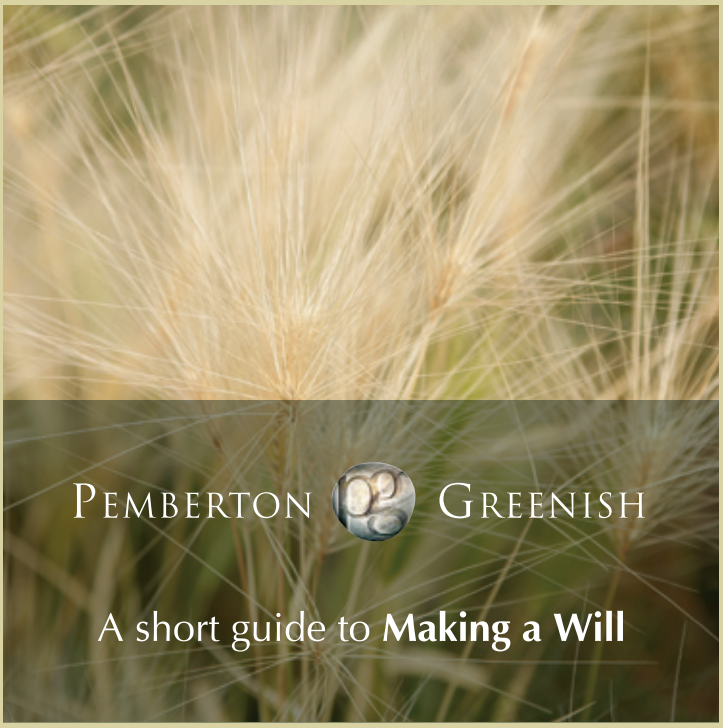

PEMBERTON GREENISH
A short guide to **Making a Will**

BEN THOUGHT MAKING A WILL WAS MORBID AND A WASTE OF MONEY.

He refused to discuss it and assuming that everything he had would go to his wife Caroline, eventually died without a Will. He left an estate of £800,000 comprising a house worth £700,000 (in his sole name) and £100,000 in other assets. Caroline in fact was entitled only to Ben's personal belongings, £200,000 and half the balance – a total of £500,000 (not enough to cover the cost of the family home). The remaining £300,000 went to Ben's brothers who had had no contact with Ben or Caroline for 30 years following a family row, and who had no compunction in forcing a sale of the house to raise their share.

WHY MAKE A WILL?

THIS GUIDE HIGHLIGHTS THE IMPORTANCE AND ADVANTAGES OF A PROPERLY DRAFTED WILL. IT ALSO HIGHLIGHTS OTHER MATTERS TO BE CONSIDERED AT THE TIME OF MAKING A WILL.

- Almost two thirds of us will die intestate, that is without a valid Will.
- It is a popular misconception that dying intestate results in "what I would do anyway". In fact if you die intestate your spouse or partner is likely to receive less than you would expect or wish, with more of your estate passing to family members who may not need it as much.
- Homemade Wills though made with the best of intentions are usually unsatisfactory and often invalid. Common problems are:
  - they fail to use the correct terminology and therefore fail to have the desired effect
  - they rarely make any provision in the event that a named beneficiary dies before the person making the Will – what happens to the gift if the intended recipient has already died?
  - there are strict rules relating to signing Wills and one mistake in this process will render the Will invalid. Often these rules are overlooked when homemade Wills are signed
  - tax planning opportunities are invariably ignored.
- Failure to make adequate provision for those who might have a claim on your estate can prove very expensive and disruptive to the administration of your estate.
- Marriage revokes a Will.

The advantages of proper professional advice and a professionally drafted Will are numerous. The most important ones are outlined in this guide, together with the procedures involved.

JAMES IS MARRIED TO ELIZABETH. THEY HAVE TWO GROWN UP CHILDREN SAM AND PHOEBE AND FIVE GRANDCHILDREN. JAMES AND ELIZABETH ARE BETWEEN THEM WORTH £1.5M OF WHICH £1M IS THE VALUE OF THE MATRIMONIAL HOME. THEY TOOK PROFESSIONAL ADVICE AND SIGNED PROFESSIONALLY DRAFTED WILLS.

James's Will directed that immediately on his death, £300,000 (his Inheritance Tax allowance) was to be held for the benefit of the whole family on a trust created by the Will and controlled by Elizabeth, Sam and Phoebe (the trustees). James expressed the wish in a private letter to the trustees that they should consider Elizabeth's needs above anyone else's. The rest of his estate was to pass to Elizabeth outright.

