Wills Today

Happy New Year!

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IS THERE SUCH A THING AS A JOINT WILL?

Traditionally, there is such a document, although they are very rare today, and they have not always been accepted, when applying for probate.

The idea, behind such a document, was that a married couple would both be able to leave their assets to their children, and the Will wouldn't be altered if one partner died, and the other later re-married. It is also worth considering that in the past, it was generally the man who owned all the major assets.

Today, Wills are generally written by one person rather than a couple. We often see "Mirror Wills" which closely reflect one another, although they may not be identical. This is particularly true, where a couple (or one party to a relationship) have been married before. They may want to benefit their children as well as each other.

Another term we come across are "Mutual Wills". These are written, normally by a married couple, and each party agrees not to change the Will, or write a new one. However, as you might imagine, they can be problematic, as it is very difficult to bind the surviving partner. They can often lead to expensive legal disputes. Because of this, they are generally best avoided. It is fairly common for a surviving spouse to make a new Will after the death of a spouse. There can often be unforeseen changes in a family situation. – Paul Rodman

IN THIS ISSUE:

- Is there a "Joint Will"?
- Registering an Enduring Power of Attorney?
- Are you over 90?
- Wills for older couples setting up home
- Amending a Will after the death

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WHEN SHOULD YOU REGISTER AN ENDURING POWER OF ATTORNEY?

The Enduring Power of Attorney is the older version of the current Lasting Power of Attorney (Financial Decisions) which was replaced in October 2007. Both documents give power to the attorneys, appointed by the donor, to make decisions about financial matters and property, for example, when going into a care home.

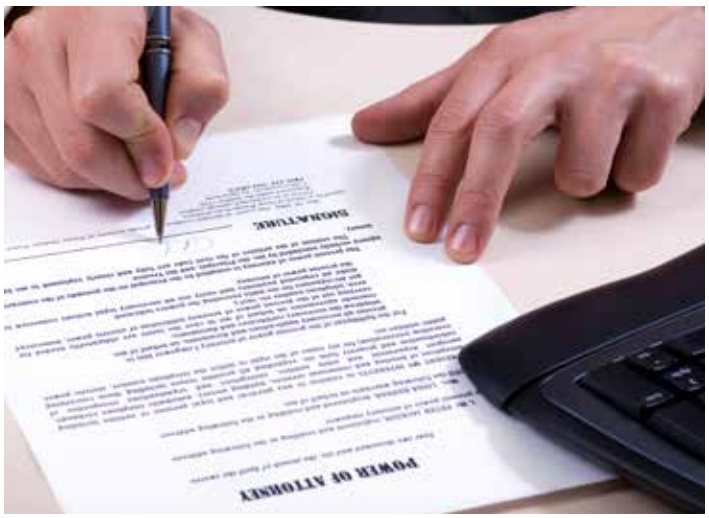
Today, there is also a Lasting Power of Attorney (Health and Care Decisions) which replaced "letters of wishes" and "advance directives" which gave instructions about the donors care in hospital.

Although, they were replaced by "Lasting Powers of Attorneys" (Financial Decisions) around 10 years ago, there are still lots of the old Enduring Powers of Attorneys around. These were set up to allow family, or other people chosen by the donor, known as "Attorneys" to deal with a person's affairs, if they lose mental capacity.

They are a relatively simple document and were fairly easy to set up. In many cases, they are never required, for example, if someone has not lost mental capacity, and then sadly dies the document is no longer needed.

So the question can arise, is when should they be registered. This question does not arise with the newer "Lasting Power of Attorneys", as they should be registered at outset. The official answer, is when the donor starts to lose mental capacity.

As people get older, it is not unusual, for them to be less able to deal with complicated issues, or make difficult decisions, than they might when they were younger. However, this does not always mean they have lost mental capacity. It can help to get a



professional opinion from a doctor or other qualified person. If necessary, they can carry out a test for a fee, to help arrive at a balanced decision. The donor is more likely to respect a decision from such a person, than from a close relative like a son or daughter.

