

# **MAX ENGEL**

## **NOTES TO HELP YOU COMPLETE THE WILL INSTRUCTION FORM**

We want to make sure both that your Will gives full expression to your own wishes and that it gives rise to no unnecessary tax liability. To help us in achieving those aims, please let us have your replies to such of these questions as are relevant in your case. The questions are numbered and you may find it convenient to use the questionnaire form which is attached.

In some circumstances it may be desirable to supplement your replies with a discussion before the Will is drafted. If you would prefer not to answer this questionnaire at all, and to come and see us instead, you are welcome to do so.

Reference to spouses or a married couple includes civil partners.

### **A QUESTIONS FOR EVERYONE**

#### **1 *Personal details?***

Please let us have your full name and address. If you have changed your name in the past (otherwise than by marriage) please let us know.

#### **2 *Executors and Trustees?***

Whom do you wish to be the executors of your Will? If continuing trusts could arise (perhaps only because a beneficiary may be under age), your Will should appoint trustees as well as executors, but it is usual to appoint the same people in both capacities.

### **NOTES**

If the Will is very simple, one person could be appointed to act alone, but if trusts may arise it is usually better to appoint at least two people. There must be two trustees if the beneficiary is under 18 at the date of your death.

If you are married, you can appoint your spouse either alone or with others.

You can have an alternative appointment - eg your spouse if he or she survives you and can act or, if not, X and Y.

You can appoint any friends or relatives (eg grown up children) who are businesslike, but it is wise to get their consent beforehand. We advise against appointing one child and not all as this can cause discontent. You can also appoint professional people such as solicitors or accountants. They would not charge merely for being appointed and although a charge would be made for work done this would not add much to the costs if professional help would have had to be obtained anyway. Appointments of a solicitors' or other firm (as distinct from particular members of it) are also possible and may be preferred because they guard against death, retirement, etc. Max Engel is able to act as your executors and most of our clients do appoint the firm. They like the idea of the independence and continuity which can be achieved by appointing their solicitors with or without another person (usually the spouse).

Please let us have the full name and address of anyone whom you wish to appoint, unless these details are already known to us.

### **3      *Your Estate?***

Without going into great detail, could you please let us have a note of your assets and some idea of their values?

#### **NOTES**

Please indicate if any dwelling or other land or property is leasehold rather than freehold.

Please indicate if any such property is charged to secure a loan (including a bank overdraft) and mention the type of charge (eg endowment mortgage).

If you are a co-owner of your dwelling or of any other property (with your spouse or someone else), please let us know and tell us, if you can, whether you hold it beneficially as joint tenants or as tenants in common (and, in the latter case, in what shares).

Please mention any joint bank or other accounts.

Do not forget to mention any insurance policies or pension schemes, and please let us know if these are already subject to trusts governing their destination on your death.

Please indicate if any items in your list are business or agricultural assets because this may be important for tax reasons.

### **4      *Legacies and specific gifts?***

Do you wish to leave any sums of money, specific articles (eg jewellery) or other specific property to friends, relatives charities or other donees?

#### **NOTES**

These gifts are free of inheritance tax unless the Will says otherwise, so that if any inheritance tax is payable on the property passing under your Will it will all come out of your residuary estate. Please let us know if you want to alter this by making any non-residuary gift bear its own tax.

If any of your gifts is of property which may be charged at your death to secure a loan, please let us know whether you wish the loan to be paid off by the beneficiary or by your residuary estate.

It is possible to give personal chattels (or even small sums of money) to a beneficiary (or to your executors) with a request that they should be distributed according to any informal wishes which you may leave.

Please let us have the full names (if you know them) and addresses of your beneficiaries.

### **5      *Residuary gifts?***

To whom do you want to give the residue of your estate? If you have a spouse and/or children, please ignore this question and answer instead the questions in Part B and C of this questionnaire.

