

A Will To Protect Your Children

Many migrants do not have relatives in this country beyond their immediate family unit. For parents this can be the source of some genuine concern as they worry about the well being of their children and other loved ones in case of their own premature death. We put these questions to practising solicitor, Prakash Raniga.

Q: Prakash, are there any steps that parents should be taking, in order to protect the interests of their children in case of tragedy?

A: There are some basic practical things you must do that are not really of a legal nature but make good sense. For instance, ensure that your close family friends are aware of who your next of kin are back in your country of origin and how they can be contacted. If your children are old enough, ensure that they too know how to contact grandparents, uncles, and so on. From a legal perspective, however it is vital to make a will.

Q: Is there a risk that your children will not be catered for if you do not make a will?

A: It is more a case that your children might not be catered for in the exact way that you might want, rather than they would not be catered for at all. If you die intestate, that is to say without a will, then your estate will be dealt with in accordance with a formula laid down by the law. Generally speaking the estate is converted into money and passes to the next of kin. This is

unlikely to be in exactly the way that you might have wanted.

Q: Are there any other benefits in making a will?

A: Yes. The most significant in relation to your children is that in a will you can specify the preferred guardians for your children in the event of your death. However, there are other advantages also. For instance, if you have a will, the time taken to administer your estate is much shorter. If you die without a will, much time may need to be spent identifying your assets and liabilities and confirming who is or is not your next of kin. Things are much cleaner and therefore less traumatic for those you leave behind, if you make out a will.

Q: Can you put anything in a will?

A: The basic answer to that is yes, provided that what you are instructing is legal and practically able to be carried out. However, there are some subtleties to be aware of. Firstly there is a legal provision to allow a will to be contested by a spouse or children if they feel they have not been adequately catered for by the provisions you make for them in your will. Secondly, you can only deal with assets that you own or are entitled to. This is important to remember for people whose affairs are tied into complex corporate or trust structures, perhaps for tax reasons, and not legally in their personal control.

Another simple but important issue to remember is that a will needs to be witnessed by two

adults and witnesses cannot also be beneficiaries under the will.

Q: There appear to be a number of rules and regulations to be aware of. Does a will have to be made out by a solicitor?

A: No, but there are some distinct advantages in using the services of a solicitor. Firstly, the solicitor will be aware of the rules such as those I have already mentioned.

Next the solicitor will avoid some of the traps which are common in self written wills. For instance, you can cause real confusion and difficulty by saying things like, "I want everything I own to go to my wife except for my favourite ring, which I would like to go to my favourite daughter". Obviously this is an exaggeration, but frankly who can tell which is your favourite ring or your favourite daughter if you have more than one?

A solicitor will use legal language that is unambiguous and leaves no need for interpretation, which might end up being contrary to your real wishes.

Additionally, and this is particularly important for migrants, the solicitor will make you aware of the different laws which might govern that part of your estate that is overseas. You may need to go to a solicitor with specialist knowledge.

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