

Wills

What is a Will?

- A Will is a legal document that sets out instructions for what should happen to your assets and estate and what should happen after you die.
- It is a legally binding document; making a Will can help protect your loved ones after you die and ensures that your wishes are carried out.

Why have a Will?

- A Will ensures that your wishes following death are carried out.
- It can also help with succession planning discussions in farm business by laying out how the next generation will be provided for.
- This means that your family can be properly provided for and protected. It also lays out who you want to care for your dependants on your passing.
- Importantly, it can head off family disputes that can arise following the death of a loved one.
- In the case of family farms and businesses, a properly planned and up to date Will can ensure that your wishes for the farm and its ownership can be properly carried out. This provides your family business with a high level of resilience for the future.
- Having a Will and taking advice from your solicitor and accountant can also help manage your Inheritance Tax position.

How can a Will help my business when I die?

- Most importantly a Will ensures your wishes for your estate are carried out.
- Your Will should ensure business continuity if it is up to date.
- If you are in a family business or partnership, then it can be very helpful if those involved know and understand what you wish to happen after your death. This can help avoid protracted family arguments and ensure that the business can transition to the continuing parties or next generation as smoothly as possible.
- In general it deals with the division of your assets and estate in the most efficient manner possible allowing businesses to continue if there are other parties to continue them.
- Taking advice from your solicitor and accountant when writing your Will can also help you manage how much Inheritance Tax you may pay.

How do I set up a Will?

- You can make a Will yourself however the best advice is that you should consult your solicitor to make sure the Will is properly constructed and is a valid document.
- This should avoid mistakes that can hold up your wishes being carried out and add costs to the process.

- The solicitor will advise you on how to set up your Will, but in simple terms you will need to list all your assets and then decide how they should be shared amongst your beneficiaries.
- You will also need to think about who will carry out your wishes (the executor), what happens if any beneficiaries die before you, what you want to happen with guardianship of your children and any other wishes you may have.

When should I set up a Will?

- You can set up a Will from the age of 18 and general advice is to make sure you have a Will in place as early as possible, especially if you have family and/or have started to build up assets.
- If you already have a Will it should be regularly reviewed, especially when you have changes in your life. That could be significant personal changes, increased assets or business changes.

Wills Case Study

A family farming business operated as a partnership between mother, son and two grandchildren. The farmland, farmhouse and buildings were all wholly owned and in the name of the mother.

The farming partnership had operated with various partners over multiple generations and all partners and the next generation assumed that the farm and the business would continue to be passed through the generations for years to come.

Unfortunately for the family the mother passed away after a short illness. Following the funeral the partners continued the business as a going concern. However, it soon became apparent that the mother had died without a Will. This is called dying intestate and makes sorting out the estate of the deceased a time consuming and expensive process.

In this case the father (husband) had died some years previously. With the mother now also having passed without a Will it is up to the law to decide who inherits her estate according to intestacy rules. This can take more time than when a Will is present and can be more costly.

In this case there is no surviving husband or civil partner. In England this means that the whole estate passes to the children of the deceased in equal shares. You may believe this is straightforward here as the son is a partner in the business, however, the son also had 4 brothers and sisters who had nothing to do with the farm or the farm business. All these siblings had an equal claim on the estate of the mother, which included all of the farm land and buildings.

As the mother owned the farm outright and in her own name this meant that all the children had a claim on an equal share meaning the farm had to be split 5 different ways. This is despite the son and the grandchildren farming the land as part of the farming partnership.

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There are various ways this can be resolved but the value of the estate must be split 5 ways. The farming son could try and raise finance to the value of 80% of the estate to 'buy out' brothers and sisters so he can own the farm and continue the farm business. This presents challenges around affordability and in this case the entire farm and business had to be sold to pay out the estate in equal measure to all beneficiaries. There may also have been an Inheritance Tax bill to pay as well.

The farming son and grandchildren may have thought they had long term security in the business but they ended up with 20% of the value they had helped build and they were also out of business.

If the mother had set up a Will she could have set out her wishes to all interested parties. This may have seen the farming son and grandchildren being able to continue farming and avoid family disputes. As you can imagine many of these types of situations lead to major family fall outs.

This case study is a true story and highlights the dangers of not having Wills in place as well as failing to have robust discussions around succession planning. A farm business cannot be truly resilient for future generations if the owners/manager do not have a Will in place.

You can find more details here: <https://www.gov.uk/make-will> and you should also take advice from your solicitor and accountant to make sure that your Will is properly developed to suit your own circumstances. They can also help you consider succession and tax planning.



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