



**Atherton  
Godfrey**

SOLICITORS

## **Top 12 Questions about Wills, Probate and Beneficiaries**

### **1. Can I have my children as my executors if I also want them to be beneficiaries?**

Your children can be beneficiaries as well as executors, but they can't be witnesses or they forfeit their entitlement under your will.

### **2. If I don't have a will does everything go to the government?**

Your estate will pass under the laws of intestacy. This means that the people who benefit from your estate may well not be the ones you would have wanted to benefit. It will only go to the government if you have no surviving relatives who can inherit.

### **3. If I transfer ownership of my house to my children and don't need to go into a care home for at least 7 more years, can the council still take the house to pay for care home fees?**

The council can go back as many years as they want and if they can show you transferred your property to avoid paying long-term care fees, they can take the value of the house into account in any financial assessment they do.

### **4. Will I need a Lasting Power of Attorney to make decisions for my wife when we're married and I am her next of kin?**

Without a Lasting Power of Attorney you have no legal authority to make decisions on behalf of your wife if she has lost capacity to make decisions herself.

### **5. If my son dies before me will his wife inherit what he would have got from my estate?**

Unless you specifically write it in your will, your daughter-in-law won't receive the share of the estate that your son would have inherited.

### **6. If we've lived together as man and wife for more than 20 years will my partner automatically get my estate?**

If you don't leave a will your partner may not receive anything as the law does not recognise the concept of a common law wife / husband.

### **7. My dad was widowed and died without a will. As I'm the eldest son will I be entitled to deal with the estate myself?**

Because there isn't a will, the laws of intestacy apply in these circumstances. This means that all the brothers and sisters have an equal right to deal with the estate, regardless of age.

**8. If I transfer my bank account into my son's name before I die, any money in the account won't be included in my estate for Inheritance Tax purposes will it?**

The transfer would be treated as a gift which could be included in your estate for Inheritance Tax. Also, if you continue to use the money in the account, as you are still benefitting from the account, it must be included in the estate for Inheritance Tax, regardless of whose name is on the account

**9. Solicitors charge a fortune for writing a will. It will be much cheaper to use a will writing company won't it?**

Most people are surprised how little solicitors charge for writing wills. Some solicitors also store your wills for free. Many will-writing companies initially appear cheap but add extras on to the cost of preparing your will and charge for storage. More importantly, will-writing is not regulated which means that will writers are often not legally qualified and do not have indemnity insurance, which could mean that you have no recourse if things go wrong.

**10. I don't own a house or have lots of money so is there any point doing a will?**

Most people have some assets when they die, even if it's only personal possessions. By signing a will you decide who is in charge of sorting out your estate and prevent family arguments. There doesn't have to be any items of high value for arguments to develop.

**11. I've got a will so my family won't need to bother with probate when I die will they?**

Obtaining a grant of probate is effectively proving the will. In other words it is evidence that the will is legally valid and the executors have the legal authority to sell or transfer assets belonging to the deceased in accordance with the will. A grant of probate will always be required if property has been left in the will.

**12. I want to make a will but don't know who to appoint as guardians for my children. I don't know who they should go and live with.**

The interests of children are always put first. If someone is appointed as a guardian in a will this can mean they acquire parental responsibility and have a right to make decisions about the children's welfare. However, where the children live and who looks after them is always based on what is in the children's best interests.