

WRITING A WILL

Whilst we, Swallow Financial Planning, try to keep abreast of the latest trends in will writing this is a specialist area and ***you must*** seek specialist advice before taking any action. We utilise specialist lawyers for inheritance tax planning (IHT) and planning relating to the use of the marital home within estate preservation arrangements. Dealing with capital gains tax (CGT) on anything other than the simplest scheme requires the services of an expert accountant. Professional fees are always expensive and should be taken into account when considering any of the ideas we put forward within this document

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1. WHEN SHOULD YOU REVIEW YOUR WILLS?

As a general rule think about a will as being effective for no more than 3 to 5 years. If you take this attitude when you approach your will writing a lot of the difficulties about “what if” disappear as you accept the need to review matters as the years go on.

There are some specific events which might pre-empt this timescale such as:

1.1 Specific Legacies

If your will gifts shares in your business, a particular asset or property or some other item which you subsequently mortgage or sell then the will needs to be reviewed.

1.2 Emigration and Foreign Assets

Buying a foreign property (France can be a nightmare) or even emigrating requires your will to be reviewed.

1.3 Inheritances

If you inherit, win, or otherwise acquire an interest in a trust this may affect the position of your estate and hence require a revamp of your will.

1.4 Marriage

If you get married, divorced or enter into a civil partnership your previous will becomes null and void so again a new will is required.

1.5 Long Term Care

Entering into a private nursing home may require a revamp of your will as assets are eroded by fees.

2. FINANCIAL ASSESSMENT

We are particularly well equipped to advise clients and their legal/taxation advisers alike as to the extent of the liabilities. We should have a full list of a client's financial affairs, an assessment of their business values and we should know what, if any, insurances and pensions are already written into trust. This is the essential first step to any advice and is avoided at one's peril!

