



**TIMBRELL
LAW**

🌐 www.timbrell-law.com
☎️ 01242 420744
✉️ contact@timbrell-law.com

HERE FOR YOU AND YOUR FAMILY



Your Guide To Wills & Estate Planning

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Welcome To Timbrell Law

Making a Will is an essential part of planning for the future.

We spend our lives working to provide for ourselves and our loved ones. The benefit of all this hard work is the assets we acquire. You may have a house, savings, investments as well as personal belongings. All of these assets make up your 'estate'.

Making a Will is the only way to ensure that your estate is distributed in accordance with your wishes. If you die without a Will, the law will decide who is entitled. As the final position will not be fixed until your death, this can cause a considerable amount of uncertainty. It can also lead to people you do not want to inherit acquiring your assets. For this reason, we believe everybody should have a Will regardless of the size of their estate.

This booklet explores the reasons why you should make a Will and what this actually involves. It also provides general information about the terminology used in Wills, choosing your executors and the most common types of Will.

The final pages of the booklet examine the position of married couples, unmarried couples and parents who do not have Wills. The results might surprise you.

For further information about how we might help you, please contact us today.

Alice Timbrell
Solicitor



Your Guide To Wills & Estate Planning

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If you would like any further assistance in planning for your future, please don't hesitate to get in touch. We offer free initial consultations for all matters to help you decide how to proceed. We are available on **01242 420744**, or you can email us at **contact@timbrell-law.com**.



What Is A Will & Why Do You Need One?



A Will is a legally binding document that allows you to set out instructions for what you would like to happen to your money, property and other assets on your death. What you own at the date of your death will be known as your estate.

You will want to prepare a Will regardless of the size of your estate. This is because it is the only way to make sure that your wishes are binding. It also gives you the opportunity to take steps to protect your family and safeguard their inheritance.

We have summarised our top reasons for making a Will below:

1 - Make sure your assets go to the correct people

If you die without a Will, your estate will be governed by the rules of intestacy. If you don't have a Will, the distribution of your estate will keep changing depending on who is born and who dies.

With so much left up to chance, your family may not benefit in the way you intend. Making a Will, provides you with the certainty that your assets will pass to those you specify. Remember this does not necessarily have to be your next of kin. You can choose to make gifts to wider family, friends and even charities.



2 - Reduce the burden on your family

For those left to deal with your estate, proving a Will is significantly less complicated than dealing with the rules of intestacy. This is because the Will names the executors who are responsible for administering your estate, confirms exactly what your wishes are and sets out the express powers your executors have to achieve your wishes.

If you die without a Will, the administration will be more complicated and your family will need to seek advice on all of the above.

3 - Making sure the right person is in charge of your estate

Preparing a Will, means that you can choose who will administer your estate and take the time to find the right people for the job. You can look at their skills, their relationship with those you want to benefit and how you think they will cope under pressure.

Making a Will also gives you the opportunity to help your executors by explaining your wishes and confirming where your Will is stored.

4 - Safeguarding your assets

If you have concerns about your beneficiaries (i.e. the people you want to inherit your estate) being financially irresponsible, at risk of divorce or if you worry about your spouse remarrying after your death, you can incorporate a trust into your Will. Your trustees will then be responsible for safeguarding the assets in accordance with your wishes. For couples, a will trust may also help to protect your estate against care fees.

5 - Appoint legal guardians for your children

If you die before your children reach 18, they will need a responsible adult to care for them. Taking control of the appointment during your lifetime means that you get to choose who will raise your children. If you do not make an appointment, the court will decide.

6 - Minimising inheritance tax

In certain circumstances, the structure of your Will can also reduce the amount of inheritance tax your estate pays. It may also determine when it is paid, i.e. on your death or that of your spouse.

A professional will also look at ways to minimise inheritance tax by ensuring that death benefits do not pay into your estate unnecessarily.



Frequently Asked Questions

Who can make a Will?

