UK-CSMwil26

Simple will with gift over

## Last Will and Testament

# I, [full name] of [home address] revoke all earlier wills and declare this to be my Last Will and Testament.

# I appoint as my executors and trustees:

my [husband/wife/partner], [name];

AND/OR

my [son/daughter], [name];

AND/OR

my friend, [name];

AND/OR

my [accountant] [name] of [business name].

If any executor is unable or unwilling to act or dies before proving my will, then I appoint [name]

OR

[any child or children of mine] as executor in [his/her] place.

# I give all of my estate to my trustees to pay all the expenses of my estate and all my debts, including any mortgage and taxes due, whether as a result of my death or otherwise. My trustees shall then hold all such remaining property for [my wife / husband / partner / other [name] absolutely if [he]/ [she] survives me by [60] days.

# If the above gift fails, then my trustees shall hold my estate [for my children [full names] in equal shares absolutely].

OR

for the following people each of whom shall take the share of my estate indicated to the right of his name, absolutely:

|  |  |
| --- | --- |
| **Name and address** | **Percentage share** |
| [Name and address 1] | [40%] |
| [Name and address 2] | [30%] |
| [Name and address 3] | [30%] |

# I direct that if any of my beneficiaries shall be a child at the date of my death then the share of my estate which would have been given to that child shall instead be given to his or her parents or guardians absolutely.

OR

# I direct that if any of my beneficiaries shall be under sixteen years old at the date of my death, all money due to him may be paid to his parent or guardian for his benefit. If he has attained the age of sixteen years it may be paid to the beneficiary himself. In either case, that payment shall discharge my Trustees.

# Executor remuneration

An executor or trustee, who is in business or is a director of a company in business, may charge for work done by him or his firm or company, in connection with the winding up of my estate and the administration of any trust including work not necessarily requiring professional assistance. The payment of any such charge has priority over any disposition made in this will.

# I wish my body to be buried at [place]

OR

**I wish my funeral** to consist of [a requiem mass at St Mary's Church Harrogate followed by burial at Little Upton cemetery.]

OR

**I wish my body** to be cremated and my ashes to be scattered [by the river at . . .]

OR

I wish my body to be used for the advancement of science by the University of [name] and in due time thereafter, cremated and my ashes to be scattered [by the river at . . .]

Date signed:

Signed on the above date by the testator, whose signature was witnessed by us in the presence together of the testator and of each other.

**Signed by testator:**

|  |  |
| --- | --- |
| Witness 1 | Name: |
| Address |  |
| Witness 2 | Name: |
| Address |  |

Example letter of intent

Note: this draft letter is intended only as an example of the sort of things you might want to say and use of plain language, which is perfectly adequate.

We remind you that this letter is not binding in law. However, it is likely that your executors and family will do as you ask, provided it is reasonable.

Do not attach this letter to your will in any way. Doing so will invalidate your will. Instead, leave your letter(s) of intent close by your will.

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To my family and my executors

This is my opportunity to help you to sort out my affairs and for your lives to continue normally. I should be grateful if you would note that these are my wishes. Of course, I hope I shall live for a long time yet, but if you are reading this letter, then of course I am no longer with you.

1. It is most important that you [Name], my wonderful [husband / wife / partner] is able to live in our house for as long as [he / she] wishes and can change it for some other home when [he /she] wants or needs to do so. This is what my will says, but I want to make it clear to all of you. Although I intend that ultimately my children and their families will inherit the remaining contents of the house that belong to me, I would like whatever furniture and ornaments that I haven’t specifically given as gifts in my will and that my [wife / husband / partner] wishes to keep in the house to remain there as long as [he / she] wants.
2. I am particularly concerned that if any of my children is under the age of 21, when I die that they will be properly cared for. It is difficult to guess what the financial requirements of any particular child might be, but it is most important to me that the guardians of my children are given enough money from my estate to enable them to live their lives without any financial loss on account of helping me to bring up my children.
3. I would like any long term partner of any beneficiary to be treated just like a wife or husband of that beneficiary. I consider a long term partner to be someone who has been living with the beneficiary for two years or more, and who is likely to continue living with that beneficiary indefinitely.
4. I would like my trustees to consider carefully before making any gift or benefit to any person who is married but separated from a relative of mine. If such a person is generally hostile, I would not want to benefit him / her.
5. I have considered for years what to do about the business. Right now, I think best if Martha takes over as managing director, and that Ben and Steve are also directors. I have stated in my will who will get what shares, but I am well aware that you could all get together and make different arrangements between you. Whatever you do, please do not run it as a committee. Someone has to be in charge and take responsibility for what happens.

