

# DO I NEED A WILL?



## DO I NEED TO MAKE A WILL?

Death is something few of us care to think about. For that reason many of us fail to consider what will happen after we die. However, making a **Will** is simply providing a plan to assist those nearest and dearest to us who live on after we die.

If you care about what happens to your estate after your death you should think about making a Will. If you own a house jointly with another person, you will probably want to make sure he or she inherits your half-share after your death.

**This does not always happen automatically.** If you do not have a Will, the joint-owner may not inherit your share of the house.

This can cause enormous problems and may be disastrous for the co-owner. If you own your home, have any life insurance or pension fund rights, your estate will probably amount to many thousands of pounds. A Will will not only say what is to happen to the estate, but may enable you to save tax.

If there are any special circumstances when you would like something to happen: to deal with a loved one who is not related by blood or marriage, to make extra provision for an invalid, to leave a gift to a charity, or just to give a small remembrance to a friend – you can **only** arrange this by a Will.

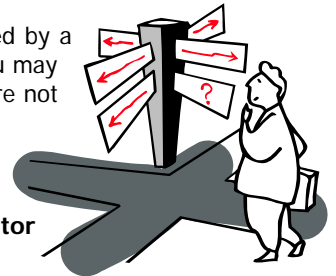
The **Estate** is the term used to describe all the property, monies, investments and so on belonging to the person at the time of his or her death, taking into account all debts, and monies due, such as a mortgage.

## WHAT HAPPENS IF THERE IS NO WILL?

The Government through its legislation over the years has provided a set of laws to decide how the **Estate** is to be divided if a person dies in Scotland without leaving a Will. This situation is referred to as **Intestacy** as opposed to the position where there is a Will – **Testacy**.

The laws are intended to be fair, but they may not suit you. For example if you are survived by a spouse and children the whole estate will be divided among them in fixed proportions but you may have wanted something different. The laws make no provision for personal partners if you are not married, even if you have lived together for many years.

In addition, except in the smallest of estates, an **Executor** will have to be appointed by a special application to the Court. Where an executor is not appointed in the Will this can often cause some delay and extra expense. An executor named in a Will is called an **Executor Nominated**. Where there is no Will, the executor is called an **Executor Dative**.



## CAN A WILL ENSURE MY WISHES ARE FOLLOWED?

In Scotland there are special laws which entitle certain very close relatives (principally spouses and children) to claim **Legal Rights** – a sum of money – if they have been left nothing in the Will or as an alternative if they are not satisfied with what they have been left.

This does not mean that those relatives will invariably claim their legal rights or that you cannot arrange matters to ensure that your wishes are followed as closely as possible. It does mean that you must take this into account when considering your wishes and how to give effect to them.

A Will is the simplest method of indicating your wishes and in most cases it will ensure that your estate goes to the persons whom you choose. You can also name as Executors the persons of your own choice to carry out your wishes.

## I DON'T KNOW WHAT I'LL OWN WHEN I DIE SO HOW CAN I SAY WHO GETS WHAT?

It isn't necessary to say who is to get each individual item, bank account, etc. In fact, it is often better not to specify particular savings or investments since these tend to change over a period of time.

A **Will** is a written document in which the person granting the document – “the testator” - nominates Executors and gives them instructions as to how they are to deal with the person's estate after his or her death.

**Executor** (or in the case of a woman, **Executrix**) is the name given to the person appointed to deal with the administration of the estate. Executors have the responsibility for ensuring that the estate is dealt with in terms of the law and, where appropriate, any Will.

## WHAT DO I HAVE TO SAY IN MY WILL?



You must name your Executors and set out their general rights and duties, including paying all debts, etc. You need to specify clearly what you want to happen to your estate. It is usual to leave the main **Beneficiaries** till last, and say that they are to receive the **Residue** or remainder of the estate.

You can make **legacies** of fixed amounts of money, e.g. £2,000 to one person and £500 to another. Or another type of **bequest** is to specify that a particular item – e.g. a piece of jewellery – is to go to a certain individual.

The **Residue** is all of the estate that is left over after all other matters, including all expenses etc. have been dealt with.

You may wish to leave the residue to one person or to say that several people are each to have equal shares or to divide it up in a number of different shares.

It is quite common for a person who is married and has children to specify that the residue is to go to the surviving spouse or in the event of that person having died or failing to survive more than a month (to take account of the possibility of a joint calamity such as a car accident), to go equally to the children. It is useful to consider alternatives like this to take account of a potential beneficiary dying before you. After all, it may not always be convenient or possible for you to change your Will immediately after the death of a loved one.

