J&H Mitchell WS
SOLICITORS & ESTATE AGENTS
Since 1836

A Will is Important

This Fact Sheet is one of a series by J. & H. Mitchell W.S.

Making a Will is the only way you can plan for the future and take your own decisions about what will happen to your property after your death.

If you have a wife or husband and, especially, if you have young children, it is the best way of making absolutely sure that they are provided for. By making a Will, you can save your family needless problems, money worries or even family disputes.

Even if you have no family, you will want to make sure that your possessions go where you wish - perhaps to friends, or to charities which you supported during your lifetime - rather than to distant relatives or to the Crown.

Even if you think you have nothing to leave, it is surprising how life policies, pension policies and property values can make quite an impact. Perhaps you feel that your spouse owns everything and you really have nothing of your own but, if so, just consider what you might have if your spouse died shortly before you, leaving everything to you.

Making a Will is not tempting fate. Indeed, making a Will gives you peace of mind, enables your Executors to know your wishes and to be able to act on your instructions to safeguard your loved ones.

Without a Will

If you do not make a Will, your property will be sorted out in terms of the Scots Law Rules of Intestacy. In most cases, these Rules provide that your property will pass to your next of kin, but in the proportions determined by the Rules. These may not be what you would wish.

Steps may have to be taken to look at your family tree and to trace all relatives with a legitimate claim. This can be complex, time-consuming and costly, all paid for by your estate.

A member of your family would also have to be appointed by the Court as your sole Executor.

A Will is essential even for married couples

Many married people assume that, when they die, everything will pass automatically to their partner. This isn't true. And sadly, it is a misunderstanding that can cause serious

hardship to the wife or husband who is left behind. You can easily imagine the kind of problems this can create - none of which need happen if you make a proper Will.

No immediate family?

Even if you have no relatives you want to provide for, it is still important to leave a Will. Without it, you forfeit any say in where your hard-earned money and possessions will go. Your estate might have to be shared amongst distant relatives, with part of your estate having to be spent on advertising and searching for them. You will lose the opportunity to benefit friends who have been kind to you, or charities and other organisations which you support.

If you die without making a Will, and without any living relatives, all you leave behind will go to the Crown.

Is a Will Costly?

It is not expensive to make a Will, nor need it be complicated or time-consuming. But it is very important that you do the job properly. A home-made Will is quite often not worth the paper it is written on and can lead to as many problems as if you hadn't left a Will at all. That is why your best plan is to go to a solicitor, who is an expert, and obtain reliable professional advice to suit your own circumstances.

What to do before you see your solicitor

You can save time and therefore money by putting a few facts and figures together before you go to see your solicitor.

Firstly, write down the full names and addresses of all those (including any charities) to whom you wish to leave money or gifts. Where beneficiaries are under the age of 18, it is helpful to list their dates of birth too.

Secondly, make a list of everything you own and what you estimate each item is worth. For example:

House: (estimated present value)	£
Car(s)	£
Savings and cash	£
Stocks and shares	£
Insurance policies	£
Pension benefits	£
Banks and building society accounts	£
Furniture and household effects	£
Jewellery	£
Clothing £	
Anything else of value	£
TOTAL ASSETS	£

Thirdly, subtract from your total any money you owe:

Mortgage	£
Bank loan	£
HP agreements	£
Credit card debts	£
Other debts	£
Tax due	£
TOTAL LIABILITIES	£

BALANCE **(deduct Total Liabilities from Total Assets)** **£ _____ .**

If you are married, most if not all of your personal possessions such as furniture, pictures and books, will go automatically to your spouse, unless you direct otherwise in your Will. However, if you want to ensure that all your possessions do go to your spouse, you will need to say so in your Will. If you want particular possessions to go to other people, you should give your solicitor an exact description of them so that they can be mentioned specifically in the Will or in an "informal writing" (see page xx).

Your Executors

You should consider appointing two or three people to be the Executors of your Will. This avoids complication if a sole Executor is appointed who becomes unable to act for you or dies before you. It is the Executors' job to see that your wishes are carried out. A named beneficiary in the Will can also be an Executor.

If you are married, you would normally appoint your wife or husband as one of the Executors. One or more of your children (provided that they are over 18) might also be an obvious choice. In the case of younger children, the person you appoint as their Guardian (see page xx) may also be a sensible person to consider.

You may consider appointing a professional person - for example, your solicitor or accountant - to act as one of your Executors. It is possible to appoint your Bank as an executor, but they may charge a fee specifically for doing so, which would have to be deducted from the value of your Estate.

Legacies

You may wish to leave sums of money or specific items (jewellery, pictures or pieces of furniture) to relatives, friends, neighbours or charities.

Legacies can also be used to assist in transferring assets to children or members of the family other than your spouse, in order to save Inheritance Tax.

These legacies can be specified in your Will or, sometimes, it is better to list them in a separate "informal writing" (see page xx).

The "Residue"

When any debts, legacies and the funeral expenses have been deducted from your estate, what is left is called the "residue". It is not necessary to describe all your remaining assets in your Will; referring to the "residue" is sufficient to include everything else.

