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Client(s) Testamentary Instruction Form

To be completed by Consultant:

Consultants Name:	
Company:	
First Testator : Surname & Initials	
Second Testator: Surname & initials	
Date Submitted:	

GIVING YOUR INSTRUCTIONS

PLEASE READ CAREFULLY BEFORE COMPLETING, INCLUDING ALL THE ACCOMPANYING NOTES FOR EACH SECTION. IF YOU HAVE ANY DOUBTS OR QUESTIONS PLEASE CALL TECHNICAL HELPLINE ON **01522 500 253** or email **info@willpack.co.uk**

1. Please use BLOCK CAPITALS throughout. DO NOT use any abbreviations.
2. Identify ALL people by their FULL NAMES, surname last.
3. Circle your choice of YES/NO questions. Put a line through any sections which do not apply to you.
4. Additional legacies can be listed on a supplementary sheet. Please clearly which section of this form will include any additional information.
5. The declaration on page 20 must be signed and completed before your application can be processed.
6. Use the section on page 20 to detail advice given but not taken by the Testator(s) and give reasons why and use the check list to indicate items of special need and attention

January 2010

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To Consultant: Please complete this section as it does help the draftsman to understand the instructions in case of doubt - we may be able to offer alternative advice

Estate Valuations:

	JOINT	1ST TESTATOR	2ND TESTATOR
Property			
Foreign Property (situate:)			
Life Assurance			
PEP s			
Tessas			
ISA s			
Pension Death in Service			
National Savings			
Shares			
Unit Trusts/Investment Bonds			
Business Assets			
Bank/Building Society Savings			
Other: House Contents (Chattels)			
Car(s)			
Total Estate Value	£	£	£

Less Liabilities

	JOINT	1ST TESTATOR	2ND TESTATOR
Mortgage			
Loans (incl Credit & Store Cards)			
Other			
TOTAL ESTATE VALUE	£	£	£
LESS TOTAL LIABILITIES	£	£	£
Net Value of Estate	£	£	£

These calculations are estimates only. They are for illustration purposes only and have been calculated on approximate figures supplied by the client(s). They do not take into account any tax allowances that may be in place.

(1) Testators

The Testator is the person making the Will. Write in your full names and surname (last).

Your address (at the time of making your Will) also helps to identify you. Mirror Wills refer to husband or wife or partner or civil partner according to the relationship indicated here.

Use the name by which you go by in every-day life, your driving licence, passport, bank accounts etc. If this is different from your birth certificate (other than maiden name) please state this as also known as or AKA .

It is important that you state whether you have any difficulties in either reading your Will, signing unaided or other impairment in order for us to ensure that the Will is executed in the correct manner.

(2) Executors

Executors do the work of administering your Estate and carrying out other instructions in your Will. Appoint people you trust to comply with your wishes. If a spouse or partner is chosen as a sole Executor, others should be appointed as reserves in case they are unable to act.

Executors are also appointed as Trustees which may involve long term management e.g. looking after money for minor children. Make sure the appointed persons understand this, and consider appointing professional Trustees to work with the family.

A maximum of four (4) Executors (including your spouse) are allowed to administer an Estate when a Will has to be proved. It is recommended that at least two be appointed (see also guardians).

Executors may also be beneficiaries but they cannot charge for their work unless they have accepted the appointment in a professional capacity.

Personal details

Instructions for preparing?		Single Will	<input type="checkbox"/>	Mirror Will	<input type="checkbox"/>
1st testator Full Name					
Is the testator known by any other name?					
Able to read and sign unaided?	YES / NO	Cause			
DOB		Gender	Male / Female		
2nd testator Full Name					
Is the testator known by any other name?					
Able to read and sign unaided?	YES / NO	Cause			
DOB		Gender	Male / Female		
Address					
RELATIONSHIP To each other	Spouse	Partner	Civil Partner		
Are you about to marry?	YES / NO	Enter a Civil Partnership?	YES / NO		
If yes, give date					

Executors**1st Executor: Do you want your spouse or partner to be an executor?**

Circle one only	Yes solely - you should appoint reserves	Yes jointly with those listed below	NO
2nd Executor	FULL NAME		
Relationship to?	1st Testator	2nd Testator	
Address			
Appointment to be?	Executor & Trustee	Executor only	Trustee only
3rd Executor	FULL NAME		
Relationship to?	1st Testator	2nd Testator	
Address			
Appointment to be?	Executor & Trustee	Executor only	Trustee only
4th Executor	FULL NAME		
Relationship to?	1st Testator	2nd Testator	
Address			
Appointment to be?	Executor & Trustee	Executor only	Trustee only
Do you wish to appoint a professional executor?			YES / NO
Would you like details on the SWW Trust Corporation?			YES / NO
Will any of the Executors be acting in a professional capacity?			YES / NO

(3) Children

Use this section to clearly name and identify each child to its natural parent.

As families are becoming more complex it is important that we know exactly which child belongs to which parent.

Children of BOTH testators		
NAME	Age	Sex
		M F
		M F
		M F
		M F
		M F

Other children of 1st testator		
NAME	Age	Sex
		M F
		M F
		M F
		M F
		M F

Other children of 2nd testator		
NAME	Age	Sex
		M F
		M F
		M F
		M F
		M F

(4) Guardians

Appoint people who will look after minor children (under 18) after the death of both partners.

Choose people who will be acceptable to both sides of the family and most importantly to the children.

