

Wills Today

KENDALWILLS

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FUNERAL COSTS

Should you start saving?

It's a sad fact we will all die sometime and the cost of dying is rising. In 2014, according to Co-operative funeral care the average cost of a funeral was £3,609. Typically this will include the coffin and services provided by the funeral director, and other expenses known as disbursements, which are fees paid to other third parties like the crematorium, doctor and minister.



In addition to this, there are other likely costs such as the cost of hiring a room for refreshments, and the family may want a plaque or memorial stone. Such costs can easily add another £2,000 to this initial figure. In addition, there may be legal costs to obtain probate and administer the estate which can run to many thousands of pounds.

Staying with the funeral, if you would like to be buried, that is normally the more expensive option, and the costs of a burial will vary depending on where you live. If this is your preference, it is a good idea to make sure your close relatives are aware of this. You might like to make some enquiries about costs so there are no surprises later.

Even where somebody dies and is reasonably well off, a problem that can arise is physically finding the money to pay the funeral

costs. Some funeral companies want up-front payments before any work is done, which can put family members under financial pressure. Once someone has died, their bank accounts are normally frozen on death, and it may be many months or even years before probate is granted and their assets can be released to family members. This may be less of a problem if the deceased person is married, and they have a surviving partner and joint bank accounts, as the survivor can continue to use the bank accounts they previously held jointly and pay such costs.

So we can see, it is more of a problem on the second death of a couple or a single person. A popular option in the past has been to take out a life insurance policy, which pays out a lump sum on death, to pay such expenses. Some insurance companies offer policies with little

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If a couple sign each other's Will should they be still be Legal?

In a recent case, *Marley v Rawlings*, a couple visited their solicitors to make Wills, and accidentally signed each other's Wills. So the husband had signed the wife's Will and the wife signed her husband's if that makes sense!

When Mrs Rawlings died in 2003, nobody noticed the mistake, as the Wills were similar, but when Mr Rawlings died in 2006 it was picked up. Naturally, this brought the Will into question, as the beneficiaries were different to the situation, should he die intestate (with no Will).



It was clear what Mr Rawlings had intended from the Will, but the court held that basic requirements had not been met and the Will was therefore invalid. This case has gone right up to the Supreme Court who has recently overturned that decision. So now the Will can be executed as intended.

What do you think? It certainly demonstrates the importance of taking care when signing documents.

If you require a Will or other Legal Services, contact me, Paul Rodman by ringing me on 01539 728020.

What happens to a pet when someone dies?

Recently, when one of my clients passed away, my first thought concerned her pet poodle. Who should look after it? I thought. Typically, this duty may fall on relatives initially, but realistically, they may not be in a good position to look after an additional animal longer term especially if they work full time.

With this subject in mind, I visited Animal Rescue Cumbria at the Wainwright Shelter at Kapellan, Grayrigg, near Kendal, and discussed this situation with Ruth, who is a volunteer at the shelter. Ruth explained that most animal shelters are full virtually all the time. This can mean having to turn people away, although preference would be given where an animal owner has died. Equally, the owner, doesn't need to die, a lengthy stay in hospital or a care home, can mean the pet owner can no longer care for the animal, which ultimately may need to be re-homed. Ruth explained that initially, a Kennels or Cattery can provide a solution although a cost will be involved. Once a place becomes available in the shelter, it would be offered to the owner, and normally the animal will be put up for re-homing.



When writing a Will, it can be helpful to think about the care of pets. Before naming a person to receive an animal, you need to be sure they are in a position to receive it longer term.

A donation in a Will to a suitable charity like the Wainwright shelter can assist with the costs of re-homing. As with any registered charity, it would be usual to include the registered charity number.

If you would like to donate or make a gift in your Will to Animal Rescue Cumbria the registered charity number is 1153737 and the address, The Wainwright Shelter, Kapellan, Grayrigg, Kendal, Cumbria LA8 9BS. Tel 01539 824293.

As you might expect, they have animals available for re-homing. The charity was started in 1972 and funds were provided by Alfred and Betty Wainwright.

Can you still make a Will and be sure your wishes will be carried out?

In recent months, you may have read in the papers about Heather Lott and her mother Melita. Their relationship was always fraught, but Heather was shocked when her mother died without leaving her a single penny, but an estate of £486,000. The Will left the estate to three animal charities, The Blue Cross, RSPB and the RSPCA. Her mother also left instructions for her executors to fight strenuously any attempt to challenge the Will.

