the necessary discharge clauses are not included within the will.

◆ **I cohabit with another person**

As advised above, the Rules of Intestacy do not recognise a cohabiting partner. Therefore it is especially important to make a Will if you want your partner to benefit from your estate.

There is one possible remedy for a partner who finds themselves severely affected, where they have been cohabiting for some time. That is for the surviving partner to go to Court under the Inheritance (Provision for Family and Dependents) Act 1975 to obtain some form of redress. This though is an expensive option.

◆ **I am married or in a civil partnership**

If you want your surviving spouse or civil partner to definitely inherit all of your estate then you must make a Will.

◆ **I am divorced**

Depending upon the divorce settlement you may be surprised to find that your ex -- spouse could still have a claim on your estate in certain circumstances.

If that is the case then a Will can help defend an estate from such a claim. Most divorcees would not want their former husband/wife/civil partner to benefit from their estate.

♦ **I am the parent of a minor child**

If a minor child is orphaned and nobody has been appointed as guardian of their child then the Law Courts will decide who is to be appointed as Guardian.



In England there is an independent body who assist in family proceedings. CAFCASS (Children and Family Court Advisory and Support Service) have the role of advising the Courts so that the decisions they make regarding the appointment of guardians are in the best interest of the child.

Where there is a conflict a Children's Guardian is appointed who will be a CAFCASS officer and a more in depth investigation will be necessary. Throughout this investigation the child may be allowed to live with one of the applicants or, where it is deemed necessary, the child may be looked after by Social Services until the Courts can make a decision based on the report provided by the Children's Guardian.

In the worst case scenario the child can ultimately be placed into Local Authority care.

We believe that this is the single most important reason to make a Will if you are the parent of a minor child.

A further important benefit of making a Will is that you can stipulate the age you wish your minor child to inherit. Most parents choose age 21. Where no Will is made, and the Rules of Intestacy apply, a child will inherit their parent's estate when they attain age 18 – and evidence shows that most 18-year-olds then spend their inheritance by the time they attain age 21.

♦ **I am the parent of a child (of any age)**

Very few parents wish to disinherit their child. Despite this many children are disinherited. The reason being that the parents failed to protect (or ring fence) their child's inheritance.

**For example:** Mr and Mrs C. had two children. They had been married for 30 years when Mrs C. died. Under the terms of Mrs C's Will her whole estate was transferred into her husband's name. Three years after Mrs C's death Mr C found a new partner which he eventually married. His children were pleased that he had managed to rebuild his life after the death of his first wife. They were less pleased when they found that after his death Mr C had failed to make a new Will. As a consequence, when he died, his estate went to his new wife in its entirety. When the new wife passed away the whole estate went to her children ... to the exclusion of Mr and Mrs C's children. Mr and Mrs C's children now see on a regular basis the children of their father's new wife driving round in expensive cars -- that they know were paid for from their own parents savings.

If the above scenario is of a concern to you then making a Will with the appropriate trust included is the solution.

◆ **I wish my stepchildren to benefit from my estate**

A stepchild is not included in the accepted legal definition of the phrase 'my children', nor are they recognised under the Rules of Intestacy. If you wish a stepchild to benefit from your estate then you must make a Will, and the stepchild must be specifically named in the Will.

◆ **I have a severely disabled child**

There are often two aspects to be considered for a severely disabled child:

- One is the probability that the child will be unable to look after their own finances in the future when their parents are no longer around to provide support the child needs.
- The second is that if the child qualifies for means tested benefits from Social Services but then subsequently inherits your estate [following your death] then Social Services will stop paying the means-tested benefits to your severely disabled child -- because the receipt of your inheritance forced the child's asset value over the threshold set by Social Services. The end result is that your child's inheritance pays for your child's welfare, rather than giving them an improved quality of life.

The solution is for your inheritance to be placed into a discretionary trust. This trust, if set up correctly, will qualify for preferential tax treatments. Further, the trustees will be able to control your child's inheritance. And lastly, because your child does not own the assets of the trust (these are owned by the trust itself) then the benefits from Social Services should continue without interruption.

If you have a severely disabled child than making your Will is very important for them.

◆ **I am likely to have an inheritance tax liability**

The tax planning opportunities available within a Will have been reduced significantly with the introduction of the Transferable Nil Rate Band allowance. However, if you are cohabiting and your estate is greater than the Nil Rate Band allowance ( £325,000 in the tax year 2013-14) then you should consider making a tax efficient Will. Doing so could save you up to £130,000 in tax.

◆ **My children are likely to have an inheritance tax liability**

Even though you yourself may not have an inheritance tax liability it is not uncommon for your children to be financially better off than you. Further, you giving your estate to them will only add to their inheritance tax problems. Sometimes the solution therefore is to jump a generation with your gifts i.e. Part or all of your estate is paid to your grandchildren, as opposed to your own children. This is only possible with a properly constructed will.

◆ **I wish to protect my property from being used to fund the long-term care costs of my surviving spouse/civil partner**

Many people are concerned at the risk of their property being forcibly sold to fund the long-term care fees of their surviving spouse or civil partner. Approximately 40,000 properties every year are forcibly sold in this manner to fund care costs.

It is possible, in certain circumstances and with a properly constructed will to protect some or all of your property from being used to fund the care costs of a surviving spouse or partner.

#### ◆ **Make Use of a Trust**

How many of the following apply to you?

- I own a part share of another property in which family members reside.
- My son/daughter's marriage is on the rocks.
- My son/daughter is taking recreational drugs.
- My child is at university and only returns home at holiday time.
- I want to give my estate to a specific person on condition that when they no longer require it must go to another person.

All the above scenarios could result in either unwanted hardship or a beneficiary benefiting when you would not wish them to do so. The solution is to create a trust. The benefit of a trust is that it allows you to retain an element of control over your assets after your death (albeit via your trustees).

If you want to make use of the trust then you must make a Will, incorporating the trust.

#### ◆ **I want to exclude someone**

As stated before, if no Will is made then a person's estate will be distributed in accordance with the Rules of Intestacy. This can result in a family member benefiting from the deceased's estate when the deceased would prefer them not to benefit.

The only way to ensure that they do not benefit is to make a Will. Even then care is needed: there is a fine line between legitimately excluding someone and making the Will vulnerable to challenge -- in particular under the Inheritance (Provision for Family and Dependents) Act 1975.

**Convenient Wills**  
Protecting People & Property



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a free brochure**

**The Ugly Truth About Wills**  
**A professionally drafted Will gives you  
and your family peace of mind. An out-of-  
date or non-existent Will does not.**

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- ✓ jargon-free advice that explains all the many aspects you should consider when making or updating your Will
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and Lasting Powers of Attorney**

**Please call Rod Jones on 01782 639716  
or visit [www.convenient-wills.co.uk](http://www.convenient-wills.co.uk)  
for more information**

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If you wish to exclude someone then you should make a Will and seek the services of a professional will writer.

♦ **I have a business**

Every business owner should make a Will as it is important that the business owners executors have the appropriate powers to sort out the business. There are additional benefits too.

♦ **I have a property abroad**

Where a property is held abroad there is the potential for conflict between that countries legislation and the UK. The solution is to make a Will that states which law applies to what.

## **4 The Solution**

If you need to make your Will we offer:

- A home visit will writing service; and
- A wills-by-Phone service

Both services provide you with a professionally drafted Will, at a very competitive price. For more details please call Rod on:

(Stoke) **01782 639716**

or click on

[www.convenient-wills.co.uk](http://www.convenient-wills.co.uk)

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We hope you have found this guide informative.

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