It is recommended that at least one Guardian be appointed as a trustee.

Unmarried Parents: The law only recognises parental responsibility of the natural mother of children where the parents have never married. In this situation, the mother may give parental responsibility to the father by one of the following means:

- By marrying the natural father at any time following conception of the child.
- For births registered since December 2003 by naming the father on the birth certificate. For births pre Dec 2003 and where the father is not named the birth will have to be re-registered.
- If the father does not have parental responsibility at the time of death of the natural mother he will have to apply to the court

However in some cases it may be that the mother would wish to appoint alternative guardians in the event that she predeceases the father, this can really only be done if the father DOES NOT have parental responsibility..

Guardians			
Children to be referred to as...		My minor children	By name
Appointment worded to allow sole guardian to appoint successor			YES / NO
1st SOLE or JOINT guardian	FULL NAME		
Address			
Relationship to:	1st Test:	2nd Test:	
2nd JOINT guardian	FULL NAME		
Address			
Relationship to:	1st Test:	2nd Test	
Any directions as to upbringing?			
Reserve Guardian	FULL NAME		
Address			
Relationship to:	1st Test:	2nd Test	

Chattels

(5) Chattels

Personal possessions (house contents etc.) can be given separately from the residue or remainder of the estate. Remember though if you give these as a first death gift the survivor may be severely disadvantaged.

Unless otherwise stated, chattels (the contents of your house, garage etc.) will pass firstly to spouse/partner, then on second death you can leave your chattels as you wish - simply write a list which you can keep with the Will and update it as many times as you wish without having to change your Will every time - simply tick the box.....

We will include in the Will a statement to your Trustees:
to be distributed according to any letter or memo I may leave

Tick this box if this is your wish and a suitable clause will be put in your Will as a second death wish

Special instructions

(6.1) Legacies

(a) Specific Items

Specific items can be defined as items of personal use and which can be clearly identified from other items you may own; e.g. *the car that I own at the date of my death* would set this apart from maybe a vintage car that you own which would be identified by its registration number and even chassis number.

Any collection of items can also be gifted in this way, rather than trying to list them; they could be referred to as *my collection of Wedgwood figurines as I own at the date of my death*.

Use this section also to make specific gifts of real estate, houses and land. Where foreign property is concerned, it is advisable for a number of reasons to make a Will in the country the property is held as an English Will cannot over rule the laws of succession in that country, your UK Will can however deal with all your moveable assets worldwide.

Where possible items of a personal nature, such as jewellery should be gifted as a first death gift as it puts a responsibility on the survivor to maintain the gift for future generations. Consider a simple trust if the beneficiary is under age.

Do not use this section to give gifts of money (see over page)

Legacies - Gifts of items of personal use and value

From First Testator	Name / Detail Gift	Relationship	2nd Death
1st Beneficiary			
Gift:			
2nd Beneficiary			
Gift:			
3rd Beneficiary			
Gift:			
4th Beneficiary			
Gift:			

From Second Testator	Name / Detail Gift	Relationship	2nd Death
1st Beneficiary			
Gift:			
2nd Beneficiary			
Gift:			
3rd Beneficiary			
Gift:			
4th Beneficiary			
Gift:			

Continue on a separate sheet if necessary - ensure you indicate clearly donor and donee

(6.2) Legacies

(b) Gifts of Money

These gifts are usually paid **free of tax** i.e. Inheritance Tax is paid from the Residuary Estate and the recipient is paid the whole amount shown. However the testator may wish the beneficiary to bear the tax burden, in which case mark the gift **subject to tax** .

Use this section to gift the contents of bank accounts, stocks, shares or any part of your Estate that may be subject to tax calculations.

Where you are gifting the contents of a bank or building society account give full details of the branch, account number and sort code.

Where you are gifting the proceeds of an insurance policy, give the details of the policy - its type, the Insurers name and policy number.

Stocks and shares should also be identified by their certificate numbers.

Tick the box only if you want the legacy to be given after your spouse or partner has died (i.e. 2nd death)

Gifts to Charity

Gifts of money to charity are exempt from Inheritance Tax.

Use this section to make such a gift or gifts.

Ensure you indicate whether the charitable gift is to be paid on first or second death. If as a 2nd death gift, it will only be paid once

Use this section for gifts of money, shares, insurance policies etc.

<i>From First Testator</i>	<i>Name / Amount in words and figures</i>	<i>Relationship</i>	<i>2nd Death</i>
1st Beneficiary			
Gift:			
2nd Beneficiary			
Gift:			
3rd Beneficiary			
Gift:			
4th Beneficiary			
Gift:			

<i>From Second Testator</i>	<i>Name/Amount in words and figures</i>	<i>Relationship</i>	<i>2nd Death</i>
1st Beneficiary			
Gift:			
2nd Beneficiary			
Gift:			
3rd Beneficiary			
Gift:			
4th Beneficiary			
Gift:			

(7) Using Trusts in Wills

On second deaths occurring after October 9 2007 the executors of the spouse or civil partner could utilise any unused portion of the Nil Rate Band of their spouse or civil partner who pre-deceased them to mitigate IHT; this effectively meant that there was no longer any need for tax planning within the Will. However this applied only to married couples and those having entered into a Civil Partnership, co-habiting couples still have no tax savings other than their own individual NRB. This change to tax planning did not take account of the growing numbers of couples in 2nd or more marriages where some distrust may arise and therefore leaving everything to the survivor to make decisions as to distribution may pose its own problems such as remarriage, co-habiting and ultimately the estate not being available to benefit the testators own children or beneficiaries. The following pages cover the basic Will trusts including the NilRate Band Discretionary Trust with the IOU debt/charge scheme and the Protective Property Trust. **Use them**; they are extremely effective and clients are now realising the power of trusts in maintaining control over the disposition of their estates.