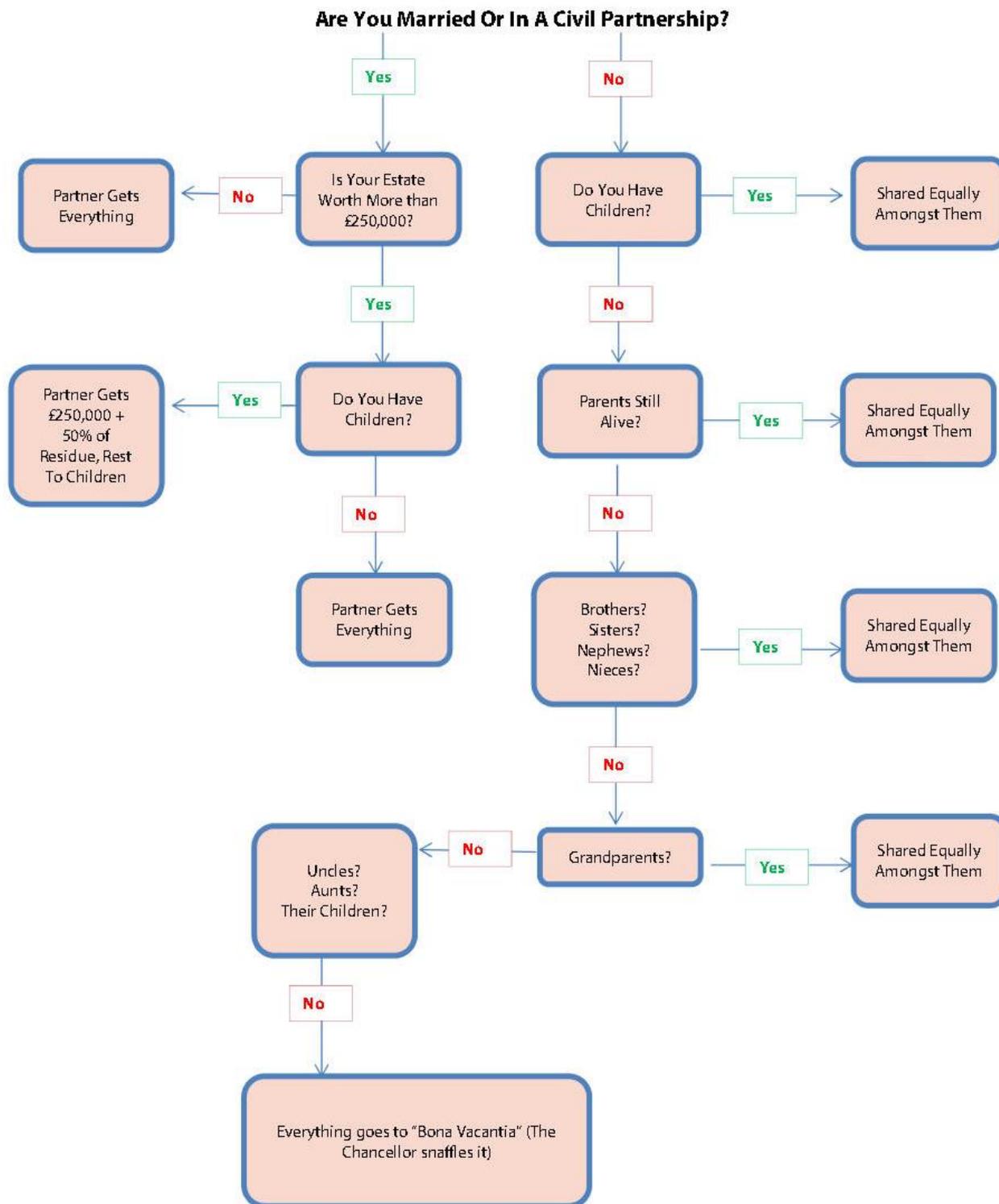
2.1 Jointly Held Assets

Many clients do not appreciate that jointly held assets (typically your main home) do not pass via your will but instead automatically pass to the joint tenant on your death. Therefore, if you wish to include your share of the property in your will you need to break the joint tenancy in favour of tenants-in-common.

3. WHAT HAPPENS IF I DO NOT HAVE A WILL?

To die without a will is to die *intestate*; just as to die with a will is to die *testate*.

The Laws Of Intestacy (England & Wales) WEF 1st October 2014



3.1 Guardianship Of Children

If you are a single parent and die without a will the guardianship of your child(ren) goes to the other parent by default. If you don't want your ex to look after your children then write a will.

4. SOME GUIDELINES ON WRITING A WILL

We like to review a client's will before we provide any specific advice. The will is one of the most effective tax planning tools available for most couples. The following are some general areas you may like to consider when undertaking a new will.

4.1 Executors

There must be at least two other individuals than the person writing the will to ensure at least one trustee is alive to administer the will after death. Typically, executors would be the spouse and a sibling or child. Professional trustees are fine if you feel no family member is suitable (or you want a referee) as long as you do not use banks and insurance companies and the professional trustee does not make exorbitant value related fee charges. Remember that the executors are only required to make the decisions. The solicitor dealing with the probate will probably do the vast majority of the legal paperwork and running around whether or not he/she is a trustee. Always ask the executors before adding them to your will and if you do choose a professional make sure you agree their fees now, as after death your beneficiaries may not be in a strong position to check terms and conditions.

4.2 Beneficiaries

Remember always to have a backstop. In other words, it is fine to leave your estate to your children, but what happens if they predecease you? Likewise (if you would want it this way) make it clear that if one of your children predeceases you then their children get their share.

Be aware of the Inheritance (Provision For Family And Dependents) Act 1975. If you have a long lost spouse, cohabitee, child or any other financial dependent who you **do not** wish to benefit from the will it is not necessarily enough just to not mention them. You may have to specifically exclude them within the will or indeed give them a small gift to clarify your intentions. Own up to the lawyer who will advise you accordingly.

4.3 Guardians

Where young children are involved it is essential to set out who you want to look after your children should both parents die. Make sure you clear this with the potential guardians before unknowingly committing them to the task.

4.4 The Letter Of Wishes

The principle of a letter of wishes is to create a non-legal declaration of your wishes after your death. After someone dies it is usually chaotic, and if there is a detailed letter of wishes available it takes a huge strain off those who have to handle the estate and funeral arrangements etc.

We have specific notes with ideas for letters of wishes, ask us for a copy.

4.5 Your Digital Assets

It is wise to leave instructions with regard to your digital assets, for instance closing down your Google and Facebook accounts, passing on your photos or destroying them etc. Some people may appoint a Digital Trustee who can manage this work better.

For instance, Google have an inactivity manager which lets you know if there have been any emails and then closes the account after 3 months.

5. SUMMARY

We assist many clients to write and maintain their wills. The task need not be arduous and does ensure that your wishes can be met after your death. We encourage all clients to also write letters of wishes to help their loved ones with the practicalities or funeral arrangements and other personal matters.

6. GLOSSARY OF IHT TERMS

The following are some commonly used IHT planning acronyms:

BMTs	The Bereaved Minor's Trust
CGT	Capital Gains Tax
DGS	Discounted Gift Scheme
DT	Relevant Property Or Discretionary Trust
GOOI	Gift Out Of Income
GAAR	General Anti Abuse Regulation
GWR	Gift With Reservation
HMRC	Her Majesty's Revenue And Customs
IHT	Inheritance Tax
IIP	Income In Possession Trust
IPDI	Immediate Post Death Income In Possession Trust
IT	Income Tax
NRB	Nil Rate Band
NRBDT	Nil Rate Band Discretionary Trust
PET	Potentially Exempt Transfer
POAT	Pre Owned Asset Tax
PPRR	Principal Private Residence Relief

7. OTHER IHT NOTES

We have a number of other notes relating to IHT issues, they can be found on our website under [Document Library](#).

Please note that whilst every effort is made to ensure that the information contained within this explanation is correct, these notes are by necessity brief and of a generalised nature. Clients should seek specific personalised advice prior to undertaking any arrangement. These notes are named [07.2020 Writing A Will. Docx](#) and was last updated in November 2017. Whilst we have done our best to ensure facts are current to this date laws and options are changing constantly so always check before action.

E.&.O.E.