Your Consultant is:

The Last Resort NW Ltd.

Tel: 0800 009 6769 Office : 0161 917 6767

THE
ESSENTIAL GUIDE TO

MAKING A WILL

AND OTHER USEFUL ESTATE PLANNING ADVICE

NO PRETTY PICTURES.
JUST THE FACTS.

SECOND EDITION May 2016

Estate planning is not just about Wills

It is about

- Your Children's and Grandchildren's Education and Future
- Marriage, Divorce, Stepchildren and New Partners
- Drug Addiction, Alcoholism and Gambling Issues
- Insolvency, Profligacy, Physical and Mental Incapacity
- The Matrimonial Home
- Protection against Care Home Fees for self and spouse
- Funeral plans
- Inheritance Tax and Business Property Relief
- Powers of Attorney

And it is about being able to apply a degree of control over your estate before and also after your death. Wills make good sense; intestacy causes hardship for your loved ones and enriches people you may neither know nor like. And if you are worried about what will happen to your children or pets after you pass away, you should deal with that as well!

In This Edition:

"Losing a loved one is hard enough without having to deal with the pressures of probate."

The Last Resort NW Legal

Offers:

1. A comprehensive service, dealing with all of the practical aspects of the probate process.

2. Exceptional value for money as we don't charge a flat fee simply based on the value of your assets. These are quoted in advance and are fixed, so you know exactly where you stand. VAT is included in all quotations.

3. Fully qualified probate practitioners who hold appropriate qualifications.

4. You will receive a personal and sympathetic service and our advisors will visit you in your own home to discuss the work you need us to carry out.

5. We are fully insured.

6. Our drafting is done by Specialist Time-served Solicitors, among the best in the country

The Last Resort NW Ltd.
1 Camberwell Drive, Ashton Under Lyne. OL7-9SW
Tel 0800 009 6769
Website: www.thelastresortnw.com

Any estate which has combined (husband & wife / civil partners) assets of more than double the current IHT threshold is an urgent case for a tax-saving manoeuvre.

Anybody who needs to look into IHT-saving projects is advised to take specialist advice, because there are some avoidance schemes available (Such as Octopus Investments). Where a Testator has cash assets they can be invested in another business, then taken out just two years later to take advantage of IHT and CGT allowances.

Another possibility is the Enterprise Investment Scheme (EIS).

Unmarried Partners

Couples who do not fall into the category of 'married' or 'civil partners' are disadvantaged as far as IHT is concerned where their respective estates or combined estates exceed the nil rate band (NRB). This is because they cannot transfer any unused NRB to each other, a benefit enjoyed since 2007 by married persons and civil partners. There are special considerations involved, and if you are in this situation, you are advised to take advice.

Remember – if you have an inheritance tax issue, you need to look very carefully at your estate planning.

DO I NEED A WILL?

Almost certainly you do!

And whatever you may read about writing a will, whatever will writing forms you buy, and whatever on-line will you might consider doing, you will never do as well as having a one-to-one discussion with an experienced expert Will writer. He will raise issues you would rarely consider and give you the opportunity to address them. He can probably save a substantial part of your estate which might otherwise go to pay inheritance tax or care home fees.

With property prices climbing (2016) a good stock market and easy cash to buy properties via the Help to Buy scheme, many people feel that their wealth needs careful handling to properly benefit their families on death.

By not having a will, your family could experience real difficulty in sorting out your estate when you die and if you are in the inheritance tax bracket they will also have to find cash to pay that bill – usually before the Courts will allow any dealings with the estate so possibly delaying any dealings with your property!

Many people assume that if they die without a will, their partner will inherit everything. In fact, even if you are married, or in a civil partnership, there are limits on what your partner would inherit in the absence of a will. Instead, Intestacy Rules apply, which may well put in place provisions with which you would be extremely unhappy about.

These same Intestacy Rules provide that children inherit at the age of 18; many people believe that 18 is too young to inherit a substantial sum of money. Making a will allows you to decide the age at which your children - or other chosen beneficiaries – inherit your estate.

Have you considered who would look after your minor or disadvantaged children on the death of the second parent?

Naturally, people are inclined to look for ways to save money.

DIY will-packs or internet wills may be cheap, and so appear particularly attractive, but a lack of understanding of the law may open your will to challenges after you die.

Mistakes are unlikely to come to light for many years, by which time it may be too late to correct them. So, whilst you saved the cost of having your will professionally drafted, the consequences could be a loss to your family of tens of thousands of pounds.