**6 Special circumstances?**

It is important that we should know of any special circumstances relevant to your Will. Examples are given in the notes below, but please mention anything which may occur to you.

**NOTES**

Please tell us if

- you own any foreign property, especially land
- you have a foreign domicile
- you have made a foreign Will
- you are expecting to be married
- you or other members of your family are interested under any existing trusts, created by Will or Settlement
- any member of your family is handicapped or financially vulnerable or has any other special problems or needs or
- any claim against your estate might be made under the family provision legislation (which allows claims by a spouse, a former spouse, children, 'children of the family' and anyone whom the deceased may be maintaining, wholly or partly, at the time of the death - and, for deaths on or after 1 January 1996, also permits a claim by anyone who, though not married to the deceased, has lived as the deceased's spouse and in the same household for at least two years before the death).

**7 Use of your body?**

Do you wish your body to be available for anatomical examination (ie teaching and research) or therapeutic use (ie corneal grafting and/or organ transplantation) or even for both purposes?

**NOTES**

Acceptance for either purpose is not automatic, but you should express any wish you may have. It is convenient to do this in your Will, but the Will itself may not be read until some time after your death. So

- close relatives should be made aware of your wishes and
- since an organ intended for therapeutic use must be removed quickly, you should also be registered on the NHS Organ Donor Register (which is better than carrying a donor card although cards are still effective).

Therapeutic use may be general or restricted (eg to corneal grafting). Information about the Register may be obtained by phoning 0800 555 777.

**8 Burial or cremation and funeral arrangements?**

Do you wish to express a preference for burial or cremation; for the place of burial or for disposal of the ashes; or for any particular kind of funeral? If you do not specify it the executors cannot pay for a memorial stone from your Estate.

## NOTES

Such wishes may appropriately be included in a Will but, again, close relatives should also be aware of them.

Please answer this question even if you are also expressing wishes about the use of your body.

## B QUESTIONS FOR MARRIED PEOPLE (including Civil Partners)

### 9 *Legacies payable only on the first or the second death?*

Perhaps in addition to making gifts to take effect on their own deaths whenever they may occur, married people often wish to give legacies taking effect only on the death of whichever is the survivor of them or (more rarely) on the death of whichever is the first to die. Please let us know if this is so in your own case.

### 10 *Gifts to one another?*

Except in rare cases where the spouse's own resources are ample for his or her future needs, so that the testator's estate may be left direct to the children or to other beneficiaries, a married testator (ie; person making a Will) will usually wish to leave everything, or nearly everything, to his or her spouse if the spouse survives.

If you want your spouse to have the residue of your estate, how do you want him or her to take it? There are two main alternatives:

- (a) an absolute gift, under which the spouse acquires full ownership and is free to do whatever he or she likes with the property, or
- (b) a gift for life, under which the spouse receives the income from the property but not the capital. The trustees may be given power to use the capital for the spouse's benefit but, subject to that, it passes on the spouse's death to the beneficiaries (usually the children) designated in the Will.

This may be combined with an 'overriding power of appointment' exercisable by the trustees, enabling them to alter the trusts, or create new ones, in ways which may have tax advantages.

There are other possibilities which we should be glad to discuss with you. For example, you could put the whole residue of your estate into a discretionary trust, so leaving your trustees free to decide, when the time came, how it should be used for the various members of your family. Clients who create discretionary trusts usually prefer to leave 'letters of wishes' addressed to the trustees in which they give them informal guidance as to the principles on which they would like them to exercise their powers.

### 11 *Other gifts of residue?*

If a married couple have children, they usually want the residue of their estates to go to the children on the second death (probably with a substitutionary gift to the children, or

perhaps the spouse, of any child who dies too soon to take) and questions about these gifts appear separately in the next part of this questionnaire. But married couples without children will need to decide what gifts should take effect on the second death. And even couples who do have children as their primary beneficiaries may like to make provisions to take effect if all those beneficiaries should die too soon.