If you want to sell it, use a business sales agent and be prepared to pay to have job of selling it at maximum value done properly. I think it should be worth a couple of million pounds.

1. Decide between you who looks after Bomber, but please take him on plenty of walks.

Dad

Explanatory Notes:

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General points

1. **Links to articles on our website**

These notes should contain the information you need to complete your will. We hope we have provided the right balance of detail to length. However, we know some people will want some extra information and therefore within these notes we refer to our online guide, which can be found on our website at <http://www.netlawman.co.uk/ial/writing-a-will>.

1. **Names and relationships**

Use your full name

Use full names throughout the document. Do not use abbreviations. For example, when naming yourself, use "William" instead of "Bill" if "William" is the name given on your birth certificate.

If you have the same name as another family member

If there could be confusion as to whom you refer, (for example, perhaps father and son share names and live at the same address), distinguish people by adding the full names of their parents, for example "John William Smith, son of Mary Alice Smith and Robert William Smith".

Aliases

If you have ever used a name that is not your true name, mention that name as "also known as" after your name. For example: "John William Smith, also known as Jed Smith".

Naming professional advisors

If you nominate a professional advisor as an executor or trustee, you can either name a person specifically, or instead name a position at a company or partnership. For example, "George McEwan of McEwan & Co., 27 Leadbetter Street, London, W1 3GL" or simply "an accountant employed by McEwan & Co., 27 Leadbetter Street, London, W1 3GL". If you use the latter, the person appointed could be any accountant, and not necessarily the person you would choose.

Specify relationships as well as names

Describe beneficiaries by their relationship to you, and give their full name and their address. For example: "My niece Annabel Robinson of 44 Acacia Avenue, Upper Downtown, SP5 64QX". This will help your executors to contact them easily and immediately. But don't worry about new addresses for beneficiaries - you need not change your will every time one of them moves house.

Classes of people

You can name a class of people, instead of individuals. For example, "My nieces" is fine. The members of the class should be identifiable. Using a vague description, such as "All the people who worked with me at Clerkenwell China Co." may leave room for claims from people you may not wish to benefit.

A second point to note is that membership of the class of people applies as at the date of your death. "My nieces" is fine if you really only want to leave gifts to your nieces. But that description won't include any nephews who are born between the date of your will and the date of your death. Even if you don't have any nephews when you write your will, you may still want to describe a class as "My nieces and nephews" in case any nephews are born between your making your will and your death.

Adopted family members

The Law provides for any group defined by relationship to include members who are in that group through adoption. It is not only that beneficiary who is affected by this rule. It applies also to any person whose membership of the group relies on adoption.

Step children and the family of non-blood relatives

Step children and relatives by marriage are not taken as being automatically included in a class. For example, a reference to the class "my children" will not include your second husband's children regardless of your emotional relationship. If you want to include your step children or your wife's niece as a beneficiary, you will have to say so explicitly, for example "my children and the children of my husband and his first wife". Of course, if such a person was supported by you as a member of your household, he could possibly apply to court for "reasonable provision" from your will under the Inheritance (Provision for Family and Dependents) Act 1975.

1. **Gender of nouns**

We follow the modern convention of referring to people in the will in the masculine version of a noun. For example, we use "testator" instead of "testatrix" and "executor" instead of "executrix" regardless of the gender of the testator. If so desired, you can change the gender of these nouns to match the gender of the role holder, but there is no legal reason to do so. Referring to a female testator or a female executor is perfectly valid.

