Notes for Clients- Wills

Please read these notes for information to help you complete our Wills Questionnaire (with notes about enduring powers of attorney)

- **Section A**: Questions for everyone
- **Section B**: Questions for married people
- **Section C**: Questions for those with children
- **Section D**: Notes on Enduring Powers of Attorney
- **Section E:** Notes on Living Wills, "Advance Directives"

We want to make sure that your Will gives full expression to your own wishes. To help us in achieving this aim, we need your replies to a number of questions. The information we ask for is explained below.

In some circumstances it may be desirable to supplement your replies by a discussion before the Will is drafted. If you would prefer not to answer the questionnaire at all, and to come and see us instead, you are more than welcome to do so but we believe that it will be helpful to you to consider the issues raised in these notes and in the questionnaire beforehand as we will need to address them with you.

A QUESTIONS FOR EVERYONE

1. ***Personal details?***

We need your full name and address and occupation, unless we have these details already. If you have changed your name in the past (otherwise than by marriage) we also need to know.

2. ***Executors and trustees?***

You need to decide who you wish to name as the executors of your Will. We need the full name, address and occupation of each executor.

If for example some part of your estate needs to be looked after by a responsible person until it can be handed over to the intended beneficiary (a "continuing trust"), your Will should appoint

trustees as well as executors, but it is usual to appoint the same people in both capacities. We need the full name, address and occupation of each trustee.

Executors are the people who will carry the terms of your Will into effect.

If the Will is very simple, one person could be appointed to act alone, but if trusts might arise it is usually better to appoint at least two people.

If you are married, you can appoint your spouse.

You can have an alternative appointment—e.g. your spouse if he or she survives you and can act or, if not, X

You can appoint any friends or relatives (e.g. grown up children) who are businesslike, but it is wise to get their consent beforehand.

You can also appoint professional people such as advocates or accountants. Generally they will not charge merely for being named in your Will but will charge for work done after your death in administering your Estate. Sometimes this does not add much to the administration costs if professional help would have had to be obtained anyway.

Remember that if you need to appoint trustees (who will generally be involved in looking after Estate assets for longer than executors) regular charges may arise. You should consult your prospective trustees beforehand to find out how they usually charge for trustee work. If you wish to appoint friends or relatives as trustees they will be reimbursed out of the trust fund for out of pocket expenses incurred by them but will NOT be paid for their time spent on Estate management etc UNLESS you make provision for their remuneration in your Will.

Appointments of an advocate's or other firm (as distinct from named individual advocates) are also possible and may be preferred because they guard against death, retirement, etc.

3. ***Your estate?***

Without going into great detail, we will ask you to let us have a note of your assets and some idea of their values? The reason we ask for this is to ensure that both you and we understand enough about your affairs to advise you properly as to the effects of the Will we will draft for you.

Please indicate if any dwelling or other landed property is leasehold rather than freehold.

Please indicate if any such property is charged to secure a loan (if only a bank overdraft) and mention the type of charge (endowment mortgage, repayment mortgage etc).

If you are a co-owner of your dwelling or of any other property (with your spouse or someone else), please let us know and tell us, if you can, whether you hold it beneficially as joint tenants or as tenants in common. If you are not familiar with these terms we will explain them to you. You may wish us to look at your Abstract of Title to any property you own so that we might check the position for you.

Please list any bank or other accounts and tell us if they are in your sole name or in joint names with anyone else.

Please list your insurance policies or pension schemes, and let us know if these are already subject to trusts or nomination governing their destination on your death. If you are uncertain about this you should check with your insurer or your pension provider or manager.

Please indicate if any items in your list are business or agricultural assets.

4. ***Legacies and specific gifts?***

If you wish to leave any specific sums of money, specific items or other specific property to friends, relatives, charities or other beneficiaries we will need details of such gifts and names and addresses of the intended beneficiary of each item.

In the Isle of Man inheritance tax is not levied by the Isle of Man government. If inheritance tax is payable by reason of your domicile anywhere other than the Isle of Man the Will may specify which of these gifts are to be free of inheritance tax, so that if any inheritance tax is payable on the property passing under your Will it will all come out of your residuary estate. Please let us know if you want to alter this by making any non-residuary gift bear its own tax. THIS SECTION IS NOT NORMALLY APPLICABLE TO CLIENTS DOMICILED AND RESIDENT IN THE ISLE OF MAN. If in doubt please ask.

