

The Drever & Heddle Guide to

Why Everyone Needs a Will



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No one likes to think about dying and yet unfortunately it will happen to all of us. It is vital to ensure that, when the time comes you know that your loved ones will be cared for and that what you leave behind will be distributed according to your wishes. We hope that you find our brief guide useful.

Why make a Will?

The importance of making a Will, whatever your age and stage in life cannot be over emphasised. Leaving a Will will ensure that your estate (all money, property etc in your ownership when you die) is dealt with according to your wishes as far as possible. Wills can also be important from a point of view of limiting the amount of Inheritance Tax which will be deducted from your estate. Some of the main reasons you should leave a Will are listed below:-

1. To allow you to decide who benefits from your Estate

If you leave no Will then the Laws of Intestacy (someone who dies without a Will is said to have died intestate; someone who died leaving a Will is said to have died testate) will determine who will inherit your property. The Laws of Intestacy are very complex and may not be as you expect. You should not assume, for example, that if you die without a will that your spouse will inherit your whole estate. Having a Will ensures that, as far as possible, your wishes are carried out.

This is particularly important if you are not married but living with a long term partner as. If you die without leaving a Will then your partner may not inherit anything. New laws mean they may have a limited claim on your estate but establishing this would involve court action and would delay the winding up of your estate without a guarantee of success. It is crucial in these cases that you have a valid and up-to-date Will.

You should note, that there are certain laws which protect people from being disowned or cut out of Wills altogether – the Law gives certain people, e.g. your children or spouse, the right to claim a part of your estate whether you leave them anything in your Will or not. Again, this is a complex area and something you should discuss with your solicitor.

2. To allow you to chose your Executor

By appointing Executors (these are the people who deal with the distribution of your estate and are responsible ensuring that your estate is dealt with according to your wishes) you avoid the situation where someone has to be appointed as your Executor by the Court. Usually a member of your family or a beneficiary will be appointed and this may not be who you would have wished to deal with the matter of your estate.

3. To avoid unnecessary disputes

The death of someone in a family who has left no Will can be a difficult time for the surviving family members. There may be differences of opinion as people try to second guess your true wishes. Unpleasantness can be avoided by preparing a properly drafted and legally constituted Will.

4. To avoid unnecessary expense

The process of completing an estate where a Will has been left by the deceased is often a lot simpler, and a lot cheaper then winding up the estate of someone who has died without a Will. Applications have to be made to the court to appoint Executors and insurance has to be applied for (at a premium) to protect those dealing with the estate in the absence of specific wishes.

5. To reduce Inheritance Tax

Inheritance tax is charged at 40% after the total value of the estate exceeds as certain amount, currently £285,000.00. When the tax calculations are done, gifts of sums of money given which exceed a certain limit are also included, provided the gift occurs within the seven years prior to death. This means that giving away assets cannot automatically protect your beneficiaries from Inheritance Tax.

Given recent increases in the value of property in Orkney many more people are likely to be effected than at any time in the past. With careful consideration of the full nature and extent of your estate a skilled solicitor might be able to save your family thousands of pounds of Inheritance Tax.

Preparing a Will gives you the opportunity to ensure that the effects of the tax system can be minimised and can maximise the benefits for those whom you leave

behind. An up-to-date and well drafted Will should be seen as a fundamental and essential part of any Inheritance Tax planning, in conjunction with other measures, which should be discussed with your solicitor and accountant.

6. To aid Charities, deserving individuals and others

The Law of Intestacy usually only provides for your family members. If you wish to leave any money or property to a Charity or a person outside of your family, then this must be done by way of a Will.

Frequently Asked Questions

Q. Who can prepare a Will for me?

A. A Will is simply a written record that says who you want your money and possessions to go to when you die. Because it is in an important legal document, the Law specifies what constitutes a valid Will. In order to ensure that your Will is valid and properly reflects your wishes, you should always discuss matters with your solicitor and have them draw up your Will for you.

Q. What's wrong with "Do-it-yourself" Wills kits?

A. Although there is nothing wrong with them as such, any Wills drawn up through these kits may not be legally binding and enforceable. They may not always be geared towards the Law of Scotland, which differs considerably from the Law of England in relation to estates. We would recommend that you always use a Solicitor to draw up your Will.

Q. How much will it cost to have a solicitor draw up my Will?

A. The price will vary depending on which firm you use and will also depend on the complexity of the work required. You should ask your solicitor for a quote of fees prior to commencing any works if you are concerned. There are also schemes, such as the Will Aid scheme, where participating solicitors draw up your Will for no fee in return for a donation to the Will Aid Charity. Please ask

your solicitor whether they participate in this scheme, and at what time of year, if you wish to take part.

Q. Who will look after my Will?

A. Once your Will has been drafted, checked by you and discussed with your solicitor it will then be prepared for signing. Once you have signed the Will (in the presence of a witness) it will be completed by your solicitor and a copy sent to you. The original will usually then be stored by your solicitor in their Wills safe where it will be protected from fire, theft and other threats. Solicitors do not usually charge for this storage. You can, of course, keep your Will at home or at your bank if you wish but it should always be kept in a safe place.

Q. Do I have to ask my Executors before appointment them in my Will?

A. You may wish to ask your Executors for their consent prior to writing your Will, however, you do not have to. If they do not wish to act as Executors, there are procedures in place for them to resign and new Executors to be appointed. However, this is not a desirable situation and if you are in any way unsure as to whether your Executors would wish to act as such you should consider asking them first.

Q. Can I include Funeral Instructions, including instructions about burial and cremation, or my wishes regarding Organ Donation in my Will?

A. You can include funeral instructions and instructions regarding your preference for burial or cremation in your Will if you so wish. But you should remember that in some cases your Will may not be found until after your funeral has taken place. You should ensure that those closest to you are aware of your instructions, or at least aware that there are appropriate instructions in your Will so that they can consult it before making arrangements. Also, funeral and burial instructions left in a Will are only expressions of wishes and unlike the rest of your Will they are not legally binding on your Executors or your family.

Organ Donation should not be dealt with you in your Will, since almost certainly instructions regarding this will be required from your family prior to your Will being read.

Q. How often can I change my Will?

A. You can change your Will as often as you like, although you should ensure that your solicitor destroys all your previous Wills when a new one is completed to avoid confusion. You should review your Will when there has been any major change in your life. Even if there have been no significant events in your life, it would be wise to review your Will every 5 years to ensure that it is current.

Q. I have a Will in England or another County? Do I need a Scottish Will as well?

A. You should discuss this with your Solicitors as it may be the case that you require both. To ensure your property in Scotland is properly dealt with in terms of the law of Scotland you will require a Scottish Law Will.

We hope that this has been informative but if you require any further help or advice or wish to make your Will now please contact one of our experienced Solicitors:- Archie Millar, Graham Sutherland, or Eric Baijal. All our staff can be contacted as shown on the front cover of this booklet

This leaflet has been designed to comply with the Royal National Institute of Blind People's 'See it Right' Guidelines.

If you have any suggestions for improving it further, please let us know.