(7) Trusts

(i) Inheritance Tax

In any estate planning advice trusts and in particular today, discretionary Will trusts play a major part in preserving assets whilst still enabling the surviving spouse to maintain their standards of living.

Discretionary Trusts: in particular the Nil Rate Band Discretionary Trust (NRBDT) are essential to saving or mitigating inheritance tax (IHT) and to ensure that both NRBs are utilised;

(1) The first trust simply gifts the NRB to taxable beneficiaries, i.e. Children - it does work for IHT BUT the survivor loses access to those funds.

(2) The second NRBDT trust simply instructs the Trustees to put in to trust the maximum that can be held without IHT being payable. This trust depends on the deceased's death estate being able to provide such a large sum in liquid assets. One of the main advantages of this type of trust is that during the life of the surviving spouse they can borrow from the trust only repaying any loans from their own estate when they die.

(2) The third NRBDT uses the deceased share of the matrimonial home to fund the NRB trust as there are few if any, liquid assets, and it does prevent the home from having to be sold to pay the IHT liability. This trust is probably the most widely used Will trust today especially where IHT is an issue. There are several schools of thought on the role of the surviving spouse, some say she should only be an executor, others only a trustee, as with most people, they are not likely to want to just sit back and do nothing whilst others plan their future, in these cases we strongly recommend that they APPOINT 3 TRUSTEES, this is so that in the event of any changes in the future they can renounce their position without affecting the trust. **NOTE that a minimum of 2 trustees have to be appointed in any case of a discretionary trust**

(7.1) Inheritance Tax Saving - Gift of NRB to children

The NIL RATE BAND or maximum that can be given without IHT becoming liable direct to children (or other taxable beneficiaries) with residue/remainder of estate to Spouse.

(7.2) Nil Rate Band to Discretionary Trust - Residue to spouse

This trust relies on the estate being asset rich and the Trustees can therefore fund the NRB by means of cash and other liquid assets. Although it would be sensible to sever any joint tenancy in title in the family home it can be gifted back via the Will or a life interest created giving the survivor a right to remain in the home for the rest of their life, allowing the survivor to sell and purchase a new home possibly downsizing and releasing more cash. This would create an interest in possession but as the NRB had already been catered for via the trust the final tax bill would be the same. The spouse and other beneficiaries under the trust can take loans from the trust, in the case of the spouse repayable from his or her own death estate. The short 2 year version are for families where both spouses are self sufficient and decisions as to distribution of the trust assets can be made at death allowing for some breathing space. There will be no charges for funds leaving a 2 year trust.

The full term, maximum 80 year trust would be the most common option as we do not know what the future holds, and does allow the loan situation. As with all discretionary trusts, and since April 2006, all Will trusts, there is a six per cent tax on income every 10 years, referred to as the anniversary tax, and a maximum of 6% charged on funds exiting the trust.

Select from the following:		✓
2 year NRB Discretionary Trust		
Full Term (max 80 years) NRB Discretionary Trust		
Include as discretionary beneficiaries:		
	Spouse, issue and remoter issue?	
	Include any step-children listed in s3 page 4?	
	Include the spouse of any child or step-child?	
Note: the term issue refers to your natural (bloodline) children, grandchildren etc		

(7.3) NRB IOU Debt/Charge Trust - House & Residue to

In how it works in saving IHT, this trust is very similar to No 2, both employ a NRB discretionary trust to mitigate tax. They are both taxed the same and where possible loans can be made from the trust. The most important thing about this trust is that the deceased does not have to have the cash or liquid assets up to the NRB to fund the trust, the Trustees can secure the debt on the deceased's share of the matrimonial home, allowing the spouse to live in the property during their lifetime, but without creating an interest in possession. The survivor gives the Trustees a promissory note (which creates the debt) to pay the NRB amount at death on their death from their estate in return the Trustees give the surviving spouse the house, but with a charge (or mortgage) attached up the value of the loan note

Select from the following:		✓
Full term (max 80 yrs) NRB Discretionary Trust - incl IOU powers		
Include as discretionary beneficiaries:		
	Spouse, issue and remoter issue?	
	Include any step-children listed in s3 page 4?	
	Include any spouse of any child or step-child?	

WARNING: Before you start See next page for additional rules to the IOU debt/charge Trust

**(7A) Trusts
Discretionary Trusts**

(cont)

WARNING

(3a) There are exceptions to the use of the IOU Debt/charge trust, if certain events have taken place in the past, it may be that s103 Finance Act 1986 will stop the trust from being effective, as would the inclusion of a life-time interest in the home upon which the debt was to be secured. There are also very strict rules on how the trustees are to conduct themselves, even if the only asset in the DT is a loan note.

Two questions you must ask and ascertain is **have there been any substantial gifts made between the couple during their marriage?** and since the case of Dr & Mrs Phizackerley, **have either party never worked and therefore not contributed financially towards the purchase of the matrimonial home?** If the answer to either question is YES then in the Will of the spouse who received the gift, or who has never made a financial contribution, the gift of residue will have to be left on a life interest trust rather than absolute.