People usually leave the residue to their families or, where there is no immediate family, perhaps to charity. A gift to charity has the added benefit of helping to reduce the amount of Inheritance Tax which may have to be paid on your death (see page xx).

Under Scots Law your spouse cannot be totally excluded from inheriting a portion of your estate. They have what is known as their "Legal Rights" which they would be able to claim if by doing so they would receive more than left for them in your Will. Their claim, if they decide to make it, is to either one-third of your moveable estate (where you have children) or one-half (where you do not).

Providing for children

If you have children, your Will is the only sure way of providing for them after your death. This is especially important for young children.

It is not just a matter of what will happen if you die. You also need to consider how your children will be looked after and how their financial needs might be met if both parents die while they are still young.

Through your Will, you can provide for their financial future.

And you can nominate a Guardian who will be responsible for looking after any children who lose both parents before the age of 16.

Under Scots Law your children cannot be totally excluded from inheriting a portion of your estate. They have what is known as their "Legal Rights" which they would be able to claim if by doing so they would receive more than is left for them in your Will. This claim is to a share of your moveable estate (that is, everything except land and buildings), either one-third between them (where there is a surviving spouse) or one-half between them (where there is not).

Setting up a trust in your Will for young children

If you have young children, or grandchildren, whom you wish to benefit in your Will, you may wish to consider setting up a trust to look after their inheritance until they are old enough to use it responsibly.

The minimum age at which they can receive their share is 16, but many consider this to be far too young an age at which to receive significant sums of money. A Will enables you to specify a later age, such as 21 or 25, as well as including some flexibility for your Executors to pay sums of income and/or capital for those children's education or benefit in reasonable circumstances before they attain the chosen age. There can be additional Income Tax and Inheritance Tax implications, which we can explain to you.

You must establish three things in your Will:

- precisely which children the trust is intended to benefit:
- what assets are to be held in the trust:

- who the trustees are to be (usually your Executors, which may influence your choice of who they should be).

We can advise you on these points and on the appropriate powers of the trustees, so that the children are provided for in the way you would wish.

Liferent Trust

In certain cases, it may not be your wish to give the residue of your estate to your spouse outright. You may be concerned for example that your spouse might remarry, perhaps to someone who has children of their own, so that your estate might not pass entirely to your own children, or might be left to some other person or charity. In that event, you may wish to consider a "Liferent Trust".

This puts your estate (or a specified part of it) in trust, with the income of the trust being used by your spouse for the remainder of his of her life (entitling him or her, for example, to live in your share of the house and to enjoy the income from your savings), whilst the capital of the trust would be retained for your children, who would receive it on your spouse's death. Such a Liferent Trust has the advantage of ensuring that your estate will pass intact to your children, but will create some inflexibility for your spouse, who would be entitled only to the income from, but not the capital of, your estate.

How to keep Inheritance Tax to a minimum

There is one person whom you are not likely to mention in your Will - but who may nonetheless take quite a large share of what you leave behind. That's the Chancellor of the Exchequer.

If your net estate - that is to say, all your assets, less debts and liabilities - comes to more than the "tax threshold" for Inheritance Tax (technically known as "the Nil Rate Band"), your family will be liable to pay Inheritance Tax at the current rate.

It is important to note that it is not just what you own at your death that is counted towards your tax liability. Also included in your estate for tax purposes are any gifts you made in the last seven years of your life.

The "tax threshold" and the rate of Inheritance Tax are fixed every year in the Budget. They are liable to change from year to year. For the current figures, please ask your solicitor.

By using the checklist, you can calculate the net value of your estate and work out whether you are likely to be caught by Inheritance Tax. If so, Inheritance Tax at the current rate will have to be paid from your estate on everything over the tax threshold.

There are a number of ways by which you can reduce the Inheritance Tax bill. You should ask us for more advice, but here are just three of them:

1. Life Policies

Death benefits from life policies can be made free from Inheritance Tax. Therefore, arranging a policy which pays out to a named beneficiary after your death can be a good way of reducing tax liability. Your solicitor or your insurance agent will be able to assist you in writing existing or new policies in trust.

2. Making gifts during your lifetime

No Inheritance Tax has to be paid on gifts which you make more than seven years before you die. And, if the gift is to a charity, no Inheritance Tax has to be paid at all, even if it is within the seven year period.

No Inheritance Tax has to be paid on annual gifts you make up to a total annual amount (for the current annual amount see the enclosed slip headed "Inheritance Tax").

3. Leaving something to charity

If in your Will you leave a specific sum of money or a share of your estate to a registered charity, no Inheritance Tax has to be paid on that amount of your estate.

When you should change your Will...

There are many reasons why you may need to change your Will after you have made it.

Changes in family circumstances

The most obvious changes in your family circumstances are marriage, separation, divorce, re-marriage or the birth of children or grandchildren.

- When you marry or re-marry this does not of itself affect any Will you have already made. Your wife or husband is given only limited rights of succession by Scots Law. They will not necessarily inherit everything you own. Therefore, to provide for your new spouse as you would wish, it is essential to make a new Will.

