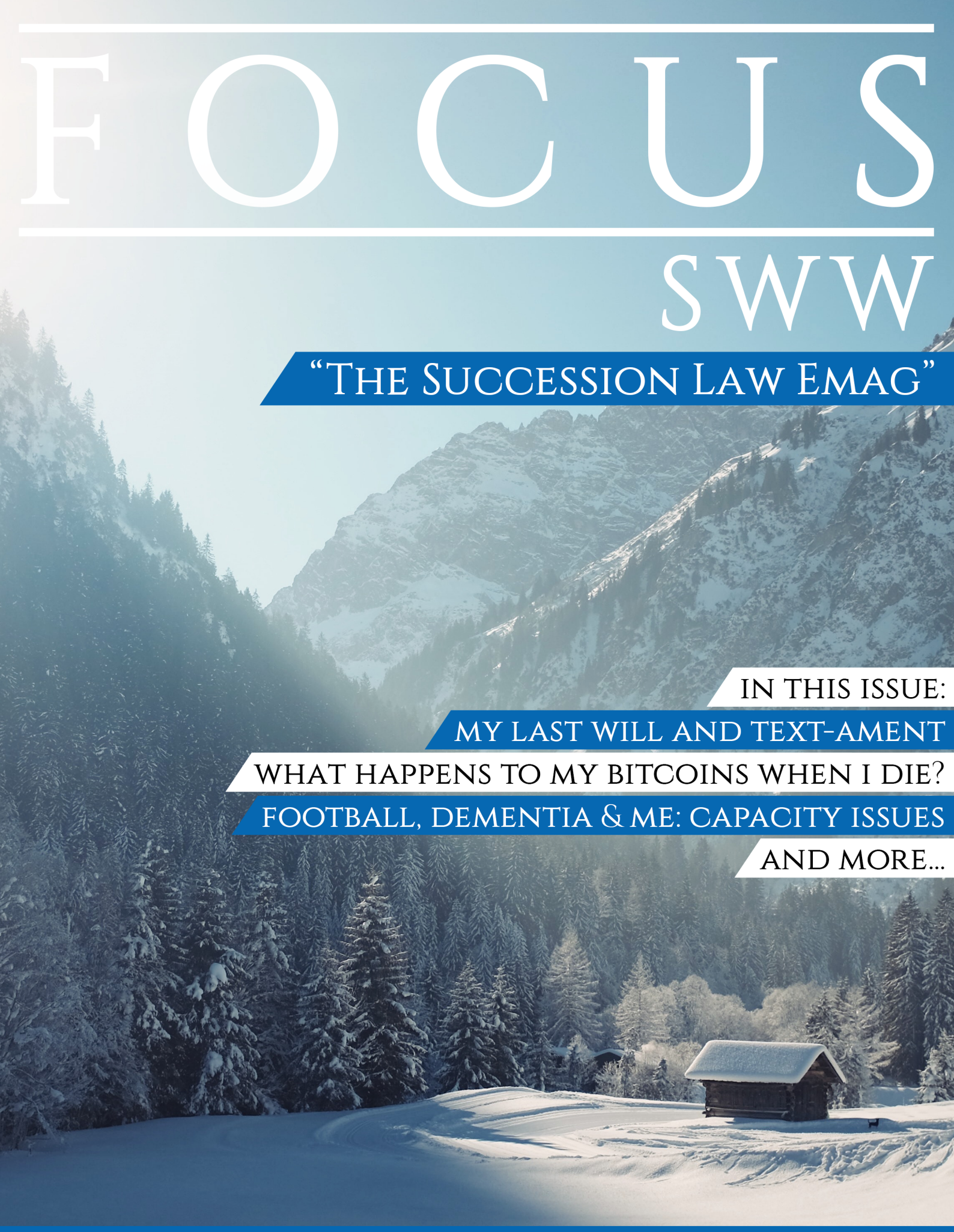
FOCUS

SWW

"The Succession Law Emag"



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AND MORE...

The Society of Will Writers

Issue 7 | Winter 2018

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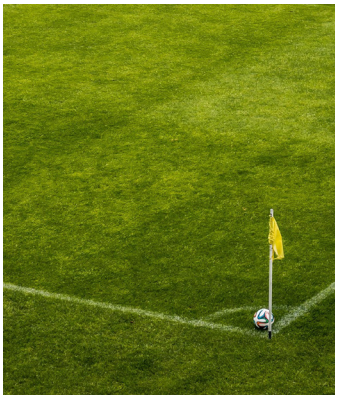
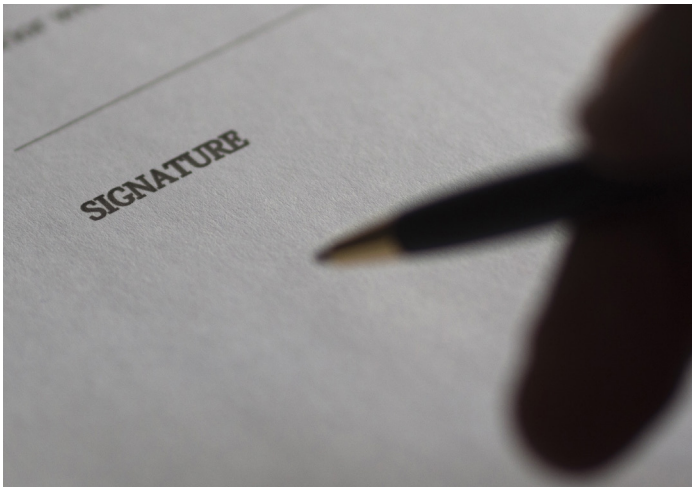




A letter from the Director General

Dear Reader,

The Christmas songs keep on telling us that Christmas is the most wonderful time of the year.