You can also make provisions to set up **Trusts** for special beneficiaries – e.g. to allow your spouse or partner to live in your house during their lifetime and then for the house to pass to another person or persons (this type of trust is called a “**liferent**” trust).

**Trusts** exist when property or money is held by the executors or trustees over a period of time – usually a number of years – for the benefit of specific beneficiaries.

You may want to give particular directions about your funeral – e.g. whether or not you wish to be cremated. The important thing is that you make your own wishes clear and that you leave instructions, no matter how simple or complex, that deal with the whole estate and do not leave anything out.

## WHAT ABOUT DEATH DUTIES?

When money or property passes on the death of one person to another there is always the likelihood that some form of tax will be payable to the Inland Revenue. At the time of going to print this tax is called “Inheritance Tax”, but it has been known in the past by different names: Death Duty, Estate Duty or Capital Transfer Tax.

The exemptions, limits and rates of these taxes change frequently and can often take account of property that not only passes on death, but which is gifted during the lifetime, particularly if the gift is within seven years of the date of death.

No matter what specific tax rules at the time there are usually steps you can take, either during your lifetime or by making appropriate provision in your Will, to minimise or in some cases even avoid altogether the tax payable. Information about death duties and other taxes can be obtained from Inland Revenue Offices or books which are published annually as laymen’s guides. Your Solicitor can also provide information and give you professional advice.

## HOW DO I MAKE A WILL?

Make an appointment to see your Solicitor. If for any reason you are not able to go to see a Solicitor within normal office hours it is usually possible to arrange for a meeting either outside those hours or at your home.

To help you prepare for your meeting and in order that you have the necessary information, read the attached Will Notes. Note down the various points to be discussed and take them to the meeting.

## WILL I EVER NEED TO CHANGE MY WILL?

You may never need to change your Will. However, you will have made your choices based on your existing personal circumstances, principally your financial position and your personal relationships with other people. Over the years your finances, family and friends may change and as a result your wishes may change or you may simply want something extra to happen with your estate.

Accordingly, you should think about your Will at least every five years although it may be unlikely that you will need to do anything about it unless there has been a major change in your life. Your Solicitor can advise you.

Remember: your circumstances can change tomorrow but your Will may have to last a lifetime.

## HOW MUCH WILL IT COST?

Just as Wills can vary from a single page or two up to many sheets dealing with complex family trusts and landed estates, the costs of preparing such Wills can vary from a few pounds to much greater sums. For straight-forward Wills the cost is not likely to exceed £150 plus VAT with a reduction for a married couple – 2 Wills. When you see your Solicitor you can ask for an estimate of the likely cost before going any further. If you have used the Will Notes this will help to ensure both a quick and accurate indication of cost.

### Spouses and Partners

If you are married or have a long term relationship with a personal partner, it is usually sensible for each of you to make a Will at the same time. Since many of the provisions in one Will are likely to be reflected in the other, costs are often less than the cost of two separate Wills made independently.

## IS IT NECESSARY TO HAVE A WILL MADE BY A SOLICITOR?

In Scotland it is perfectly possible to make a Will provided it is all in your own handwriting, signed and dated, this was formerly known as a Holograph Will, and now as an unattested Will. Such Wills must go through a formal process to have the hand-writing identified. In addition, when people make Wills of this type they often make mistakes, perhaps by failing to make their wishes clear or not saying who is to get everything that's left over – the residue. When this happens it can often be worse than having no Will at all. It may be necessary to apply to the Court to say who is to get what. The expense of sorting it out can use up much of the estate and the resulting delay can last years.

**Solicitors** can practice as Solicitors only after they have proved their academic worth (usually by obtaining a degree in law and a postgraduate diploma) and after a minimum of two years practical training and experience.

Similar difficulties can arise with other types of home-made Wills such as Will Forms which are sometimes sold by stationers. An extra problem with these is that they are often intended for use in England where the rules are very different. As a result the Form may be quite unsuitable for people living in Scotland.

Recently private companies have started advertising Will Writing Services. Some of these companies are off-shoots of insurance companies, while some others are franchise chains or the like. The company may offer a

home visit or a "mail order" service. The sales person involved takes a note of your wishes and fits these to the pre-written standard styles that he has available. The sales person requires no special qualification and is generally unable to offer any advice as to the laws of inheritance, death duty implications or the many variations of Will provisions which can be drawn to suit your exact needs. The cost of these Will Writing services is usually as much as, and in some cases more than, the cost of using a fully qualified Solicitor.

Solicitors have been trained to take account of all the difficulties and complications which can arise and are familiar with the many common, and the less common, wishes of persons making their Wills.