As long as you are over the age of 18 and have testamentary capacity, you can make a Will. You will need to understand the effect of making a Will, what your assets are and who you want to benefit.

What type of gifts can I make under my Will?

Under your Will you can make specific gifts of property, personal possessions and cash. These types of gifts are known as “legacies” and are paid out before the remainder of the estate is distributed.

I don't have a significant amount of money, should I bother with a Will?

While you may not have a large estate now, this could change in the future. Also, don't be fooled, 90% of our clients actually have larger estates than they realise. For example, have you thought about death in service benefits and any life assurance that may pay out on your death? A professional will be able to take these into account when writing your Will.

My children are still young, should I wait until they are 18 to prepare a Will?

For parents, the best way to appoint legal guardians for your children is through your Will. If you die while your children are under 18, the legal guardians you appoint will have the authority to step in and care for your children.

Do my family have a right to see my Will?

Your Will is a confidential document. You do not have to tell anybody about the contents unless you want to. That said, it is important to tell your executors where your original Will is stored.

What are the benefits of using a solicitor?

If you choose to prepare a DIY Will the burden is on you to get it right. Ultimately, preparing a Will without professional advice can lead to problems later down the line.

If your Will is ambiguous, incorrectly signed, fails to deal with your entire estate or attempts to do something not permitted by the law, these failings will only be discovered on your death causing problems for those you leave behind.

Similarly, while you may believe that a simple Will is all you need, speaking with a professional can tease out issues that you might not have considered.

Understanding Your Will: A Glossary Of Common Terms

Testator	The person making the Will.
Executors	Your Executors are the individuals appointed, under the terms of your Will, to administer your estate after your death. They will be responsible for proving your Will, collecting in your assets and paying off any debts, administration expenses and any tax due. They will then distribute your estate in accordance with your Will.
Beneficiary	A beneficiary is a person who will receive some benefit under your Will, for example a gift of a specific item, cash gift or share of your residuary estate.
Legal Guardian	A legal guardian is a person, other than a parent, who has the legal authority to care for a child under the age of 18.
Trust	A trust is a legal device which regulates the way in which trustees hold property for the benefit of others (i.e. the beneficiaries). If you create a trust under your Will it will only come into force on your death and the terms of the trust will be expressly set out in your Will.
Legacy	A gift under a Will.
Residuary Estate	Your residuary estate is what remains after your executors have settled any outstanding debts, the payment of funeral and administration expenses, legacies and any tax due.
Contingent Interest	A beneficiary's entitlement to a legacy under your Will or a share in your residuary estate can be made contingent on a certain event occurring. For example: "I give £10,000 to my grandson Robert Smith absolutely if he should attain the age of 21 years".
Common Accident Clause	If all your beneficiaries should die either before you or together in some common accident, this clause would specify who should benefit on your death to prevent the rules of intestacy applying. This might be a charity or wider family and friends.
Inheritance Tax	Where the value of your estate on death exceeds the available tax-free nil rate band and there are no further inheritance tax exemptions to apply, inheritance tax will need to be paid by your executors at a rate of 40%.
Nil Rate Band	The nil rate band is the amount up to which your estate does not have to pay inheritance tax.



Common Types Of Wills

As with most things not all Wills are created equally. You can choose from several different Will structures each offering different levels of protection to your beneficiaries.

The type of Will that you need will depend on your individual circumstances. Your adviser will normally sit down with you to discuss your wishes and the assets in your estate, then explain the benefits of each structure.

Essential Wills

These Wills are suitable for individuals and couples looking to record their wishes. An Essential Will covers the key elements of a Will: the appointment of executors, appointing legal guardians, making gifts and distributing the estate.

Essential Wills are best for when your circumstances are straightforward, and you want your beneficiaries to receive their entitlement immediately on your death.

Wills For Second Marriages

Married couples commonly wish to gift everything to each other and then to their children. But what happens if your spouse remarries after your death or changes their Will to leave less to your children?

