AMAN SOLICITORS
ADVOCATES

WILLS - WHAT TO THINK ABOUT BEFOREHAND

You should consider the following matters before giving your Will instructions.

1. EXECUTORS AND TRUSTEES:

These are persons who deal with the administration of your estate after your death. This would include taking charge of your home and belongings, obtaining a Death Certificate and taking care of your funeral arrangements. Consequently, they should be people who you know you can trust and who you believe will be capable of undertaking such a task.

If any of your beneficiaries are under 18 years of age then you must appoint at least two Executors. You can appoint individual persons to deal with the administration, or an "enduring institution" such as a solicitors firm or your bank. If you appoint individuals as your Executors you should consider substitute Executors who would be appointed in the event of the primary Executors predeceasing you or being unable or unwilling to accept the appointment. The appointment of substitute Executors will not however be required if you appoint an enduring institution as your Executors.

2. GUARDIANS:

You should consider appointing a guardian or guardians of any minor children you have. Again, you should consider the appointment of a substitute guardian who can be appointed in the event of the primary guardian or guardians predeceasing you.

3. FUNERAL AND OTHER ARRANGEMENTS:

You may wish to include in your Will specific wishes for your funeral arrangements. You may for example, wish to declare a desire for your body to be buried at a particular place or for a particular religious service to be performed at your funeral.

4. SPECIFIC GIFTS:

You should consider whether there are any specific items of personal possessions or gifts of money that you wish to give to particular individuals. These gifts will be made prior to the division of the remainder of your estate.

5. REMAINDER OF YOUR ESTATE:

Once any debts, inheritance tax, administration costs and funeral expenses at your death are paid and any specific gifts made, the remainder of your estate should pass to your "residuary" beneficiary or beneficiaries. To deal with the possibility that both you and your residuary beneficiary die together in a common accident, or if he/she predeceases you, your Will should include a substitute beneficiary or beneficiaries. You may wish to consider making a charity a beneficiary or substitute beneficiary. Inheritance tax is not payable on gifts made on death to a charity. It is possible for your residuary estate to be divided up into fractions and for beneficiaries to each take a share of the same.

6. POWERS OF EXECUTORS AND TRUSTEES:

These powers are provided by statute (the law). We would suggest however that the statutory provisions are amended. Such amendments extend the limited statutory (legal) powers that Executors have to invest the monies in your estate and to borrow monies, insure property and to advance monies to any child beneficiary for their maintenance, education and general benefit.

7. OTHER TERMS:

There are various other terms that that you could put in your Will, including the grant to your partner or any other person of a life interest in your estate which would mean that the person benefitting from the life interest would only be entitled to the income from your estate and not to the actual capital value of the estate itself.

8. INHERITANCE TAX:

Depending on the size of your estate we would strongly advise that you seek professional advice from an accountant or an independent financial advisor (IFA) on the options available to you in order to minimise the tax burden of your estate. Inheritance tax is payable on the net estate above the inheritance tax threshold. The rate of tax is currently 40% and the inheritance tax threshold is £325,000. No inheritance tax is payable on gifts between spouses or, from December 2005. Further, if you have assets abroad you should ascertain from a suitably qualified attorney or tax advisor in that country whether any local death taxes will apply.

9. FOREIGN PROPERTY:

Your English Will may not operate in all jurisdictions and there may be a possibility of a conflict of laws. For example the ability of a personal representative to use foreign assets for the payment of English debts will depend on the law of the country in which the assets are situated. The general rule where you have immovable property, i.e. land, that you should have a local will to cover this. If you do not own land abroad then your English Will should take effect though it should be expressed to be an international Will made pursuant to the Convention providing a uniform law on the form of an international Will.

The formalities are very similar to an English Will but not only must you declare in the presence of two witnesses that the document is your Will in which you must also state that you are aware of its contents, in addition a third person should also be present, known as an authorised person. A solicitor can be this person. Provided the Will is executed properly it will be valid irrespective of the place it was made, the location of the assets and the nationality, domicile or residence of the testator. We cannot however give you conclusive advice as to whether your Will will be valid as to dispositions in countries outside the UK.

10. DEPENDANTS:

You have the right to leave your property in whatever way you please, and no relative has the right to receive property under your Will. However, The Inheritance (Provision for Family and Dependants) Act 1975 give the Court limited powers to order financial provision to be made from the net estate of a deceased person for the benefit of certain categories of people. A person qualifying must take an application to the Court within six months of the date of the deceased. The categories include; the spouse of the deceased; the former spouse of the deceased (depending on whether or not a clean break order was made at the time of the divorce); a person who has lived with the deceased for at least two years in the same household as the husband, wife or partner of the deceased; a child of the deceased or a person treated as being a child of the family.

11. WITNESSING:

In order to be valid a Will requires the signatures of 2 independent witnesses. These witnesses will have to witness the signing of the Will by the testator. The witnesses cannot be either a beneficiary (or the spouse of a beneficiary) or an executor to the Will. In light of the current COVID-19 outbreak and the restrictions in place to ensure social distancing there may be practical difficulties in having 2 independent witnesses sign the Will. The Law Society and the Ministry of Justice are currently in discussions about relaxing the requirements for witnessing a Will. For now, however, we suggest some possible solutions to this:

1. If you have access to 2 independent witnesses living within your household have them sign.

2. Ask your neighbours by signing your Will from more than 2 metres away in their presence and then have it safely passed to your neighbours for signing and safely returned to you.

3. If you cannot have your Will safely witnessed then PLEASE DO NOT DO SO AS ALL RISKS FROM THE CORONAVIRUS / COVID-19 MUST BE AVOIDED.