



How To Be Clear In Your Will

The recent furore over the £520,000 legacy left in the Will of the late Joan Edwards to the Government highlights the need for a Will to be drafted clearly so it accurately reflects the intentions of the individual.

Joan Edwards passed away in September 2012 aged 90 and left her estate to *'whichever government is in office at the date of my death for the government in their absolute discretion to use as they may think fit'*. This wording however caused some confusion.

The executors of the Will interpreted it to be a donation to the political party in power and both the Conservatives and Liberal Democrats accepted the donation. The public outcry that followed caused both parties quickly to hand back the money so that it could go to the Treasury. Miss Edwards had been a nurse, so it was argued by many, that her intention must have been for it to go to the NHS. It may never be clear what her true intention was – but what is clear is that the wording used in the Will was ambiguous.

'Armchair Principle'

The second case that has hit the headlines involves an anonymous £500,000 legacy also made to the government in 1928, which came with the strict stipulation that it *'could only be used to reduce the national debt to zero'*.

Eighty-five years later and the fund is estimated to be worth £350m, but because the national debt stands at about £1.2 trillion, it cannot be touched.

It would in this instance have been helpful for the Will to have contained a clause that covered this scenario, or if the wording was a little clearer.

When the courts have to rule in cases interpreting a Will, there is the 'armchair principle' in England and Wales and the court will endeavour to discover the intention of the deceased (the 'testator') and by looking at extra evidence submitted.

It therefore places itself in the 'armchair' of the testator and considers the circumstances that surrounded them when they made their Will, to assist in arriving at their intention.

Traps For The Unwary

Homemade Wills should be avoided. It can be a false economy to make a homemade Will, if your beneficiaries then face a costly legal battle to prove your intentions in court.

Strict rules governing the way a Will is made and executed means that errors can be made very easily and can invalidate it.

These errors often include not signing the Will or not having it witnessed correctly.

The wording of a Will can also be problematic as words and terms have specific meanings in law.

There are regularly problems with the naming and the identification of individuals in Wills. Referring to people by their nickname, or an abbreviated name, can cause confusion.

Don't forget to include substitute beneficiaries if someone you name as a beneficiary dies before you and don't assume that the children of a deceased beneficiary will (or will not) take their parents' share – there are special rules that apply.

Altering your Will by crossing out sections or making amendments after it has been signed, usually mean the alterations will be invalid and can lead to conflict within the family which can end up in the courts.

If your Will is judged to be invalid then your estate would be distributed in accordance with an earlier valid Will or by the intestacy laws.

Your intention may not be for the government to benefit, but if there are no family members to inherit and no Will, your estate will usually pass to the Crown.

It's also worth remembering that your Will when proved after your death becomes a matter of public record, which means that anyone can look at it and obtain a copy. So references to, for example, 'that waste of space who is my son' may be worth avoiding.

Top Tips For Writing A Will

- Contact us for professional advice
- Make sure the Will is signed and witnessed
- Be clear with names and relationships
- Include substitute beneficiaries
- Don't make alterations after signing
- Remember that marriage cancels all previous Wills

Please contact us for further information.

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