If any of your gifts are of property which may be charged at your death to secure a loan, we will need to know whether you wish the loan to be paid off by the beneficiary of that specific gift or by your residuary estate.

It is possible to give personal belongings (or even small sums of money) to a beneficiary (or to your Executors/Trustees) with a request that they should be distributed according to any informal wishes which you may leave.

5. ***Residuary gifts?***

You will need to decide who you want to leave the residue of your estate to. The residue is what is left of your estate after all liabilities and specific gifts have been dealt with.

If you have a spouse and/or children, please read carefully the notes in Parts B and C below.

6. ***Special circumstances?***

It is important that we should know of any special circumstances relevant to your Will. Examples are given below, but please mention anything which may be relevant.

We need to know if:

- you own any foreign property, especially land;
- you have a foreign domicile. Domicile is a difficult concept to explain as it may be described differently in different countries and may even be differently applied in the context of determining liability for various taxes in different countries. Your domicile of origin is the same as that of your father at the date of your birth. Your domicile of origin can be superseded by a domicile of choice once you have reached the age of majority (18 in the Isle of Man). A domicile of choice is acquired if you intentionally decide to abandon your domicile of origin in favour of a different country with which you decide you wish to be more closely associated on a permanent basis. A physical move to another country of residence does not necessarily mean you have abandoned your domicile of origin. IF IN DOUBT PLEASE CONSULT US SPECIFICALLY about your domicile. YOU MAY NEED TO TAKE TAX ADVICE – we will tell you if we consider this advisable in your particular circumstances;
- you have made a foreign Will;
- you are expecting to be married;
- you are living with a partner to whom you are not married;
- either you or your spouse or partner have children by a previous relationship;

- you or other members of your family are interested under any existing trusts, created by Will or Settlement;
- any member of your family is handicapped or financially vulnerable or has any other special problems or needs or;
- any claim against your estate might be made under the family provision legislation (which allows claims by a spouse, a former spouse, children, 'children of the family' and anyone whom the deceased may be maintaining, wholly or partly, at the time of the death).

7. ***Burial or cremation and funeral arrangements?***

If you wish to express a preference for burial or cremation - for the place of burial or for disposal of the ashes - or for any particular kind of funeral we need to know. If you do not specify your preferences in your Will the decision will lie with your executor as to the arrangements that will be made. Your executor will usually consult with your closest family members before making funeral arrangements but if you have no close family or if you think there may be any difficulty in family consultation you should let your executor know what your preferences are and record this in your Will.

You should answer this question even if you are also expressing wishes about the use of your body.

If you claim to be domiciled in the Isle of Man it is preferable not to express any wish in your Will for your body or remains to be removed from the Isle of Man after death as this may adversely affect your Manx domicile (See above or consult us if you are in any doubt about any effect of specifying burial arrangements)

8. ***Use of your body?***

If you wish your body to be available for anatomical examination (ie teaching and research) or therapeutic use (ie corneal grafting and/or organ transplantation) or even for both purposes this can be specified in your Will and we need to know if you want us to incorporate specific provision.

Acceptance for either purpose is not automatic, but you should express any wish you may have. It is convenient to do this in your Will, but the Will itself may not be read until sometime after your death. So:

- close relatives should be made aware of your wishes and;
- since an organ intended for therapeutic use must be removed quickly, you should also be registered on the NHS Organ Donor Register (which is better than carrying a donor card, although cards are still effective).

Therapeutic use may be general or restricted (e.g. to corneal grafting).

You may wish to consider making an advanced directive (sometimes called a "living will") in addition to your Will to give guidance as to how you wish to be treated by doctors if you become ill before your death. You do not need to make such a directive and indeed very few people do BUT if you feel strongly about such matters you may wish to discuss this matter further with us.

B QUESTIONS FOR MARRIED PEOPLE

9. ***Legacies payable only on the first or the second death?***

In addition to making gifts to take effect on your own death whenever that may occur, you may wish to give legacies taking effect only on the death of whichever is the survivor of you and your spouse/partner or (more rarely) on the death of whichever is the first to die. Please let us know if this is so in your own case.

