



### **Children**

If you are a parent with care of your children, you may wish to consider making a Will not only to provide financially for your children after your death, but to appoint a guardian to look after your minor children after your death.

An unmarried father does not automatically have parental responsibility, and if he has not acquired it by his name being registered on the child's birth certificate (please note: parental responsibility acquired in this way only applies to registration post 1<sup>st</sup> December 2003 and is not retrospective) or by a Court Order, by agreement or subsequent marriage to the mother, the mother may wish to consider appointing him as the guardian.

If the father does have parental responsibility, then he can also appoint a testamentary guardian to act after his death.

If you are a single parent and you wish to appoint a guardian for your child, it may be possible to prepare a Will for you **FREE**, depending on your income and capital, under the Legal Help Scheme.

### **Infirm or Elderly**

Persons receiving Income Support, Income Based Job Seekers Allowance, certain other DSS benefits or in receipt of a limited income, may also qualify for **FREE** advice and assistance in the making of a Will, provided again they have limited capital.

Those who qualify are:-

- (a) Aged 70 or over; or
- (b) If you are a disabled person within the meaning of section 1 of the Disability Discrimination Act 1995. Under section 1 of the Act a person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day to day activities.
- (c) or the parent or guardian or person who has parental responsibility of a person to whom any description in (b) applies if you wish to provide in your Will for that person

Where there is practical difficulty attending the office, we can arrange for a home visit.

### **Co-habitation**

If you are living with a partner and that partner dies, you have no automatic right to make a claim against his or her estate under the Intestacy Rules. Unless there is a Will in your favour, you would have to make a legal claim on the deceased's estate under the Inheritance (Provision for Family and Dependents) Act 1975, in order to receive any benefit from the Estate.

If you make a Will, you can ensure that your estate passes to the correct person or persons on your death. The Will could be in favour of whoever you wish.

If you are concerned about the possible claims that could be made on your estate under the 1975 Act then it is possible to make a separate declaration in your will as to why certain beneficiaries have been included and why others have been excluded. This can be influential if the Court were to be asked to make a decision regarding a claim.

If either you or your partner is a member of an occupational or private pension scheme, the rules of the scheme should be considered. In most schemes, death benefits do not go to the Estate. If appropriate, you can arrange for your partner to be nominated for any benefit payable on your death.

You should also consider whether your partner is to benefit from any life policies on your own life. If that is your wish, you may prefer to confer the benefit by making it the subject of a Declaration of Trust in favour of your co-habitee, with appropriate notice to the life company, rather than allowing the proceeds to go to the Estate. A Declaration of Trust has a higher degree of certainty – if the relationship breaks down, a Will can be revoked unilaterally, whereas a Declaration of Trust cannot.

If you own assets jointly with your co-habitee, normally these will pass to the survivor when the first of you dies. If you do not want any jointly owned assets to pass on survivorship you may wish to make provision so that your share passes to beneficial under your Will.

If you have children by a previous relationship, you may wish to say what should happen to your home upon your death, with your children benefiting ultimately.

Please note that if co-habitees marry, that marriage will revoke any existing Will of either party.

(For more information concerning co-habitation and co-habitation agreements, please see fact sheet 10 of this series.)

### **Divorce/ Nullity**

Any decree of divorce or nullity will automatically remove your ex-spouse from your Will as an Executor or a Beneficiary.

- (a) If your ex-spouse has been appointed co-executor, the remaining executor will be entitled to take a Grant of Probate. However if your former spouse was the sole Executor, then there will be no Executor named in the Will and there could be uncertainty as to who should deal with the Estate.
- (b) Property given to your former spouse in your Will, will fall into residue. If you have given the residue of your Estate to your former spouse in your Will, it will pass as if your former spouse had never been named in the Will.
- (c) If you have gifted a life-interest to your former spouse in your Will, the ultimate beneficiaries will take an immediate interest, and your former spouse will be treated as having pre-deceased.

Even though divorce and nullity do not themselves invalidate a Will, it is a good idea to review your Will in any event, to ensure that your Estate is disposed of according to your wishes.

Do not forget that the Inheritance (Provision for Family and Dependants) Act 1975 gives the Court limited powers to order financial provision to be made from the net estate of a deceased person to the benefit of certain categories of applicants. If you died first, under some circumstances, your former spouse could make a claim against your Estate, if able to show that the Will or the intestacy rules had not made reasonable provision for him or her.

However please note that in divorce, nullity or judicial separation proceedings, you can seek an Order from the Court barring your former spouse from applying for financial provision from your Estate, at the same time as the final financial order is made in those proceedings.

In view of the powers of the Court to make such financial arrangements, there will be few cases where it would be appropriate for your former spouse to apply under this legislation. However a claim could be made, if for example your Estate received the proceeds of a particularly large insurance policy payable on your death.

### **Separation**

A separation from your spouse does not in any way change the effect of your Will. A person contemplating separation, should always therefore consider making a new Will.

If there is no Will and you are separated but not actually divorced, normally your spouse will inherit most or all of your Estate if you should die first. Your Estate includes your share in the family home, any life insurance cover you have, together with all your personal possessions. Even if you have children, in the absence of a new Will having been made, your spouse may well inherit everything.

To protect yourself and your family you should take the following steps;

- (a) Instruct us to prepare a new Will for you
- (b) Consider instructing us to “sever the joint tenancy”. (see Fact Sheet 9)

A Will made at the outset of matrimonial proceedings does not need to be altered again when the divorce is made absolute (final), unless, in your new Will, you specifically left property to the spouse you are divorcing.

A new Will remains valid until you remarry. At that stage, it is vital to consider making a new Will as your old one will automatically be revoked on your remarriage.

In addition, if you have taken out life insurance during your marriage, it is strongly advisable to check the contents of your policy document, in order to establish whether or not you have named your spouse as a beneficiary under that policy. A Decree Absolute does not automatically remove your former spouse if he or she is named as a beneficiary in a policy. The benefit to a nominated beneficiary in your policy is effectively in Trust and therefore your Will would have no effect on this if the policy is not amended, rewritten or assigned accordingly. We can refer you to an Independent Financial Advisor who would be able to advise you in more detail.

### **Remarriage**

A Will made on or after 1.1.83 is normally revoked by the subsequent marriage of the maker of the Will.

The exceptions are;

- (a) A disposition made in a Will by a power of appointment
- (b) If a contrary intention is clear in the Will.

**Special Requirements**

Provision can be made in a Will for funeral arrangements, thereby avoiding dispute which might arise in this regard.

**Further Assistance**

If we can assist you further with any of the issues raised in this fact sheet, please do not hesitate to contact any of our branches to assist you.

*Dunn & Baker – Here to help you*

*Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.*