Do I need a Will?

Everyone should have a Will. A Will is a legal document setting out how you would want your assets, such as your property, money and personal possessions to be distributed. Without a Will, the "Rules of Intestacy" apply which means that your assets could pass to people who you would not choose. Making a Will means that you take control.

What can I include in my Will?

You can include the appointment of executors, guardians for minor children, gifts of money or specific assets. You can include your funeral wishes and make provision for pets and charities.

What is an Executor?

An Executor is the person who you appoint in your Will to administer your estate after you have died and to distribute your assets in accordance with your Will. You can appoint one or more executors.

What is a Guardian?

A Guardian is the person or persons who you appoint in your Will to care for your minor children in the event of your death. You can only appoint a guardian if you have parental responsibility for a child. By appointing a guardian, the guardian then acquires parental responsibility for the child at the time of appointment i.e. your death. A guardian has the right to make all major decisions about the child's upbringing, education and welfare.

Without appointing a guardian, you could be putting your children at risk of private Children Act proceedings if there is a dispute as to who should care for your children. By appointing a guardian, you are setting out your clear wishes.

Can I use my Will to protect my assets for my children?

This is a common concern and a question for many. We all want to protect our assets for our families and future generations. Many couples therefore create mirror Life Interest Trusts of their share in a jointly owned property in their Wills. The share of the property belonging to the first of the couple to die passes into a Trust which allows the survivor to benefit from the trust property for the rest of their life (or sometimes for a shorter period) but without actually owning that half share outright. On the death of the survivor, the property will, most likely, be sold and half of the sale proceeds will pass in accordance with the provisions of each Will. Half the value of the house is therefore protected to pass to the next generation even if the survivor has had to spend all their own money (often on paying care home fees).

Can I give my house away during my lifetime?

Yes, but you need to aware that there are many risks involved. Giving away your assets with any intention of avoiding care fees, or to protect your eligibility for means tested welfare benefits, is known as "deliberate deprivation of assets". Should you do this and later go into care or claim benefits, the Local Authority or Benefits Agency can challenge any gift of property and potentially have this overturned. You also need to bear in mind that by giving away your house during your lifetime, you are losing control and therefore are unable to make any further decisions in respect of the property. If your relationship with the recipient of the property were to break down or if they get divorced or become

bankrupt, you could find yourself in an extremely vulnerable situation and potentially homeless.

By making the Life Interest Wills referred to before, this is not treated as a deprivation of assets as only the deceased's share of the property is held in trust and disregarded for care fees. You also retain full rights in respect of the property until you pass away.

I am not married. Will my partner inherit from my estate?

Only if you make provision with your Will. Under the intestacy rules, a cohabitee/partner is not entitled to the deceased's estate, regardless of the length of the relationship. There is no such thing as "common law wife/husband" - this is a myth. Therefore, if you want your long-term partner to benefit from your estate on your death, you will need to make a Will.

What do the terms "Beneficial Joint Tenants" and "Tenants in Common" mean?

These are the terms used for how you hold your property when it is co-owned with another person.

Beneficial Joint Tenants – when one party dies their share of the property will automatically pass to the surviving owner, irrespective of what their Will states. The surviving owner then owns the entirety of the property and they can dispose of this as they wish. The whole value of the property can, ultimately, be at risk of being used to pay care fees.

Tenants in Common – each party owns a separate share of the property (usually equal unless stipulated otherwise) and they can leave their share of the property to whom they wish in their Will.

I want to make a Will, what should I do now?

If you would like more information about Wills or would like to arrange an appointment to discuss your circumstances, one of the expert lawyers in the Wills, Trusts & Probate team at Sills & Betteridge would be pleased to hear from you on 0800 542 4245.