Changing your Will

There may be times when it is necessary to make changes to your Will. This page gives information on why, when and how to change a Will.

Please note that if you have stored your Will with us, you can make two changes to your Will for no extra charge.

In this leaflet:

- Why change your Will?
- How to change your Will
- New Will or Codicil?
- Changing a Will with a Codicil
- Making a new Will
- Destroying the previous Will
- Changing a Will after death

Why change your Will?

It is important to review your Will when a major life event occurs such as a marriage, divorce, separation, the birth of a child, the death of a relative or a change in your financial situation. Any of these events may have an impact on both your wishes for the distribution of your estate and on the validity of your current Will.

Marriage/Civil Partnership

When you marry, any Will that you made previously is automatically revoked. The only exception to this is if your Will states that a marriage is about to take place and contains explicit instructions that you intend for the Will to remain valid after marriage.

Since the introduction of the Civil Partnership Act in December 2004, members of a civil partnership are treated in the same way as married couples. When a civil partnership is registered, any Will that either partner has previously made will be automatically revoked.

Divorce

If you get divorced or your civil partnership is dissolved, your Will does not become invalid but many of its provisions would no longer be effective if you pass away before making a new one. For example, any gift that you had bequeathed in your Will to your former spouse or civil partner would take effect as if they had died on the date your divorce was completed. This usually means the gift falls back into the estate residue for the benefit of the residuary beneficiaries. If a Will states that everything passes to your spouse then it would be as if you died intestate (leaving no valid Will).

In addition, if in your Will you had appointed your spouse as an executor or trustee, after divorce they would be barred from acting as an executor or trustee after your death. For these reasons, it is always best to make a new Will as soon as possible after your divorce

Birth of a Child

If you have a child after writing your Will, they will not automatically become a beneficiary even if you have named your other children as beneficiaries. Therefore, in order to ensure that your wishes are carried out, you should update your Will as soon as possible after the birth.

How to change your Will

To change your Will, you cannot simply write changes on an existing Will. Such alterations are assumed to have been made after the Will was executed and do not form part of the original legally valid document.

The only way a Last Will and Testament can be legally changed is by:

- making a codicil to the existing Will, or
- making an entirely new Will.

As mentioned above, if you have stored your Will with us you can make two changes to your Will for no extra charge.

New Will or Codicil?

As a rule, if the change you wish to make is quite small or simple you can use a codicil. If the change is more significant or complex you should make a new Will. If you wish to make several changes, big or small, it is advisable to make a new Will.

The table below gives recommendations on whether to use a codicil or a new Will to make your required changes.

Changes Required	Codicil needed	New Will needed
Changing your main beneficiary e.g. after marriage or civil partnership		✓
Creating a Trust e.g. after the birth of a child		✓
Removing a living beneficiary* e.g. after a change of heart		✓
Appointing a different Executor e.g. after the original Executor dies	✓	
Appointing a different Trustee e.g. after the original Trustee dies	✓	
Appointing a different Guardian e.g. after the original intended Guardians get divorced	✓	
Reallocating a bequest e.g. after the original intended beneficiary dies	✓	
Changing your funeral wishes e.g. after buying a funeral plan	✓	
Making more than one or two changes		✓

* If you wish to remove a living beneficiary from your Will, it is advisable to make a 'Memorandum of Wishes' to explain your reasons for this exclusion as this action is one of the major causes of legal disputes.

Costs for changing a Will or LPA after completion

You can make two changes to your Will for free if it is stored with AdviserWill. After these two amendments (or if the Will is not stored with us) the charges are as follows:

Amendment	Cost	Cost if stored by Adviser Will
Add/Remove/Change Legacy	£25	£10
Add/Remove/Change Guardian	£25	£10
Add/Remove/Change Executors	£25	£10
Add/Remove/Change Trustees	£25	£10
Add/Remove/Change Beneficiary	£25	£10
Change property under property trust	£50	£25
LPA (OPG will charge new application fee)	£75	£50

Changing a Will with a Codicil

A codicil is a supplement to an existing Will that makes some alterations but leaves the rest of the Will intact. It is a legal document that is as legally binding as the original Will. A codicil must be on a separate sheet of paper to the Will and be signed, dated and witnessed in the same way as the original Will. However, the witnesses do not have to be the same as for the original Will. There is no legal limit on how many codicils may be added to a Will but they should only be used for very simple and straightforward changes.

There are two different types of codicil that can be added to a Will:

- The first type involves adding a clause to the original Will, for example to bequeath a new asset or one that you may have forgotten at the time of drawing up your Will.
- The second type involves revoking an existing clause and replacing it with a new one, for example revoking a previous beneficiary's gift (perhaps because they have died) and leaving it to a new beneficiary, such as a new grandchild.

When making a codicil, the same rules apply as for making a Will, that is:

- The testator (the person making the codicil) must be 18 years old and of sound mind. For more information on this, see Who can make a Will?
- The codicil must be signed and dated in the presence of two witnesses. These witnesses do not need to be the same people who witnessed the signing of the original Will.
- A witness must have no interest in the inheritance from the Will or codicil and must not be receiving anything from the testator.

After the codicil is executed, it should be stored with the original Will in a safe place. It is recommended that codicils are numbered, so that executors will know how many documents to consult alongside the Will. Do not attach the codicil(s) to the Will, as attaching anything to your Will document would invalidate it.