## **C QUESTIONS FOR THOSE WITH CHILDREN**

(including married people, widows and widowers)

### **12     *Details of your children?***

It would be helpful to know how many children you have and their ages. (Names are not needed unless any are to be singled out for special treatment.)

### **13     *Guardianship?***

If any child of yours might be under 18 at your death, do you wish to appoint anyone to be his or her guardian?

## **NOTES**

Guardianship should always be considered in the case of minor children. It is usual to appoint one guardian or two (perhaps a married couple).

If a child is legitimate, legally treated as legitimate, legitimated or adopted, each parent may appoint a guardian or guardians to act after that parent's death but, save in exceptional circumstances involving separation, the appointment will not take effect until both parents are dead. (This is so even if the parents are now divorced.) Parents usually agree an appointment to take effect on the second death.

If a child is illegitimate the mother may appoint a guardian or guardians, but the father may not do so unless he has acquired 'parental responsibility' for formal agreement with the mother or by court order. If the mother is the only parent who can appoint, her appointment will take effect on her death. If both parents can do so, an appointment by the father cannot take effect until after the mother's death, and an appointment by the mother cannot take effect until after the father's death - unless he loses the parental responsibility which he has acquired.

Guardians have the right to appoint other guardians to take their place if they should die while the child is still under 18.

If your Will makes financial provision for the child, guardianship should not entail any substantial expense for the guardian, but provision could be made to deal with this problem if it should arise and we should be pleased to discuss it.

Please let us have the full name(s) and address(es) of any guardian(s) you wish to appoint.

### **14     *Gifts to children?***

What gifts do you want to make to your children, and do you want to make substitutionary gifts to their families (if any) if they die too soon to take?

## **NOTES**

Gifts to children will normally be gifts of residue, typically taking effect on the death of the last surviving parent; but parents sometimes make smaller gifts to take effect on the first death.

If property is given to a child conditionally on attaining a specified age the trustees (though they may use the income for the child in the meantime and have power to use capital if need be) must hold it until the child reaches that age. This is normally desirable in the case of large gifts, but in the case of small ones it is usually better to impose no age contingency and to authorise the trustees to hand over the gift to the child's parent or guardian. (These points apply to all gifts to children, whether or not they are your own.)

If you want to make entitlement conditional on attaining some specified age, what is the age to be? Usually people choose 18, 21 or 25. We can discuss the choice of age with you.

If a child dies before you, or dies after you but before reaching the specified age, he or she may nonetheless leave a spouse and/or children, and most testators wish the bereaved family to take the gift which the child would have taken. Usually they feel that the gift should pass to the child's children (if any), but if there are no children (or perhaps even if there are) they may wish a surviving spouse to take some benefit.

For technical reasons, substitutionary gifts to grandchildren should be conditional on their reaching an age no greater than 21. Such gifts are often made to take effect on marriage under that age - not in order to encourage early marriage but so as to ensure that if a grandchild married and then dies under the specified age, his bereaved family are not deprived of benefit.

**15     *Direct gifts to grandchildren?***

Do you wish to make any direct (as distinct from substitutionary) gifts to grandchildren?

**NOTES**

Testators sometimes want to make small direct gifts to grandchildren.

Occasionally they wish to make more substantial gifts - eg if the parent of those children have already died or if, though alive, he or she is wealthy and would prefer his share of the estate to go straight to his children for tax reasons.

**D SPECIFIC ISSUES**

You should tell us about any special circumstances. We have suggested a few.

**INSTRUCTIONS FOR WILL**

**A. QUESTIONS FOR EVERYONE**

**1. CLIENT'S DETAILS**

Name: .....

Address .....

Telephone (Home) .....

(Work) .....

English domicile? Yes  No

Similar Will for Spouse Yes  No

Foreign will in existence? (Do NOT revoke all wills) Yes  No

**SPOUSE'S DETAILS**

Spouse's full name .....

Previous spouse(s) name(s) .....