There was no Inheritance tax to pay on James's death: the trust being of his Inheritance Tax allowance was not taxed; and the rest of his estate was exempt from Inheritance Tax on account of the exemption which applies to transfers between spouses.

To begin with none of the family were in particular financial need: Elizabeth's widow's pension was more than enough to meet her requirements; and Sam and Phoebe were both comfortably off. The trustees chose to retain the income from the trust and reinvest it so enhancing the growth of the fund.

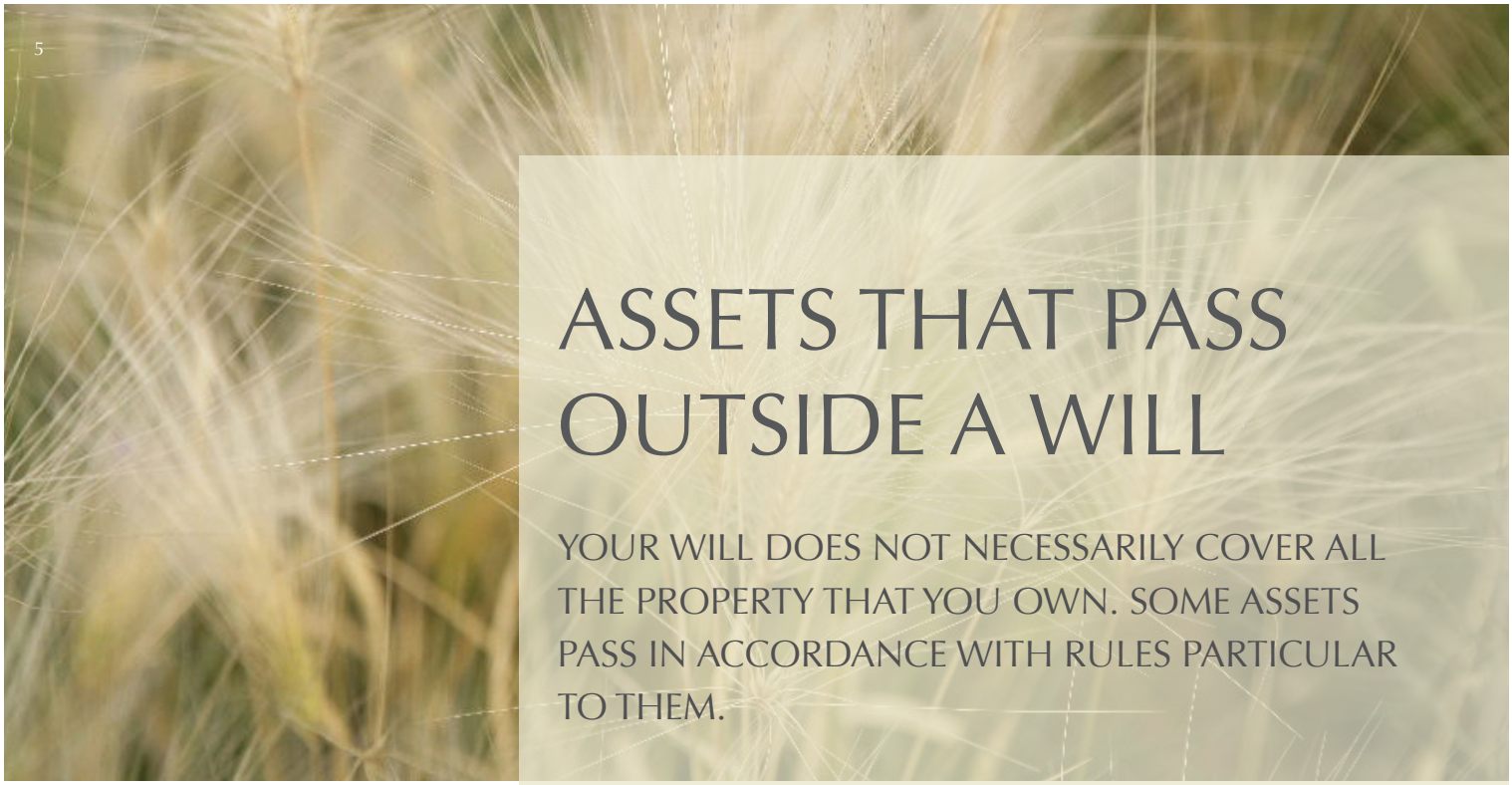
However, when Phoebe's husband was made redundant the trustees agreed to apply money from the trust to help meet the family's living expenses during what proved to be a lean year for them.

By now Elizabeth needed extra help in the house. The trustees agreed to supplement her income to meet these additional costs and to give her £25,000 as a lump sum of capital to pay for some improvements to the house.