**(8) Disabled Persons
Discretionary Trust**

The Finance Act 2006 also brought changes to the Disabled Person Discretionary Trust.

It is important that the principal beneficiary of a DPDT qualify for the trust to be created.

The definition of a disabled beneficiary is extended, by sch 20 of the Finance Act 2006 to include persons who would be entitled to attendance allowance or disability living allowance were it not for the fact that they live outside the UK, or are provided with certain types of residential accommodation.

There is also a new s89a which extends to the special treatment to lifetime self-settlements by a person with a condition expected to lead to disability.

(7.3.1) NRB IOU Debt/Charge Trust - gift to spouse with life interest to donor

The discretionary trust in this case works exactly the same as the trust in (3), the main exception is if either party has made a substantial gift to the other during their lifetimes, and this will include a Deed of Gift whereby the house originally purchased in the sole name of one of the party has been conveyed into both names as either joint tenants or tenants in common.

Q. Has either party made any substantial gifts to the other party?

If **NO** then ignore this section and use s3 on page 7

If **YES**, then continue with this section

Name of person who made the gift:

Nature of the gift?

Select from the following



Full Term (max 80 yrs) NRB Discretionary Trust - incl IOU powers

Residue to Donee absolutely

Residue to Donor of gift on life interest (IPDI)

Include any discretionary beneficiaries:

Spouse, issue and remoter issue?

Include any step-children listed in s3 page 4?

Include the spouse of any child or step-child?

Use this section to make any notes or comments regarding the use of trusts for tax planning

Disabled Persons Discretionary Trust

Principal Beneficiary

Does the Principal Beneficiary qualify? (see notes (8))

YES / NO

Other beneficiaries to be included?

To be most effective the more beneficiaries the better.

YES / NO

If YES, is it acceptable to refer to them as my children other than ?

YES / NO

If NO, please name them and include their relationship to each testator. Use a separate sheet if required.

Include a charity?

YES / NO

If YES give name address and Reg d. number

(9) Trusts (cont)

There are pitfalls in the creation of Trusts which can entrap even the most experienced. When a Trust is created, the reasons should be explained to the client as should the extended powers of the Trustees.

There are certain important considerations :

- 1) A gift which confers a vested interest on the beneficiaries will have different consequences from one which confers a contingent interest.
- 2) The significance of the interest in possession in relation to Trusts.
- 3) The risk of partial intestacy where there is a residuary gift to a number of persons in equal shares with no provision as to what should happen to the share if the beneficiary dies before the testator.
- 4) The consequences of Wills Act 1837, s33 in respect of a gift to a child or remoter issue of the testator when the beneficiary fails to survive him.
- 5) The risk of offending the rule against perpetuities, particularly in the case of contingent gifts to grandchildren.
- 6) The necessity of limiting the right to accumulate income to 21 years from the testators death.
- 7) A well devised IHT mitigation plan may well be ruined by legislative changes. The client needs to be warned of this.

Apart from possible changes in taxation, changes in family circumstances may require the testator to review the provisions of his Will periodically. Many clients are aware of this but it is worthwhile reminding the testator that his Will has been drafted on the basis of the law at the date of his Will.

Do you wish to include further trusts ?

YES

Give a brief description / purpose of trust / Clients aims and objectives

(9.1) Trust of Residue (if NO trust is required go straight to s10 Residue)

In some circumstances it is more convenient to place the whole of the residuary estate into a discretionary trust - such as when a client has not the time to see you but needs a Will in a hurry, or when the testators simply do not know what to do. Such a Will does allow for some tax planning should a death occur prematurely but a more detailed and flexible Will should be written at the earliest opportunity.

Two Year Discretionary Trust of Residue		✓
Appoint spouse as children as trustees?		
If NO, name spouse and other's to act as trustees		
Include as discretionary beneficiaries:		
	Spouse, issue and remoter issue?	
	Include any step-children see s3 page 4?	
	List other beneficiaries including any charities?	
	Include wives/husbands of children?	

(9.2) Protective Trust

A protective trust is traditionally used to provide an income (no capital) from the income generated by the trust fund, usually via the spouse of a bankrupt son or daughter. Then passing to the children on the death of the protected beneficiary. Today we would most likely advise the use of a discretionary trust which can be brought to an end and distributed. As the rules of bankruptcy have changed making the need for such a lifetime trust is unnecessary

Protective Trust (read notes above before completing)				
Protective beneficiary				
Trust to be?	Protective?	YES / NO	Discretionary?	YES / NO
If discretionary trust - name other beneficiaries or class				

9.3	Other Trusts (use box at top of page to give description of trust)			
List beneficiaries				
Special Notes				

(10.1) The Family Home

By leaving your interest in the property to another other than your spouse or partner, it may be necessary to create a LIFE INTEREST for your spouse or partner to remain in the property for the rest of their lives, you may impose such restrictions as are reasonable. (see below)

For the purposes of IHT mitigation however, creating a life interest may create an interest in possession, the value of the interest in possession will be added to the survivors estate upon their death and IHT may be due upon second death if their estate exceeds the current nil rate band.

The severing of tenancies from JOINT to COMMON may be used for very limited IHT planning, preserving part of the property for your children in the event the survivor remarries or to ensure that children from a previous marriage or relationship who may have an entitlement will inherit

The Protective Property Trust - Life interest to survivor - residue to spouse/partner - gift over to children/others

This trust relies on the tenancy being severed from joint to tenants in common. The survivor can enjoy the right to remain in the property having been given a **life interest** in the deceased's share.

