

Nearly two-thirds of adults in the UK do not have a will and yet it is a document that after your death, sets out your wishes to ensure those you want to inherit your estate do so. A will ensures a smooth process – provided you get it right. Not having a will, being Intestate, follows rules laid down by law and may have unintended consequences, cause delay and additional expense and stress. Of particular importance is that anyone who is a parent should have a will appointing guardians for their children in case the worst happens.

There are often offers on social media for “cheap” will writing services, and there are “off the shelf wills” available from retailers, to be completed by the layperson at home. Those looking at these options should take care because the laws surrounding wills are complex, meaning there is plenty of room for mistakes, which may only be discovered after the death.

Errors in wills may lead to distributions being made against the intentions of the Testator (the person making the will). The language may be ambiguous or your intentions confusing, or the will may incompletely dispose of all the assets. This may cause disputes between beneficiaries, and fracture family relationships. Challenges to wills are becoming more common and yet the cost of court action may be prohibitively expensive, take many years and not achieve the expected outcome.

By speaking to a lawyer in person, they can not only assess capacity and ensure there is no undue influence but also to advise on all aspects of your estate. Discussion should include family relationships, guardianship issues, property ownership, potential trusts arrangements, lifetime gifts and inheritance tax. With many blended families these days, an independent viewpoint can help clarify sensitive issues which may be difficult to discuss between those affected.

Common mistakes of home-made or computer generated wills include:

1. The will was incorrectly witnessed – there are strict rules about witnessing and incorrectly witnessed wills can be invalid, or cause a beneficiary to miss out, leading to intestacy.

2. Forgetting to name an executor or appointing inappropriate executors who are unable to deal with the necessary administrative tasks or refuse to do so. (Executors may instruct solicitors to help with the probate process – a regulated activity for qualified professionals only).
3. Changed circumstances such as the loss of a loved one, marriage (which automatically invalidates an existing will by law), divorce, the birth of another child/grandchild.
4. Failing to appoint guardians – A surviving parent becomes the legal guardian for blood or adopted children. If you are the surviving parent and you do not choose a guardian for your children in your will, social services will be involved.
5. Many people are very specific when they write their will. While solicitors advise being specific about certain things, being overly specific can cause all sorts of unintended consequences.
6. You must not make amendments to your will after it has been signed and witnessed. A separate document called a “codicil” may be made, which must be signed and witnessed in the same way as the will. Often it is better to start from scratch and make a new will, particularly if you are changing beneficiaries.

It should be noted that changed circumstances and legislative changes between the date the will is signed and the date of death may alter the original intentions and wills should be reviewed regularly to ensure they are still appropriate.

If you would like help making a will, please contact Alison Fielden & Co to arrange an appointment.