Factsheet No. 14
Making a Will and Leaving Legacies

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Why is a Will Necessary?

The estate of a person who dies without leaving a will (described as dying intestate) will normally go to the family members who are entitled by law to inherit the estate (the possessions, property or money you leave behind). These family members are also entitled to be appointed as executors of the estate. If the family members are not entitled to be named as executors, or do not wish to take on the administration, it is possible for them to nominate a person who will take on this responsibility. However, having a will is a much better option.

Despite the fact that we all know every one of us will eventually die, only 1/3rd of us actually take the time to put in writing what we want to happen to our bodies and possessions after we have died. Instead, most of us sometimes make statements to our closest relatives along the lines of "I want you to have this when I'm gone..." And sometimes, unwittingly, lead more than one person to expect to inherit a particular item.

Most of us will have either experienced, or known of, a situation in which there was disagreement between relatives as to who was meant to receive a particular item. Most of us will probably also know of bitter family disputes arising from disagreements between how an estate should be divided up when there is no will. The answer to this particular problem is to avoid creating the problem in the first place by making a will in which you state clearly and unambiguously how you want your estate to be distributed.

Making a Will

In theory anyone can sit down with a pen and a sheet of paper and write their own, perfectly valid, will. In Scotland there have been past cases where un-witnessed wills have been deemed to be valid. However, it would be safer to have the will and your own signature witnessed by two independent people and stored somewhere safe where it can easily be accessed when required.

Planning A Will

Planning your will can minimise the additional taxes and fees payable on your death. Also, planning can minimise taxes payable by your beneficiaries on future income. To plan a will you will need to:

- Make a list of all assets and liabilities including additional taxes due on your death
- Determine who your beneficiaries will be, such as spouse, children, friends, charities, etc.
- Consider tax reduction strategies, such as donations to charities
- Choose the executor of your estate, such as your spouse or a trusted friend. A lawyer or accountant could be considered for more complex situations.

Although originally intended for a different purpose the attached Inventory for Estate Planning can be used to itemise and value your potential estate prior to making a will. This will give you a list of what you own and can form the inventory on which you base your bequests.

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Steps before you Write your Will

List your assets and any on-going uninsured debts:
You'll surprise yourself with how much you have to bequeath, even if you are not a home owner.

Start by making an inventory of your assets such as; jewellery, furniture, musical instruments, life assurance policies, pensions, bank and building society accounts and so on. The list should also include property, cars, stocks and shares and the like if you are fortunate enough to own these too.

It is equally important to list possible sources of debt, such as credit or debit cards, direct payments from bank accounts for mortgage, rent council tax and services such as AA/RAC membership, TV Licence, gas, electricity, telephone and so on. These won't be needed for your will itself, but they will be useful for people winding up your estate to know what to cancel and where to go to cancel it.

Decide Who Benefits:
Start with family and friends and anyone else you wish to include. Then consider including charities or other organisations that have been close to your heart. Any legacies left to registered charities are tax free and deducted before the estate is assessed for inheritance tax, which is levied at 40% on everything over £325,000. (A married couple can have up to £650,000 available to them.) By including charities you can reduce or eliminate your estate's liability for inheritance tax.

Decide who will carry out your instructions contained in your will:
Think about who you want to carry out your wishes (administer your estate in legal-speak). The person who does this is called **the executor**.

The duties of the executor include "ingathering" the various items of your estate and then distributing them to the beneficiaries. You could ask one or more trusted family members to do this, provide they are adults, or you could ask your solicitors if they would act as executors. Solicitors will charge your estate for the work they do as your executor and deduct these charges first before dividing your estate between your friends and relatives according to the terms of your will. These charges can amount to thousands of pounds even for relatively small estates.

Relatives acting as executors can claim legitimate expenses from the estate but will usually have to work less hard than a solicitor as they will already know how to contact most of the beneficiaries.

Unless you give direct instructions to the contrary it is probable that a solicitor winding up your estate would sell off assets such as your car or stocks and shares and put the cash into your estate for division between your legal heirs.

Find a Solicitor:
If you do not have a solicitor then friends may recommend one, or check the yellow pages. The Law Society of Scotland can also provide a list of accredited solicitors practising in your area who specialise in the types of work you want done.

Choose a solicitor or firm that specialises in wills and executries. The services of a solicitor can help ensure your wishes are carried out to the letter. Check the fee charged for drawing up a will, it will probably be less than you expected.

Make your Will:
Arrange an appointment with your chosen solicitor. If your mobility is severely affected by MND ask your solicitor if it would be possible for them to visit you because of your circumstances. Many will readily agree to this.

Before this meeting prepare your lists of assets, beneficiaries, executors and preliminary ideas of what is to happen. Your solicitor will have a general discussion with you and make notes regarding what, exactly, you want done. He or she will then draft a will which they will want you to read over and comment on.

There are several estate planning alternatives available to help reduce your estate's liability to inheritance tax. If your estate is likely to be well over £325,000 (£650,000 for a married couple) it would be wise to consult with a financial advisor or a lawyer specialising in trusts and executries to explore these..

This drafting and redrafting process will go on until you are satisfied that the will is an exact expression of your wishes. Once you have agreed the document is correct you will be asked to sign it and it can usually be witnessed by staff in the solicitor's office or, if your solicitor is visiting you at home other arrangements can be made to have the document witnessed.

Where your will is stored is up to you. It is normal for the solicitor to keep one copy and give you another which you can keep somewhere that suits you, e.g. a fire-secure place at home, or at your bank. It is important that your relatives know where the copies of your will are kept.

What Happens Next?