When Elizabeth died three years later, the trust fund was worth £350,000. Owing to the nature of the trust it was not taxed on Elizabeth's death and tax of £140,000 was saved. The full £350,000 was available for the benefit of Sam, Phoebe and their respective families.

ADVANTAGES OF A PROFESSIONALLY DRAFTED WILL

- Making a Will ensures that you will benefit those you wish and to the extent that you wish. If you die without a Will the law prescribes who inherits your estate and the shares that each takes.
- You can choose your executors – those who are to be responsible for dealing with your assets after your death and carrying out the wishes expressed in your Will – and guardians for your children.
- Wills can also be used to set out your wishes in respect of burial or cremation, organ donation and your funeral itself.
- You can make the most of any tax saving opportunities for example by making sure you use rather than waste your Inheritance Tax Allowance. The allowance for each individual is £300,000 for the tax year to 5th April 2008, rising to £350,000 for the year 5th April 2011. With Inheritance Tax at 40% that represents a potential saving of £120,000 rising to £140,000.
- Certain assets, for example some business and agricultural assets are taxed at a reduced rate or escape Inheritance Tax altogether. Such assets can be passed to beneficiaries, gifts to whom would otherwise be taxable e.g. children or grandchildren. Leaving such assets to the next generation rather that to your spouse ensures maximum advantage is taken of these generous exemptions while they still exist.



ASSETS THAT PASS OUTSIDE A WILL

YOUR WILL DOES NOT NECESSARILY COVER ALL THE PROPERTY THAT YOU OWN. SOME ASSETS PASS IN ACCORDANCE WITH RULES PARTICULAR TO THEM.

JOINT PROPERTY

Property owned jointly is held either as “Tenants in Common” or as “Joint Tenants”.

Joint owners who hold their property as Tenants in Common may each dispose of his or her share by Will.

Joint owners who hold as Joint Tenants may not. On the death of one his or her share automatically passes to the other (or others) regardless of any provision made in a Will.

There are no hard and fast rules about which sorts of property are held as Tenants in Common and which as Joint Tenants. However the matrimonial home is commonly held as Joint Tenants and property bought by friends or perhaps siblings whether as an investment or a first property is more usually held as Tenants in Common.

Jointly held cash or investment accounts are nearly always held as Joint Tenants.

A change from one type of joint ownership to the other can be made simply and quickly.

TRUSTS

Although you may be entitled to receive the income from a trust, or to occupy trust property it will be the trust deed and not your Will which determines who inherits the trust assets on your death. The trust deed might allow you to specify in your Will who is to inherit the trust assets, but that is less common.

If you are a beneficiary of a trust we will need to see a copy of the Trust Deed when advising you in connection with your Will.

LIFE ASSURANCE

Life assurance will usually pay out to your Executors. The same is true of other similar death benefits, for example in connection with a pension or death in service benefit.

Convenient as this might seem, it is also unnecessarily expensive: the proceeds will be liable to Inheritance Tax notwithstanding that they were received only after your death. Furthermore your executors will not receive the money until after a grant of probate to your Will has been obtained (a process which typically takes 3 months or more).

You can avoid both consequences by writing the life assurance policy or death benefit in trust. Those controlling the trust (the trustees) can be and often are the same people as your Executors. They will receive the money immediately, tax free, and could use it straight away to help tide over beneficiaries until money is available to them from your estate or even to cover some of the expenses of administering the estate, for example Inheritance Tax.

It is important that any trust is set up correctly particularly where the death benefit attaches to a pension. We can advise you as necessary and comment on or prepare the necessary documents.

FOREIGN ASSETS

A UK Will does not necessarily cover assets outside the UK.

The issue of foreign assets is complicated and often will require advice from a lawyer in the country where the asset is situated. It may be necessary or preferable to have a foreign Will to dispose of such assets.

To ensure that your UK Will operates effectively and in concert with any existing foreign Wills we would first need to know about any foreign assets and see copies of any foreign Wills.

ENGLISH WILLS FOR NON-UK DOMICILED PERSONS

IF YOU ARE DOMICILED OUTSIDE THE UK IT MAY STILL BE APPROPRIATE FOR YOU TO HAVE AN ENGLISH WILL.

Domicile is an English Law term meaning, very broadly, “your true home”. It is possible to be resident in the UK and domiciled outside the UK. For example you have come here to work (for say 5 years) after which you intend to return to the US.