It is advisable to let your executor(s) know that you have made a codicil and tell them where it is stored.

For more information on storing a Will and codicil, see the section on Storing your Will.

Making a New Will

If you need to make a major change to your Will or to make more than one or two minor alterations, it is best to make a new one.

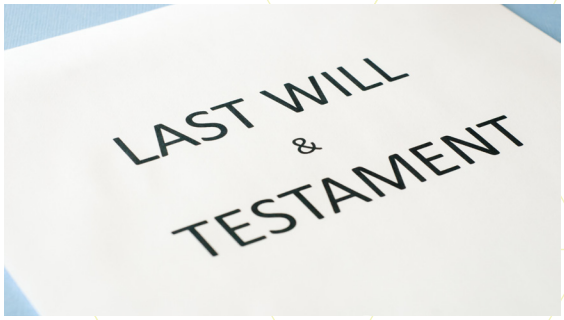
The new Will should begin with a clause stating that it revokes all previous Wills and codicils.

It is also vitally important that all copies of the previous Wills and codicils are destroyed to avoid any confusion after your death. For more on this see 'Destroying a previous Will'.

When writing a new Will you need to consider how long ago you wrote your previous one. If it is only a short time since your previous Will was written, the value of your estate is unlikely to have changed significantly. However, if the previous Will was written five or more years ago then you will need to revalue your estate and begin the Will writing process from the start again.

Process for Making a New Will

When making a new Will, you will need to consider certain things that may have changed since writing your last one.



Destroying the previous Will

If you have a previously made Will but have now made a new one, it is important that the previous Will(s) and codicil(s) are destroyed so that when the time comes there will be no confusion as to which Will is the legally valid one. This is especially important if certain provisions were made in a previous Will which have since been changed in a newer one. For this reason, the disposal of all old Wills and codicils is essential.

If you have had a solicitor draw up a Will (and codicils) on your behalf, they are likely to have a copy. You should ask them to either destroy it for you or hand the document(s) to you so that you can destroy them yourself to avoid any confusion over previous copies when a new Will is written. It is advisable to be present when old documentation is destroyed.

To destroy a Will, you must burn it, tear it up or destroy it in a way that makes it obvious that its destruction was intentional. There is a risk that if a copy subsequently reappears or pieces of the Will are reassembled, it might be considered that the destruction was accidental. If it is proven that a Will has been accidentally destroyed, it could be considered legally valid.

Once the old Will is destroyed, the new Will should contain a clause revoking all previous Wills and codicils. Revoking a Will means that the Will is no longer valid in law.

Changing a Will after death

If someone dies with or without a valid Will it is possible to change their Will with regard to distribution of their assets. In some circumstances, it is beneficial for beneficiaries to change a Will for tax purposes after the deceased's death. This can be done through a Deed of Variation, sometimes referred to as a Deed of Family Arrangement. This must take place within two years of the death and can only take place if all the beneficiaries agree to the changes. A Deed of Variation must be done in writing and signed by the beneficiaries agreeing to the changes, and if more tax is payable as a result of the Deed, the executors will also be required to sign the document.

The most common reasons for changing a Will after death are:

- To reduce the amount of Inheritance Tax payable.
- To provide for a person who has been omitted from a Will or who has not been adequately provided for in a Will (such as new grandchildren).
- To provide for someone who has a legal claim on the estate.
- To redirect a property held in a joint tenancy which otherwise would have passed to the surviving joint tenant.
- To resolve any uncertainties or defects in the Will.

The beneficiaries should be certain that they want to redirect their inheritances as once they have done so, they will not be able to get them back. Once a Deed of Variation has been signed, it cannot be altered. A Deed of Variation does not enable the executors or beneficiaries to reduce the assets or money given to anyone under eighteen years of age. Children under the age of eighteen cannot consent to a Deed of Variation but an application can be made to the courts for consent to be obtained on their behalf.

The most common reason for using a Deed of Variation is to avoid a large inheritance tax bill. If someone dies leaving their entire estate to their partner, then when the other spouse dies the family members may be left with a large inheritance tax bill, as the first spouse will have effectively wasted their nil-rate band. A Deed of Variation may also be used if assets are passed to a family member who has inheritance tax problems themselves and wishes to pass on the assets to their children to reduce their estate. By redistributing a person's assets, it is possible to reduce the estate below the nil-rate band so that inheritance tax is not due. Assets can be given to another family member, individual or trust to reduce significantly the value of an estate.

Even though using a Deed of Variation can be very useful, it should not be relied upon for estate planning. Ideally, inheritance tax should be considered when planning the original Will, to ensure the lowest amount will be charged. This can be done through giving certain gifts that are tax-free and taking advantage of inheritance tax exemptions. By planning for inheritance tax carefully and considering the nil-rate band, it is possible to avoid the need for executors to execute a Deed of Variation. Reviewing your Will regularly in relation to the changes in the inheritance tax threshold can eliminate the need for a Deed of Variation.

For a Deed of Variation to be valid and take effect it must involve significant changes to the way the assets are to be distributed. It is not permissible to transfer assets to another person on paper while the original beneficiary continues to benefit from them. Spouses cannot pass on assets to their children that are later passed back to the parent, as a means of avoiding inheritance tax charges. There should be no reciprocity at all when setting up a Deed of Variation