For most hopefully it is, but for many people and families especially, the loss of a parent, husband or wife, child, brother or sister or close friend during the preceding year can be a time of great sadness, and occasionally tinged with bitterness.

Death at whatever time of year brings with it its own unique problems, if they died without making a Will, the loss may be harder to bear; if the deceased was the main or only breadwinner and their death without a Will has brought financial hardship upon the family making Christmas almost impossible especially where there are young ones.

With the coming of the New Year, please make sure that in the event of something unforeseen happening to you, you had enough foresight to ensure all your estate is sorted – making a Will won't take away the pain of losing a loved one, but it may help lessen the loss by ensuring your loved ones knew you cared enough to plan.

Many families find that their grieving cannot begin until the problems that intestacy can bring are sorted.

Do not delay making those decisions like so many good intentions we make after Christmas fall by the wayside, it will bring peace of mind knowing your loved ones are cared for, it will also bring comfort to those left behind.

All the staff at the Society of Will Writers wish you all a very Happy, Healthy New Year.

Sincerely Yours,

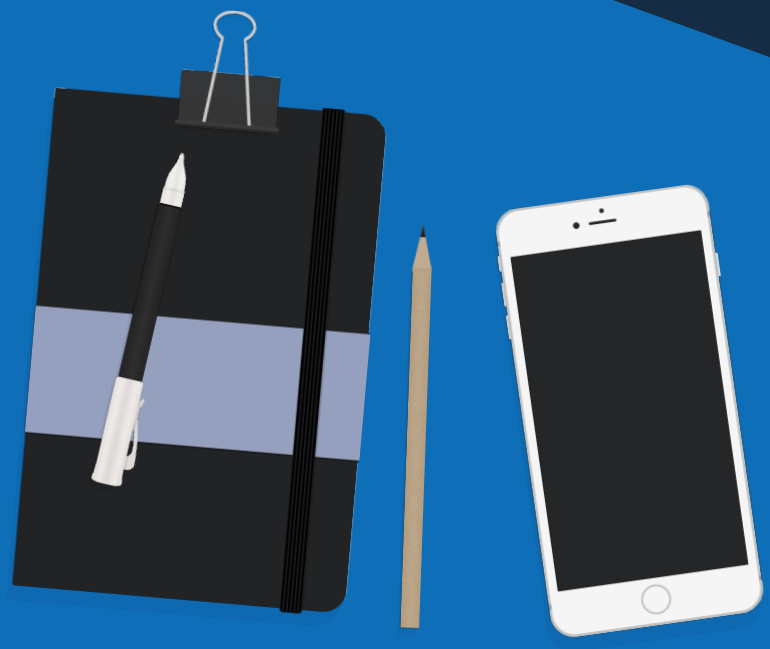
Brian W Mcmillan
Director General
The Society of Will Writers and Estate Planning Practitioners

WANT TO MARKET YOUR BUSINESS WITH THE SWW?

The SWW is pleased to offer a variety of advertising opportunities within Focus SWW as well as across our other platforms.

To find out more information, or to see our media pack and rate card, please contact either thomas.s@willwriters.com or anthony@willwriters.com or call 01522 68 78 88

Quarter, half and full page adverts are available within Focus SWW.
All advertisement sizes and specifications are detailed in our media pack.



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MY LAST WILL & TEXT-AMENT

In October 2017 a court in Queensland ruled that an unsent text found in the drafts folder of a deceased man's phone the day after his suicide was a valid Will. This was despite opposition from the deceased's excluded widow and son who stood to benefit from his intestacy.

In the text itself the deceased left 'all that I have' to his brother David Nichol, informally referred to as 'Dave Nic', and his nephew. It also included instructions to put his ashes in the back garden, and details of how to access his bank account. It was signed off with the words 'My will' and a smiley face.

For a Will to be valid in Queensland it must be in writing, dated, and signed by the testator and two witnesses, so the requirements for formality are very similar to our own. However under s18 of the Succession Act 1981 (an Australian Act) the court may dispense with the formality requirements and declare a Will written in a 'non-traditional' form valid if satisfied that the testator intended for the document to be their Will.

Justice Susan Brown held that the wording of the text message showed that the deceased intended it to be his Will.

The next question was whether he had capacity at the time the text was written. Where the Will has not been formally executed it is for the party propounding the Will to satisfy the court that the testator had capacity. The court found that the fact the testator had committed suicide does not raise a presumption against testamentary capacity, and those close to him agreed that nothing in his behaviour indicated he was "so afflicted by depression that it was affecting his ability to think or function." Ultimately the court found that on the balance of probabilities the deceased had testamentary capacity at the time of writing the text.