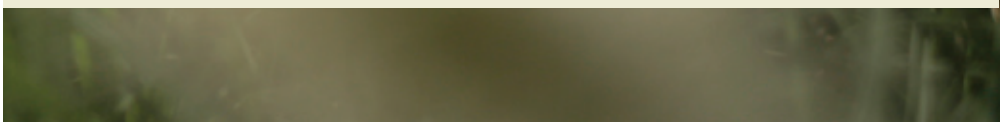
Domicile is an important factor in succession to your assets. It is usually the law of the place of your domicile which governs succession to your estate. An important exception to this general rule is that immovable property (most usually land and buildings) passes according to the law where the property is situated.

If you own your home or other immovable property in England having an English Will disposing of that property can be a great help to your heirs: it is quicker and simpler to use an English Will than to wait for a foreign Will first to be proved or verified in another country and then proved here.

There may also be advantages to having an English Will to deal with other assets in the UK, for example investments run through a UK investment manager, or cash deposits held at a UK bank. It is then vital to consider the succession law of your country of domicile and any restrictions that their law may impose.

If you have more than one Will, for example one dealing with your assets in the UK and one with your assets anywhere else in the world, it is important to check that the two work properly together, and one does not revoke the other.

Proper professional advice is key in this very complex area.



INHERITANCE TAX FOR NON-UK DOMICILED PERSONS

UK Inheritance Tax is payable on all property which is actually situated in the United Kingdom; that is both real property (house etc) and personal property (bank accounts and shares etc). Provided you and your spouse/civil partner have the same domicile, anything you leave to him or her is exempt whatever its value. Also the first part of the value of your estate is free of UK Inheritance Tax regardless of who inherits it; for the tax year 2007/2008 this is £300,000.

It is possible that the country of your domicile will also tax your English estate. It is important that the two tax systems are considered together to ensure that any double taxation can be avoided.

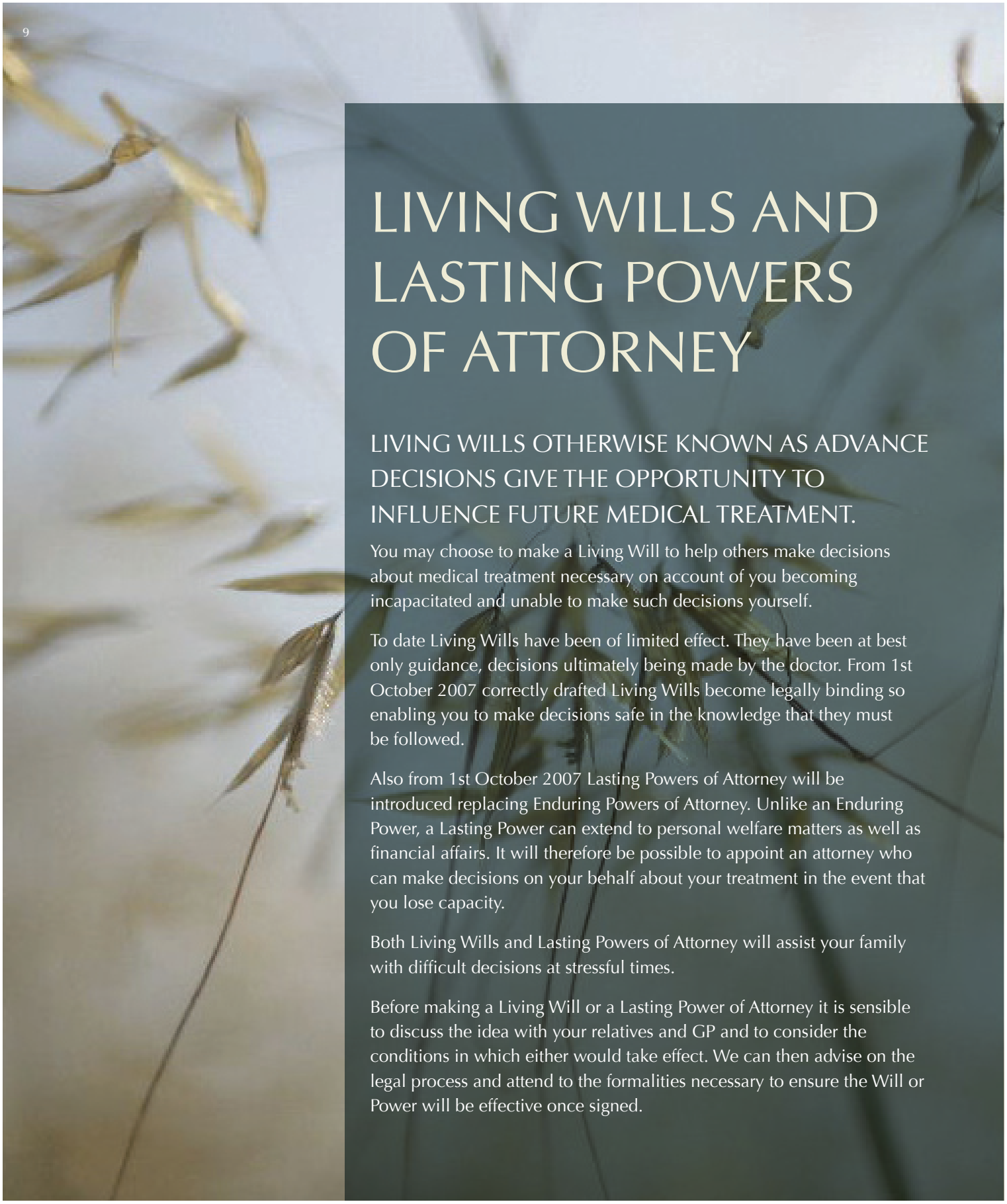
Deemed Domicile Rule for Inheritance Tax

