

Wills

Basic Guidance

(Individual with Children)

ProTrust 
Estate Planning

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Why see an Expert for your Will?

Everyone knows how important it is to have a Will prepared. A Will is the legal document by which you dispose of your Estate to your chosen beneficiaries on your death.

The reason why it is advisable to see a Wills and Trust specialist, is to have proper and informed advice on the options available to you in the distribution of your Estate. There are matters which simply are not considered by most people when thinking about Wills and it is only through speaking to professionals who have had the experience of dealing with such matters regularly over a number of years that all of the issues and legal traps are carefully and safely navigated.

The person you instruct must make sure that he or she has full knowledge of those alternative options. Instead of a simple Will structure, which may be sufficient for some kinds of circumstance, many people will actually need something more complex in order to cover all of the issues.

Will-Trusts – why have a trust structure instead of a basic structure?

Will-Trusts are primarily designed to help your beneficiaries. They help them make the most of the estate that passes to them and to keep it protected from attack claims against those assets. Will-Trusts are also the means by which you can pass assets to children with the added protection of ensuring that the value is protected to ultimately pass to your grandchildren (ie down the family lines). A 'basic' (non-trust) Will structure does not do this.

Will-Trusts – what is the usual structure?

Will-Trusts prepared by ProTrust Consulting are usually set out within the body of the Will itself. They are not usually separate documents. There is a guiding document alongside the Will called the 'Memorandum of Wishes' which is an important document containing the wishes as to how the estate shall be distributed from the Will-Trusts.

If you have two children, it is usual for there to be two Will-Trusts. Each of the children will eventually be in control of each respective trust. The usual approach is to provide each of the children the flexibility as to whether the Trusts are 'utilised'.

Utilising a Will-Trust or not doing so.

If you have two children benefiting, once they are of sufficient age (usually 18, 21 or 25, as you may specify) each one has the choice of whether to utilise their Trust or not. We can advise them on what is best for them.

'Utilising' the trust: is usually in the form of the child taking a loan advancement of the capital or money or having the property transferred to them subject to a legal or equitable charge on the property. The child usually does not pay any repayments of the loan during their lifetime and usually there is no interest on the loan. The existence of the 'loan' means that the child's own assets are subject to the loan. This can assist the child in protecting the value from divorce, insolvency, care fees claims during the child's lifetime and even protect against that value being included for Inheritance Tax purposes. The loan advancement can be a very useful tool as the actual impact for the child receiving the loan is the same (or virtually the same) as if the child received the inheritance as an outright gift.

The only real consideration to take care of when advancing the value by loan is where the Residence Nil-Rate Band (RNRB) for Inheritance Tax is affected. It may be necessary for sufficient amounts of the estate to pass as outright gifts (or appointments from the estate/trusts) to ensure qualifying for the tax relief. We advise as to what is the optimum approach.

Not 'Utilising' the trust: alternatively, the child can close their part of the Trust down by electing to receive their inheritance as an outright gift. There is thus no further ongoing protection of the value (as with the loan, mentioned above) but the Trust is closed.

Each of the children will eventually be in control of each respective trust. The choice as to adopting the Trust is made at the relevant time, i.e., when it comes to inheriting their share of the estate following death of the Will-maker.

Other matters to consider when making a Will

Here is a list of the things you will need to consider when making your Will.

- Who to choose as Executors and guardians and what those roles actually involve in practice.
- Inheritance tax planning within the Wills for people with estates in excess of the Inheritance Tax threshold (currently £325,000).
- Protecting your estate from third-party claims or attack on the assets passed to a beneficiary.
- Where estate passes to children, avoiding potential claims from a son-in-law or daughter-in-law on a marriage break-up or from outside parties.
- If you are giving money to charity, how best to structure payments and whether a trust may be suitable.
- Dealing with substitute provisions contained in Wills in the event that your primary beneficiaries die before you.
- Adequately setting out your funeral provisions and wishes.
- Obtaining advice on how your Will would be administered and the current Probate procedures on death.
- Ensuring that the Will is 'claim-proof' in the event of queries on mental capacity or undue influence. (Professionally prepared Wills are unlikely to be challenged, assuming they are correctly drawn up by an experienced advisor.)

Overall, to ensure the correct drawing up of the Will, certifying its validity and ensuring that all the legal necessities as to capacity, knowledge and understanding of what is being carried out are formally covered.

We shall cover all of the above with you as part of our standard Wills service.

Contact Us

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