

Newsletter – November 2016

Mirror Wills – are they right for you?

When it comes to writing a will, many couples opt to make mirror wills. These usually involve leaving the entirety of their estate to the surviving spouse, which will eventually pass on to their chosen beneficiaries.

In reality however, the intention behind mirror wills may not always be reflected in the actual events upon death.

One issue which may arise is in relation to provision of care. Subsequent to the death of one partner, the other may require care provision later in life. If mirror wills have been written, it is likely the Local Authority will use most of the assets accumulated by the couple in order to fund the care of the remaining spouse. This power is governed by the Community Care Act and allows the Local Authority to use people's finances and assets towards any care costs. Where total assets amount to more than £23,250, the individual will be required to fund the care themselves. Savings may be used up rapidly due to the large costs of care, which on average amounts up to £572 per week for a care home.

Local Authorities will provide a partial contribution when assets fall below the threshold of £23,250, and will only cover all care costs if savings deplete to £14,250. As mirror wills usually involve the entirety of an estate being left to a partner, it is likely both shares will go towards care fees, should it be required.

Another issue with mirror wills is certainty, and that ultimately the will may be revoked.

Although mirror wills are usually identical, they are still separate documents. Circumstances may change following the death of one spouse, with the original wishes being completely changed by the remaining partner. This may ultimately undermine the initial principle of making the mirror will in the first place.

Similarly, the lack of legal obstruction from making changes to a will means that one party can effectively alter their will even when the other is alive.

Problems may also occur should the surviving partner remarry. Marriage automatically revokes a will unless otherwise stated, thus leading to potential disinheritance for any party originally covered in the mirror will. Instead, the law of intestacy will step in and potentially lead to the new spouse receiving the entirety of the estate upon death as opposed to any children of the first marriage.

Thus prior to drafting a mirror will, consideration of the various potential consequences is advised to be explained to the testators so they are able to make an informed decision as to whether mirror wills are right for their circumstances.

Foreign Assets

Greenwell Consultancy is always looking to create relationships with companies that compliment their own for the benefit of our clients.

I am pleased to say we now have further expanded with the following connections who now work alongside us;

Andrew Eastwood - Spanish & Italian Will & Probate Lawyer

Professional Deputies - Court of Protection Specialists

Anglo French Law LLP - French Probate Lawyers

Please contact us if you need a referral to any of the above to help with the areas mentioned.

Two issues to be aware of in relation to Estate Planning and Bankruptcy;

1. You cannot be an Attorney on a Lasting Power of Attorney (LPA) if you are bankrupt, nor can you act if you are made Bankrupt after the LPA has been signed.
2. If you bankrupt at the time of an inheritance the Court will seek repayment of any debts in your name first and you could lose part, if not all of your money.

Happy to provide advice in both area's where needed - the use of a Trust can resolve point 2 above where appropriate.

Why do people NOT make Wills?

Everyone knows what a Will is and does – most people agree that they should have one, so why, on average, do less than 50% actually do?

Latest figures from the National Consumer Council showed that by age groups the following did not Wills;

- 65 yrs + 30%
- 55-64 yrs 45%
- 45-54 yrs 61%

In our experience there are three main reasons for why;

1. People do not like thinking about death and the effects it has on those they leave behind!
2. People never get round to it – it is not a priority for most and unless, like with most things in life, they experience the pain and turmoil caused by not having one they leave it until it is sometimes too late!
3. They just simply 'forget'!

Dying without a Will – the facts

There are many problems that dying what is known as 'intestate' can cause and these are just some of them;

- Difficulties faced by those left behind at a time when they least need it in organising their affairs and assets
- If you have no Will the law dictates how your assets are divide up
- Children under 18 years of age need Guardians, without them the courts decide on their future, which may not be with the people you would like
- Lack of control over who inherits – spouses may not receive everything and charities, friends and unmarried partners will definitely receive nothing!
- In addition disputes on who should inherit can get complicated and at worst fall into expensive legal cases.

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