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It might be handy to make someone a joint signatory on your bank account, but beware the legal consequences

People who add someone else to their bank accounts (or put any other assets into joint names with someone else), even if it is just for convenience, should take advice first, as they could find the account (or asset) automatically goes to that other person when they die, when that may not have been what they intended.

A wealthy man living in the Bahamas went to his bank with his friend, and added the friend as joint holder of his bank account. He told the bank it was so his friend could 'pay utilities' such as electricity and gas bills for him.

The bank made them sign a bank application form. This said that all the money in the account was held jointly, 'with the right of survivorship'. The form had a section explaining what that meant. 'That means that if one of us dies, all money in the Account automatically becomes the property of other account holder(s).

In order to make this legally effective, we each assign such money to the other account holder (or the others jointly if there is more than one other account holder).'

The man later died and the friend claimed that all the money in the bank account – about $190,000 – passed to him automatically as the surviving account holder, and was not part of the dead man's estate.

A beneficiary under the man's Will went to court, arguing that every cent in the account had been put in by the deceased, so he must have intended that the money in it remain his, and added his friend just for convenience.

The money should therefore be part of the dead man's estate, to be distributed according to his Will, on his death.

The court ruled in favour of the friend. It found that the wording in the bank account form was clear – it said that the man and his friend held the account as joint tenants, ie whichever survived the other would inherit all the money in the account, which would not become part of the estate of whichever of them had died.

Plenty of people add their children, a friend or neighbour to their account for convenience – especially as they get older. But this legal ruling shows the danger of making someone a joint holder of your bank account (or joint owner of any other asset) without taking advice on the legal consequences first.

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Thinking of making a Will? Why pre-planning helps

How a little bit of preparation can save time and money when you make your Will.

Doing a little bit of preparatory work before you approach your solicitor to draft a Will for you can make the whole process simpler and cheaper – and it doesn't just help you and your advisors, but your executors too. All you need to do is make some lists.

Start with a list of the things you own that are valuable – either financially or because they have sentimental value. Be specific – don't just put 'the money in my bank account', but which bank, and the account number. And not just 'my stocks and shares', but which stocks and shares, where the share certificates are held, and who (if anyone) is managing them.

It's even more important to be specific when describing things like paintings, jewellery or porcelain, so describe them in detail, including colours, shapes and any markings, signatures, dates, etc on them. Also list your pet or pets, and say what you want to happen to them.

Next, make a list of your 'digital assets' – anything that can be stored electronically – for example, that you can access on a device or online – and that you have a right to use. It's important you're your executors know what you want to happen to these, as well as tangible things you own. These could include:

1. *Online bank accounts, or cryptocurrency you own, like Bitcoin.*
2. *If you have your own business, work files on a computer or other device. These are assets of your business, which your executors can sell or pass to your heirs.*
3. *Business domain names and/or website(s), and membership of online business networks like LinkedIn, Twitter accounts for your business, or a Facebook business page, are all business assets too.*
4. *Digital assets such as a credit balance in an Ebay, Paypal, gaming, gambling or lottery account, or an online utility account. Or online tokens or vouchers with a value, or that entitle you to discounts.*
5. *Digital assets with a sentimental value, such as a personal Facebook account, an account where you access your favourite music, groups where you share photos, and your own personal documents, recordings, photos and other files on your devices. Separately list passwords, to be kept securely, until they are needed by your executors.*

The next list is who you want to benefit from your Will, and what you want them to have. The law gives people like your spouse, civil partner and, sometimes, someone you're living with in an intimate and committed relationship when you die, rights to a share of your estate (everything that you leave behind when you die), even if you leave them nothing in your Will, so take that into account. You should also think about making proper provision for your children because, if they don't think you have, they can go to court to challenge your Will, which will be expensive and upsetting for everyone.

Generally, if there are relatives who expect to inherit something from you, but you're not going to leave them anything, it can be a good idea to write a letter alongside your Will, explaining why. Maybe you could have a go at a first draft of that letter?

Also remember to say what you want to happen to an individual's inheritance if they die before you – does it lapse, or should it be divvied up among their children? What if you leave someone, say, a family portrait, which can't be divvied up?

List any good causes you want to benefit from your Will. Specify exactly who the money is to go to – loosely worded gifts can cause executors no end of problems, with the associated expense of sorting them out.

Finally, what about the 'residue' of your estate – the amount left over when all the other bequests have been satisfied. Usually this gets divvied up among a 'pool' of beneficiaries – divided equally among my grandchildren at the date of my death. List the names, and the postal and email addresses of the people you want to be your executors – the people who deal with your estate after you die in accordance with what it says in your Will. There are usually two or three executors. It can be a big job, and is unpaid unless your Will says otherwise, so they've got to be competent, and you must trust them completely. It's usually a good idea to check they understand what's involved and are happy to act, before you name them in your Will. If no-one else is prepared to be your executor, your solicitor can do it, in which case your Will should authorise them to be paid.

Having put in this initial effort, your solicitor will be able to start giving you substantive advice much sooner and more easily – on issues like tax, making sure your Will is unlikely to be challenged, how to pass your business on, and whether you should be setting up family or other trusts – without wasting time and money getting you organised in the first place. And the records you leave behind on your death can be useful to your executors too.