1. **Inheritance tax**

Inheritance tax can cut a broad swath of value from your estate above the threshold. What you write in your will, to some extent, can (legally) minimise the amount of inheritance tax paid.

Use of tax avoidance schemes

Many will writers sell their services based on their ability to avoid your estate paying tax. They make use of loopholes in the system. They claim that the high cost of their service is offset by the tax 'saving' that your estate will make.

Our policy at Net Lawman is to avoid any such scheme. The primary reason is that tax law changes regularly, and a valid scheme at the time you write your will may be closed by the time you die. If so, at best you may not reduce any tax liability; at worst, you may increase it.

A Net Lawman will is designed to give you control over to whom your assets are passed, rather than to help you minimise inheritance tax. However, we do help you to use allowances and exemptions. So in paragraphs that impact on inheritance tax, you can be sure that while we are reducing the tax payable on your estate, we are not making any suggestion that you will not find on the website of HM Revenue and Customs.

Who pays the inheritance tax?

It is possible to specify that inheritance tax is to be payable “out of” a specific gift, so that the receiver of that gift gets less than what you give or, if the gift is not money, has to find the money to pay the tax himself.

In most cases, Net Lawman wills do not provide for tax to be payable out of a gift. In addition to not knowing what the rate of tax will be on your death or what will be the personal circumstances of your beneficiaries (whether they will be able to find the money to pay tax), providing for tax to be payable on some but not all gifts can complicate a will.

Your only consideration will therefore be to remember that any tax liability will be payable out of the rest of your estate.

1. **Letters of intent**

Your will is a legal document. To be valid in a court of law (obtaining probate is technically a court procedure), it must be written in a certain style using certain words, and executed as a will.

However, some of the things you want to say are best not said in your will - for any number of reasons. These things could be wishes or instructions to your executors, guardians or beneficiaries. You can do this by leaving one or more "letters of intent". That is just a phrase meaning a side letter which is not part of your will.

Make sure you do not attach anything, including a letter of intent, to your will (even by paperclip). If it is attached, it may invalidate the whole will.

Some of the things you might write about in a letter of intent might include:

Wishes as to your children's upbringing

You may want to set out arrangements for your children in a letter to the guardians that you have appointed.

Confidential information

You might want to tell executors or family members about passwords, identities and other information which will enable access to your bank account and other assets. Or you might want to tell certain people about secrets that you have held during your life.

How to use a gift

You might want to tell a particular beneficiary how you would like him to use your gift.

How to value your assets

Sadly, many firms of estate agents / valuers use the term "probate valuation" to open a treasure trove for themselves - using your money. There is no legal (or tax) definition of "value" or "probate valuation". Your death is an excuse for a valuer to charge on a percentage of value, then quadruple the values of your possessions that your beneficiaries could reasonably obtain at auction, after all expenses. So the valuer gets very well paid and your estate pays gigantically more in inheritance tax.

Tell your executors to insist on a fixed fee valuation based on net receipts after all expenses of sale and transport costs after “a bad day at the auction”.

Your executors have to swear to the accuracy of the figures given, based on whatever yardstick they regard as appropriate. That leaves them plenty of scope. They have no obligation to pay more tax than necessary!

Care of a pet

You may wish to name who you would prefer to care for your dog, cat or other pet and specific details about how the animal should be looked after.

Remember that whatever you say, it is not binding in law.

1. **Marriage and divorce**

When you marry, any existing will is automatically revoked and becomes invalid. Most people write a new will immediately after marrying.

In anticipation of marriage

However, you can make a will before you marry expressed to be "in anticipation of marriage". If it is quite clear that you intend it to take effect after you have married, then it will be valid after you have married. You can make it take effect either only after you have married, or immediately and after. You may need help in drafting to make this clear.

On divorce

If your marriage is ended by a court order (like divorce or annulment) your will is not void or invalid. What happens is that any gift to your former spouse takes effect as if he had died on the date your decree became absolute. That usually means the gift falls back into residue for the benefit of the residuary beneficiaries. It follows that if you had left everything to him, then the effect is as if you had died intestate (without a will). Of course, it is best to make a new will immediately after your divorce.