A specialist will writer can help you avoid pitfalls and explain the options most suitable to your circumstances. High Street Solicitors are NOT specialists but jacks of all trades. They expect you to come and see them and all the time the meter is running in 6 minute increments.

Your will can include certain safeguards for example, delaying payments or keeping it in trust for a beneficiary who may be in the midst of divorce proceedings or is a bankrupt, an alcoholic or drug addict, or is mentally or physically disabled.

A well-drafted will can also ensure that your estate stays in your bloodline, avoiding 'sideways disinheritance' so going to your issue and remoter issue. And do not simply prepare a will and then forget about it.

Your personal and financial circumstances can change, so you should review your will regularly; at least every 5 years.

“A well drafted, up to date Will can be a valuable investment”

INHERITANCE TAX

Careful planning may save a client from paying Inheritance tax (IHT) to the government; so why not try to avoid paying it?

"You cannot legislate the poor into prosperity by legislating the wealthy out of it;

What one person receives without working for, another person must work for without receiving;

The government cannot give without taking from someone else;

You cannot multiply wealth by dividing it;

When half the people think the other half will provide for them, the other half will wonder why they should bother to work just to keep them"

Hang on to what you have earned. There are plenty of schemes available to deal with this issue. Unfortunately many people do not take advantage of them because they just do not bother to address estate planning issues as soon as IHT becomes a problem. Testators should therefore:

Work out their liability to IHT;
Exploit their NRB [up to £325,000 can be given away without tax];
Use exempt gift allowances (a spouse can gift the same amounts);
Carry forward unused gifts (two years);
Gift spare income;
Work on potentially exempt transfers. (PETs)

On death, each individual is currently (May 2016) entitled to an inheritance tax (IHT) allowance of £325,000. Assets owned by the deceased in excess of this amount are taxed at 40% and certain provisions can be made in a will to mitigate this expense. There is an exemption for all assets, whatever their value, passing between spouses and civil partners, but they still need a will to make this happen. This exemption does not apply to those in unmarried relationships. In addition, there are special rules where one partner of the marriage is not domiciled in the UK.

POSSIBLE CONSEQUENCES OF NOT MAKING A WILL

1 Depending on the value of your estate, your spouse could inherit everything unconditionally, meaning an absolute interest so that they could pass them on to someone other than your children.

2 Your surviving spouse could spend the inheritance or maybe start a business which eventually fails, with banks seizing assets to recover their lending - then the children and grandchildren will get nothing!

3 Your children could find a substantial sum of money in their accounts at a time when they may be ill-equipped to manage it which means their inheritance could be frittered away.

4 People you do not know or do not like could inherit part of your estate.

5 Your children's inheritance could be swallowed up in care fees if you or your spouse were to go into a care home.

6 Your business could be sold or wound up unless you made provision in your will for its continuance.

7 Your children may be placed in care or with guardians you would not necessarily have chosen for them.

8 If your spouse re-marries, the new partner – and his or her children – could well finish up taking your whole estate or a substantial part of it.

9 You will have no opportunity to consider powers of attorney, trusts, tax planning, non-provision or exclusion of people / family members whom you do not wish to benefit.

10 You will not be able to appoint an executor you know will deal with your estate properly with the beneficiaries' best interests in mind.

“75% of Britons have no will. How can so many people leave their loved ones so exposed when they die?

DYING INTESTATE

Means the rules of intestacy govern the distribution of the estate. These rules were updated in October 2014. The order of priority relating to the distribution of the estate is :-

Spouse; Children & grandchildren; Parents; Full siblings and their descendants; Half-siblings and their descendants; Grandparents; Full siblings of the parents of the deceased [uncles, aunts, and their descendants viz., the first cousins of the deceased] ; Half siblings of the parents of the deceased [half uncles and half aunts (and their descendants)] The Crown. *But the new rules do not change with respect to unmarried relationships!*

AVOID INTESTACY PROBLEMS – MAKE A WILL !

Married or in a civil partnership estate worth less than £250,000 with or without children – spouse / civil partner gets everything.

Married or in a civil partnership estate worth more than £250,000 and no children – spouse / civil partner gets everything.

Married or in a civil partnership estate worth more than £250,000 with children – spouse / civil partner gets : First £250,000 and all the personal possessions. The remainder of the estate is halved, one half going to the partner / spouse and the remaining half divided between the surviving children.

Living together but being unmarried brings its own problems; Gina B of Sussex lost her partner at 42. Neither of them had a will. Had they been married she would have been entitled to at least £250,000 from Dave’s estate. As it is, Dave’s children from a previous marriage benefitted, leaving Gina with nothing, so she had to go to court to get some cash from the estate. S*he didn't have the same rights as a married couple enjoy*.