Once a decision is made to register the document, at least three family members must be told about the registration. This is done by issuing a form, which can be obtained from government website gov.uk. The website also suggests an order of priority of who should be notified. It is worth mentioning that if one person of a category is notified; all the people of that category should be told, so if one grandchild is notified, all the grandchildren must be told.

Sometimes, the question can arise, should the donor register an existing Enduring Power of Attorney, or set up a new Lasting Power of Attorney (Financial Decisions)? A consideration is that the donor's mental capacity, is likely to have been better when the old Enduring Power of Attorney was set up, which must have been at least ten years ago. This can lead to the question, should they be setting up a new Lasting Power of Attorney if they no longer have mental capacity?

WHAT PERCENTAGE OF THE UK POPULATION ARE OVER AGE 90?

Although people are living longer, it may come as a surprise to lean that less than 1% of the UK population are over age 90. If you are over age 90, you are just one in a hundred congratulations!

According to the Office of National Statistics in 2012 there were just over 500,000 people in the UK over age 90. The population of the UK in 2016 was 65.5 million.

HOW SHOULD OLDER COUPLES RE-MARRYING OR SETTING UP HOME TOGETHER WRITE THEIR WILLS?

A question that is often asked is how should I write my Will to benefit my children and a new partner?

Typically, this situation will arise when a person has lost their spouse at a relatively early age, and they meet a new partner. They may not be thinking of getting married initially.

They generally will want to maintain some independence and financial security for themselves, and also have peace of mind, of knowing their own children will benefit from their assets, rather than their partners children.

Such "second time around" relationships seem to work best where both parties have similar assets. For example, if each partner owns a house, they may not actually move in together, and prefer to maintain their own space. However, this may not suit everyone, and the cost of running a home can be heavy for a single person.

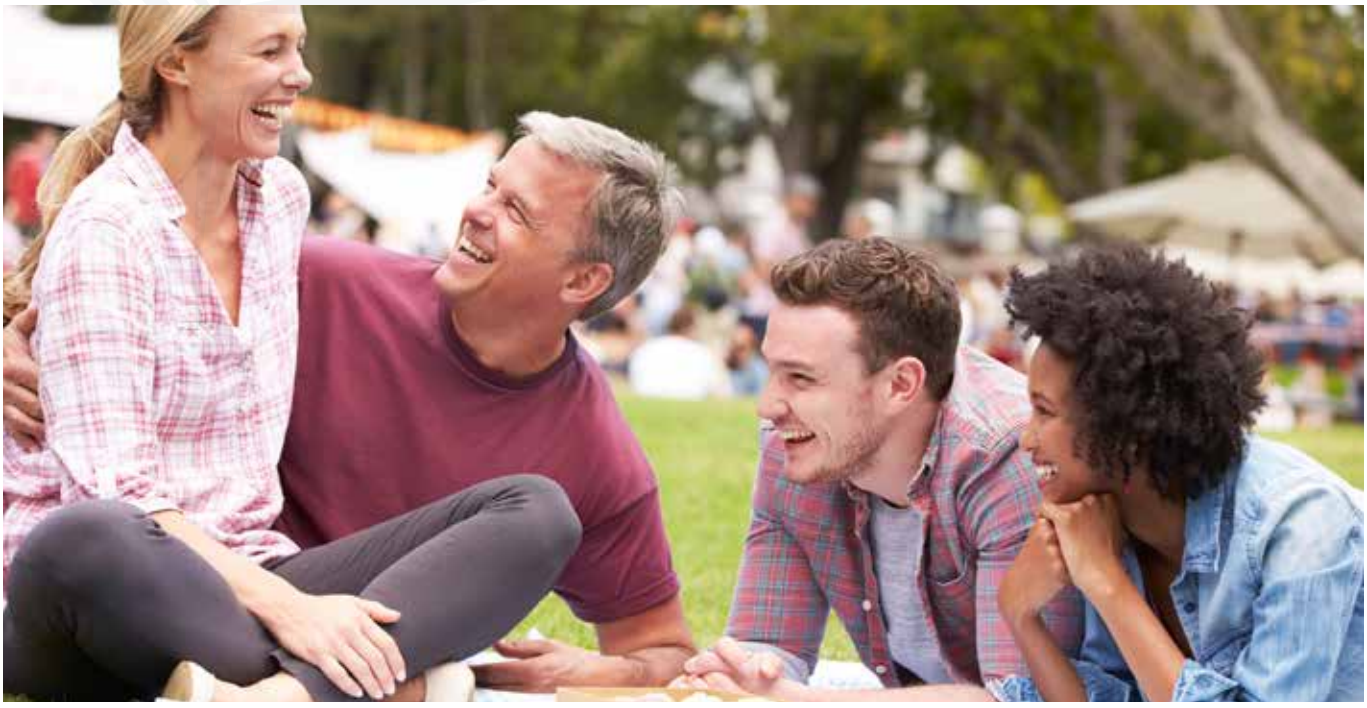
One popular solution is to write a Will with a "Property Trust". This is where one partner owns a house, and allows the other partner to live in the house after their death. Normally, the house is sold on the death of the surviving partner, and the sale proceeds revert back to the family of the owner.