There was no evidence of any other Will or contrary wishes. The court were satisfied that the text message was intended to be the deceased's final draft of his Will, and that he intended this to be found.

Although this is an Australian case and has no impact on English & Welsh succession law, it is interesting to see a courts approach to deciding how a text message Will could be valid. Especially considering the changes proposed in the Law Commissions recent consultation paper. Summarised here: https://www.willwriters.com/blog/law-commission-making-will-consultation/

One of the proposals suggested is recognition of Wills made and signed in an electronic format. Further proposals suggest allowing the courts to uphold Wills made informally to allow emails, notes and even texts to be used in place of a written Will.

The new powers would allow Judges to decide "on the balance of probabilities" whether the informal document should be upheld as the deceased's valid Will. So maybe the future will see a rise in the 'textator'?

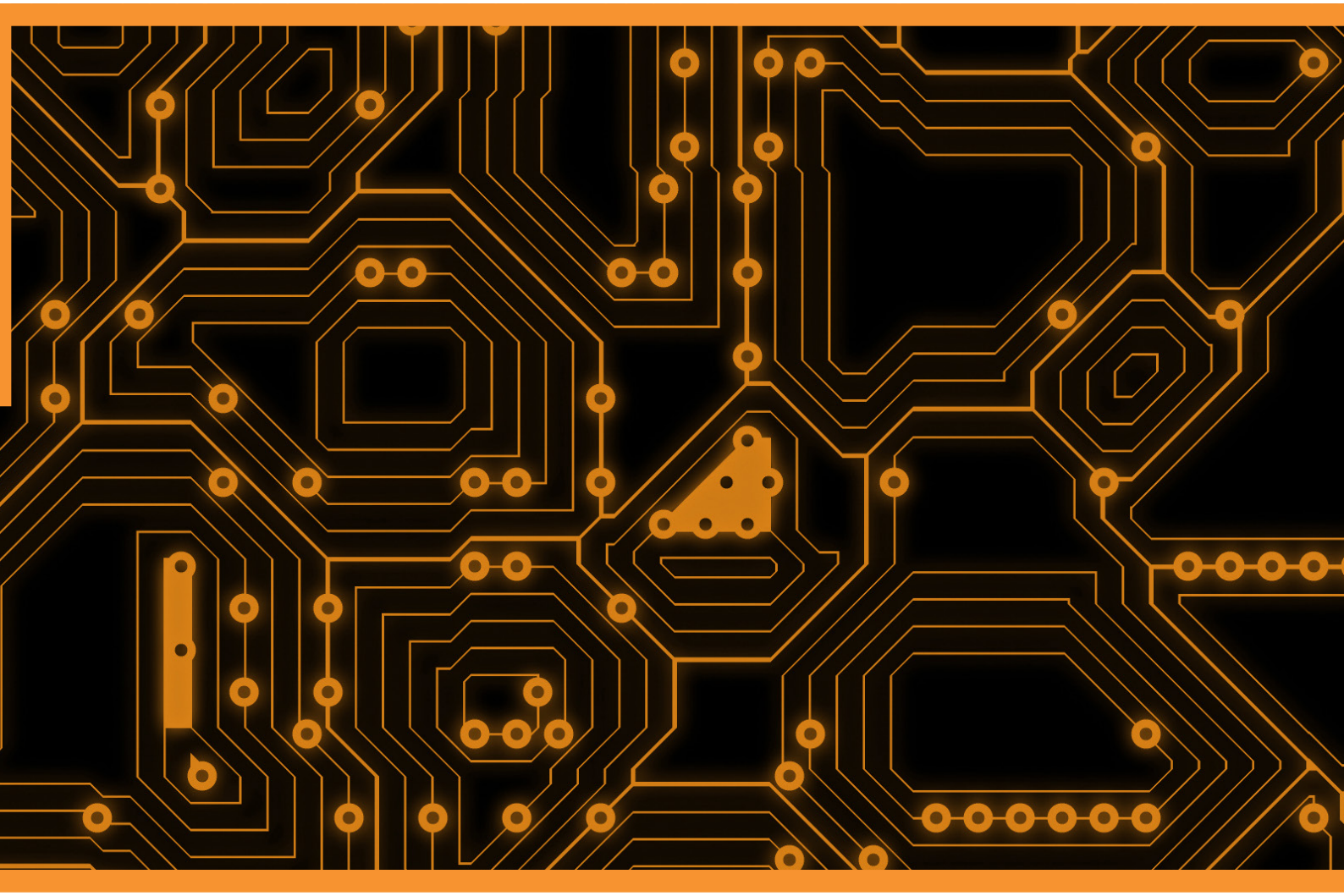

Last Will
&
Testament
- of -
Christine Smyth
When contacting us please quote:
Reference: SMY101000
Telephone: 01522687888
Chancery House
Whisby Way
LN6 3LQ

WHAT HAPPENS TO MY BITCOINS WHEN I DIE?

