

## **Planning for the Future Series 2**

### **WILLS**

#### **Why make a Will?**

It is important to create certainty about your wishes to come into effect after you have died and when you can no longer make decisions and arrangements for yourself. It avoids uncertainty and potential chaos at a distressing time for your family; if you have no close family it is even more important to make proper arrangements. By making a properly constituted Will, you will have peace of mind.

#### **Appointment of Executors**

Executors derive their legal authority from your Will to take steps in relation to your estate which include the following matters-

- Arranging the funeral, you can include funeral wishes in your Will or in a separate document or letter
- Securing your home and arranging insurance
- Ensuring that your possessions are safeguarded for example clearing your home of perishable food to avoid infestation
- Dealing with financial aspects, they may need to apply for Probate which is legal confirmation that the Will is a valid document and enables certain aspects of the estate to be dealt with such as selling property and selling or transferring shares
- Dealing with Inheritance Tax

#### **Appointment of Trustees**

You may wish to include a trust within your Will

#### **EXAMPLE**

Ms Reed includes a legacy of £1,000 each to her grandchildren as shall be living at the date of her death and as shall attain the age of 21 years. When Ms Reed dies, she has four grandchildren two of whom are aged under 21. The young people's respective gifts will be held by the trustees until they each attain 21.

#### **EXAMPLE**

Mr and Mrs Oak wish to leave their respective share in the matrimonial home into a trust for the benefit of the surviving spouse and thereafter for the benefit of their children in equal shares. After the death of Mr Oak, the fund is held on trust during the lifetime of Mrs Oak and after her death, it is wound up and distributed to the children.

#### **EXAMPLE**

Mrs Smith wishes to leave her estate in a special discretionary trust for her adult daughter who is living with disabilities. After Mrs Smith has died, the trustees will manage the fund for the benefit of Miss Smith and to ensure that her means tested benefits are not reduced.

#### **EXAMPLE**

Mr and Mrs Beech wish to leave their respective estates into a discretionary trust for the benefit of the surviving spouse and the wider family. This is a trust which can be used to manage and protect assets through the generations and can potentially continue for 125 years and beyond. These types of trust protect assets against potential erosion through divorce or bankruptcy of a beneficiary.

#### **EXAMPLE**

Mr Green wishes to leave his family shares in his company Green Ltd. into a discretionary trust.

The use of trusts is varied and the trustees are subject to very strict legal and fiduciary rules. Trustees must act by agreement. The choice of trustees is crucial and should be discussed thoroughly before the appointment is made.

### **Professional Executors and Trustees**

A solicitor can be appointed as executor and / or trustee. This is a professional service and the costs incurred are payable after death and from the estate. The primary advantages are that you and your beneficiaries can rely on the job being done properly and it takes the legal responsibility away from the family. The law can be complex and the protection and management of your family wealth is very important.

### **Appointment of Testamentary Guardians**

Parental responsibility of a minor child vests with the mother and in many circumstances also with the father including circumstances where the couple are married or father is registered on the birth certificate.

Parents can appoint a guardian, guardians and replacement guardians in their respective Wills. It is essential that the guardians consent to the appointment which brings significant responsibility for the care of an orphaned child.

### **EXAMPLE**

Mr Smith and Ms Hay have two children aged 6 and 4. They each make Wills appointing Ms Hay's sister June as guardian if they have both died before the children reach 18.

In this case the estate would be held on trust for the children and the trustees can be the same people as the guardians or different or a mix, again the decision depends on the circumstances and family dynamics. These are important decisions.

If there is no guardian appointed, the children may be taken into Local Authority care. Certainty can be provided for the child and family in the Will.

In all decisions regarding the care of children the Court has overriding jurisdiction to decide what is in the child's best interests and will step in if necessary.

### **NEXT STEPS**

This is a basic guide, so contact us to talk about your wishes to enable us to advise you about your options and how we can help you.



Naomi Pinder, Head of Private Client

Naomi Pinder qualified as a solicitor in 1988 and for over 20 years she has specialised in helping clients in planning for the future through Wills, Trusts and Lasting Powers of Attorney; Probate and the administration of estates and trusts; capacity and Court of Protection; later life care planning and related elder client issues.

Catherine Higgins Law Ltd Solicitors  
45 Allerton Road  
Woolton  
Liverpool  
L25 7RE  
**Tel: 0151 428 2472**

[www.chigginslaw.co.uk](http://www.chigginslaw.co.uk)

naomi@chigginslaw.co.uk