1. **The importance of correct signing (“attestation”)**

Signing and witnessing your will is critically important. It is a good idea to arrange the format of your will so that all the signatures are printed out on a single sheet of paper and are not split between two sheets.

Your will must be signed:

* By you, in a state of understanding so that you know exactly what you are signing and what it all means;

If there is a possibility that your will might be contested after your death on grounds that you were not sound of mind when you attested it, you should consult your GP before signing it.

Do not drink alcohol or take drugs that could affect your judgment before executing your will.

* In the presence of two witnesses who must both be present at the same time, when you sign and who must see you sign.

A witness must not be a relative of yours nor any person who may benefit under your will (including a spouse or a partner or a close family member of a beneficiary).

Each witness must clearly print his name and address by hand. They should not sign illegibly. Unlike signing to prove identity where a unique mark is required, signing a will is to provide information and therefore needs to be clear.

The witnesses do not need to know anything about the contents of your will, or even that the document is a will, and not some other document.

Correct attestation is such an important part of creating a will that we encourage you to read our longer article on the subject: <http://www.netlawman.co.uk/ia/sign-will>.

Paragraph specific notes

Notes following the numbered paragraphs:

1. **Revocation of earlier wills**

Except to edit your name and address, we suggest that you leave this sentence in place, even if you haven't made a will previously.

Make sure you record your full name here. For example: "John William Smith" and not "J. William Smith".

Enter your home address including postcode. For example: "12 Wellington Street, Harrow, HA2 5RH". If you have more than one address, use the address where you reside most often.

We have an article on <http://www.netlawman.co.uk/ia/revoking-will> that provides further information.

1. **Executors and trustees**

Executors

Your executors manage your estate after your death by collecting in all your assets, paying the debts and distributing the rest in accordance with your will. The process is known as probate.

Being an executor involves a lot of administrative work. If your executors are also your beneficiaries, this heavy burden comes just at the time they will find it most difficult to manage. So when you choose who to appoint, you should consider whether those people are likely to be both willing, and capable of doing the work involved.

Your husband or wife might seem to be a good choice to be your executor, particularly if you leave the majority of your estate to him or her. But do consider that the circumstances of the executors you now appoint might change, particularly as they become older.

We have an article on the role and responsibilities of executors at <http://www.netlawman.co.uk/ia/role-executors-will>.

Who to choose as your executors?

You can appoint up to four executors by law.

Most people choose two or three, which we recommend unless your estate is very simple, in which case one might be sufficient. Friends and family members are usually chosen.

If you prefer to remove the burden and emotional stress of the work from your close friends and family, you could appoint a solicitor or a professional probate business. Fees charged usually are based on the size of the estate, and are paid by the estate after you have died.

We advise against appointing banks as executors. After your death they simply instruct a probate business or a solicitor and put a hefty mark-up on the charges.

If the executor you nominate cannot or is not willing to act

Executors can decline your request to take up their position, so it is a good idea to ask each person at the time you write your will whether he or she is happy to be an executor and to make sure that he or she knows what the responsibility entails. We provide a series of articles on probate that you could ask him or her to read to understand what work is involved. You can find the first at <http://www.netlawman.co.uk/ia/overview-of-probate>.

To safeguard against the scenario where none of the named executors can or wants to take up the position, you can nominate an “alternative executor” in your will, who can take up the position only if all others decline.

We advise that you do appoint an alternative executor. If none of your executors do take up the position, then other people may apply to administer your estate. In theory, a creditor such as your mortgage provider could have the say over whether your family heirlooms are sold and the proceeds distributed, or whether they are kept in the family.

Most people choose a professional probate business as an alternative executor because of the certainty that it will act.

Trustees

Trustees manage a trust created on behalf of the beneficiaries of those trusts. Duties include not only investment decisions, but also administration, such as having accounts prepared. The role of the trustee usually continues long after executors complete the winding up of your estate.