Wills for second marriages contain additional provisions to protect against this scenario. The Wills are drafted to ensure that your spouse is provided for, while ultimately protecting the underlying assets for the benefit of other named beneficiaries (i.e. your children).

Asset Protection Wills

Where it is not desirable to leave assets directly to a beneficiary, it is possible to create a Will with additional asset protection provisions. For example, an Asset Protection Will might be used where you have concerns that:

- a beneficiary might divorce or become bankrupt;
- a beneficiary is disabled, needs help with managing money or receives state benefits where any money received directly from the estate might reduce the entitlement to such benefits; or
- the beneficiaries are very young, and it is not prudent to make any assumptions about their future.

Asset Protection Wills are drafted to protect your assets so that your beneficiaries receive the maximum benefit possible.

Will Checklist: What Decisions Do You Need To Make?

Before you sit down and prepare a Will, there are a number of important things that you will need to consider.

☐ Choosing your Executors

Executors are the people you choose to wind up your estate after your death and distribute your assets in accordance with your Will. An Executor can be anyone, even a beneficiary, over the age of 18. You will want to make sure you choose people with the right skills and experience for the role.

☐ Setting out your funeral wishes

You can choose to include burial or cremation wishes in your Will. These wishes will not be binding but are normally followed where possible.

If you have thoughts about the songs you want played, the readings or the tone of the wake you can also set these out in a side letter.

☐ Appointing legal guardians for minor children

If your children are under the age of 18, your Will is the best place to appoint legal guardians to care for them on your death. Your criteria for selecting a guardian will be unique to you and your children. You should start by writing down everything you are looking for in a legal guardian and work from there.

Planning ahead provides you with the opportunity to discuss your wishes for your children's future with the guardians and make a plan.

☐ Including gifts

In making a Will, you can choose to make specific gifts (known as legacies) of personal possessions, cash or property. These might be to individuals, such as friends, family or godchildren. Alternatively, you can make charitable gifts. Legacies can be a nice way to honour a personal relationship or a cause close to your heart.

☐ Naming your residuary beneficiaries

You will need to think about how you want the residue of your estate to be divided. The residue will be what is left after the payment of any outstanding debts, funeral and administration expenses, any tax due and the distribution of any legacies in your Will.

You can choose to make outright gifts or incorporate a trust which can help protect the assets for your beneficiaries.



Top Tips For Choosing Executors

The individuals you name as your executors will be responsible for administering your estate. This includes:

- investigating the assets and liabilities in your estate;
- applying for a grant of probate and paying any inheritance tax due;
- collecting in your assets or the sale value;
- paying off any outstanding debts, taxes, legacies, funeral and administration expenses; and
- distributing the residue to your beneficiaries.

With this in mind, you will want to be confident that you have chosen the best person for the job. Here are a few factors you might want to consider when picking an executor:

1 - Willingness to act

Acting as an executor is a big responsibility, where mistakes can even lead to personal liability. Make sure the person you have chosen is actually willing to act and happy to accept the risks.

2 - Competing commitments

Administering an estate can take over 12 months to complete. You will need to appoint someone who has the time to take on the role.

3 - Organisation skills

Executors need to collect a large amount of information and be able to deal with multiple asset holders simultaneously. It might be worth considering how well organised your chosen executor is in their day to day life.

4 - Comfortable with big decisions

Your executor may need to make decisions about valuable assets, for example selling your home. You will want to know that they are comfortable making these types of decision and handling large amounts of money.

5 - Good at communicating

Your executor will need to be good at communicating. Part of the role is making sure that your beneficiaries and other third parties are kept up to date and expectations are managed.

6 - Teamwork

If you are appointing more than one executor, they should be capable of working together.



Keeping Your Will Under Review

You should review your Will whenever your personal or financial circumstances change. We have listed some examples below of the types of events that should prompt a review.

