

TAIT & MACKENZIE

SOLICITORS

Why Make a Will

It is estimated that around 60% of people in Scotland do not have a Will. Some assume that everything they own will automatically pass to their nearest and dearest and so don't see the need to go to the expense of making a Will. For others they simply do not want to think about dying. Your Will is the most important document you will ever sign. Don't be tempted to prepare a Will yourself or use a "DIY" Wills kit. They can cause more problems and expense in the long run. Here we highlight the reasons why making a Will is so important.

Your Wishes

In Scotland there are rules which set out how your estate would be distributed if you died without a Will. While your surviving spouse / civil partner will get the first bite of the cherry, if the value of your estate is more than a certain limit then other relatives will also be entitled. For example, your spouse / civil partner is only entitled to the house that he or she lived in up to a certain fixed value. In some cases, due to house values, the spouse will not be entitled to the whole house. These rules can end up in unjust and unintended situations where siblings and parents and even more distant relatives can inherit. By making a Will you can ensure that your wishes are upheld and can also be clear about who is to benefit from your estate if one or more beneficiaries have died.

Legal Rights

In Scotland spouses / civil partners and children are entitled to a share of your estate – known as their "legal rights" – even where children are grown up and financially independent and even if you don't want to benefit them in your Will. We can advise you on how legal rights would affect you and how this might be dealt with and planned for.

Protection for Children

Your Will can cover how children's inheritances will be managed. In Scotland, children become entitled to their share of the estate on reaching the age of 16. You may wish to delay this to a later age and this can be achieved in your Will, while still giving your executors and trustees flexibility to access the money to pay for the likes of further education, holidays or a deposit for a first property. Practical matters can also be covered such as who should look after your children if you die prematurely. Most parents will have strong feelings about who they would wish to nominate as a Guardian for their children.

Second Marriages and Step-children

Second marriages are fairly common nowadays and often there will be children from previous relationships. Your Wills can be set up to ensure that the survivor has the use of the family home during their lifetime rather than ownership passing to them. On the second death the house can then be shared among all children to ensure that the interests of both families are balanced. Provision can also be made for step-children who do not have "legal rights" of birth or adopted children.

Cohabitants

There are an increasing number of people choosing to live together and not marry. While the law provides some provision for cohabiting partners to share in their partner's estate these are not automatic, nor guaranteed as the court has discretionary powers and it will depend on the circumstances of the case. The process involves applying to the Court within 6 months of the date of death which can add expense, delay and uncertainty at an already difficult time.

Choice of Executors

Your Will appoints Executors who are the people who are responsible for winding up your estate. Where there is no Will an application is made to Court to appoint a relative to be the Executor – for many that person might be the person you would have chosen.

Care Home fees

Couples can set up their Wills to protect a share of their home from being used to pay for care fees. This will give them the comfort of knowing the property is available for the survivor to live in for as long as it is required.

Protection for Vulnerable Beneficiaries

Families may have concerns about leaving an inheritance to a person who has a disability or a vulnerable person. If you have a child or family member with disabilities, how will their inheritance be managed? It's also important to consider the impact their inheritance might have on any benefits they receive or may be entitled to in the future.

Tax Planning Opportunities

By taking advice on your Will we can advise you on whether Inheritance Tax may be relevant to you – few people are comfortable with the idea of their hard-earned assets being taxed at 40%. A solicitor can consider any planning which can be done to reduce your likely tax bill.

Avoid Extra Costs and Delays

Where a person dies without a Will there are more procedures to follow – the estate will take longer to wind up and there will be additional costs which could be avoided.

The Bigger Picture

Most importantly where you take advice from a solicitor we can look at all your circumstances. Perhaps you need advice on granting a Power of Attorney, tax advice or advice on how other assets such as life policy proceeds, pensions and death in service benefits will be dealt with. This advice can be invaluable and worth far more than the cost of making a Will.

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