Well, as you might expect, Heather did fight the decision, which has taken 11 years to reach the Court of Appeal and now a verdict has been reached. They awarded Heather a third share of the estate. The court agreed with Heather that her mother had been unreasonable. The case gives clear evidence that the courts will overturn Wills that they view to be unfair.

The case was challenged under the Inheritance (Provision for families and dependants) act 1975. This act is designed to protect dependents, (more typically partners or children) when a family member dies.

The case raises a few questions

Why bother to write a Will if it can be overturned by the courts?

Would it have helped if Melita had made some provision for Heather?

If you are unhappy with a Will left by a relative, should you always challenge it?

Does the case have implications for charities that may stand to lose out in the future?

One of the problems with a case like this is that the courts want to do the right thing, and put things right, not necessarily what the person making the Will wants. In this case, they have



only paid a third of the estate to Heather, so Melita's wishes have still been largely carried out.

The situation for Melita is still very different to what would have happened had she not made a Will at all.

If Heather had been left a share of the estate originally, she may have been less inclined to bring the action, and if she had still gone ahead, the courts may have been less likely to find in her favour." While we are all free to challenge a Will, we need to be mindful of the considerable costs involved, and that there is no guarantee of success in the end.

In conclusion, it will be interesting to see how this case implicates on future case law and other similar cases. I would agree that charities are right to be concerned.

What can go wrong when writing a Will?

It sounds straightforward enough. You want to write a Will to say where or who, your assets should go to. You sign it, in the presence of a couple of Witnesses, and you are all sorted. So what are common problems that might arise with this simple process? Here are ten you might know of others:

- 1 The Will is never actually signed. Typically this can arise, when the Will is posted out to you. It is stuffed in a draw and forgotten about. Result, intestacy just as if there was no Will at all. The government will decide where the assets should go.
- 2 Another problem that can arise when a Will is posted out is that the witnesses used are family members or spouses of a family member. This is incorrect as witnesses cannot benefit in a Will.
- 3 The document isn't dated. It will be impossible therefore to prove when it was signed.
- 4 The witnesses may not have actually seen the testator (the person making the Will) sign it. If they were asked this question, they may truthfully answer that they didn't see it signed.
- 5 The document once signed correctly can be lost. If it is not found at the date of death it will be an intestacy once again.
- 6 A previous Will made may be found and used, in place of the most recent one, so the last wishes are not actually carried out. It doesn't bear thinking about the problems that might arise if the newer document is eventually found!
- 7 The testator may get married and not review the Will so it is revoked on marriage.

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- 8 The estate of the person making the Will may reduce in size after making the Will. This can happen when funding long term care fees. They may have made gifts that are no longer practical or possible to make.
- 9 The testator may lose mental capacity and so an inappropriate Will can't be changed.
- 10 The Will has never been reviewed for years, so people mentioned in it have died or moved away. The executors appointed may no longer want to act.

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or no medical underwriting. It is important however, that the sum assured is sufficient to pay the funeral costs, as inflation can erode the value of a plan after ten or twenty years. It is also helpful if the plan proceeds can be paid directly to a third party like a close relative, so the policy proceeds do not fall into the deceased person's estate and cannot be accessed until probate is granted.

A second option is to purchase your funeral in advance. This has several benefits. You have the comfort of knowing the funeral is provided for while you are alive, and you get to choose exactly what you would like, although you might not see

the occasion! Most funeral directors are able to offer such schemes and the money you pay is normally held in trust until your death.

Some discount funeral operators have set up in business in recent years, as they have seen a niche, offering basic funerals for low prices than the traditional funeral directors. Typically these start from around £1,000 and the internet has helped them establish themselves. However, most local traditional funeral directors are well experienced at what they do, which may give families the confidence to stay with them, at what can be a sad and distressing time.

Kendal Wills are agents for Golden Leaves Funeral Plans please contact us for more information on 01539 728020.

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MI of Carnforth, Lancashire

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Kendal Wills work to a fixed price menu of services so you know where you are at the start, so there are no nasty surprises. The prices are always kept highly competitive, and include free home visits, up to a 50 mile radius of Kendal. The company is not VAT registered and so this saves 20% on the final bill. If you require something more complicated than normal, we will advise you of the price before work commences.

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Ask us your legal questions and if we don't know the answer we will find out!

KENDALWILLS



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