

Last will and testament of Sue Smith

Last will and testament

This is the last will and testament of me Sue Smith of XXXXXXXX, XXXXXX, Ware, Hertfordshire, SG11 1ER.

1. Revocation

I hereby revoke all former wills and testamentary dispositions made by me.

2. Cremation

I wish my body to be cremated.

3. Appointment of executors

I appoint as the Executors and Trustees of this my will ("my Trustees" which expression shall include the personal representatives of my estate):

3.1. John Smith of XXXXX, XXXXXX, Ware, Hertfordshire, SG11 1ER and Alan Smith of XXXXXXXX, Ware, SG11 1ER.

3.2. Should any Executor and Trustee appointed above either die in my lifetime or be otherwise unable or unwilling to act as my Executor and Trustee, I appoint the following to fill any vacancy arising:

3.2.1. Richard Smith of XXXXXXXX, Ware, SG11 1ER.

4. Definition of my estate

In this will, where the context so admits, 'my estate' shall mean:

4.1. all my property of every kind wherever located;

4.2. all my property of every kind wherever located over which I have a general power of appointment; and

4.3. the money, investments and property from time to time representing all such property.

5. Administration of my estate

5.1. My Trustees shall:

5.1.1. pay my debts, funeral and testamentary expenses and Inheritance Tax on all property which vests in them;

5.1.2. satisfy all gifts of specified property referred to in this will; and

5.1.3. deal with the remainder of my estate ("my Residuary Estate") as set out below.

5.2. Debts, funeral and testamentary expenses, legacies and Inheritance Tax shall be payable out of the capital of my estate (subject to the Trustees' administrative powers relating to capital and income).

6. Specific legacies

6.1. I give the following specific legacies:

6.1.1. All my jewellery that I own at the time of my death , free of tax, to my friend, Sally Cotton of XXXXXXXX, Ware, SG11 1ER, provided that Sally Cotton survives me. If Sally Cotton dies in my lifetime, leaving children who survive me, such children shall take by substitution and, if more than one, in equal shares, the specific legacy which Sally Cotton would have taken had he or she survived me and attained a vested interest.

6.2. I declare that this clause shall be construed as if Section 33 of the Wills Act 1837 had not been enacted.

6.3. In implementing the foregoing provisions, the Trustees shall be the sole judges as to the identity of any asset specifically bequeathed and as to the nature and extent of the bequests in this clause; and the decision of the Trustees on all such matters shall be final and binding on all beneficiaries under this will and under any codicils to this will.

7. Residuary estate

7.1. I give my Residuary Estate to the following:

7.1.1. 100.00% (one hundred per cent) to my friend, Mick Collinson of XXXXXXXX, Ware, SG11 1ER, provided that Mick Collinson survives me. If Mick Collinson dies in my lifetime, leaving children who survive me, such children shall take by substitution and, if more than one, in equal shares, the share of my estate which Mick Collinson would have taken had he or she survived me and attained a vested interest.

7.2.If there are no surviving beneficiaries as aforesaid, then I give my Residuary Estate to any UK company, body or trust established for charitable purposes only as my Trustees shall nominate.

8.Standard provisions

The provisions set out in the Schedule below shall have effect.

The schedule

1.Interpretation

1.1.In this Schedule, unless the context otherwise requires:

1.1.1.Income Beneficiary, in relation to Trust Property, means a Person to whom income of the Trust Property is payable (as of right or at the discretion of the Trustees).

1.1.2.Person includes a person anywhere in the world and includes a Trustee.

1.1.3.The Principal Document means the document in which these Provisions are incorporated.

1.1.4.The Settlement means any settlement created by the Principal Document and an estate of a deceased Person to which the Principal Document relates.

1.1.5.The Trustees means the personal representatives or trustees of the Settlement for the time being.

1.1.6.The Trust Fund means the property comprised in the Settlement for the time being.

1.1.7.Trust Property means any property comprised in the Trust Fund.

1.1.8.A Professional Trustee means a Trustee who is or has been carrying on a business which consists of or includes the management of trusts or the administration of estates.

1.2.These Provisions have effect subject to the provisions of the Principal Document.

2.Additional powers

The Trustees have the following additional powers:

2.1.*Investment*

2.1.1.The Trustees may make any kind of investment that they could make if they were absolutely entitled to the Trust Fund. In particular the Trustees may invest in land in any part of the world and unsecured loans.

2.1.2.The Trustees are under no obligation to diversify the Trust Fund.

2.1.3.The Trustees may invest in speculative or hazardous investments but this power may only be exercised at the time when there are at least two Trustees, or the Trustee is a company carrying on a business which consists of or includes the management of trusts.

2.2.Joint property

The Trustees may acquire property jointly with any Person and may blend Trust Property with other property.

2.3.General power of management and disposition

The Trustees may effect any transaction relating to the management or disposition of Trust Property as if they were absolutely entitled to it.