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Thinking of Making a Will Without Legal Advice? Read This First!

Having your will professionally drafted and signing it in front of a solicitor really is the best way of ensuring that your wishes are honoured after you are gone. In a case on point, the High Court gave effect to a matriarch's final will, despite her daughter's concerted attack on its validity.

[Will] By the will, the woman, who died just before her 97th birthday, left small legacies to two of her daughters and everything else that she owned, including her home, to her son. One of the daughters claimed that she had lacked the mental capacity to make a valid will and that the son had exerted undue influence over her.

In ruling on the dispute, the Court noted that the will was rational on its face. The daughter's claim that her mother was incapacitated by dementia when she signed it was wholly undermined by contemporaneous medical records. There was also no evidence to support the daughter's allegations that her mother's signature on the will was a forgery or that the son had forced her to sign it.

The professional drafting of the will and its execution in the presence of a solicitor created a strong presumption in favour of its validity. The daughter's contradictory, self-serving and deliberately misleading evidence came nowhere near to dislodging that presumption. The Court had no hesitation in upholding the validity of the will and thanked the son's lawyer for his assistance in what was an extremely emotionally charged case.

Will Updates in the Covid -19 Pandemic

So as Covid-19 continues to dominate our headlines here is an update on how this affects your situation in relation to Wills and Will drafting. No matter what age you are you are concerned that you could be a victim. The daily death numbers, the loss to families, the disruption to lives. What if those who are affected in addition to dealing with the grief are left with the Deceased's affairs in an unfinished state?

Would making even a simple Will have meant that those left behind have time to grieve and have one less problem to deal with.

While no-one should do a "Homemade Will", as they are usually a recipe for trouble later on, at least understand some basic rules about what makes up a valid Will.

1. State that it is the Last Will.
2. Appoint one or two people who you trust to be Executors. An Executor is anybody who is to carry out what the Will says. Over 18's only and of sound mind.
3. Give property/gifts to whomever you want. Remember spouses get an automatic share.
4. Do some basic reading on Tax in particular CAT and how it can be minimised.
5. Finish with a "sweeper clause" known as a residuary clause. This "sweeps" up anything not covered in No. 3 above.
6. Sign and date it and have it witnessed by two people not included in No. 3 or No. 4 above.
7. Signing and witnessing has to be done in a particular way. Both witnesses must be present at the same time to see you sign the document.
8. The signing and witnessing are where the non-legal person can err. It is best to ask a Solicitor dealings with Wills and Estates on a daily basis to ensure that your wishes are followed after your death. Good advice is worth paying for and I am sure terms can be arranged for payment in the future if this creates a difficulty.
9. Another golden rule is not to choose witnesses who are going to benefit in any way under the Will or are married or in a civil partnership with any beneficiary.

In summary, remember you are working to clearly set out the passing of your property and assets to the next generation.

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If you suddenly lost mental capacity are your affairs in order

Anticipating and planning for your possible mental incapacity. You may think that, if you lose mental capacity your next-of-kin can simply take over and start looking after your affairs for you. In fact they can't, unless you have formally given them legal authority to do so, which could leave your affairs in a mess and cause them even more upset and stress at a difficult time.

Yet there are many ways people suddenly and unexpectedly lose mental capacity, whatever their age. As well as serious learning disabilities and the common problems associated with dementia and Alzheimer's Disease, you could suffer an injury in a traffic or sporting incident, get an illness that makes you confused or delirious, fail to come round for a period after an accident or operation or suffer problems because of alcohol or drugs.

The legal test for mental incapacity is whether you can make decisions – whether you can understand the nature of the decision you are making and its consequences, given the choices available to you at the time. The test is issue and time specific. It's not whether you make good (sensible) or bad (unwise) decisions.

Rather, it's a question of the process you use to make decisions. What's relevant is whether you can understand information relevant to the particular decision, retain and use it, and communicate your decision, with relevant support and help.

One key step you have been able to take historically is to sign an Enduring Power of Attorney. This gives the person you appoint as your attorney (which doesn't have to be next-of-kin – it can be anyone you trust enough) authority to make decisions for you about your affairs. If you do become mentally incapable, they are legally entitled to start looking after you very quickly.

But the range of options open to you looks set to widen. New laws will update and reform the rules for Enduring Powers of Attorney – and you will be able to revoke any Power you have already made, and make a new one under the new rules when they come in.

You will also be able to make a range of legally-binding agreements to help with decisions about your welfare, and property and affairs, where you lack mental capacity to make decisions without such help – look out for terms such as Assisted Decision-Making, Co-Decision-Making, Decision-Making Representatives and Advance Healthcare Directives (where you set rules now for the type of medical treatment and procedures you are not prepared to undergo, in case you are unable to refuse consent at the time).

If you've made a Power of Attorney, and want to know whether the new rules mean you should change it, or you haven't even thought about it yet, or you want to know more about the other option open to you under the new rules, get in touch. The more you plan for these things now the less stress and upset for you and your family if the worst comes to the worst.

In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement.

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