What is a Will?

A Will is a legal document, signed and witnessed in a specific way, which confirms your wishes regarding the distribution of your property and affairs upon your death. It also states who you have nominated to take care of any minor children you leave behind: these nominated persons are known as 'Guardians'. Should you die without a Will, (a term known as being Intestate) your wishes may not be followed. When a person dies without leaving a Will, their estate must be shared out according to certain rules known as 'the rules of intestacy', which is prescribed by government legislation.

What happens if I die without a Will?

Some people worry that writing a Will could be complicated, whilst others don't think it is very important and see it as an unnecessary cost. However, without a will, a number of problems could occur after you die:

- You will have no control over where your assets end up. Your estate could therefore be inherited by someone you never intended or wanted it to go to.

- The people administering your estate will be chosen under the Intestacy Rules, and they may be someone who you wouldn't choose, or who isn't capable of carrying out this role. If a Grant is needed to realise your assets or sell property and there is more than one beneficially entitled person, it is not possible to apply for a Grant online and a paper application must be made. This is more complicated and takes longer than the online route.

- If you have young children and you haven't nominated a Legal Guardian for them, you run the risk that Social Services will become involved and your children may end up being looked after by someone you wouldn't have chosen or even being taken into care.

What can I put in a Will?

By making a Will you can:

- Appoint people (called Executors) to carry out the terms of your Will. They have a legal responsibility and are answerable to the beneficiaries.
- Appoint Guardians you trust to look after your children.

- Leave gifts of specific items or fixed sums of money.
- Name the people or charities you want to benefit from your estate.
- Include Trusts to help protect your assets for your spouse and your children's inheritance.

What about home-made Wills?

- Whilst this is a better option than no Will at all, a home-made Will can still have considerable downsides. If it is not drafted or executed correctly, or does not address recent changes in the law, a homemade Will may result in an outcome similar to not making a Will at all.

- Using qualified lawyers to draft your Will ensures that the many considerations and possible pitfalls are avoided, tax implications being only one of them, which may not be readily apparent.

Types of Will

Standard Wills – everything to my spouse or civil partner and then children on the second death.

Many people chose this type of Will and it ensures your family benefits after your death. It may be useful as a starting point particularly where your estate is relatively small and no inheritance is payable.

Inheritance tax is charged at 40%

Where a spouse or civil partner inherits on the first death, there is no inheritance tax to pay at all. When the spouse or civil partner subsequently dies, their estate benefits from the unused nil rate band (NRB) of the first spouse (£325,000 plus a Residence Nil Rate Band (RNRB) adding a further £175,000 allowance if there is a residence passing eventually to descendants - which includes adopted or step-children - PLUS their own NRB and RNRB – totalling £1m. If your estate is above £2.2m the RNRB reduces by £1 for every £2 over that value, which if lost completely, may then limit your joint estate to £650,000.

If you are single with no children, your estate is limited to £325,000 inheritance tax allowance.

Beware – If you are not married or in a civil partnership when you die but live with a partner, your estate will be limited to a single NRB and only if you have children of your own and own your residence, do you benefit from the extra RNRB.

There are many circumstances where it may be less advisable to have a "standard" Will. After your death, as life moves on, the survivor may remarry (marriage invalidates an existing Will), have financial problems including bankruptcy or, make a new Will. If you have a child or children from a previous relationship whom you had originally included in both your Wills, once your spouse has inherited everything from you, you are relying on them to continue to benefit your offspring. It may be that they make a new Will cutting our your children, particularly if they are influenced by third parties.

How to overcome this risk?

Life Interest Trusts or Property Protection Trusts – If you own a property "jointly" it will pass to the surviving owner outside of your Will. If you "sever the joint tenancy" you will own it as "tenants in common" and your share passes via your Will (the law assumes 50/50 unless there is a trust deed stating that ownership is in different shares). You may direct your share of the property to your children but you then protect the right of your spouse/civil partner to live in the property until their own death with a trust. This may include conditions, such as not re-marrying or cohabiting and paying all bills and the right to sell the property and buy another, or invest the share and receive the interest to help with living costs. The capital value, however, must eventually pass to your children on the survivor's death or the if conditions are breached.

Another benefit of severing the joint tenancy and leaving your share to your children (with a trust for your spouse/civil partner) is that it may limit potential care fees payable by the survivor. They will only own their own share of the property and not the whole property.

Discretionary Trusts

A Discretionary Trust is initially established by the Will - you are the "Settlor". Further property may be added to the Trust after it has been set up.

These types of Will are extremely useful if you have a large estate and concerns about inheritance tax not only in your own estate but potentially increasing value of your children's estates. Also if you do not want to pass funds outright to a family member to avoid potential matrimonial or welfare issues.

Most important is the definition of the Beneficiaries. In Discretionary Trust Wills there is "the class" of beneficiaries listed in the Will, starting with the most important beneficiary and widening scope in each subsequent group of beneficiaries. No beneficiary has the **right** to receive anything from the trust. Instead, the trustees are given the sole and absolute **discretion** to decide which beneficiary benefit, to what extent, when and on what terms.

When a Will Discretionary Trust is made, a Letter of Wishes is usually made at the same time which expresses the Settlor's wishes as to whom the Trustees should prioritise when making distributions (the Letter of Wishes may be updated from time to time without needing to change the Will). The Letter of Wishes does not **bind** the Trustees, but they should take account of the Settlor's wishes when making decisions. For this reason, it is important to appoint Trustees whom you trust to follow your wishes.

If you would like to discuss setting up Wills and the most appropriate type of Will for your circumstances, please contact Alison Fielden & Co on 01285 653261.