Your Review Checklist:

- ☐ The birth of a new person you wish to include in your Will. For example, a child or grandchild.
- ☐ You are getting married.
- ☐ You are divorcing or separating from your partner.
- ☐ You have recently received an inheritance.
- ☐ You wish to change the individuals you have named as executors, trustees or legal guardians.
- ☐ If any of your beneficiaries, executors and trustees have lost mental capacity.
- ☐ If any of your beneficiaries or executors have died.
- ☐ Your children have reached the age of 18. For example, you can now name them as executors or replacement executors.
- ☐ If you wish to change the amounts of any of the gifts in your Will or the gift recipient.
- ☐ If you wish to remove gifts entirely or add new gifts.
- ☐ You have moved property.
- ☐ You now own agricultural or business assets that may qualify for inheritance tax relief.
- ☐ The value of your estate has substantially increased or decreased.
- ☐ If you wish to check that your estate will benefit from any changes in the law. For example, the new Residence Nil Rate Band for inheritance tax.
- ☐ If it has been 5 years since you last reviewed your Will.

As a firm, it is our policy to stay in touch with our clients to make sure updating their Wills is as easy as possible.



Why Do Married Couples Still Need Wills?



If you die without a Will, the law will govern the distribution of your estate. Your spouse will be in a privileged position compared to others who may seek to benefit. However, the intestacy rules can still have unexpected results.

We have outlined the common problems that the intestacy rules create for married couples below.

The act of marriage revokes all existing Wills

As soon as you say I do, any existing Will previously signed will automatically be cancelled. You and your spouse will have lost control of who benefits from your estate. The rules of intestacy now apply, until you make a new Will.

Problem 1: If you are survived by your spouse but no children

If you die without a Will and without children, your spouse will inherit your entire estate. While this may not come as a surprise, many people do not consider what happens next.

Once your spouse inherits your estate, they can dispose of it however they want. If they remarry, your assets may pass to their new spouse.

If you and your spouse die together and it is impossible to tell who died first, you will be deemed to have died in age order. This means all of your assets will end up in the estate of whoever is younger and pass to their family (i.e. parents or siblings). Your estates will



not be divided 50:50 between your families.

Making a Will can control the distribution of your estate in many different circumstances.

Problem 2: If you are survived by your spouse and your children

If you are survived by your spouse and children, under the intestacy rules, it is possible that some of your estate will pass to your children.

This can be problematic for several reasons.

Firstly, it increases the risk that an inheritance tax liability will be triggered on the first death. Generally speaking the common goal for married couples is to delay the payment of inheritance tax until the death of the survivor.

Secondly, your spouse may need those assets during their lifetime.

Thirdly, your children will have a right to their inheritance at the age of 18. They may receive assets which they are not financially mature enough to deal with. This presents the risk that they will waste their inheritance themselves or be at risk of manipulation by third parties.

Writing a Will provides you with the opportunity to minimise the inheritance tax exposure, ensure your spouse is provided for and protect your children.

Problem 3: Step-children cannot benefit under the intestacy rules

No matter how long you have been a step-parent or the nature of the role that you play in that child's life, a stepchild cannot benefit under the intestacy rules.

To avoid this situation, both the biological parent and the step-parent should consider preparing a Will. If Wills are not put in place, there is a risk that the step-child will not inherit from their biological parent or their step-parent.

Problem 4: There is no opportunity to benefit people other than your spouse (and children)

The intestacy rules are very rigid; who inherits your estate depends entirely on who survives you and their relationship to you. Writing a Will provides you with the opportunity to make gifts to friends, wider family and charities.

If you want to learn more about making a Will and the structures available for married couples, please get in touch.



Going Beyond Choosing A Legal Guardian For Your Children



Is appointing a legal guardian enough?

Every parent worries about their child's future; whether it is the risk they currently face in the playground or their chances in an overly competitive job market. Sometimes these more pressing immediate concerns prevent parents from thinking about the more troublesome "what ifs".

If you have children under the age of 18, you should consider a Will appointing a legal guardian.