Professor Cooke, one-time Law Commissioner; “There’s almost a superstition about making a will; if I make one, maybe I’m going to die. Perhaps it’s easier to say to your partner, *‘Shall we both make our wills?’*

Making a will means that you are also able to choose your Executors – the people who administer your estate. You might wish to appoint a member of the family. You can also make specific gifts of treasured items to family or friends.

Ensures that should the estate of a deceased person not have sufficient funds to settle the cost of probate, funeral expenses or the debts of the estate, trust property will not be sold or charged if the Trustees wish to keep the property unencumbered or to keep it for the beneficiaries. Either the estate will be classed as ‘insolvent’ and the debts unpaid, or family could settle them. They are not, however, obliged to do so. Many Testators deliberately run-down the value of their estates, but this does not necessarily mean that they leave nothing to their beneficiaries where a trust had been established years previously.

Permits Trustees some discretion in disposing of or dealing with trust assets so as to best accommodate beneficiaries’ respective interests, needs and requirements and to better account for their various circumstances prevailing at the material time and in the future. For example, a beneficiary may be or may become mentally unstable, a drug addict or alcoholic, could have serious debt issues or be going through a messy divorce. So, clearly, giving money or other assets to such a person would be a waste of that money – so hold it until he has sorted out his affairs.

Ensures that in the event of a Donor’s Will being lost, destroyed or invalid that trust property will devolve in accordance with trust terms. There are many well-documented incidents where wills ‘go missing’ because a first, second or even third spouse or other dependants will fare better under the intestacy rules (or maybe even under an old, but not destroyed, will). Or a will may genuinely just be lost- another reason to use us for Will Storage at very reasonable rates.

It limits the possibility of a person – maybe a bit frail or not of sound mind – being pressurised (or even cheated) into disposing of property or the sale, proceeds of their house, when they move into care. It is the Trustees who manage the property or money, not the Donor.

Where a couple settle property in a trust for the benefit of their children and grandchildren then even where the Donor's relationship breaks down, that property will remain in the trust unless all parties agree that it should be broken. A court is very unlikely to break the trust just to benefit a departing spouse.

Reduces the risk of successful claims by other people against a deceased’s estate.

TRUSTS

Trusts effected while you are alive allow you to control assets whilst you are alive and after your death; they are also useful tax-saving tools. Most people need a trust of some sort as part of their estate planning. This does not mean that you have to engage lawyers to spend hours of their time mulling over your estate and briefing barristers to draft ‘opinions’ all for your benefit and at great expense. A trust document can be just one page or many pages. As long as it sets out the four main ingredients of any trust ...

BENEFICIARIES, ASSETS, RULES and TRUSTEES

However, trusts can be set up unintentionally such as where e.g. a minor (somebody aged under 18 years) is left an interest in 'real ' property [land and buildings].

What is a Trust? A trust holds donated or ‘settled’ assets of any description, to be managed by Trustees on terms set out in the trust deed. The donor / settlor decides the terms and what assets are donated. The Trustees are the legal owners of the trust property but they are not beneficially entitled to it unless they are also beneficiaries. They will usually have a discretion – hence ‘Discretionary Trust’ – as to how they distribute the trust property to the beneficiaries.

What does a Trust do? As far as the estate-planner is concerned, any one or all of the following, and a lot more !

Relieves the Donors of the burden of maintenance, repair, security and insurance of the trust property of whatever nature but especially realty (land and buildings) should the Donors at any time be unable or unwilling to manage those matters themselves. If a property is let or not occupied by the Donor - who could be in a care home - then the total management of the property will fall to the Trustees.

Settles ‘The Property’ on ‘The Beneficiaries’ whilst the Donor is still alive, to afford the beneficiaries a fixture as to their inheritance.

Can avoid the expense and time of obtaining a Grant of Representation in respect of the trust assets on the death of the Donor, because at the time of his death he does not own them. Whether the Donor is alive or dead, the Trustees can still deal with the estate just the same.

On death, each individual is entitled to an inheritance tax (IHT) allowance of £325,000. Any assets owned by the deceased in excess of this amount are taxed at 40% and certain provisions can be made in a will to mitigate this expense.

There is an exemption for all assets, whatever their value, passing between spouses and civil partners, but they still need a will to make this happen. This exemption does not apply at all to those in unmarried relationships. In addition there are special rules where one partner of the marriage is not domiciled in the UK.

