photiades solicitors
FRIENDLY EFFICIENCY

NOTES TO HELP YOU COMPLETE OUR WILL INSTRUCTION QUESTIONNAIRE

These notes provide a commentary on the accompanying questionnaire. They should explain the options open to you and the consequences of your choices. Not all the sections have a commentary. Those that do can be found in these notes with the number that corresponds to the section number in the questionnaire. Some of the explanations will not be relevant to your personal situation but you may find them of interest and they may highlight those circumstances in which you should revise your new Will in the future.

1. Any variations in your name need only be advised if you hold any assets or bank and building society accounts in that different name.

2. If you own property jointly, the way in which you hold it is very important when you die. Most jointly owned property is held as Joint Tenants the other way to hold property is as Tenants in Common. The distinction between property held as Joint Tenants or Tenants in Common is crucial in the context of drafting a Will. Both Joint Tenants own all of the property. Such property will pass automatically to the survivor outside the terms of the deceased Joint Owner's Will (even though it may still be taxed as part of his Estate). Tenants in Common own the property in defined shares (usually equally if this is not specified in any documentation). That share must be bequeathed in a Will either specifically or it will be part of the residuary estate. When deciding which choice to make when completing Section 2. The share of the value that you own in any jointly owned property should be included in your calculation. Any debts that you have such as a Mortgage should be taken off the value and remember to include the value of any life policies that will pay out on your death.

   Although a Will can achieve some limited tax planning and assist your relatives in dealing with your estate, it is no substitute for lifetime planning. Making a Will may provide a good opportunity to consider tax planning during your lifetime, for instance, in taking out insurance policies, changing the ownership of property between you and your spouse etc. It may also be the time to consider granting an Enduring Power of Attorney to some person who you can trust to deal with your property and affairs when you no longer can. An Enduring Power of Attorney, unlike an ordinary one, does not fail once the person giving the Power becomes mentally incapable. It can be worded so it only comes into effect only when the donor becomes incapable. It avoids the necessity of applying to the Court of Protection to deal with

an incapable person's affairs, which is very expensive and cumbersome process. If you would like to have some more information on this subject, please answer Yes to the question at the bottom of Section 2.

4. If a child's parents are not married when a child is born, only their mother may appoint a Guardian unless their father has acquired "parental responsibility" by formal agreement or Court Order.

5. If you have children under the age of 18 you may appoint one or two Guardians to look after them following your death, where their other parent has died before you. This applies even if parents are divorced. The non-resident parent is likely to have prior rights to be responsible for a child over a Guardian appointed by the resident parent but it may be worth appointing someone who is not your former spouse, if that is what you want, in case your former spouse dies before you. If you make such an Appointment you give your Guardian a stronger case before a Court if an application for Guardianship is to be made. Guardians have the right to appoint substitute Guardians by their Will. If you appoint a Guardian we will include provisions in your Will to state that your Guardian's expenses should be met by your Estate and that any incidental benefit your Guardians receive as a result of their being a Guardian may be kept by them.

6. Executors are the persons appointed to look after a deceased's estate. An executor appointed by the Will does not have to accept the office and can either renounce the Executorship or can decide not to act initially but reserve his/her right to do so later during the period of Administration. The role of your Executors is to establish what is comprised in your estate, pay any debts or taxes due and then ensure that the provisions of your Will are carried out. Once this has been done the period of Administration is completed. It may be that your circumstances are such that on your death a Trust has to be set up or a Trust is imposed by Law, for instance where children who are under the age of 18 inherit some or all of your Estate. If your Will provides for ongoing Trusts then your Executors automatically become the Trustees of the ongoing Trusts unless you specify otherwise. Trustees do not have to be the same as Executors but in general your Trustees should be chosen for the same reasons as your Executors, for example, because they are trustworthy and have some experience in financial matters. Once your Executors have completed the Administration they can resign and appoint their own successors. However, during the period of Administration they cannot resign and they cannot themselves appoint substitute Executors. During the period of Administration the Trustees will own your assets but can only use them for the benefit of the Beneficiaries of your Will. They have a long-term commitment to look after any Trust assets and to protect and balance your Beneficiaries' interest.