The survivor (Life Tenant) can request the house be sold and another purchased on their behalf and enjoy the income from any trust created from the balance/proceeds of such sale and purchase. This trust is ideal for the protection of assets for the children should the survivor cohabit, remarry or need residential care.

The trust will also ensure that both testator s can Will their share to their respective children in the case of second marriages etc.

Address of property if not main home			
	Post Code	Title No.	
Name of first owner			
Name of second owner			
DO YOU HOLD THIS PROPERTY IN:	1: Sole Name	If YES: First Testator / Second Testator	
As SOLE owner have you:	considered GIFTING half the house to your spouse or partner? YES / NO : if yes we will provide a separate quotation		
If NO:	Do you want to create a life interest for your spouse? YES / NO		
DO YOU HOLD THIS PROPERTY AS:	2: Joint Tenants	If YES then you will need to consider severing the tenancy to TENANTS IN COMMON & creating a Life Interest to protect interests of surviving spouse or partner (Life Tenant)	
Life Tenant?	Spouse / Partner	OR other?	Name
Severance to be?	EQUAL / UNEQUAL Share %:		
DO YOU HOLD THIS PROPERTY AS:	3: Tenants in Common	If YES, ignore sections 1 & 2 we need do nothing with regard the property except create the life interest for the survivor	
Gift over to ? When trust ends?	1st Testator		
	2nd Testator		
Do you wish to impose any conditions other than standard conditions? If YES see below and tick relevant terms or exclusions			YES / NO

NOTES

Do you wish to impose any conditions on either the Protective Property Trust or the Right to Occupy?		Tick
1	Life interest or occupancy to cease on marriage or co-habitation?	
2	Subject to payment of all outgoings and keeping property in good repair (council tax and utilities etc)	
3	Right to sell and purchase another on same terms (applicable to Protective Property Trust only)	
4	To end trust or occupancy if ceases to be permanent home	
5	Life Tenant NOT to receive income from trust created from proceeds/balance of sale and purchase	
6	Trustees to create a separate trust fund to ensure that they can, if necessary carry out repairs before sale	
7	Other	

**(10.2)
Right to Occupy**

In many cases you will want to ensure that a family member living with you has the right to remain in the property, even for a limited period, rather than *for life*. In these cases the property is given to the trustees to hold, usually for a specific period, but in the case of an elderly parent living with you, until an event happens such as having to go into a home, then *ceases to be their permanent home* would be applicable. Any children living at home at the date of death, it would be practical to give a right to occupy for a period of say [two] years.

A right to occupy (sometimes referred to as a right to reside) can also help guardians, by giving them the right to live in your home, bringing up your children BUT knowing that when say, your youngest child attains the age of 18, 21 or 25 the trust will end and they revert back to their own property allowing the family home to become part of your children's estate.

NOTE: conditions apply to both life tenant and RTO

**Property Asset Protection
Right to occupy or reside in property**

Address if not main home		
Names and relationships to testators of occupants		Relationship
State terms of occupancy		
Ultimate beneficiaries 1st Testator		
Ultimate beneficiaries 2nd Testator		

When creating a Life Interest or a Right to Occupy, it is worth discussing with the testators whether the Trustees should have access to additional funds (a Trust) to carry out repairs or essential work if the house is to be sold. Although the terms of the trust are to keep the property in good repair should be complied with, there are occasions especially if the occupants are elderly when this may not be possible and help may be needed.

(11) Gifting a Business - Succession Planning

When dealing with a client who owns or has a share in a business it is important to discuss with them any plans they may have for the business following their death. In the case of a sole trader it may be that a child is to takeover the business it is normally convenient to make the beneficiary a business executor for that part of the testator's estate. If the beneficiary is one of the testator's children there may be problems in achieving equal distribution of the estate which would satisfy all the children. Where there are limited other assets it may be possible to make some provision for the others by giving one child an option to purchase the business at a reduced price, and using the proceeds to fund legacies for the other children.

Where the testator is a partner in a business, any partnership deed or agreement must be considered before drafting a gift of his share into his Will. The deed or agreement may state that on the death of one partner the surviving partners may buy the testator's share or interest in the partnership from his estate. From an inheritance tax perspective it is important that the deceased cannot be regarded as dying with a contract in place to sell the interest in the partnership to the remaining surviving partners. This would lead to a loss in any business property relief as the testator would be treated as dying entitled to the proceeds of sale rather than the business.

Cross options agreements and automatic accrual clauses are accepted by the Revenue as not constituting binding contracts for sale. To avoid arguments, the partnership agreement should deal with the basis of the valuation of partnership assets at the date of death (likely to be the most beneficial to the deceased's estate), or the historic valuation carried in the partnerships accounts (more likely to benefit the surviving partners).

Where there is no deed or agreement or where such a document fails to deal with the death of a partner, then the partnership is dissolved and the amount due to the deceased partner for his interest is paid to his executors. This is not normally what any partner would want.

The following page deals exclusively with the gifting of a business.

(11) Gift of Businesses

A small business may be run as a private company or as an unincorporated business either in partnership or by a person.

Business Property Relief

BPR is normally available (in addition to the normal IHT relief) at 100% on the value of the deceased's share or interest at death, so long as the requirements of sections 103 to 104 of IHTA 1984 are met.