While your estate is being wound up, your executors are also the trustees of the trusts created by your will.

You might not always intend for a trust to be created. For example, if you leave gifts to a child (anyone under the age of 18 years), a trust is automatically created to hold that gift until the child is 18 years old.

We recommend planning for trusts in case one is created.

Most people usually appoint the same people as both executors and trustees.

You should consider carefully who will best represent each of the “interests” in your will, for example, children from earlier relationships or spouses from second relationships.

In your will you can specify whether your executors should continue in their role as trustees once the estate has been distributed, whether any should lose their office, and whether anyone else should be appointed or take over – such as the guardians of your children.

Trustee powers

By default, the powers of the trustees who manage a trust can be very restrictive. But you can change those powers in your will so that your trustees can do what you would like them to do.

You must try to balance the powers you give to your trustees against the risk of negligence or fraud. The powers you give them to handle your money, to invest it, to buy and sell things, to give or lend it to beneficiaries, all relate to who they are. For example, it is no use appointing a solicitor or an accountant to run property investments. Quite rightly, professional advisers are not supposed to be in the business of taking risks with clients’ money. If they take that to the logical conclusion, they simply take no action at all.

We have an article on <http://www.netlawman.co.uk/ia/choosing-executors-trustees-guardians> that might be useful further reading.

1. **Survival by your beneficiary**

In this will, we have made two alternative provisions: one if your beneficiary survives long enough after you to inherit from you, and the other in case he or she does not.

Even if you and your beneficiary die as a result of the same event, you will not necessarily die at the same time. That means that the will of the first to die takes effect while the other still lives, even if he or she dies shortly afterwards. That will certainly upset the intentions of both of you (for example, the second to die may have died intestate) and may result in more inheritance tax becoming payable. We therefore provide the 60 day condition to cover, as well as we can, the possibility of both of you dying from one accident. Of course, you can shorten or lengthen this period as you wish.

This paragraph relates to the situation in which **your beneficiary does survive you.**

This paragraph instructs your executors to gather in your estate, pay debts and then distribute the estate to your beneficiary.

You may change the beneficiary (for example, "to my brother John), or to a class of people (for example, "my children, John and Sarah"). Be aware that if a beneficiary in a class dies before you, his share will be divided between the other members of that class. If you leave your estate to your adult children and one of them dies before you, leaving children, those children will not inherit their parent's share. If this is a potential problem for you, we suggest you look at other Net Lawman wills.

Whichever option you choose, you should keep the word "absolutely" in the paragraph.

1. **Gift over**

This paragraph relates to the situation in which **your beneficiary does not survive you.**

There are two options. **You must delete one of them**. Either you give your estate to a single beneficiary or a class of beneficiaries or you can give percentages to individuals specifically.

Including names with classes (e.g. "my children, David Jones and Ewan Jones") clarifies members of the class, but also excludes others who may otherwise qualify to be in the class.

You should keep the word "absolutely" in the paragraph.

1. **Gifts to children**

These options simplify the task of distributing the estate when beneficiaries are children under 18. The only consideration you need to make is whether you can trust the parents or guardians to pass on the gift to the child once he reaches adulthood.

1. **As for previous paragraph.**
2. **Payment to professionals**

Under the Trustee Act 2000 a trust corporation or professional trustee may charge a reasonable fee for their services. Executors who are not trust corporations or professional trustees may charge only if the will contains a paragraph which expressly authorises the payment. They may however, claim out of pocket expenses in any event. The best position is to provide in your will that professionals may charge. You can also leave a gift of money to an executor. That way he does not pay tax on it, but your estate may do.

1. **Funeral service, burial and cremation**

Strictly, you do not legally own your own dead body and, therefore, cannot specify what should happen to it. However, if you make your wishes clear in your will, it is most likely that your executors and relatives will carry out them out.

We have an article on <http://www.netlawman.co.uk/ia/donating-organs-body>.

After editing your will

1. **Print it out, sign and date it in the presence of witnesses**

You must follow the correct procedure for signing your will. Specifically, two people must witness the act of you signing it. They must be in the room with you when you sign and when each of them signs. Then you must write the date by your signature.