What are the disadvantages of such an arrangement?

- The children may not inherit for some considerable time, especially if the new partner is a lot younger than their parent.
- The house could fall into disrepair if the surviving partner doesn't maintain it.
- The partner allowed to live in the house, may find a new partner to share the house with.

So such disadvantages need full consideration. An alternative is for both partners to own a house "Tenants in Common". This may be a house one partner already owns, or it could be a new property. They can each own a share of the single house. In most cases, this share will be 50% with two owners, but it doesn't have to be that way. The shares can be of unequal value, which might reflect the amount of capital introduced.

Having set up the ownership this way, each partner can write a Will, leaving their share as they wish. Generally, it will include trust provisions, to allow the other partner to remain in the property, rent free, with security of knowing the house cannot be sold, without their agreement. Finally, as always, do take professional legal advice at the first instance.



CAN YOU CHANGE A WILL AFTER SOMEONE HAS DIED?

The short answer is "Yes" if all the beneficiaries of a Will agree, a Will can be changed up to two years after the death. To do this, a deed needs to be drafted, known as a "Deed of Variation".

So what are the popular reasons for doing this? Sometimes a beneficiary of a Will may already be comfortable financially. They may prefer that other people receive the gift, for example, children or even grandchildren.

The inheritance rules in our country may also be a consideration. The current "Nil rate band" is £325,000. This is the amount you can leave before inheritance tax is payable. Once you have over this figure in assets, any excess is taxable at 40%. This can take quite a slice out of a typical estate. For example, an estate of £500,000 will reduce to £430,000 once the inheritance tax has been paid with £70,000 being due in tax.

Since April this year, the government has introduced the new residential nil rate band. This gives an extra £100,000 of allowance if you are a homeowner, leaving your main residence to your children or grandchildren. It is quite a complex piece of legislation. However, for those who qualify, it does have the benefit of reducing the tax payable in an example like the one above.

With the new extra allowance, you can leave a total of £425,000 in the current tax year before inheritance

tax is due, allowing you to keep £470,000 with a tax bill of £30,000. The extra allowance is also due to rise in future years.

It is important to be aware that some Wills won't qualify for the extra residential nil rate band, for example some trusts in Wills won't qualify, so this makes reviewing your Will even more important, especially for those with total assets over the nil rate band of £325,000.

There may be other reasons why a Will may be changed. A person in receipt of state benefits may find such financial benefits are reduced or lost if they suddenly inherit a large amount of money. They may prefer to re-direct their gift to other family members.

Other assets such as shares in a limited company can also be transferred this way. It is a way the beneficiary of a gift can avoid the seven year rule when later passing on assets to other family members.

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