2.4.Improvement

The Trustees may develop or improve Trust Property in any way. Capital expenses need not be repaid out of income under section 84(2) of the Settled Land Act 1925, if the Trustees think fit.

2.5.Income and capital

2.5.1.The Trustees may acquire for investment or any other purpose:

2.5.1.1.wasting assets and

2.5.1.2.assets which yield little or no income

2.5.2.The Trustees are under no duty to procure distributions from a company in which they are interested.

2.5.3.The Trustees may pay taxes and other expenses out of income, although they would otherwise be paid out of capital.

2.5.4.Generally, the Trustees are under no duty to hold a balance between conflicting interests of beneficiaries.

2.5.5. Income may be set aside and invested to answer any liabilities which in the opinion of the Trustees ought to be borne out of income or to meet depreciation of the capital value of any Trust Property. In particular, income may be applied for a leasehold sinking fund policy.

2.6. Application of trust capital as income

The Trustees may apply Trust Property as if it were income arising in the current year. In particular, the Trustees may pay such income to an Income Beneficiary as his income, for the purpose of augmenting his income.

2.7. Use of trust property

2.7.1. The Trustees may acquire any interest in property anywhere in the world for occupation or use by an Income Beneficiary.

2.7.2. The Trustees may permit an Income Beneficiary to occupy or enjoy the use of Trust Property on such terms as they think fit.

2.7.3. The Trustees may lend trust money to an Income Beneficiary. The loan may be interest free and unsecured, or on such terms as the Trustees think fit. The Trustees may charge Trust Property as security for any debts or obligations of an Income Beneficiary.

2.7.4. This paragraph does not restrict any right of Beneficiaries to occupy land under the Trusts of Land and Appointment of Trustees Act 1996.

2.8. Trade

The Trustees may carry on a trade, in any part of the world, alone or in partnership.

2.9. Borrowing

The Trustees may borrow money for investment or any other purpose. Money borrowed shall be treated as Trust Property.

2.10. Delegation

A Trustee or the Trustees jointly (or other Person in a fiduciary position) may authorise any Person to exercise all or any functions on such terms as to remuneration and other matters as they think fit. A Trustee (or other Person in a fiduciary capacity) shall not be responsible for the default of that Person (even if the delegation was not strictly necessary or convenient) provided he took reasonable care in his selection and supervision. None of the restrictions on delegation in sections 12 to 15 Trustee Act 2000 shall apply.

2.11. Place of administration

The Trustees may carry on the administration of any Settlement made by this will anywhere they think fit.

2.12.Indemnities

The Trustees may indemnify any Person for any liability relating to this will or any Settlement made by this will.

2.13.Security

The Trustees may mortgage or charge Trust Property as security for any liability incurred by them as Trustees (and may grant a floating charge so far as the law allows).

2.14.Supervision of company

The Trustees are under no duty to enquire into the conduct of a company in which they are interested, unless they have knowledge of circumstances which call for inquiry.

2.15.Appropriation

The Trustees may appropriate Trust Property to any Person or class of Persons in or towards the satisfaction of their interest in the Trust Fund.

2.16.Receipt by charities

Where Trust Property is to be paid or transferred to a charity, the receipt of the treasurer or appropriate officer of the charity shall be a complete discharge to the Trustees.

2.17.Release of powers

The Trustees (or other Person in a fiduciary position) may by deed release wholly or in part any of their rights or functions and (if applicable) so as to bind their successors.

2.18.Ancillary powers

The Trustees may do anything which is incidental or conducive to the exercise of their functions.

3. Powers of maintenance and advancement

Sections 31 and 32 Trustee Act 1925 shall apply.

4. Minors

4.1. Where the Trustees may apply income for the benefit of a minor, they may do so by paying the income to the minor's parent or guardian, or to a person with parental responsibility for the minor, on behalf of the minor. The Trustees are under no duty to inquire into the use of the income unless they have knowledge of circumstances which call for inquiry.

4.2. Where the Trustees may apply income for the benefit of a minor, they may do so by resolving that they hold that income on trust for the minor absolutely and:

4.2.1. The Trustees may apply that income for the benefit of the minor during his minority.

4.2.2. The Trustees shall transfer the residue of that income to the minor on attaining the age of 18.

4.2.3. For investment and other administrative purposes that income shall be treated as Trust Property.

5. Beneficiary without mental capacity

Where income or capital is payable to a beneficiary who does not have the mental capacity to appoint an attorney under a lasting power of attorney which relates to his property and affairs, the Trustees may (subject to the directions of the Court or a deputy appointed under the Mental Capacity Act whose powers include receiving such income or capital) apply that income or capital for his or her benefit.

6. Disclaimer

A Person may disclaim his interest in this will or any Settlement made by this will wholly or in part.

7. Conflicts of interest

7.1. In this paragraph:

7.1.1. "A Fiduciary" means a Person subject to fiduciary duties under this will or any Settlement made by this will.