The witnesses must not be beneficiaries.

Anyone can be a witness. It does not have to be someone special such as a solicitor. What does matter though is that each witness also writes his name and address legibly before he signs.

If you do not get this right, your will may be invalid. We recommend you re-read the general notes to this document and also our article at: <http://www.netlawman.co.uk/ia/sign-will>.

1. **Write a letter of intent explaining any wishes in further detail**

You can expand on your wishes by writing a letter of intent. For example, you might explain how you intend that a beneficiary will use your gift or how you want the family to run your company.

Net Lawman provides a free template for a letter of intent that you can download from our website.

See the general notes to this document for more information.

1. **Would you like a qualified will writer to check your will and store it securely for you?**

Most people want the peace of mind in knowing that they have their will is binding, complete and complies with what they really want.

It is also reassuring to know that your will is absolutely safe until the day comes that it is needed.

We can arrange both of these.

Post your will to us and:

* a qualified will writer will check that your will does not contain any errors that might invalidate it. If we think there is a problem, we will contact you and tell you.
* we will place it into secure storage to prevent loss or damage.
* we will issue you with a receipt that you can keep with your other important personal papers telling your executors or next of kin where your will is stored.
* we will contact your executors to tell them that we hold your will, and remind them periodically.

It is important to keep your will safe. If your will is lost, damaged or destroyed, then your money and assets might not be distributed in the way you want.

Many people keep their will at their home. This is not a good place to store it, even if you keep it in a safe. Fire or damp might damage your will, or it might be found before your death by someone and altered, destroyed or damaged without you realising.

The checking and storage service is free. The only cost we ask you to pay is the cost of registered postage when we return your will to your executors after your death (or to you should you want to withdraw it yourself later).

We are able to keep the service free through our arrangement with our end-of-life legal services partner. When your executors request your will after your death, our partner will offer to carry out probate on your executors’ behalf. There is no obligation on your executors to use our partner for this work, but by being given the opportunity to talk to executors about the process of probate, our partner hopes that they can be asked to provide their services.

To use the will checking and storage service, send your will to:

Net Lawman
PO Box 10257
Melton Mowbray
LE13 9EN

If you would like more information about this service, you can contact our support team at support@netlawman.co.uk.

End of notes

Information that we need to check your will

If you would like to use our free will checking and storage service, we need to know some information about your circumstances and how to contact you if there is a problem with your will.

Please complete the following form then send it with your will to us.

Please do not physically attach it to your will in any way as doing so will invalidate your will.

|  |
| --- |
| **Name and address of the person making the will** |
| Full name |  |
| Address |  |
| Telephone number |  |
| E-mail address |  |
| Date of birth |  |
| Place of birth |  |
| Marital status (Single, Engaged, Married, Divorced, Widowed) |  |
| Full name of previous wife, husband or partner and his or her current marital status |  |
| Do you have any children or step-children currently under the age of 18?If so, what are their full names and ages? |  |
| Do you own a business?If so, what is the business called?Are you a sole trader, in a partnership or are you a shareholder in a company? |  |

|  |
| --- |
| **Your executors**We will contact them to let them know that we are storing your will for you |
| Executor name |  |
| Address |  |
| E-mail address |  |
| Executor name |  |
| Address |  |
| E-mail address |  |

|  |
| --- |
| **Previous last will and testament** |
| Have you made a will before? |  |
| What reason do you have for making a new will? |  |

|  |
| --- |
| **Are you able to read and sign your will unaided?** |
| Name |  |

|  |
| --- |
| **When you signed your will** |
| Were both witnesses present at the same time you signed your will? |  |
| What relationship to you are your witnesses?For example: two neighbours; or your doctor and a nurse at her practice; or your care home manager |  |
| Have you left either of your witnesses a gift in your will? |  |

|  |
| --- |
| **If you have had any help preparing your will, who has helped you?** |
| Name |  |
| Relationship to you |  |
| Telephone number |  |
| E-mail address |  |