Dying intestate - a case history.

Jason says, “My spinster Aunt Hannah died suddenly and childless at the age of 39 without making a will. She owned two flower shops and a small nursery. Her father had abandoned her and my mother when they were both very young, and the solicitors who were dealing with Hannah's estate – instructed by my mother – traced Hannah's biological father.

My mother and Hannah were very close and my brothers and I regarded her with a great deal of affection. In fact, we were her whole life. Notwithstanding, a great chunk of Hannah's estate went to her father – and even when he received the cheque, he didn't even bother to call on us, even though he lived only 20 miles away.

This is one of many heart-rending stories brought about simply by not making a will.

But a will might not be the most important document for you.

-Your Power of Attorney could be!

LASTING POWERS OF ATTORNEY – everybody needs one

Having a Lasting Power of Attorney [LPA] can make life easier for a Donor, his family and business partners. A Power of Attorney gives another person authority to deal with a Donor's affairs. A Power can be for Property and Affairs (P&A) or Health and Welfare (H&W).

Once registered, the Power can be used (with the Donor's permission) whilst he is still *compos mentis*. If the Donor is unable to act for himself due to loss of mental capacity permanently or temporarily, his Attorneys can act but they have *by law* to act in the Donor's best interests.

Example; a person working overseas and who wants to buy a house, can ask his Attorney to deal with the purchase. An Attorney does not have to be a lawyer – it can be a spouse, a child, a good friend or more than one of the above.

The Attorney will have the authority to deal with all aspects of the Donor's sale and purchase, signing of the pre-contract enquiries, signing the sale and purchase contracts and even the mortgage deed.
His acts, provided that they were authorised by the Donor, are seen to be the acts of the Donor himself. An Attorney can manage all the financial affairs, sign cheques and manage bank accounts. In fact an Attorney can deal with the Donor's affairs as though he were himself the Donor.

At the moment, it takes about 16 weeks for an LPA application to be processed and returned to the Donor, so many clients ask for a General Power to be drafted while the LPA is being processed. The General Power is effective as soon as it has been signed and witnessed but becomes invalid when the Donor becomes incapacitated. An LPA remains valid until the Donor dies or revokes the Power – which he cannot do if he lacks capacity.

The alternative for a person who loses capacity and has no valid LPA is for his family (or in some cases the Social Services) to apply to the Court of Protection (CoP) to appoint a deputy; this is a long-winded and expensive business. The appointed Deputy – even if a member of the family – may have to provide security which can be for hundreds of thousands of pounds (though a special insurance policy can be effected to cover this).

Your Consultant can advise on how to do this.

The Deputy will have to produce accounts when the court demands them and may also have to ask the Court's permission to buy or sell the home where for example, it is no longer lived in by the Donor. It is definitely NOT the way to go in view of the inconvenience and expense.

For a good illustration of how the Court of Protection can mess up a life, find the HEATHER BATEMAN story on the internet:

https://www.youtube.com/watch?v=xNqGw1cvnkI
You will then appreciate the value of arranging a Power of Attorney.

Obtaining a Lasting Power of Attorney:

The Donor – the person who wants to appoint attorneys - cannot apply for an LPA if he lacks capacity; a Donor must read all the information he receives from the Office of the Public Guardian which the prospective Attorneys should also read. Then he will need:

Names, addresses, dates of birth, occupations and relationship to his Attorneys; ditto any replacement Attorneys

One Certificate Provider plus one Person to Notify OR two Certificate Providers
Any guidance or restrictions he wants to apply

To note if he wants his spouse to remain an Attorney after a divorce or Separation

Witnesses for all signatures

Details of any Trust Corporation he might want to act as his Attorney.

If a Donor – or other person who needs to have his affairs managed because he lacks capacity – has not got an LPA then the property is managed by the Court of Protection, which will result in delay, vast expense and imposition of restrictions. In the vast majority of cases it is better to let a professional (like us) deal with your application.

Our Consultants deal with hundreds of LPAs every year.

LIVING WILL / ADVANCE DIRECTIVES

What happens when you become so seriously incapacitated that you are incapable of telling your health-care professionals what treatment you want – or don't want?

For example, whether you want to be resuscitated after a seriously disabling heart attack or stroke. This is also an important question for people who have dementia and who might otherwise be happy to die peacefully and with dignity.

How about people who are in a persistent vegetative state after a brain injury? Do you really want to spend maybe years tied up to a machine?