IHT at 100% is available on the following:

- A business (s105)(1)a
- An interest in a business
- Unquoted shares which gave the transferor control of the company; unquoted shares include those dealt with on the Alternative Investment Market.
- Any unquoted shares in a company (s105(1)(bb))

It is available at 50% on:

- Listed shares or securities which gave the transferor control of the company (s105(1)(cc))
- Any land or buildings, plant or machinery which immediately before the transfer was used by a partnership or company of which he had control (s105(1)(d))

Relief is given on the net value of the business, which is stated to be: the value of the assets used in the business (including goodwill) reduced by the aggregate amount of any liabilities incurred for the purposes of the business.

Relief is not available if the business consists wholly or mainly of one or more of the following, that is to say, dealing in stocks and shares, land or buildings or the making or holding of investments. It can be advantageous to leave property eligible for BPR by Will rather than making a lifetime gift of it.

The following share and interest in the business belongs to?				
1st Testator	YES / NO	2nd Testator	YES / NO	
Both	In equal shares	Unequal shares	%	%

Business Property Trusts (See notes on previous page before completing)				
Name of business				
Address				
<input type="checkbox"/>	Sole Trader?	Should be left to taxable beneficiaries via the trustees in trust for his spouse to enjoy income		
<input type="checkbox"/>	Partnership?	Any partnership deed or agreement must be consulted before drafting a gift in a Will concerning the business. (see below for details where no agreement exists)		
<input type="checkbox"/>	Incorporated?	The testator can leave his share to whoever he wants, subject to any pre-conditions in the Articles of Association. If these need changing then it may be possible to amend the articles, this requires a 75% majority.		

Details of disposal of business (you can appoint separate executors from the private estate to ensure the business is still managed)	
Executors/Trustees	If different from the main private estate. The cost of gaining probate for the business can also be paid for from the business rather than the estate.
Name & relationship	
Name & relationship	

Tick one only from items 1 - 5 as to disposal of business		
Number	Description of clause (see separate price list for costs)	Tick
1	Absolute gift of small business	
2	Gift to trustees of all the testator's business assets subject to BPR & IHT threshold to a BPR trust for taxable beneficiary such as children with life interest to spouse	
3	Gift to trustees of a business upon trust to carry on for a limited period	
4	Trusts of net profits until sale of business and proceeds of sale	
5	Provision for child of testator to take on business on payment to trustees	

The following are additional powers useful to trustees to manage business after the death of the testator		
List	Description	Tick
A	Power to trustees to carry on business where there is a trust for sale	
B	Power for willing trustees to carry on testator's business where other trustees refuse	
C	Provision for salary for trustees managing business	
D	Provision for exercise of powers through trustees interested in business	
E	Indemnity to trustees carrying on business	✓

List beneficiaries	
1st Beneficiary	
List subsequent beneficiaries	

(12) Gift of residue

Residue is the general mass of your estate left after all other gifts have been made and all debts, funeral and testamentary expenses have been paid.

	<i>Gifts of residue can be:</i>	<i>Tick</i>
1	Absolute that is a gift made with no conditions. Use form on page 15	
2	Life Interest IPDI (Immediate Post Death Interest) giving the spouse or partner the right to receive income or capital and income. Useful for complex family arrangements. Need to state whether <u>income</u> only or <u>capital and income</u> to be advanced.	
3	Discretionary where the whole of the residue is left on trust for the spouse and children with discretion on the trustees as to how the fund will be managed and distributed	
4	Absolute gift to spouse with children's share held on discretionary trust	
5	Charitable Trust used mainly where the testator may not have children or others they wish to benefit from the bulk of their estate. They want to leave to charities but not simply to be used towards administration costs. The appointment of a professional trustee is essential in these cases as there is no time limit for the trust to run	

Using the table above and the information given below and on page 15, it should be easy to select the type of residual clause best suited to your client. Most clients situations will be covered on Page 15 but we will tailor the residual clause based on which scenario you have selected above.

Complex Family Arrangements

With more complex family arrangements, such as second or third marriages there is a need to ensure that each of the testator's share and interest in the estate passes and benefits their respective children (if that is their wish). In such a case it would achieve little to simply gift all your estate to your spouse (or partner in the case of co-habitees) in the hope that your wishes would be carried out; the survivor could remarry; simply rewrite their Will excluding your children of an earlier marriage or simply spend it all!

Where there is no Inheritance Tax liability then the simplest solution would be to use the Property Trust on page 11 ensuring that having severed any joint tenancy each respective share is given under the trust; then on residue EITHER make the gift over absolute (1) to the survivor or use an IPDI (an Immediate Post Death Interest) or life interest (2) giving the spouse the right to income from the estate; remember though you will need to consider the additional powers to your trustees to advance capital as well if the estate is relatively small to save the survivor from successfully challenging the Will.

Protecting Children/beneficiaries from themselves

Where a child or children have problems, such as bankruptcy, drink or drug dependency, spendthrifts or other problems, parents could consider using discretionary trusts to manage the residue. Discretionary trusts are extremely powerful tools with the right appointments of trustees. The trustees of such a trust can ensure that a child who has a problem who is made a discretionary beneficiary with his or her siblings would be well cared for, providing food and a home but not being given access to capital on which to exacerbate their situation. This situation can be reversed in future years if, at the trustees discretion the child or children have reformed.

(12) Residue

Main Beneficiaries

The Residue is everything left in your Estate after debts and any legacies have been paid.