10. ***Gifts to one another?***

Except in rare cases where your spouse's own resources are ample for his or her future needs so the estate may be left direct to the children or to other beneficiaries, a married testator will often wish to leave everything, or nearly everything, to his or her spouse if the spouse survives them.

Q: *How do you wish your spouse to benefit?*

There are two main alternatives:

(*a*) an absolute gift, under which the spouse acquires full ownership and is free to do whatever he or she likes with the property, or

(*b*) a gift for life, under which the spouse receives the income from the property but not the capital. The trustees may be given power to use the capital for the spouse's benefit but, subject to that, it passes on the spouse's death to the beneficiaries (usually the children) specified in the Will.

Alternative (*b*) may be combined with an 'overriding power of appointment' exercisable by the trustees, enabling them to alter the trusts, or create new ones, in ways which may have tax advantages.

There are other possibilities which we should be glad to discuss with you. For example, you could put the whole residue of your estate into a discretionary trust, leaving your trustees free to decide, when the time came, how it should be used for the various members of your family. Clients who create discretionary trusts usually prefer to leave 'letters of wishes' addressed to the trustees in which they give them informal guidance as to how they would like them to exercise their powers.

You may wish to consider mixing and matching financial provisions for your spouse e.g. combining an outright payment either in the form of a legacy for a stipulated amount (£) plus an absolute share (%) of your residuary estate or a life interest in a specified capital sum (£) or a life interest in a specified proportion (%) of your estate. You may wish to leave specific assets with financial value to your spouse (for example all your stocks, shares etc) – this form of gift needs to be discussed carefully and fully understood as changes in the assets before death could result in unintentional loss of benefit.

11. ***Other gifts of residue?***

If a married couple have children, they often want the residue of their estates to go to the children on the second death (probably with a substitutionary gift to the children, or perhaps the spouse, of any child who dies too soon to inherit).

Married couples without children will need to decide what gifts should take effect on the second death. Sometimes the residue is to be divided between their respective families in specified proportions. Sometimes gifts of shares in the residue are made to friends or to charities.

Even couples who do have children as their primary beneficiaries may like to make provisions to take effect if all those beneficiaries should die too soon to inherit.

C QUESTIONS FOR THOSE WITH CHILDREN

12. ***Details of your children?***

We will ask you for details of your children and their dates of birth.

Names of individual children need not be set out in your Will unless any are to be singled out for special treatment.

We need to know about all of your children including children from a previous relationship, adopted children, illegitimate children, children who are treated as part of your family or for whom you pay maintenance even if they are not your natural children to be able to advise you properly.

13. ***Guardianship?***

If any child of yours might be under 18 at your death, you may wish to consider appointing someone to be his or her guardian. We will need the full name, address and occupation of each guardian

Guardianship should always be considered in the case of minor children (ie under 18). It is usual to appoint one guardian or two (perhaps a married couple).

If a child is legitimate, legally treated as legitimate, legitimated or adopted, each parent may appoint a guardian or guardians to act after that parent's death but, save in exceptional circumstances involving separation, the appointment will not take effect until both parents are dead (this is so even if the parents are now divorced). Parents usually agree an appointment to take effect on the second death.

If a child is illegitimate the mother may appoint a guardian or guardians, but the father may not do so unless he has acquired 'parental responsibility' by formal agreement with the mother or by court order. If the mother is the only parent who can appoint, her appointment will take effect on her death. If both parents can do so, an appointment by the father cannot take effect until after the mother's death, and an appointment by the mother cannot take effect until after the father's death unless he loses the parental responsibility which he has acquired.

Guardians have the right to appoint other guardians to take their place if they should die while the child is still under 18.

If your Will makes financial provision for the child, guardianship should not entail any substantial expense for the guardian, but provision could be made to deal with this problem if it should arise and we should be pleased to discuss it.

14. ***Gifts to children?***

We need to know what gifts you want to make to your children, and whether you want to make substitutional gifts to their families (if any) if they die too soon to inherit.