A Living will (also known as an Advance Directive) – is a statement about what medical treatments/interventions you want or don't want when you are so 'out of it' that you are unable to discuss the situation with the doctors. This is Thinking Ahead - much the same as drafting a will and getting a Power of Attorney for Property and Affairs (and now considered even more important than making a will).

The Living will – Our consultants produce a 'pick and mix' format for the client to decide what he or she wants rather than just handing out one 'off the shelf ' - The living will should be supported by the LPA for Health & Welfare. Why? Because it is not fair to ask your spouse or children to make decisions about turning off the machine or to post a 'Do Not Resuscitate' [DNR] on the medical records. For years afterwards, the person who made that decision may have it on their conscience; he or she may be accused by other family members of not doing the right thing.

So, rather than go through all that trauma and asking your loved ones to make almost impossible decisions, get a Living Will drafted – this will be the instructions to your Health & Welfare Attorney.

It makes a lot of sense. Please try to do it before you are taken into hospital or a care-home. Information on Living Wills/Advance Directives can be had from the AGE UK website or from SAGA; get some information.

Do the right thing!

FUNERAL PLANS

Have you considered getting a pre-paid funeral plan?
Would your family have **at least** £3,500 immediately available for your funeral? If you think life insurance will cover this, think again- the proceeds of any life insurance policy must by law go through the full probate process (6 months to 2 years) before the funds are available. **Life insurance companies don't tell you this even though they commonly market them as cover for just such an eventuality!!**
Needless to say this makes them pretty useless at the time of need as the family will have to find the money elsewhere.

The cost of funerals is rising dramatically and the allowances from the Government to assist bereaved families comes nowhere near to covering the cost. There are Plans to suit all requirements and the family will feel more comfortable with the whole process if they know that it is *you* who made the choices, rather than them having to do it for you.

Wade through the alternatives / l Weigh up and bear the cost / Decide on burial or cremation.

Contact one of the larger pre--paid providers -

Safe Hands

Your consultant has all the details!

The UK's fastest-growing and most affordable pre-paid funeral plan provider. Their plans cover both burial and cremation, plus you can dictate the precise format of the service thus eliminating any uncertainty amongst loved ones left behind regarding what you would like your funeral to include. Safe Hands Funeral Plan can be paid for in a single lump-sum, or you can spread the cost over an extended period up to a maximum of 10 years. Alternatively, pay for your Safe Hands plan over the course of 1 or 2 years and no interest is charged!

Apart from everything else-

A funeral plan is a good investment and

can be paid for over a number of years

at a rate to suit every pocket

THINGS TESTATORS SHOULD ALSO CONSIDER

CODICILS – documents for making small, inexpensive changes to existing
wills.

WILL STORAGE – a valid will can be ruined by careless handling. It can also be inadvertently or intentionally destroyed if left lying around the house. Secure storage makes common sense. Some family members may inherit more under the rules of intestacy - and so destroy a will!
We can store your will at very reasonable rates.

PROBATE Not always a straightforward business. Appointment of Professional Executors lifts the burden off the shoulders of family and ensures that the terms of the will are adhered to. We can and do act as professional executors and are very experienced as well as sympathetic.

BUSINESS PROPERTY RELIEF – passing a business [usually a trading business] on to a spouse could mean losing worthwhile tax benefits. This is a complex matter and will require professional advice, especially after death if full advantage is to be taken of this tax relief.

WILL UPDATES – people should update their wills every three to five years to take account of changes in their and their and the circumstances of their beneficiaries.

LIFE AND DISCRETIONARY INTERESTS – there is a world of difference! Ask your consultant for details.

CARE-HOME ISSUES – Care-homes can absorb large sums of money, money which the testator would prefer to go to children or grandchildren. Advice may be needed on this.

PETS – A pet owner is always concerned about what will happen to pets – from horses to dogs and cats, rabbits to tortoises and hedgehogs. Provision for their care can be made in a will.

SPECIFIC BEQUESTS AND LEGACIES – You may want certain of your possessions or sums of money to go to friends or to a charity;; this is also possible through a will.

Your Consultant can advise on all these points

CHARITABLE GIFTS

Why not consider giving a small gift in your will to a UK Charity?

There are certain tax benefits – to offset against IHT liability - for charitable donations. The following are examples of UK charities to which you may wish to donate:-

Army, Royal Air Force, Navy, Royal Marines

Help for Heroes

Cancer and Leukaemia in Kids

The British Heart Foundation

Great Ormond Street Hospital

Cancer Research

RNIB

Your local Air Ambulance

The British Horse Society

Cats Protection League

National Trust

RSPCA

Greenpeace