It's no surprise that in a digital age the question of 'what happens to my Bitcoins when I die?' has been brought to our attention. Bitcoin is cryptocurrency, which is a form of digital currency, which of course means there's nothing tangible to be had. You can't go to the bank and withdraw X amount of Bitcoin and you don't keep it in your wallet. So where exactly is it kept and how can you access it?

Bitcoins are stored in a virtual wallet, and this virtual wallet has two keys – a public key and a private key. The public key is just a string of characters and is visible to anyone as an address for sending and receiving cryptocurrency, whereas the private key is what allows the owner to access the wallet's contents. This means that if you as the owner were to die without leaving the details of your private key to somebody, the contents of the virtual wallet could be inaccessible. You could still theoretically gift your Bitcoins to a family member or a friend much in the same way you would money from your bank account, but the danger is that the private key to access the wallet could simply be disregarded, or its importance not understood by the executors or beneficiaries.

The real difficulty is in how you leave your private key behind, and making sure you give clear instructions to the person who you wish to have access to your wallet. You could scribble it down on a piece of paper for safe keeping, but there's absolutely no guarantee that this will be accessible in the future. You could store it on a memory stick, or somewhere on your computer, but again, you'll need to ensure



that somebody has access to these, and no doubt you'll change computers multiple times in your lifetime along with countless password changes. In such cases, some estate planners are turning towards virtual storage facilities such as the Safe4 Digital Inheritance Vault in which you can store things such as passwords and access codes, even photos, family recipes and much of the sort. With such a system, you only need one set of login details to access all the information you wish to be known for when you die which could make the distribution of your estate much easier.

If you do have a virtual wallet full of your hard-earned Bitcoins then you will no doubt be needing a Will to ensure that you can gift your wallet to somebody of your choosing. With the value of a single Bitcoin surging past £13,000 at the time of publishing this magazine, it's certainly not something you'd want to be missed out of your estate. You will also need to bear in mind that Bitcoins are recoverable and identifiable, as such any Bitcoins you have stored in your virtual wallet will be liable to Inheritance Tax on your death.

For more advice on what to do with your digital assets, speak to a member of the Society of Will Writers in your local area:
https://www.willwriters.com/members/

If you are a company looking to incorporate a safe online document storage for your company then speak to Safe 4.

Safe4
Digital Inheritance Vault

CHALLENGING A WILL

There are a number of reasons why Wills get challenged. This article aims to discuss some of those reasons and to find out how they are challenged.

From the public perspective

Anyone over the age of 18 and who has mental capacity in England and Wales can write a Will. For it be valid, it needs to be created and signed in accordance with S.9 of the Wills Act 1837.

There is a principle in England and Wales meaning that anyone has the right to give their property to whom they like. This is known as testamentary freedom. However the Inheritance (Provision for Family and Dependents) Act 1975 allows certain categories of people to apply for provision where a will fails to make adequate provision for them. This leads to challenges in the courts by disgruntled people who have been left out of the will.

The problems that this sometimes causes are evidenced by the recent case of Illot v Mitson, later appealed in the case of Illot v The Blue Cross and Others. Some individuals feel that they have a right to inherit even when excluded from, or not mentioned in a Will. As a result they challenge the Will meaning that the probate process is protracted and the estate can become embroiled in a legal battle.

From the professional perspective

A professional has an obligation to produce documents in accordance with the wishes of the testator (Will maker) and also has the responsibility to provide them with advice as to what they should consider when planning their estate for example, who might have a claim on the estate, what tax they might face, what they should do mitigate such tax as well as how to ensure their wishes are carried out.

They should also, as a matter of best practice, keep detailed notes of the meeting. This will protect you should the client's capacity or the reasons for gifting ever be brought into question.

How Wills are challenged

If you want to challenge a Will because you don't believe the Testator had capacity, feel that you are entitled to inherit, believe it is invalid due to undue influence or think the testator lacked the knowledge and approval of the contents of their Will then you should seek advice from a solicitor. You may also seek advice if you believe the testator revoked their Will or made a later Will.

A Solicitor will then issue a Larke v Nugus letter to the Will Writer in question requesting to see their client file to establish the facts of the case.

If you're a Will Writer and are concerned having received a Larke v Nugus letter then you should approach the SWW for advice. Alternatively, click here take a look at our Larke v Nugus article.

YOUNG LIVES vs CANCER
CLIC SARGENT

DO SOMETHING AMAZING TODAY... FOR YOUNG LIVES AGAINST CANCER

Every day, 11 more young lives receive the devastating news that they have cancer.

CLIC Sargent helps families limit the damage cancer causes beyond their health. With your help we can ensure all young cancer patients and their families receive the support they need, for as long as they need it.

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London W6 8JA

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'Football, Dementia and Me'

Many of you will have seen Alan Shearer's documentary 'Football, Dementia and Me' on BBC One earlier this year. Dementia is seemingly prevalent in retired footballers, so much so that studies are being conducted into whether there is any link between heading a football and dementia in later life. Alan Shearer, who over the course of his career scored 46 goals via headers, took part in one such study as part of his program.

Alan also visited the families of other footballers who had been effected by dementia, such as Nobby Styles who is currently in the advanced stages of dementia. This highlighted not just the effect that dementia has on the person, but the impact it can have on the people close to them.