You can leave everything to your spouse or partner but if they do not survive you by 30 days your Estate can pass to your children (or grandchildren) or to other named beneficiaries.

A standard family Will often only requires YES to be circled in the first choice and simply state **my children** this will allow for further children being born without having to amend your Will.

If the children in your family have come from more than one partnership it is best to name them (with relationships like stepson) to indicate exactly who is to be included.

Complete s3 on Page 4 to indicate who each child is and their relationships to each testator.

If you are single, or do not have children or wish your Estate to pass to friends simply list each beneficiary, their relationship to each testator and the share they are to receive.

The share they are to receive can be written as a percentage (e.g. 25%) or as a fraction (e.g. 1/4).

If the share is left BLANK they will receive equal shares of your Estate. You may include charities in this section.

Reserve Beneficiaries

In case all your previous beneficiaries fail to survive you, Reserve Beneficiaries can be named. Charities may be named as well as individuals in this section also.

Residue of Estate to pass firstly to Spouse or Partner

YES / NO



And/Or then to pass onto Children and Grandchildren or other family or friends

IMPORTANT: Where the estate is to pass to children following the death of the surviving spouse or partner complete s3 page 4 IN FULL in all sections especially where there are children of previous relationships. When listing them below you need only refer to them by their first names.

	Name of beneficiary	Relationship	%
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

If gift of residue is to your children (step-children) then gift passes to grandchildren by default should any child (step-child) predecease you.

At what age should any children inherit? 18 - 21 - 25 - other

If gift of residue is to beneficiaries other than your children, please indicate from list below what is to happen should any beneficiary fail to survive you or state other:

	Description	✓
a	e.g. To my [brother/sister] but should he/she predecease me leaving a child or children then to their children	
b	e.g. To my [brother/sister] but should he/she predecease me then ? [state where the gift is to pass]	
c	e.g. If any gift should fail it shall be added proportionally to the ones that have not	
d	e.g. If any gift shall fail it shall form part of my residuary estate	
e	Other:	

Reserve Beneficiary Name(s) - list names and relationships or details of charities etc

(13) Exclusions

Name people who may make a claim they have been excluded as an oversight. Indicate if the exclusion is mutually agreed. (that is between testator and excluded).

Any person who was financially dependent on you at the time of your death may make a claim.

If you have deliberately excluded someone from your Will who may have a possible claim on your estate, it is advisable to write a short note, preferably in your own hand writing, giving your reasons and store this letter safely with your Will.

	Full Name	Relationship 1st Testator	Relationship 2nd Testator
1			
2			
3			
	Include in Will(s) of BOTH? (circle)	1st Testator	2nd Testator

(14) Gift of a pet

Many pet lovers will want to ensure that any animals left after their death are well looked after.

To ensure this you may wish to leave the pet to either a specific person or a charity with a cash gift to help with its welfare.

You may also wish to leave a letter of wishes detailing your expectations for the upkeep of the animal.

Gift of pets with a legacy			
Type of animal?			
Animal to go to?			
Address			
Gift to take effect only on second death?	YES / NO		
Are you leaving a legacy to look after any animals?	YES / NO	If yes; how much?	£
Do you wish to include a Letter of Wishes?	YES / NO		

(15)

Medical Donation

An expression of a wish. To enforce your intentions carry a Donor Card and register with the Donor Registration centre

Do you wish to specify your funeral arrangements?	YES / NO	
ORGAN DONATION	1st Testator	2nd Testator
Do you wish your organs be used for transplant purposes?	YES / NO	YES / NO
Are there organs, i.e eyes, that you DO NOT want to be used?		

(16)

Funeral Requests

Requests can be recorded in your Will but friends and relatives should also be informed separately.

Your Executors are not under any obligation to carry out your wishes.

If your requirements are very detailed or complicated it may be worth leaving separate instructions to the person or persons who are likely to carry out your arrangements and keep a copy with your Will.

1st Testator - Do you wish to specify your funeral wishes			YES / NO
Cremated?	YES	Ashes buried; or	Scattered
Buried?	YES	Headstone	YES
Where			
General directions			
Donations to charity in lieu of flowers			
Pre-Paid funeral plan?	YES / NO	More information please	
2nd Testator - Do you wish to specify your funeral wishes			YES / NO
Cremated?	YES	Ashes buried; or	Scattered
Buried?	YES	Headstone	YES
Where			
General directions			
Donations to charity in lieu of flowers			
Pre-Paid funeral plan?	YES / NO	More information please	

(17) That completes the questions regarding the Will, please fill in the two boxes below with any further information which may help in drafting. Following on page 18 are instructions for the completion of an Advance Medical Directive or Living Will.

FURTHER INFORMATION: Use this text box to list any further information that may be helpful to the drafts person in completing these instructions:

CONTENTIOUS WILLS: Use this section only to give YOUR thoughts and opinions as to the testators state of health and mind at the time of taking instruction for the Will. Also give the names (*especially if the testator is a widow or widower*) of any other person present at the interview, and in particular if the Will benefits that person over others.