- If you make a Will without referring to the possibility of children who may be born to you in the future, that Will can be overturned after your death by any child who was born to you after the Will was made. Therefore, to ensure that your wishes are carried out it is essential to make a new Will on the birth of the child (or to have provided for that possibility in your initial Will).

- If you are separated from your wife or husband and living with a new partner that new partner is entitled to nothing unless you change your Will.

- If you are separated or divorced from your husband or wife but do not make a new Will, your ex-partner may still be able to claim what was left to him/or her in your original Will, made before the break-up of your marriage. It is therefore very important to make a new Will in these circumstances.

Keeping your Will up to date

Even if there has been no change in your marital status, it makes good sense to take a fresh look at your Will every few years. Here are some questions you should ask yourself reasonably regularly:

- Does my Will reflect the present value of my property and possessions? Are my assets considerably more (or less) than when I first made my Will?
- Does my Will still meet my wishes?
- Should some of the bequests be altered to take into account changes such as the death of a beneficiary or the birth of children in my family?
- Are there people or organisations not mentioned in my Will whom I now wish to benefit?
- Can I, by changing my Will, reduce the amount of Inheritance Tax that will have to be paid on my estate?

How to change your Will

Codicils
The simplest way to change your Will, if only relatively minor alterations or additions are needed, is by making a Codicil. This is a written addition to your existing Will.

You should first decide on the changes you wish to make. We can help you. The Codicil has to be formally witnessed, in the same way as the original Will.

"Informal Writings"
It is usually preferable for minor bequests (such as jewellery, pictures and furniture) to be kept separate from your Will, because they are more prone to change. Most Wills contain a power which enables you to make "Informal Writings" subsequently, which you can use to list any minor bequests of possessions and money you may wish to make (but not any substantive alterations to your Will).

If and when made, they must be signed by you and dated, as well as being clearly expressive and unambiguous. If made, they should be sent to us to be checked, and to be retained with your Will.

A new Will
If there are more significant changes in your wishes or circumstances, you would be best advised to start afresh and make a completely new Will. This certainly applies if there has been a change in your marital status. Again we can advise you.

The Legal Language

Beneficiary (or Legatee)
An individual or organisation who is to receive something from your Will.

Codicil
A further document which makes a change or addition to an existing Will.

Confirmation
The legal procedure to establish the title of your Executors to administer and distribute your estate (equivalent to 'Probate' in England).

Crown
The Treasury. If you leave no Will and have no relatives, the Crown would take all your possessions.

Estate
Everything you own at the time of your death.

Executor-Dative
Someone appointed by the Sheriff Court to administer your estate according to the Scots Law rules of intestacy if you fail to leave a Will.

Executor-Nominate
The person(s) you appoint in your Will to administer your estate when you die and ensure that the terms of your Will are carried out.

Guardian
The person you can appoint in your Will to look after any children of yours who are still under the age of 16 when both parents have died.

Heritage or Heritable Property
A collective term for land and buildings

Intestate and Intestacy
If you die without having made a valid Will, Scots Law declares you to be intestate and decides how your possessions should be shared out. Intestacy is the name for this situation.

Legacy (or Bequest)
A specific item or sum of money left in a Will.

Legal Rights
Where a spouse or children have been left little or nothing in a Will, they can make a claim to their "Legal Rights", which entitles them to receive a share of the Moveables in the estate.

Moveables
A collective term for your furniture, car, personal possessions, savings, etc, indeed everything except land and buildings.

Residue
The property or assets left in your estate when all debts, funeral expenses and legacies have been paid.

Spouse
The person to whom you are married.

Testator (male) or Testatrix (female)
The person who is making the Will.

Trustee

The word for an Executor who has to look after any part of your estate which involves a trust.

Ten Important Points

1. Making a Will is the only way to make sure your property and possessions will go to whom you wish after your death.

2. If you die without leaving a Will, all of your belongings will not necessarily go to your wife or husband. Scots Law determines how much should go to each of your relatives.

3. If you die without leaving a Will and have no family or relatives, everything may go to the Crown.

4. A Will is essential to provide properly for young children in the event that both parents die. In your Will you can nominate a guardian to look after the children.

5. You and your partner should each have your own separate Will.

6. You need to make a new Will when you marry. Otherwise, under Scots Law, any Will you made before your marriage will remain in force - and your wife or husband will only have a very limited claim on what you owned.

7. It is also essential to make a new Will if you have separated, divorced or remarried since you made your existing Will.

8. Once you have made your Will, you should ensure that the original is kept safe and you should look at your copy of it every few years to make sure it still fits your wishes and circumstances.

9. You can reduce the tax burden on your estate by making a gift or legacy to charity.

10. You should seek the professional help whenever you make or change your Will. Home-made Wills may not stand up in law.

The Most Important Point

Make a Will and Make it Now!

Although carefully prepared, this Fact Sheet is a guide only and is not intended to be comprehensive. Specific advice should be requested on individual situations

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