Your chosen legal guardian will be able to step in to care for your children if both of their parents should die before they reach 18. The legal guardian will inherit all the rights, duties and responsibilities you have in relation to your children to raise them into adulthood.

Choosing a legal guardian is often considered to be the most challenging part of making a Will for many parents. At Timbrell Law, we believe that the actual guardianship appointment should be just a small part of the bigger picture. A good solicitor will also ask you to consider the following and work with you to ensure your Will and any accompanying documents achieve your wishes:

1 – Making provision for the legal guardians

When considering whom to appoint as a legal guardian, it also makes sense to discuss



the financial strain bringing up your children may have on that person and their resources. A solicitor can work with you to put mechanisms in place to support the legal guardian and as a result your children.

2 – Communicating your wishes for the future

Similarly, you may wish to work with your solicitor to set out your preferences for your children's future. These might include your views on where they should live, their education, religion, the lifestyle you would like them to enjoy and any desire for them to maintain contact with particular family and friends. While these wishes would not be binding on the legal guardian, they will act as a guide to help them raise your children.

3 – Reviewing your appointment

As your children grow and their interests change, so will the criteria for a potential legal guardian. For this reason, it makes sense to keep your appointment under review.

If you would like to discuss preparing a Will and the broader estate planning involved in appointing legal guardians, we would be pleased to help.

Things to consider when choosing a legal guardian:

- What is the guardian's existing family structure?
- Is the guardian's parenting style similar to yours?
- Is the guardian close to the rest of your family, geographically and personally?
- Are you comfortable with your children being relocated if necessary?
- Is the guardian willing to take on the responsibility?
- Can they commit to fulfilling your wishes regarding education, religion and lifestyle?

If you would like any further assistance in planning for your future, please don't hesitate to get in touch. We offer free initial consultations for all matters to help you decide how to proceed. We are available on **01242 420744**, or you can email us at **contact@timbrell-law.com**.



The Rights Of Unmarried Couples On Death



Unmarried couples do not benefit from the same protections and rights on death as married couples.

Despite several petitions for change, the Government have declined to provide further remedies for unmarried couples on death. The burden lies with the unmarried couple to either provide for each other through their Wills or opt into the system of marriage.

What is the current position for unmarried couples on death?

If a person dies without making a Will, the rules of intestacy will govern their estate. Under these rules, unmarried couples have no right to benefit from their partner's estate. The position remains the same regardless of the length of the relationship or whether the couple has children together.

The survivor can make a claim against their partner's estate on the ground that the intestacy rules do not afford them reasonable financial provision. However, even a successful claim is limited to what would be reasonable for the unmarried partner to receive for his or her maintenance.

Making provision for each other as an unmarried couple

If you choose not to marry, it is down to you to ensure that you provide for your partner on your death.

Navigating the laws of succession as an unmarried couple can be difficult and you may benefit from seeking professional advice. A professional will be able to look at your assets and provide you with tailored advice on how to incorporate your wishes for your partner into your new Will. They may also cover other important considerations for unmarried couples, such as your pension arrangements on death and the benefit of any life policies.



How Can Timbrell Law Support You?

Timbrell Law solicitors deliver a range of private client services, including Wills, Probate and Lasting Powers of Attorney. We provide flexible home visits across Gloucestershire and offer free initial consultations. Our goal is to provide a responsive and trustworthy service that supports our clients in all stages of life.

If you would like to be kept up to date with legal news and receive helpful insights about Wills and more, follow us on social media.

Making a Will

If you would like assistance with preparing a Will, please get in touch. We have years of experience helping our clients prepare Wills that ensure their assets are distributed correctly.

Our service includes:

- Working with you to understand your estate and how you wish to distribute it.
- Drafting your Will and any accompanying documents.
- Sending all draft documents to you for approval with an explanatory note.
- Assisting you with the execution of your Will.

Contact us to set up your free initial consultation today.



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