Gifts to children will normally be gifts of residue, typically taking effect on the death of the last surviving parent; but parents sometimes make smaller gifts to take effect on the first death.

If property is given to a child conditionally on attaining a specified age the trustees (though they may use the income for the child in the meantime and have power even to use capital if need be) must hold it until the child reaches that age. This is normally desirable in the case of large gifts, but in the case of small ones it is usually better to impose no age contingency and to authorise the trustees to hand over the gift to the child's parent or guardian.(These points apply to all gifts to children, whether or not they are your own.)

If you want to make entitlement conditional on attaining some specified age, people usually choose 18, 21 or 25.

If a child dies before you, or dies after you but before reaching the specified age, he or she may nonetheless leave a spouse and/or children, and most testators wish the bereaved family to take the gift which the child would have taken. These gifts are called substitutional gifts. Often a testator feels that the gift should pass to the child's children (if any), but if there are no children (or perhaps even if there are) they may wish a surviving spouse to take some benefit. We need to know your requirements.

For technical reasons, substitutional gifts to grandchildren should be conditional on their reaching an age no greater than 21. Such gifts are often made to take effect on marriage under that age—not in order to encourage early marriage but so as to ensure that if a grandchild marries and then dies under the specified age, his bereaved family are not deprived of benefit.

15. ***Direct gifts to grandchildren?***

Do you wish to make any direct (as distinct from substitutional) gifts to grandchildren?

Testators sometimes want to make small direct gifts to grandchildren. You can tell us whether you want any such gifts to have an age restriction over 18 or whether you want the gift to be paid over to the grandchild's parent or guardian to be looked after until the grandchild reaches 18 – this arrangement will sometimes be appropriate as a cost saving measure for small estates or estates which would otherwise not involve the need for longer term trustees.

D: A NOTE ABOUT ENDURING POWERS OF ATTORNEY

You may have heard about Powers of Attorney. These enable someone of your choosing to help you look after your financial affairs.

It is possible to grant to some businesslike person who you trust (e.g. your spouse, a relative, an advocate), or several such people, an enduring power of attorney to deal with your property and affairs. This can be a useful arrangement if you fall ill and become temporarily or long term unable physically or mentally unable to look after your own affairs. They can also be convenient even if you are not incapacitated but simply want the convenience of giving a trusted person the ability to help you out from time to time with various tasks that may need your signature on official forms or documents (e.g. cheques)

An "enduring" power, unlike an ordinary one, is not nullified by the subsequent mental incapacity of the donor, and indeed it can be worded so as not to take effect at all unless the donor does become incapable.

If you become incapable, the attorney(s) must register the power with the Court but, subject to certain statutory safeguards, can still act. If you become incapable of managing your own affairs and there is no enduring power, your property and affairs may become effectively frozen and will only be capable of administration by someone appointed by the Court itself. This can be a more expensive and cumbersome process and may result in your affairs being managed by someone not chosen by you.

Any of us could become mentally incapable (perhaps suddenly as a result of an accident), or find it difficult (perhaps as a result of general ill health) or inconvenient (because of occasional absence away from the island) to manage all of our affairs and such occasions will not be covered by the provisions of a Will – as this only comes into effect on death. This may provide a

good opportunity for you to consider also the making of an enduring power. If you would like to have any more information on this subject, please let us know.

E: NOTES ON LIVING WILLS, "ADVANCE DIRECTIVES"

A Living Will will allow you to record your wishes as to any future medical care and treatment you may require in the event you lose the capacity to make these decisions. It is important to note that this document only comes into force if you cannot make decisions at the time you are asked because you are unwell.

A Living Will can record:

- Your wishes are about medical treatment. However, you cannot insist on *receiving* any particular medical treatment. These statements are called "advance directives".
- If you wish to appoint someone to take part on your behalf in decisions about your medical treatment. This is called a "health care proxy",
- The level of medical treatment you want should you become terminally ill;
- Where you would like to be cared for (at home, or in a hospice);
- How your medical treatment might be affected by religious or spiritual beliefs;

This Living Will is about medical treatment only. You cannot use it to say what is to happen to your property after your death, or to make funeral requests this is dealt with in an ordinary Will.

If you wish to discuss making a Living Will please contact us for more information.

July 2013

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