

COMMENTARY

To Andrew Example

This is an overview as at 10th July, 2011 of your proposed Will prepared by Direct Wills.

General

By the provisions of your Will, after the payment of all costs and debts, you have made a gift of money, certain gifts of specified property after which you have provided that your residuary estate will pass to your wife Alison Example, on the basis that if she dies before you, leaving children, you have made provision for those children.

If these provisions fail, you have appointed further beneficiaries.

If you are making provision for your wife then it is important to note that should you subsequently divorce after putting your Will in place, then your Will does not automatically revoke, but it treats your former wife as if they have predeceased you. Therefore, in these circumstances, any gifts made by your Will to your wife and any appointment of her as executor will fail.

The following is a commentary upon particular clauses in your Will:

Clause 1 revokes all your existing Wills which would include any foreign Will that you might have.

Clause 2. You have appointed your wife Alison Example to be your Executor but if she is unable to act, you have made a new appointment of Jack Black.

The Executors' responsibilities are to:

- * locate and identify the assets and any liabilities of the estate
- * deal with the administration of the estate according to law by collecting these assets in
- * determine the beneficiaries
- * apply to the Court for a grant of Probate of the Will. (Probate is a formal document that confirms the Executors and gives them permission to administer the estate)
- * make sure all claims or debts are received, assessed and paid if substantiated
- * prepare accounts
- * deal with taxation returns
- * defend litigation

This Clause also appoints your Executors as Trustees of your Will. The Trustees are responsible for:

- * managing any trust that might arise in your Will
- * holding funds for children until the date specified in the Will or until a child's 18th birthday

Your Trustees are bound to act carefully and properly and in accordance with the various Trustee Acts. They will need various powers in relation to these trust funds, such as the power to pay monies for maintenance or education of a beneficiary. These powers are contained in your Will.

Executors and Trustees are entitled to have proper expenses paid out of the estate, so the task should not normally be a financial burden. Your Executors can appoint solicitors or professional Trustees, at the expense of the estate, to deal with its administration.

Clause 3. Here you have set out your funeral arrangements. Your relatives should know your wishes or be aware that these are contained in your Will.

Clause 4 records your appointment of guardian. You have appointed your sister-in-law Kerry Sage to be the guardian of your children whilst they are under the age of 18. You have referred to "my children who are under 18 years of age" and therefore if your family increases this in itself would not be a reason to update your Will. Where you have made financial provision for your child or children in your Will then administrative provision for dealing with this is provided by subsequent provisions in your Will - see Clause 15.

It should be noted that it is only possible to appoint a guardian to those children which the law regards you as having "parental responsibility" for. To be able to make an appointment you must be one of the following:

- * either the mother or father of a child who were married to each other at the time of the child's birth*
- * the child's mother whether or not she was married to the father at the time of the child's birth*
- * the father of the child if he marries the natural mother*
- * the father of a child, born since December 2003, who was not married to the mother at the time of the child's birth but is named on the birth certificate*
- * the father of a child who was not married to the mother at the time of the child's birth but who has been given parental responsibility by a valid parental responsibility agreement entered into with the child's mother*
- * a person granted parental responsibility by a court*
- * a person with a Residence Order*
- * Step parents who have signed a Parental Responsibility Agreement or have a Court Order under S112 Adoption of Children Act 2002.*

By making a guardian appointment you cannot take away the rights of a person, surviving you, who also has parental responsibility for any child of yours.

Clause 5. You have made the following money gift:

- * five hundred pounds sterling to your godson Barry Salt but if he dies before you, leaving children, when they reach the age of 21 then they will inherit this gift.*

Clause 6. This gift of your Personal Chattels allows you to make gifts, in a less formal way, of any items which are within your personal chattels and which have not already been gifted. You should prepare a letter or list, clearly setting out your wishes, which should be signed and dated by you. The letter can be left with your Will but in any event it is essential that your Executors are aware of it at the time of your death.