There is a special rule of domicile which applies only for Inheritance Tax purposes: when you have been resident in the UK for income tax purposes for 17 out of 20 years, you will be deemed domiciled in the UK for Inheritance Tax. As soon as you are deemed domiciled in the UK you will be taxed as if you are UK domiciled: your worldwide estate will be subject to UK Inheritance Tax. All the usual exemptions will apply and to the extent that there is an equivalent tax charge in any other country it is usually possible to set one off against the other so that double taxation is avoided.

This special rule does not make you UK domiciled for the purpose of Wills.

Suggested action about making an English Will

1. Before you make an English Will consult a lawyer in your country of domicile to learn whether there are rules as to how you may leave property by your Will.
2. Choose executors who will deal with your estate. These may be the beneficiaries and it may be preferable that they are. They do not have to be resident in the UK in order to act but it will probably make the administration simpler if they are.
3. After you have made an English Will and you make a Will elsewhere, make sure that the new Will does not deal with English property and does not express itself, either expressly or implicitly, to cover "worldwide" property; the reason is that then the new Will would automatically revoke the English Will.
4. Remember that marrying after making an English Will automatically revokes the English Will.



LIVING WILLS AND LASTING POWERS OF ATTORNEY

LIVING WILLS OTHERWISE KNOWN AS ADVANCE DECISIONS GIVE THE OPPORTUNITY TO INFLUENCE FUTURE MEDICAL TREATMENT.

You may choose to make a Living Will to help others make decisions about medical treatment necessary on account of you becoming incapacitated and unable to make such decisions yourself.

To date Living Wills have been of limited effect. They have been at best only guidance, decisions ultimately being made by the doctor. From 1st October 2007 correctly drafted Living Wills become legally binding so enabling you to make decisions safe in the knowledge that they must be followed.

Also from 1st October 2007 Lasting Powers of Attorney will be introduced replacing Enduring Powers of Attorney. Unlike an Enduring Power, a Lasting Power can extend to personal welfare matters as well as financial affairs. It will therefore be possible to appoint an attorney who can make decisions on your behalf about your treatment in the event that you lose capacity.

Both Living Wills and Lasting Powers of Attorney will assist your family with difficult decisions at stressful times.

Before making a Living Will or a Lasting Power of Attorney it is sensible to discuss the idea with your relatives and GP and to consider the conditions in which either would take effect. We can then advise on the legal process and attend to the formalities necessary to ensure the Will or Power will be effective once signed.

HOW WE CAN HELP YOU

Pemberton Greenish provides an efficient and professional service to ensure making your Will is as simple and pain free as possible.

Initially we ask you to complete a simple questionnaire to give us your personal details and an overview of your wishes. Once the questionnaire is completed we can meet to discuss your wishes in detail, identify any tax planning opportunities and provide advice as necessary.

We will then provide you with a draft of your Will for you to review and approve. Once the Will is complete we will meet again to supervise its execution to ensure that it is valid once signed.

COSTS FOR COMPLETING A WILL

We are happy to provide a quotation for completing your Will.

We have standard rates for basic Wills and provide a tailor-made quotation where the circumstances are more complicated.

If you are interested by any of the issues raised or would like to discuss making your Will please contact us on 020 7591 3333 or law@pglaw.co.uk

ABOUT PEMBERTON GREENISH

Pemberton Greenish is a specialist firm renowned for its property and private client work. Its core business remains providing legal services to companies and individuals owning and dealing in property with a focus on family and charity owned estates. Pemberton Greenish also offers services to private clients in areas of UK and international tax planning, trusts, wills and the operation of UK and offshore investment vehicles.

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