7.1.2. "An Independent Trustee", in relation to a Person, means a Trustee who is not:

7.1.2.1. a brother, sister, ancestor, descendant or dependant of the Person;

7.1.2.2. a spouse or civil partner of a person falling within paragraph 7.1.2.1 above, or a spouse or civil partner of the Person;

7.1.2.3. a company controlled by one or more of any of the above.

7.1.3. References to a "spouse" include a party to a same-sex marriage.

7.2. Subject to subparagraph 7.3 below a Fiduciary may, even though his fiduciary duty under this will or any Settlement made by this will conflicts with other duties or with his personal interest:

7.2.1. enter into a transaction with the Trustees, or

7.2.2. be interested in an arrangement in which the Trustees are or might have been interested, or

7.2.3. act (or not act) in any other circumstances.

7.3. Subparagraph 7.2 above only has effect if:

7.3.1. the Fiduciary first discloses to the Trustees the nature and extent of any material interest conflicting with his fiduciary duties, and

7.3.2. there is an Independent Trustee in respect of whom there is no conflict of interest, and he considers that the transaction arrangement or action is not contrary to the general interest of this will or any Settlement made by this will.

7.4. The powers of the Trustees may be used to benefit a Trustee (to the same extent as if he were not a Trustee) provided that there is an Independent Trustee in respect of whom there is no conflict of interest.

8. Absolute discretion clause

8.1. The powers of the Trustees may be exercised:

8.1.1. at their absolute discretion; and

8.1.2. from time to time as occasion requires.

8.2. The Trustees are not under any duty to consult with any Beneficiaries or to give effect to the wishes of any Beneficiaries.

9. Trustee remuneration

9.1. A Trustee acting in a professional capacity is entitled to receive reasonable remuneration out of the Trust Fund for any services that he provides in connection with this will or to or on behalf of a Settlement made by this will.

9.2. For this purpose, a Trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with:

9.2.1.the management or administration of trusts or estates generally or a particular kind of trust or estate, or

9.2.2.any particular aspect of the management or administration of trusts generally or a particular kind of trust.

9.3.The Trustees may make arrangements to remunerate themselves for work done for a company connected with the Trust Fund.

10.Liability of trustees

10.1.The duty of reasonable care (set out in s.1, Trustee Act 2000) applies to all the functions of the Trustees.

10.2.A professional Trustee shall not be liable for a loss to the Trust Fund unless that loss was caused by his own fraud or negligence. A non-professional Trustee shall not be liable for a loss to the trust Fund unless that loss was caused by his own fraud.

10.3.A Trustee shall not be liable for acting in accordance with the advice of Counsel, of at least ten years' standing, with respect to this will or any Settlement made by this will. The Trustees may in particular conduct legal proceedings in accordance with such advice without obtaining a Court Order. A Trustee may recover from the Trust Fund any expenses where he has acted in accordance with such advice.

10.4.The above sub-paragraph does not apply:

10.4.1.if the Trustee knows or has reasonable cause to suspect that the advice was given in ignorance of material facts;

10.4.2.if proceedings are pending to obtain the decision of the court on the matter;

10.4.3.in relation to a Trustee who has a personal interest in the subject matter of the advice; or

10.4.4.in relation to a Trustee who has committed a breach of trust relating to the subject matter of the advice.

10.5.The Trustees may distribute Trust Property or income in accordance with this will or any Settlement made by this will but without having ascertained that there is no Person who is or may be entitled to any interest therein by virtue of any relationship unknown to the Trustees. The Trustees shall not be liable to such a Person unless they have notice of his claim at the time of the distribution.

10.6.This paragraph does not prejudice any right of any Person to follow property or income into the hands of any Person, other than a purchaser, who may have received it.

11.Appointment and retirement of trustees

11.1.A Person may be appointed Trustee of any Settlement made by this will even though he has no connection with the United Kingdom.

11.2.A Trustee may be discharged even though there is neither a trust corporation nor two Persons to act as trustees provided that there remains at least one trustee.

12.Change of governing law

The Trustees may during the Trust Period by deed with the consent of two Beneficiaries declare that from the date of such declaration:

12.1.The law of any Qualifying Jurisdiction governs the validity of any Settlement made by this will, and its construction, effects and administration, or any severable aspect of that Settlement; and

12.2.The courts of any Qualifying Jurisdiction have exclusive jurisdiction in any proceedings involving rights or obligations under that Settlement.

In this paragraph a "Qualifying Jurisdiction" is one which recognises trusts (as defined in the Hague Convention on the Law Applicable to Trusts and on their Recognition).

13.Interest in possession protection clause

The provisions of this schedule shall not have effect so as to prevent a Person from being entitled to an interest in possession in Trust Property (within the meaning of the Inheritance Tax Act 1984).

Testimonium and attestation

Dated _____

Signed by the above named Sue Smith as and for
her
last will in our presence and then by us in
hers
.

Sue Smith

First witness

Name _____
Address _____

Second witness

Name _____
Address _____

Occupation _____
Signature _____

Occupation _____
Signature _____

Which? Wills Sample will