This arrangement is of practical use in that it is not necessary to itemise in your Will these type of gifts. Further you can make changes to your letter of wishes without the need to make a new Will or codicil.

Please remember that this only applies to personal chattels which include personal items such as cars, jewellery and other household goods. It does not include, for example, houses, land, bank accounts, investments or businesses.

An example of an appropriate letter is as follows:

"To the Executors and Trustees of my Will dated day of 20 ("my Will")

By my Will I have bequeathed my personal chattels not before disposed to you requesting that these be distributed by terms of any memorandum or note left by me.

I am mindful that you have a complete discretion as to their distribution but I set below my wishes in this regard:

(YOUR WISHES here)

.....
*Signature of Andrew Example
Dated etc. "*

Clause 7. *You have made the following specific gift:*

- * your long case Grandfather Clock to Jack Black absolutely.*

Clause 8 *confirms that your estate is to consist of all property wherever it is which you shall own at your death. This makes it unnecessary in your Will to refer to, or list all your assets.*

Clause 9 *provides that your Executors will hold all your estate excluding those assets which you have specifically gifted and shall pay from it any:*

- * outstanding debts*
- * funeral expenses*
- * the costs of the administration*
- * money bequests*
- * Inheritance Tax*

What is left is referred to as your "residuary estate" or "residue".

Clause 10. *You have provided that your residuary estate shall pass to your wife Alison Example but if she dies before you, leaving children, when they reach the age of 21 then they will inherit this gift.*

Clause 12 *will only be applicable if the above provisions you have made fail. You have provided that your residuary estate shall pass to Dogs' Home Battersea.*

Clause 13 *is included because you have made a gift to a charity, and this allows your Trustees, if that Charity does not exist at your death to gift it to another charity with similar aims. This will ensure that the gift, so far as possible, will not lapse.*

Clause 14 *reverses the position at law, where if, in your Will, you make a gift to a child, grandchild or remoter descendants, without having expressed substitute*

provisions, and they have died before you, leaving children of their own who are living at your death, those children will automatically receive that gift. The inclusion of this clause means that the gift to a deceased child, grandchild or remoter descendant will lapse and will pass to other beneficiaries.

Clause 15. This provides that the Standard Provisions of the Society of Trust and Estate Practitioners (STEP) shall apply. This is a standard way of providing your Executors with a number of technical and routine provisions they need to administer your estate properly.

These provisions also ensure that where a beneficiary is under age, your Trustees are able to make available the income to the parent or guardian of that beneficiary, if needed for his or her maintenance. Further, if considered necessary your Trustees could, out of the capital, pay for such things as that beneficiary's maintenance or education.

The amendments to the Standard Provisions, referred to, reflect recent changes in the law and are of a technical nature.

It is noted in your Will that you have made a gift which will be paid only when a beneficiary attains an age greater than 18 years.

- * The wording of the condition affects the entitlement to income until that specified age is reached. These vary if the gift is vested i.e. "To Henry upon him attaining the age of 21 years" as compared with a contingent gift of "To Henry if he attains the age of 21 years." Different rules for Income Tax, Capital Gains Tax and Inheritance Tax will also apply.
- * It should be borne in mind that when the vesting of the gift is deferred beyond the age of 18 years to the age of 25 years and Inheritance Tax is payable, there is potential for a further charge of up to 4.2% on the value of the fund passing to the beneficiary, depending on the number of years payment is deferred. Different considerations apply if vesting is beyond the age of 25 years.
- * However, in the majority of cases, the different tax implications should not be of such significance as to deter you from the basic decision as to when you think young beneficiaries can be regarded as able to manage substantial sums of money.

Attestation or signing clause. It is essential that your Will is signed and witnessed. Until it is signed and witnessed correctly **it will have no effect**. It is so important that you follow the signing procedure as set out in the accompanying instructions.

If once you have signed your Will, your address changes or an address or name of a person you have referred to in your Will changes, it is not usually necessary, for that reason alone, to change your Will. It is recommended however that you place a separate note of any address or name changes with your Will.