

Why living without a will is a risky thing to do

MoneyWeek – May 2009

I don't have a will. According to research from Co-operative Legal Services, that's something I have in common with 70% of the population.

But as a single woman with no children whose most valuable possession is probably my TV, I don't have much use for a will. What does shock me is the number of people who have dependants and / or sizeable assets who haven't written one yet, not realising what a terrible mess they would leave behind should they shuffle off this mortal coil unexpectedly.

What happens if you die without a will?

If you die without a will you are described as dying intestate and there are laws dealing with who gets what from your estate. And there's a good chance that what the law says and what you might expect or want to happen are two different things.

For example, if you die married, but without children, your spouse will receive all your 'personal chattels' - car, furniture, dodgy record collection. The rest of your estate (including your house if it's in your name only) is split, with your spouse getting a legacy of £200,000 (rising to £450,000 from 1st Feb this year) and half whatever's remaining. The other half goes to the deceased's parents, or if they are dead, is split between the deceased's siblings. So if your house is worth more than £200,000 and is solely in your name your spouse may have to sell it to release value to other claimants.

If you are married with children, then your spouse still gets your personal belongings, plus a legacy of £125,000 (rising to £250,000 on 1st Feb), plus lifelong interest on half of the remaining money, which goes into a trust for your children to receive on their 18th birthday.

Unmarried couples are particularly vulnerable

If you are unmarried, but living with a partner, it's even more important to get a will – if you die, you will be treated as being single by the Treasury, which means that your partner is completely ignored. Instead, your estate goes to any children you have. If you are childless, it goes to your parents; then (in order of priority) siblings; then half-siblings; then grandparents; then aunts and uncles.

And if you have no family at all, it would end up lining Gordon Brown's pockets, as the Crown will retain the entire estate – regardless of how many years you'd been living with your partner.

Another potential problem is that if your house is in your name only, then your spouse would have no automatic right to inherit it. Depending on its value (as you might expect, the larger your estate the more chance of complications arising) there's the possibility that it could even have to be sold in order to pay other claimants their share of your estate – leaving your partner both homeless and bereaved.

And of course, if you have children, the other important reason to have a will is so that you can appoint a guardian to look after them should both parents die. For full details on intestacy, see Directgov. But the short answer is that if you have a partner or children, or you want to have any say in the way your assets are divided when you die, then you really need to make a will.

Making a will

The good news is that this is a straightforward process. You just need to decide whether you want to get a lawyer to write up your will, or you can do it yourself using a kit you can pick up in your local newsagents.

A do-it-yourself will is the vastly cheaper option with kits usually costing around £4.99. If your estate is small and easy to divide up, this may be worth considering, but be warned – a DIY will can be as risky as DIY home improvements - and this is not an area where you want a botched job.

“The one thing worse than not making a will at all is making a mess of writing a will,” warns Which? in its Wills and Probate Guide. A mistake on a DIY will can render it invalid and should someone decide to contest it then this type are easily ripped apart in court. “The mere fact a will is prepared by a solicitor doesn’t preclude it from attack. However, the second that you see a homemade will, some people rub their hands with glee,” says Henry Frydenson, chairman of the Association of Contentious Trust and Probate Specialists in The Observer.

Getting a will drawn up by a solicitor can cost between £100-£400 (more if you live in London). If neither you nor your partner have wills you can get mirror wills – where they are the same except for a reversal of names – for around £200. Using a solicitor is an especially good choice if your estate is larger than the inheritance tax threshold (currently £312,000) as you can get some basic inheritance tax planning included at the same time.

Charity wills can save you money

In terms of value for money the best way to get a will is through one of two charity services. Cancer Research UK’s FreeWill service (http://legacies.cancerresearchuk.org/how_to_leave/freewill_service.asp?fs=1) is available to any UK resident who is over 55 and allows you to have a will written or updated for free. You don’t have to give money to Cancer Research in return and the advice you will be given is entirely independent of the charity.

Another option is by using a solicitor through the WillAid (<http://www.willaid.org.uk/>) scheme. You will get a will written up by a participating solicitor in return for a donation to one of several charities. Suggested donations are £75 for a single will and £110 for mirror wills. WillAid is a seasonal campaign which will next run in November.

And once you’ve made a will remember to keep it up to date. Key life stages include getting remarried or divorced, having a child or moving house. And keep it somewhere safe. There’s no point going to the trouble and expense of writing a will if no-one can find it after you’ve died.