Statement of reasons for not mentioning Spouse Yes  No

State reasons:-

**2. EXECUTORS**

Max Engel plus spouse Yes  No

Or Other Executors

Name .....

Address .....

Relationship .....

Name .....

Address .....

Relationship .....

Appointment of Max Engel as solicitors Yes  No

**3. YOUR ESTATE**

Estimated value of solely owned property: £

Estimated value of your share in jointly owned property: £

Estimated value of pensions and insurance policies: £

Are the pensions/insurances written in trust? Yes  No

Further Information.....

#### 4. LEGACIES AND. SPECIFIC GIFTS

##### *Personal chattels*

<b>Description</b>	<b>Donees' Full names</b>	<b>Tick if Under 18</b>	<b>Addresses and Relationship</b>
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##### *Pecuniary Legacies*

<b>Amounts</b>	<b>Donees' Full names</b>	<b>Tick if Under 18</b>	<b>Addresses and Relationship</b>
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#### 5. GIFT OF RESIDUE

<b>Donees' full names</b>	<b>Addresses and Relationship</b>	<b>Tick if Under 18</b>	<b>Shares</b>
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Vesting ages 18, 21, 25, other? (Perpetuity).....

Any further gift over? Details:-

**6. SPECIAL CIRCUMSTANCES**

.....

**7. USE OF YOUR BODY**

State requirements:

**8. BURIAL**

Cremation	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Provision for memorial to be paid from residue	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Other Instructions

**B. QUESTIONS FOR MARRIED PEOPLE**

**9. LEGACIES TO BE PAID ON FIRST OR SECOND DEATH?.....**

**10 & 11. RESIDUE**

**As in 5 with the following observations.....**

**C. QUESTIONS FOR THOSE WITH CHILDREN OR OTHER DEPENDENTS**

**12. CHILDREN'S DETAILS**

Children's full names	Ages
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Other Dependents? .....

Do we need to check deeds. Whereabouts? .....

**13. GUARDIAN(S) FOR INFANT CHILDREN**

Name: .....

Address .....

Relationship  
(if any) .....

**14. GIFTS TO CHILDREN AND OTHER DEPENDENTS**

.....

**15. GIFTS TO GRANDCHILDREN**

.....

**16. PROVISION FOR HOUSE**

16.1 Solely owned Yes  No

16.2 Jointly Yes  No

State with whom .....

16.3 Right to occupy Yes  No

State details:

**D SPECIFIC ISSUES**

**17. COMPANY/BUSINESS**

Name .....

Power to continue Yes  No

Option to Purchase Yes  No

Give details .....

**18. POWERS**

Is there any reason NOT to provide the usual extended powers of investment Yes  No

**19. SURVIVORSHIP**

Is there any reason NOT to include a 30 day survivorship clause requirement Yes  No

**20. HOTCHPOT etc (e.g.Loans to children)**

Should hotchpot be included or special provision made? Yes  No

.....

**21. CHARITABLE GIFTS**

.....

**22. OTHER REQUIREMENTS**

## A SHORT NOTE ABOUT LIFETIME TAX PLANNING

Inheritance tax has been touched upon in parts of this questionnaire. We shall, in preparing your Will, bear carefully in mind the effect of this and other taxes.

Tax savings which can be achieved after death are bound to be limited, and the making of a Will may provide a good opportunity to consider tax planning during your lifetime. For example

- if you can afford to give away any of your property (eg to, or on trusts for, your children) during your lifetime, this could save inheritance tax on your death;
- if not, you might still like to consider taking out a life insurance policy to cover some or all of the inheritance tax for which your estate will be liable;
- this policy (and any other life insurance policies which you may have) could be settled during your lifetime on trusts for your family, so that the policy money would escape inheritance tax on your death;
- if you have an interest (eg a life interest or a reversionary interest) under any existing trust, created by Will or Settlement, important opportunities for tax saving may exist;
- under the existing system of separate taxation for husband and wife, savings of both income tax and capital gains tax might be achieved by a transfer of property from you to your spouse, or by your spouse to you.