Seeing the effect that dementia can have on your loved ones may have spurred you into thinking about what would happen if you were to lose capacity, and what you could do to prepare for the possibility. If you were to lose capacity to make decisions for yourself who would make decisions for you? Who would manage your bills and other finances? If you needed medical treatment who would consent to this on your behalf? If you are married you may think your spouse will be able to do this for you, but this is not the case unless they are formally appointed as your attorney or deputy.

A Lasting Power of Attorney (LPA) is a legal document that grants a person or people the power to make decisions on another person's behalf. Having an LPA will save your family a lot of time and distress in the event of your loss of capacity.

There are two types of LPA, both of which must be made when you have capacity.

The first type is the Property and Affairs LPA which allows your chosen attorney to make decision about your financial affairs and property.

The second type of LPA is the Health and Welfare LPA. This covers decisions about your personal welfare and health, and can only come into effect after you have donor has lost capacity.

Under both types of LPA you choose who to appoint as your attorneys, so this could be your spouse or partner, your children, or anyone else you trust to look after your best interests. You can also provide guidance to your attorneys so they can make the decisions as closely as possible to how you would. This can be done by making your preferences known and by providing instructions in the forms. Your attorneys should consider your preferences but don't have to follow them. Instructions on the other hand must be followed. Instructions have to be carefully worded so that they are legally correct, your local Estate Planning Practitioner will be able to help you with this.

What if you don't have an LPA though? If capacity is lost without any LPA in place, family and friends would need to apply for a Deputyship which takes significantly longer than registering an LPA. Applications to become a Deputy are handled by the Court of Protection, and the process can be very expensive with a £400 application fee (at time of writing).

If you haven't got an LPA in place and this article has raised any concerns why not contact a member of the Society of Will Writers for assistance today? Find a local member on our website.

BRITISH LIVER TRUST

Mary's Story

Liver disease can take many forms. Mary and her husband Bill made mirror wills when Bill was diagnosed with Primary Sclerosing Cholangitis, a rare liver condition. Bill had a liver transplant in 2001 but sadly lost his life in 2014.

As Christmas approaches, Mary reflects on her life with Bill.

"Bill and I wanted to leave a meaningful amount of money; when we did our Wills, we thought about what the disease, the generosity of the donor and his family and the transplant had meant for us. Above all it had allowed Bill to become a grandad to a grandson he loved very much.

"As his widow it gives me great comfort to know that Bill's legacy will improve the lives of fellow sufferers and their families in years to come. Please consider leaving a legacy in your will to the British Liver Trust."

British Liver Trust supports patients and families, and campaigns for better awareness, early detection and treatment of all liver conditions.

To find out more about leaving a gift in your Will to the charity:
Call **Audrey Cornelius** on **01425 600206** or
Email **audrey.cornelius@britishlivertrust.org.uk**

British Liver Trust is a registered charity no 298858 in England and Wales, SC042140 in Scotland

www.britishlivertrust.org.uk

Who is your Will Writer?

- All SWW Members will provide up to date advice in line with current legislation.
- All SWW Members adhere to our Code of Practice.
- All SWW Members complete compulsory annual CPD.
- All SWW Members carry at least £2m of insurance cover.

If you have doubts about an SWW member give us a call on 01522 687888.
If you would like to join the SWW then please email info@willwriters.com for our information pack or application forms.