To the testator: This section is a safeguard for you in the event that any beneficiaries attempt to challenge your Will on the grounds that at the time of giving your instruction you lacked the necessary capacity

(18) Advance Medical Directive (Living Will)

The introduction of the Mental Capacity Act 2005 in April 2007, now means that Advance Decisions (as they are now called) are recognised in law. The Act sets out the statement that everyone has the capacity unless proved otherwise. But it is clear in common law, that competent, informed adults have a legal right to refuse medical procedures in advance and that an unambiguous and informed Advance Directive (refusal) can be as valid as a contemporaneous decision. However, health professionals may be legally liable if they disregard the terms of an Advance Directive if the directive is known to them and that it is clear, unambiguous and is applicable to the circumstances.

Advance statements expressing preferences about treatment decisions or requesting certain treatments are not legally binding. In England and Wales, views expressed by a third party about medical care are also not binding on health professionals. The British Medical Association believes however, that wherever possible such statements should be taken into account in deciding on the patient's best interests. In all circumstances, a contemporaneous decision by a competent individual overrides previously expressed statements by that person.

NOTE: An Advance Directive cannot authorise unlawful procedures, such as euthanasia, nor can they insist on futile or inappropriate treatment. Nor can they be used to refuse the provision of basic care. This includes the administration of medication or any procedure primarily to provide comfort to the patient or to alleviate that person's pain or distress.

	<i>First Testator</i>		<i>Second Testator</i>
Name		Name	
Address		Address	
Post Code		Post Code	
DOB		DOB	
<i>Personal Request - in case of doubt or confusion list who you would like contacted</i>			
Name		Name	
Address		Address	
Post Code		Post Code	
Telephone		Telephone	
Relationship		Relationship	
<i>Select from the following Directives:</i>			
1	General Directive		
2	Defining intolerable condition		
3	Defining maximum treatment		

For a clearer definition of the above options see your buddy or contact The Willpack Service on 01522 500 253
ANY FURTHER DIRECTIONS?

Each client will be supplied with three original documents for them to sign and have witnessed. One should be forwarded to their GP, one should be sent to the hospital where their records are kept (if appropriate) and the third one kept by them.

It is wise for the clients to discuss the presence of a Living Will with their families so that they are aware of their wishes.

<p><i>That completes the section regarding the Will, but have you considered other products and services available? For more information simply tick the box and we will contact you or go to www.willpack.co.uk/forum and download much of the information required</i></p>		
1	Lasting Power of Attorney - Property & Affairs. Although more expensive than the original EPA, still essential if your client is concerned about loss of mental capacity in the future and who will manage their affairs.	
2	Lasting Power of Attorney - Health & Welfare. Much of what this document does can be handled by the Living Will, now recognised in Law since the introduction of the Mental Capacity Act 2005 (see page 18)	
3	Ordinary Power of Attorney - useful where the client is a sole trader, can be time sensitive or left open. Will fail should the donor lose mental capacity in the future	
4	Death in Service Pension benefits, policies written into trust, consider the Asset Protection Trust created during lifetime of testator	
5	Client got excess cash and would like to take advantage of extra nil rate band, then consider a Pilot Trust, this too is created during the clients lifetime to take assets up to the NRB	
6	Client in partnership with others? No agreement in place see pages 12 & 13 for more information.	
7	Client in business with others in an incorporated business? Consider a shareholder agreement, goes further than the articles of association with regard to individual rights.	
8	Client, elderly in good health and no IHT liability to worry about, main concern is asset preservation. Take a look at the Home Protection Trust, ideal for widows and widowers	
9	Land Registry search, it is worth always checking the title of the property - you would be surprised at what comes to light. You do need to register with WillPack if you want this service as standard - talk to your Buddy now!	

PLEASE MAKE SURE YOU TURN TO THE LAST PAGE AND HAVE THE CLIENTS SIGN THE DECLARATION AND FOR YOU TO LIST ANY ADVICE YOU HAVE GIVEN BUT NOT TAKEN BY EITHER TESTATOR AND HAVE THEM SIGN THAT SECTION ALSO

IMPORTANT: Use this section to list any further notes or comments which may be relevant: **for example, any advice given but rejected by the client and on what grounds.**
Please get the client to sign this section as well as the foot of page 20.

Client signature: _____

Consultants Signature: _____

CONSULTANTS CHECK LIST OPTION CONFIRMATION (please tick as appropriate) Before submitting please check (✓) against those items of special need and attention	
Testator can read and sign own Wills without help	
Foreign property (where situate _____)	
Trusts: NRB Discretionary trust 2 year	
Trusts: NRB Discretionary trust full term	
Trusts: Include IOU Loan Trust provisions	
Trusts: Discretionary Trust for disabled beneficiary	
Trusts: Protective Trust (_____)	
Family Home: Sever Tenancy	
Family Home: Create Life interest (not suitable for IHT Planning) Property Trust	
Family Home: Create Right to Occupy (have you included terms of occupancy)	
Lasting Power of Attorney - Property and Affairs - SEE SEPARATE FORM	
Lasting Power of Attorney - Health and Welfare - SEE SEPARATE FORM	
Advance Medical Directive (Living Will)	

DECLARATION TO BE SIGNED BY TESTATOR(S)

Your Will(s) cannot be processed unless this declaration has been signed.

I/We confirm that I/we are over the age of eighteen years and am/are of sound mind. The information given on this form is complete and correct and is to be used as a basis for preparing my/our Last Will and Testament. In addition to appointments, legacies and distribution of residue I/we agree to my/our Executors and Trustees having normal powers to aid the administration of my/our Estate(s). I/We know of no other Trusts or constraints which would prevent my/our Estate(s) being distributed as I/we have requested.

1st Testator

2nd Testator

Date