

## Wills

Do you consider it part of your duty to your family to:

- Ensure fair division of your estate on your death?
- Reduce inheritance tax, chargeable at 40 percent of the value of your assets?
- Protect the younger members of your family?
- Make special provision for disabled people
- Make gifts to charities?
- Avoid claims against your estate?

The making of a Will is a very important activity for every responsible adult. Unfortunately, many die without having made one, or with an invalid or badly drafted Will. Our policy is that only qualified Solicitors in the Private Wealth Department, with the required specialist knowledge, prepare Wills. They are:

<b>Ray Walley</b>	<b>Senior Private Client Partner</b>
<b>Meh Dharamsi</b>	<b>Partner</b>
<b>Nicola Dudley</b>	<b>Partner</b>
<b>Paul Lowery</b>	<b>Solicitor</b>
<b>Julie Man</b>	<b>Solicitor</b>

### Covering all the Angles

In the Private Wealth Department, we treat Will writing as an important service, part of a 'holistic' review of a client's financial and family affairs. Among the many issues to be discussed are:

- residence and domicile, and their tax impact
- reduction of inheritance tax through planned gifting
- using Wills to reduce inheritance tax
- capital gains tax planning
- the possible creation of lifetime trusts and settlements
- opportunities for 'ring fencing' assets against claims
- the various types of ownership of houses
- legal or moral obligations to individuals
- people whom the client is maintaining
- guardianship of minor children
- disabled beneficiaries
- pension scheme death benefits
- interests under trusts or Wills
- foreign assets
- business interests

So that we can be certain to leave no stone unturned, we usually commence by asking our clients to complete a questionnaire, which they either send to us or bring with them to the initial meeting. This also avoids us spending unnecessary time in obtaining basic information.

## The Terms of the Will

Only when these things are clear can we discuss the structure of the Will, and those who should benefit. At that point, further questions need to be addressed:

- should the beneficiaries receive their inheritances unconditionally?  
Or would it be better they only receive a trust interest, perhaps the right to the income but not the capital?
- should the executors and trustees be given wide-ranging powers or discretions, to create flexibility, recognising that one cannot change one's Will after death?
- how much should be provided, for example for an elderly parent who may need help just at the time his or her son or daughter dies?
- where inheritance tax is payable, how should it be allocated between the beneficiaries? This is an area of considerable complexity.
- should guardians be appointed for minor children?
- who should be the executors and trustees? Although beneficiaries can be, the conflict of interest resulting from the dual role often creates problems. Mundays Trustee Services Limited is a 'trust corporation' permitted by the court to obtain probate and act as an independent professional executor and trustee. Its existence means that directors of the company can authorise transactions even in the absence of the clients' usual adviser.

## Contested Wills

Wills are sometimes challenged on the basis that they are invalid. It is part of our duty to meet with our client and ensure that he or she has 'mental capacity' to make a Will, and then to ensure that it is signed in accordance with the rather archaic legal requirements.

We also have to ensure that the instructions we receive derive solely from the person making the Will; occasionally, we have the embarrassing task of asking other relatives to leave us alone with our client. Otherwise, arguments could be advanced that the relative who attended our meeting with our client was influencing the terms of the Will.

By adopting strong internal policies, we seek to avoid the risks of a challenge on the grounds of invalidity. Even a valid Will can be challenged, though, by an application under the Inheritance (Provision for Family and Dependents) Act 1975. There are several classes of potential claimant under this Act, who need to show that the Will does not make 'reasonable provision' for them. Again, it is part of our task to flush out any potential challengers under this Act.

## Living Wills

Common in the United States, living wills are gaining acceptance in the UK. In October 2007, they will become available as 'Lasting Powers of Attorney', with the full force of law.

## Safekeeping of Wills

Mundays LLP has a policy of retaining clients' wills in fireproof safes, free of charge. Clients are supplied with photocopies, with associated guidance notes, and are encouraged to review their terms regularly.

## For more information or advice

please contact Mundays LLP:

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