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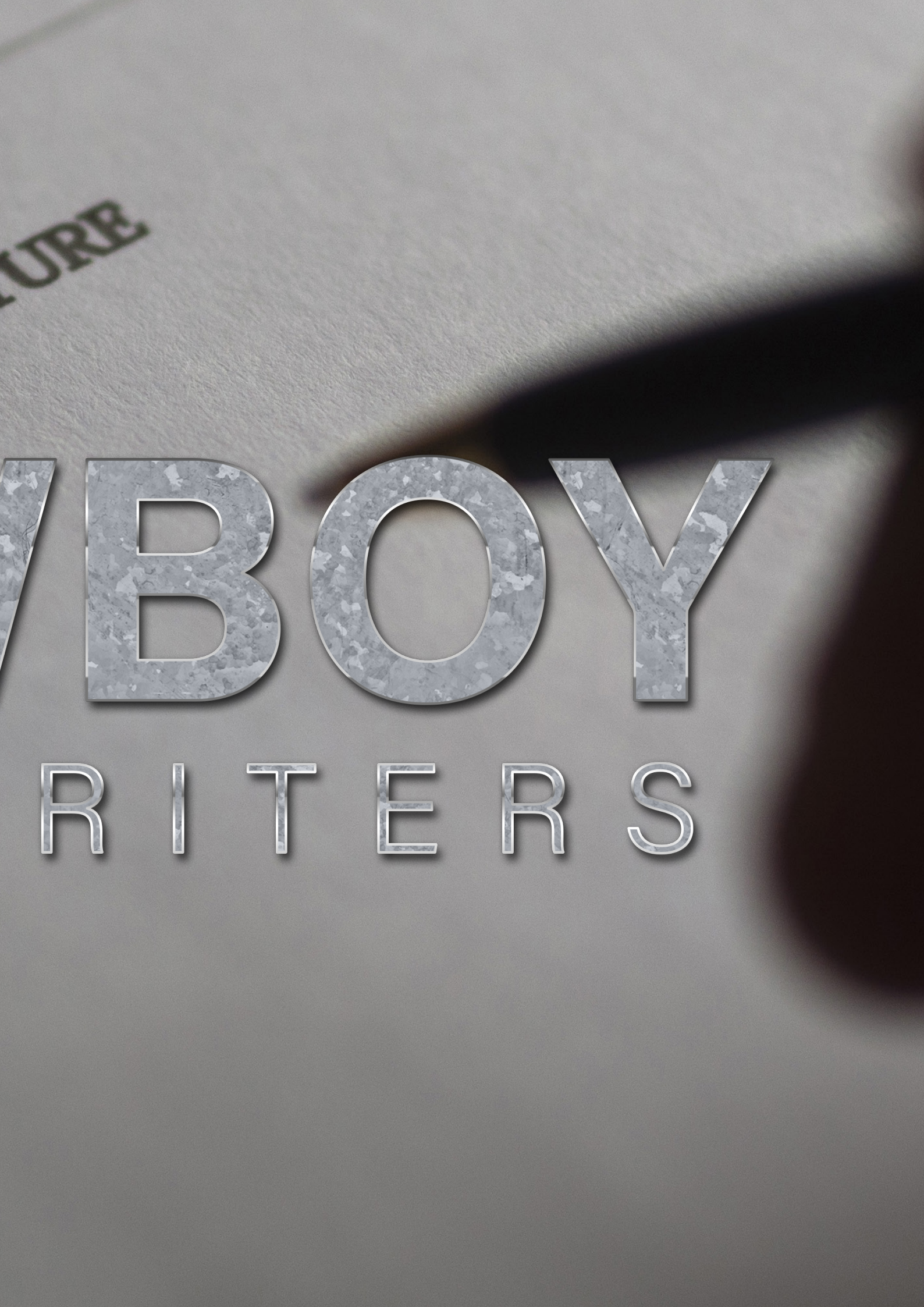
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RITERS

COWBOY WILL WRITERS

The importance of having a valid Will that is fit for purpose is not to be underestimated. In the UK Will Writing is an unregulated profession – this means that anybody can write a Will, whether it be for themselves, or for somebody else. With many Will Writing companies throughout the UK it's now easier than ever to get a bespoke Will drafted. But how can you be certain the person or company you're doing business with is providing you with valid and suitable documents, and not just a cowboy posing as a professional?

In 2011 the Society of Trust and Estate Practitioners (STEP) published a report on Cowboy Will Writing which outlines five main problem areas within the UK Will Writing market:

- Invalid Wills
- Will writers making untrue claims
- Disappearing Wills and Will writing companies
- Hidden fees
- Fraud in estate administration

STEP believe that Will Writers should be regulated to ensure minimum standards of competence and behaviour. Through proper training, insurance and set standards, these problems can easily be overcome – something that by aligning to a membership organisation such as The Society of Will Writers (SWW), can be achieved. The SWW has 3 mandatory membership requirements – members must hold valid Professional Indemnity Insurance, adhere to the SWW Code of Practice, and complete mandatory continuous professional development (CPD). Through these requirements we can ensure that our members are 'Safe to do business with', as SWW membership is there not only for the professional, but also to safeguard the consumer.

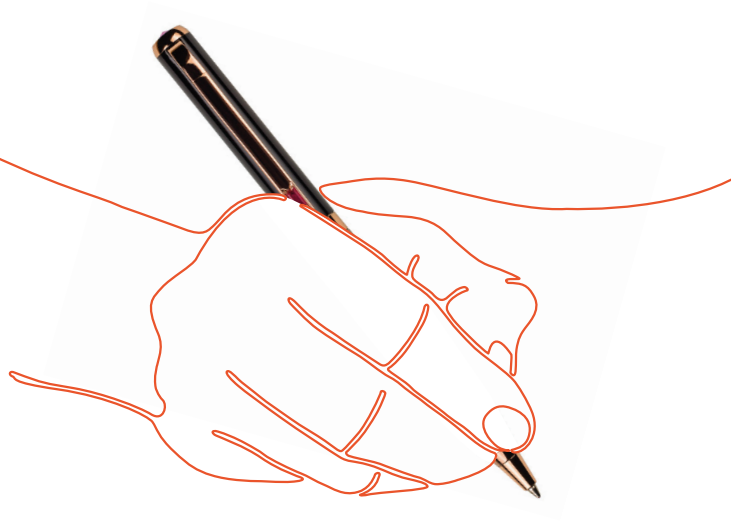
How do I know a Will Writer is safe to use?

Always make sure you use a trained professional who is fully insured to draft your Will. You can avoid cowboy Will Writers by checking if they belong to a membership organisation such as the SWW, they will have to have the necessary qualifications to provide their services to you. Before granting membership to the SWW we ask for proof of proficiency, and to retain that membership we issue audits on an annual basis where all requirements met must be noted and evidenced. All compliant members are issued with certificates and ID cards on return of their annual audit and you can contact us at any time to check whether someone who is claiming to be a member, is a member. There is a similar process for solicitors, who must be regulated by the Solicitors Regulation Authority (SRA). You can check a solicitor with the SRA at any time.