Hopefully nothing happens for a very long time and you will live for many years after drawing up your will.

At the appropriate time your will is read and acted upon. The executors will need to draw up an inventory of your estate for purposes of assessment for tax and may need to be confirmed in their roles as executors by a local sheriff who will also authorise release of the different assets listed on the inventory such as bank accounts and so on. For further information on winding up an estate see the section on "Confirmation and Inheritance Tax," in factsheet 46 "After a Death."

An estate cannot be wound-up in Scotland for at least 6 months to allow time for any debts of the estate to surface, and it is usual for any bank accounts of the person who has died to be "frozen" during this time. This could affect the payment of standing orders or direct debits on which the household depends, so it could be a good idea to arrange to have these things paid from a joint account that can be operated by you and someone else as "either or survivor". That strategy can allow the other account holder continued access to cash and to honour direct debits and standing orders without undue disruption to the running of the household.

In practice, unless your will is the classic three-word will, "Everything to Mum," it is remarkably difficult to write out a comprehensive set of instructions in plain English that is not open to some mis-interpretation. Over the years solicitors have developed skills and techniques for interpreting your instructions given in every-day English into a form of "legalese," which should very clearly and unambiguously state how your estate should be distributed. It really is worth consulting a solicitor to avoid unnecessary problems.

If You Still Want To Make Your Own Will:

Beware of the pitfalls of assuming everyone knows what you mean. Common sense isn't quite so common.

Let's suppose you want to leave your favourite gold chain to someone who has always admired it.

Calling it your "favourite," suggests you have more than one gold chain, so how is anyone to know with certainty which one is your favourite if you're not around to answer the question?

Similarly, if you wrote, "To Jim Brown I leave my fishing rod and all my fishing equipment." Which of many possible Jim Browns do you mean? Does **all** your fishing equipment include the collapsible stool and tent you used while fishing?

An experienced and competent solicitor should ask you these kinds of questions to clarify exactly what and who you mean, and should then write out what he or she thinks your instructions are and show you this written interpretation of your conversation to make sure you agree.

In a similar vein, let's suppose someone who is modestly comfortably off wants to leave almost everything to their 8 year old grandson, but don't want him to have access to it until he is 25.

If the person were to die tomorrow it would then be another 17 years before the grandson inherits everything left to him, therefore there is also a need to nominate trustees to look after the estate in case the worst happens. Under these circumstances it might seem sensible to nominate a niece and a nephew to act as the trustees until the boy inherits; and reward them for doing so by leaving them a legacy of £5,000 each for their troubles.

This could written down as "*I leave £5,000 each to my niece and nephew Tom and Geraldine and the remainder of my estate to my grandson. As I don't want my grandson to inherit until he has reached the age of 25 years I also appoint Tom and Geraldine as trustees on his behalf."* This seems to say pretty much what is wanted in plain English.

Now, suppose there is a period of time between drafting the will and the will being acted upon, during which time the person has been in a care home and their assets have been used to pay for that care. The bank accounts have been run right down and their house has been sold to raise money to pay the care home bills. Once everything is added up and all the bills are paid the whole estate amounts to just under £10,000, what does this mean for the grandson?

The will states that the niece and nephew are to receive legacies of a fixed amount each and the remainder of the estate is to go to the grandson, so, in this example, the niece and nephew would share the last remaining £10,000 of the estate, leaving them nicely off and the grandson with nothing. This is not what was intended when the will was drafted.

A better drafted will would have left all of the estate to the grandson, with the provision that a percentage of the estate would go to the executors, up to a maximum value of £5,000 each. If this had been done the grandson would inherit the majority of the estate, no matter how little it is, and the niece and nephew would each have had a small legacy in keeping with the size of the estate.

A competent solicitor can help you draft a will to avoid pitfalls like the above.

Further Information

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26 Drumsheugh Gardens,
Edinburgh,
EH3 7YR

Telephone: 0131 226 7411, textphone: 0131 476 8359 fax 0131 225 2934

www.lawscot.org.uk Email lawscot@lawscot.org.uk

Factsheets

Factsheet 24	Powers of Attorney
Factsheet 38	Financial and Legal Issues
Factsheet 45	Advance Directives
Factsheet 46	After a Bereavement
Factsheet 48	Medical Bequests

Should you wish to leave a legacy to ourselves it is important, in order to avoid confusion with the Northampton based MND Association which does not operate in Scotland, to give our full details.

*We are named in full as **MND Scotland.***
*Our address should also be stated as **74/76 Firhill Road, Glasgow, G20 7BA***
*Our registered charity number is **SC002662***

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Inventory for Estate Planning

This checklist may help you remember what items you need to consider when estate planning or consulting with a lawyer regarding the drafting of a will.

Details of your Estate
List any heritable property you own such as your house, timeshares and other large value items.
Furniture
Valuables in the house (e.g. jewellery, silverware)

Money in banks, building societies etc.		
Name and address of Bank/Building Society	Account reference No	Approximate Amount
Life Assurance Policies		
Name and address of insurance company	Policy number	Approximate value of policy

Any other item of estate. List any other item of estate not covered elsewhere, such as superannuation, or other pensions which might pay a lump sum on death, Premium Bonds, savings certificates, shares and other property of note such as cars or boats
Gifts and income from a Trust or other sources not listed.

Money or debts owed or paid by you

Insert the name of your creditor, account number and payment details, e.g. your mortgage lender, credit card or hire purchase repayments.

Name and address of person or company	Account reference No	Amount & When Paid

Any particular bequests you would like to make.

Give details of who you want to receive a bequest and what you would like to leave to them.

Name and Address of person	Nature of the Bequest