These are, of course, only examples. If any of them is of interest to you, or if you would like advice on tax planning in general, please let us know.

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## **NOTES ON LIVING WILLS**

A Living Will (sometimes known as an Advance Directive) is a written statement setting out your wishes regarding medical treatment towards the end of your life. It is intended to communicate to your Doctors what your wishes are in the event that you become unable to communicate with them directly.

In particular, it sets out how medical treatment should be carried out in the event that you become terminally ill.

From 1<sup>st</sup> October 2007, Living Wills have a legal basis in the U.K under the Mental Capacity Act 2005. You are not asking your family or medical team to do anything contrary to law. You are merely setting out guidelines for them in the event that choices have to be made. A Living Will is only valid for life sustaining treatment if it is in writing, signed and witnessed.

Also from this date, you may appoint others to make these decisions for you under the provisions of a Lasting Power of Attorney. If you have any particular fears which you want covered by your Living Will then you should inform us. It is not the same as an ordinary Will which contains your dispositions of property and any funeral directions which you may have. If you have not made an ordinary Will then you should consider doing so.

We suggest that you discuss a Living Will with your immediate family before making it and ask them to join in it, to acknowledge your wishes. If you have Life Insurance you should also inform the Life Insurance company that you have executed the document.

We suggest that the original of the Living Will is lodged with Max Engel and placed with your ordinary Will if you have one. A copy may be sent to your Doctor and a further copy kept by you or given to a member of the family or a friend who is most likely to be involved if there is a medical emergency.

A Living Will may be revoked at any time and we would suggest that this is best done by recalling and destroying all copies. We also suggest that the Living Will is reviewed regularly and renewed to show that you have not had a change of mind with the passage of time. We suggest a two year review.

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# NOTES ON LASTING POWERS OF ATTORNEY

## What is a Power of Attorney?

A Power of Attorney is a document by which one person (called the Donor) gives another person (called the Attorney) power to act on his behalf and in his name.

Powers of Attorney can be divided into two types:

### 1. Ordinary Powers of Attorney

These can provide for wide or limited powers (as the Donor wishes) for the Attorney on general or specific matters but only whilst the Donor has the capacity to conduct his own affairs. They are often used when a Donor is out of the country for example to facilitate a sale.

### 2. Lasting Powers of Attorney

#### What is a Lasting Power of Attorney?

A Lasting Power of Attorney ("LPA") is a Power of Attorney which, subject to conditions and safeguards, continues in force even after the Donor becomes mentally incapable of handling his affairs.

#### What is the Purpose of a Lasting Power of Attorney?

To enable people while they are still mentally capable to decide who they would like to deal with their affairs for them after they become mentally incapable. There are two types. The first is a "Property and Affairs LPA" (PALPA) and the second is a "Personal Welfare LPA" (PWLPA).

#### What authority can the Power give?

A PALPA may give a general authority to enable the Attorney to deal with all aspects of the Donor's affairs or a specific power e.g. enabling the Donor to sell the Donor's house. A PWLPA enables a Donor to give an Attorney power to decide on their medical treatment and general welfare should the Donor become mentally incapable of taking those decisions himself, e.g. giving or refusing consent to medical treatment.

#### Will the LPA have to be registered?

Each LPA will have to be registered with the Office of the Public Guardian and will only be valid after registration and payment of a fee (currently £150)

#### After Registration?

In the case of a PALPA, the attorney will be able to use all the powers given in relation to the Donor's property and affairs immediately. However, in the case of a PWLPA, the attorney will only be able to use the powers given once the Donor becomes mentally incapable of taking those decisions himself.

#### Can the Donor change his mind after signing the Power?

Yes. The Donor can cancel or revoke the Power at any time while he remains mentally capable.

**These notes are only intended to be a brief explanation. If you have any further questions please do not hesitate to ask.**

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