Members who are found to not be SWW code compliant (whether this be discovered through internal checks or if it has been brought to our attention externally) are contacted immediately informing them to bring themselves up to date and failure to do so can lead to expulsion from the SWW.

If you would like to find a SWW member in your area, visit:
https://www.willwriters.com/members/
or call us on 01522 68 78 88

YOU HAVE THE WILL, WE HAVE A SIMPLER WAY



At Charities Aid Foundation (CAF), we have over 90 years' experience in connecting our donors to the causes that matter to them.

We have designed our legacy service to make leaving money to charity in your Will, straightforward.

- Give to as many charities as you wish
- Change your mind as often as you like without having to amend your Will
- Save time and expense for your executors

Leave a lasting legacy in three easy steps:

1 Name CAF

We provide you with the exact wording to give to your Will writer, making it easy for everyone.

2 Choose your causes

Identify the charities you'd like to support. Our expert advisers can help you if you are unsure who to give to.

3 Send Letter of Wishes

List the charities or charitable causes in our Letter of Wishes Form and send it to us.

"It's been a highly satisfying experience and I have total confidence that they will carry out my wishes as directed."

Alice Salisbury, CAF Client

Find out more about the CAF Charitable Legacy Service:

W: www.cafonline.org/legacies

T: 03000 123 504

Lines are open Mon to Fri, 9am to 5pm (excluding bank holidays)

Registered charity number 268369

CAF Charities Aid Foundation

COHABITANTS

WHAT ARE THEIR SUCCESSION RIGHTS?

Changing attitudes in our society mean that many couples are choosing not to marry or enter a civil partnership. This means the number of unmarried couples living together has risen to 3.3 million in 2017. Marriage and civil partnership provides an array of rights between spouses and civil partners. But what exactly are the rights of cohabiting couples when it comes to death and inheritance?

There is a pervasive myth of 'common law marriage'. This is the belief that if you have been living together as a couple for a number of years (usually 2, though the figure varies) you are treated as 'common law spouses'. While some jurisdictions do have a concept similar to this, England & Wales is not one of them. In short if you are not married to your partner you have no automatic right to inherit from their estate if they die without leaving a will.

Where a person dies without a valid will the rules of intestacy (Intestacy Article) dictate how their estate will be distributed. In the case of a couple who are married and have no children the surviving spouse will inherit the whole estate. If they also have children then the spouse will receive the first £250,000 and half of what remains, with the children taking the other half. If a couple is unmarried then their surviving partner will receive nothing.

There can be some recourse though. An unmarried partner who finds themselves left out because their partner has died without a will may be able to apply to the court for provision under the Inheritance (Provision for Family and Dependants) Act 1975. This Act allows certain categories of people to apply for provision from an estate when a deceased person's will or inheritance failed to make 'reasonable provision' for them. A cohabitant is one of these people provided certain conditions are met.

A cohabitant can apply for provision as 'a person living as the spouse or civil partner of the deceased'. To qualify they must have been living in the same household as their deceased partner, as though they were their spouse or civil partner, for the 2 years immediately before their death. This 2 year period must also be unbroken apart from reasonable exceptions such as illness requiring hospital care.

If you are cohabiting with your partner and wish to make sure that they inherit from your estate you should make a will.

THE MYSTERY OF MISSING BENEFICIARIES

WHEN DISTRIBUTING GIFTS MADE IN A WILL WHAT HAPPENS IF THERE IS ARE MISSING BENEFICIARIES?

Personal Representatives (PRs) have a duty to ensure that the estate is distributed to the correct beneficiaries. This involves first ascertaining who those beneficiaries even are, in the case of a gift made to a group of people for example 'my children living at my death'. But what happens if the PRs are aware that a beneficiary exists but they can't find them? They may have fallen out of touch with the testator or they may be difficult to trace.

If a PR distributes an estate and fails to take account a missing beneficiary then they may find that they have acted in breach of their duty. If the missing beneficiary turns up at a later date the PR will be liable to pay them out of their own funds. Thankfully, this can be avoided if the PR takes the appropriate steps before distributing the estate.

The PRs should make all reasonable enquiries to try and find the beneficiary. For most people the first enquiry will be to the deceased's friends and family as they may know the beneficiaries location. Failing that they should take out an advertisement in newspapers local to the beneficiaries last known whereabouts and an advert in the Law Society Gazette.

Next steps should be employing a genealogist or 'heir hunter' to trace beneficiaries, or even a private investigator. This can be very expensive though, so before hiring a PI the PR should consider whether the value of the estate can justify such an expense.

Once all reasonable avenues have been exhausted and the missing beneficiary has still not been found it's time to start thinking about how to deal with the administration. At this stage a PR has multiple options open to them:

1. Keep a reserve fund

The PRs could hold back a reserve fund equal to the amount of the missing beneficiary's legacy. They can then distribute the rest of the estate as normal to the known beneficiaries. If the missing beneficiary comes forward in future (within 12 years of the testator's death) they can be paid their share. This avoids the distribution being held up for too long.