If your Will is to be simple one, for instance giving the bulk of your estate to an adult, then that person, e.g. your Spouse or Partner, can be appointed as a sole Executor. However, you should consider that your Spouse or Partner may die before you and you may want to appoint a substitute executor for that situation. If Trusts arise then it may be better to have at least two people from the start. You can have an alternative appointment, e.g. appoint your Spouse if he or she survives you but if not, your adult children or two other individuals could be appointed. You should ask them first! You can appoint this Firm as your Executors. We will not make any charge for merely being appointed and the cost to your Estate will be no greater than if your Executors instructed us to act for them in administering your Estate. In fact it may be cheaper as we will not write letters to ourselves about what needs to be done and will not need to have meetings to explain the documents that need to be signed!! If you do not have two people whom you wish to appoint as Executors or you wish to reduce or spare your relatives the responsibility for administering your Estate then you should seriously consider appointing this firm to act as your Executors.

8. Specific gifts will be free of Inheritance Tax which, if payable, will come out of your residuary estate unless you specify that any gift should bear its own tax. The cost of storage, transport, insurance, etc (if applicable) will, however, be borne by the recipient of the gift. If property is subject to a loan, you can also specify who discharges the loan. It is possible to give belongings and even money to an individual with a request that they should be distributed according to a letter or a list. Please note that if items are described explicitly, the gift will only operate if you still own that particular item at the time of your death. If not, the gift will fail completely

10. This Section is where you can choose to whom everything else you own is to be left after any particular gifts that you wish to make have been made. If there is insufficient room on the questionnaire please attach a separate sheet setting out your wishes.

11. If you think that all the people mentioned in Section 10 could die before you or at the same time as you, this section is where you can indicate who should inherit your Estate if that happens.

12. You may have specific wishes regarding funeral arrangements and disposal of your body. You do not have to complete this section and if you do not, we will not make any reference to these matters in your Will. However your Will is where most people check to see what you wish to have done following your death, so if you do have any particular wishes it is a good idea to set them out in your Will. Please bear in mind though, as your Will may not be read until some time after your death, you should ensure close relatives are aware of your wishes.

13. The purpose of these questions is to find out whether there are any special circumstances that might require additional clauses in your Will or require me to give you further advice. The notes in italics in the questions should give you some idea why we need the information asked for. If you are not sure how to answer any of the questions, please get in touch with us.

GENERAL NOTES

MARRIED COUPLES

Married couples usually wish their estate to pass to their surviving spouse unless both are individually wealthy. Two points must be mentioned: -

1. The first £275,000.00 of property passing on death is at present exempt from Inheritance Tax.
2. Property, which passes between spouses, is exempt whatever its value. This means that no tax is be payable on the first death if all your property goes to your Spouse. Anything over £275,000.00 will be taxed (40% is the current rate) on the second death. So, if your jointly owned home is worth more than £550,000 you may "waste" one person's Inheritance Tax Allowance if all your property passes to your Spouse on the first death. Sometimes this is unavoidable but there are tax saving Trusts that can be put into your Will. The cost of advising you and preparing a Will containing these provisions is much more expensive than for a simple Will but the tax saving can be as much as £110,000.00.

MARRIED COUPLES & PARTNERS

There are two main ways on giving property to someone: -

1. An absolute gift to the recipient who can do whatever he or she likes with it, or
2. A gift for life where the recipient receives the income from the gift but not the capital which passes on the recipient's death to someone else chosen by the person making the Will. The second option may be combined with other options such as discretionary trusts and the power to receive some capital, which may have tax advantages that can be explored further if you wish.

THOSE WITH CHILDREN

Gifts to children can be gifts of the residuary estate, which usually happens on the death of the last surviving parent, but gifts can be made on the death of the first parent (this may be useful from a tax-saving point of view). Children cannot give a receipt for property until the age of 18 and until that age, Trustees must administer the property on their behalf even though they may use the income and even the capital for the child. It is usually better for small sums to be handed over to the child's parent to look after on their behalf rather than creating a trust. Often a gift to a child is conditional upon him or her reaching a particular age, normally 18, 21 or 25. If a child dies before reaching that age, you may want that child's children or spouse to take in substitution. (For technical reasons, substitutional gifts to grandchildren must not require them to reach an age greater than 21). You may wish to make a direct gift to your grandchildren or, for tax reasons, it may be better to leave them a substantial part of your estate.