What is a Will?

A Will is a legal declaration of how you wish to dispose of your property on your death. However, in order for it to be valid, it must comply with certain requirements.

Who can make a Will?
Generally speaking, anyone over the age of 18 can make a Will providing that they have what is known as Testamentary Capacity (being of sound mind) which the law describes as being able to; *"understand the nature of the act and its effects, understand the extent of the property of which he is disposing and appreciate the claims to which he ought to give effect"*.

As is usual with the Law there are exceptions. For instance, it is possible for members of H.M. Armed Forces to make a Will if they under the age of 18, but legal advice should be sought in those circumstances. Likewise, under the provisions of the Mental Health Act 1983, the Court of Protection may approve the making of a Will or a codicil (a later addition to a Will) for someone who is mentally incapable of doing so themselves.

What makes a Will valid?
- It must be in writing.
- It should appoint someone (your Executor) to carry out your instructions and dispose of your property and possessions.
- It must be signed by the person making the Will (the Testator), or signed on the Testator's behalf in his or her presence and by his or her direction, which must be done in the presence of two independent Witnesses who then sign the Will in the presence of the Testator.

Who can be a Witness?
Anyone can be a Witness providing they: -
- are not blind
- are capable of understanding the nature and effect of what they are doing
- are not a beneficiary in the Will or married to, or be the civil partner of, a beneficiary

A Will can be used to: -
- formally appoint Guardians for your children
- make specific gifts of property or money
- give someone the right to live in your property
- help you save inheritance tax
- set up trusts to protect disabled relatives
- protect assets from remarriage
- protect assets in case of a relationship breakdown
- protect assets in case of financial problems

Making proper provision

Under the Inheritance (Provision for Family And Dependants) Act 1975, the spouse, or civil partner, of the deceased, is entitled to *'reasonable financial provision'* meaning such provision as would be reasonable in all the circumstances of the case for a husband or wife or a civil partner to receive, whether or not that provision is required for his or her maintenance.

That obligation can also extend to those who are ordinarily dependent upon you, even if only to a small degree; i.e. someone who lives rent-free in your home, those who you financially support or who normally live as part of your immediate family, which may include step-children, an adult child who receives a monthly stipend, an elderly parent living with you or a disabled family member or even friend for whom you care.

If you fail to make such provision, the party for whom such provision should have been made may be able to bring an action against the deceased's estate.

In more detail, the Act makes provision for a Court to vary (and extend when appropriate) the distribution of the estate of a deceased person to any spouse, former spouse, child, child of the family or dependant of that person in cases where the deceased person's Will or the standard rules of intestacy fail to make reasonable financial provision. Such provision can be derived not just from monetary assets but from any others forming part of the estate or which have been disposed of in the six years prior to the death.

The categories under which someone can make an Inheritance Act 1975 claim by virtue of their relationship with the Deceased are: -

- the wife or husband of the Deceased
- an ex-wife or ex-husband of the Deceased who hasn't remarried
- a cohabitant of the Deceased, or;
- a child of the Deceased, or;
- someone treated as a child of the family of the Deceased
- someone who was being financially maintained by the Deceased immediately before the death
- a civil partner of the Deceased
- a same-sex cohabitant of the Deceased
- a former civil partner of the Deceased, who hasn't remarried or entered a later civil partnership.

However, with each of the above categories there are further criteria and requirements that must be satisfied for someone to be eligible to make a claim and the Deceased must have been domiciled in England and Wales.

Planned Succession Limited - Suite 6, 43 Bedford Street, London WC2E 9HA.
Switchboard : - 0203 303 0963 Email: - info@planned-succession.com Web: - www.planned-succession.com