2. Take out missing beneficiary insurance

They could distribute the estate to the known beneficiaries and take out insurance against the missing beneficiary turning up and claiming. This will avoid the beneficiary claiming against the PR as the insurance policy will satisfy their claim. The amount insured must be large enough to cover the value of the legacy itself as well as any interest.

3. Distribute with an indemnity

The PR could distribute the funds to the known beneficiaries and obtain an indemnity from them. If the missing beneficiary comes later forward makes a claim the PR will be able to recover the money from them. This is more appropriate for small sums and should be done with caution. There is always the possibility that the missing beneficiary will claim and the indemnifying beneficiaries will be unable to meet the costs.

4. Court intervention

Finally, the most time consuming and expensive option. The PRs could apply for leave from the court to distribute the estate under Part 64 of the Civil Procedure Rules 1998. This is known as a 'Benjamin Order' (from the case of Re Benjamin). This allows the PRs to distribute the estate on the presumption the court makes the order on. This presumption is usually that the missing beneficiary has predeceased the testator leaving no issue.

Before such an order can be granted the PRs must show the court what steps they have taken to establish the beneficiary is still alive and to trace them. The court will only grant the order if they agree that all that can be done, has been done.

If the missing beneficiary later turns up they can try and claim their share from the other beneficiaries, however the PRs are protected.

Written by Siobhan Rattigan, The Society of Will Writers and Estate Planning Practitioners


WRITE
YOUR
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www.willwriters.com
The Society of Will Writers

If you have any questions about Wills, or any of the content in this magazine, please contact The Society of Will Writers:

Chancery House, Whisby Way, Lincoln, LN6 3LQ

Telephone: 01522 68 78 88

Email: info@willwriters.com

Web: www.willwriters.com

Safe to do business with

Code Compliant

The Final Word

Why consider a funeral plan?

You should consider a Funeral Plan to deal with the most personal and sensitive of your family affairs and alleviate the financial and emotional burdens that naturally accompany a bereavement.

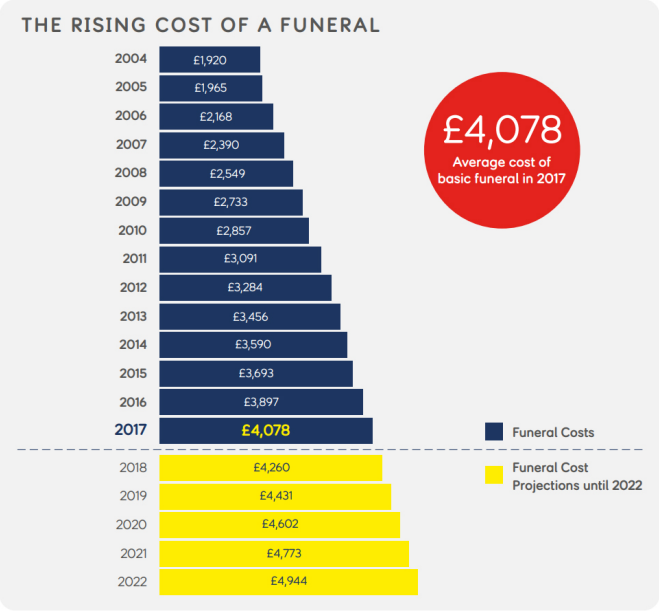
Planning ahead is important. Here are some of the reasons why people choose to purchase funeral plans:

- Funeral plans provide an opportunity to secure funeral director's services at today's prices, to counter the sharply rising costs of a funeral.
- Often people just don't know what their deceased relative wanted - usually because it's natural to put off talking about it.
- At a time of sadness, you will have relieved your family of a significant financial burden. Those you leave behind will remember your thoughtfulness.
- A funeral plan ensures that your wishes will be carried out and that the funeral director's services will be paid for at no extra cost to your family.
- Savings in a bank or building society is just a sum of money. Your executors are not obliged to spend it on your funeral and it may not keep up with the rising costs of funerals.
- Putting your funeral wishes in your Will is not binding upon your executors - they do not have to carry out your wishes.
- You can choose a funeral to suit your requirements across a range of prices, or you can pay by instalments if you prefer.
- You will receive a welcome letter and certificate which confirms the funeral you have chosen. It also specifies, if you wish, personal details such as religious requirements, gifts to charities in lieu of flowers, music, etc.

The national average cost of a funeral has more than doubled since 2004

The reality facing us all is that the cost of a funeral in the UK has risen by 90% since 2004 and is predicted to continue to rise significantly in the future.

By choosing to purchase a Guaranteed Funeral Plan, you can secure the cost of the Funeral Director's services, at today's prices, with no more to pay however much they may rise in the future.



Source: The SunLife Cost of Dying Report 2017

Your Money is Secure

Funeral Partners Limited provides exceptional security for your money. All of the invested funds are held securely in a whole of life assurance policy to pay for your funeral service. For maximum security, Funeral Plan funds are held in guaranteed whole of life assurance policies with a life assurance company that is authorised by the Prudential Regulation Authority (PRA) and regulated by the PRA and the Financial conduct Authority (FCA). Funeral plans themselves are not regulated by the PRA or FCA but are regulated by the Funeral Planning Authority.