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MAKING
A WILL
Scotland

MAKING A WILL

IMPORTANT INFORMATION ABOUT MAKING YOUR SCOTTISH WILL



What does making a Will involve?

A legally drawn up Will is a written statement of your wishes.

It enables you to make important decisions that affect your family and friends after your death.

Decisions such as:

- Who inherits your estate (i.e. everything you own)? These people are your beneficiaries?
- Who will act as guardians of your children?
- Who carries out your wishes? (These people are your executors and may also act as your trustees if your Will creates a trust).
- Why would you create a trust?
- Which charities, if any, are to benefit from your estate?

All of these issues can be incorporated in a Will. A properly drafted Will can spare your family and friends a lot of unnecessary work and heartache at a time when they are least able to cope with it. It also reduces the possibility of making your Will invalid or contestable. You can alter your Will or cancel it at any time although if you use a solicitor to help you there will usually be a charge.

Who will carry out my wishes when I die?

Executors are people who administer – or execute – your affairs. Being an executor does not prevent the person from also being a beneficiary of your estate. Husbands and wives or partners can appoint each other as first executors and two (or more) additional executors such as adult sons and daughters or professional people to act as substitute executors in the event of both deaths. Please consider the appointment of your executors with care. The duties imposed

by law on executors and trustees can be time consuming and can lead to personal liability. Our Solicitors are willing to act as executors of your estate, either solely or with a relative or trusted friend. Even when a Will appoints an executor, a Grant of Probate must generally be obtained from the Probate Registry. In addition, Capital Tax and Inland Revenue returns may need to be filed listing full details of assets. For these reasons executors and trustees nearly always instruct a solicitor to deal with the administration of the estate. Our Solicitors have experienced Probate Departments staffed by skilled solicitors who deal with the administration of estates. Their costs are reasonable and are calculated on the basis of the amount of work involved, unlike the major banks who charge a percentage of the estate. Their costs can always be the subject of independent review and scrutiny by the Legal Services Ombudsman.

What happens if someone dies without making a Will?

- Everything you own will be divided up under fixed rules decided by law, not you. These are known as Intestacy Rules.
- You leave your relatives and friends with the difficult task of sorting out your affairs. One of the most common misconceptions is that if you die without a valid Will all of your estate will automatically go to your surviving partner. This isn't the case. Your partner could even end up with insufficient money to remain in the family home. The law does not provide for unmarried partners or children who are not biological children of the parents (other than adopted children) and if you have no surviving blood relatives then your estate goes to the Crown.

What arrangements should I make about my children?

You should consider appointing a legal guardian to look after your children who are under 18. When a parent dies the surviving parent normally becomes the legal guardian. But you may die at the same time in which case it would be wise to appoint another member of your family or a close friend as a legal guardian.

Your trustees have power to pay money to the guardians for the maintenance, education and general welfare of your children.

Please note:

Unless the mother appoints him, an unmarried father will not automatically become the guardian of his natural child on the death of the mother.

I don't want to leave anything to my family

You don't have to leave anything to your family in your Will but if you do not make suitable financial provision for members of your immediate family or other people financially dependent on you, they may be able to contest your Will and claim a share of your estate.

Witnessing the Will

There are very strict legal formalities which have to be complied with when you sign your Will. We will give you clear and detailed instructions of those requirements.

Witnesses may also need to act as trustees: for example, where money needs to be held in trusts for children under the age of 18 or where any other type of trust arises under your Will.

Living Wills

This is the name given to a Will which does not deal with matters after a person's death but seeks to control medical treatment before that person's death.

A Living Will may contain a statement or direction about that person's future medical treatment when they are no longer able to communicate the circumstances in which they do not want medical treatment.

In a Living Will you can set out what medical treatment you wish to refuse in what circumstances. However treatment to cause death cannot be directed.

Can I ensure that my partner does not leave the assets inherited by him / her under my Will to someone whom I would not like to inherit those assets?

This can be ensured by giving your partner only a limited interest in your estate. This will mean that both your Will and the administration of your estate will be more complicated and that your estate will have to be held by your trustees upon trust.

Examples include giving the right to live in your home to your partner during your partner's lifetime (or perhaps until your partner's (re)marriage); giving your partner the right to the income generated from the remainder of your estate during your partner's lifetime (or until your partner's (re)marriage).

This may involve work which falls outside the Wills scheme and is something for which we may have to levy an additional charge.

Assets which may not be covered by your Will

- Death benefits under a pension scheme are usually distributed at the discretion of the pension fund trustees. You should therefore let them know of your wishes. Often, they will require you to complete a nomination form indicating whom you would like to benefit. We would advise you to review your nominations annually.
- Life assurance policies, if written in trust, are payable to the named person(s), whatever your Will may say. We would advise you to check these annually.
- Assets in joint names may pass to the survivor. If you wish to leave your share of jointly-owned assets to someone other than your co-owner, you may need to take steps to divide the ownership of those assets. If, for example, the jointly-owned asset is your home you should have the wording of the title deeds checked. Normally, the title deeds are worded in such a way that your share would automatically pass to the other owner on your death. This requires conveyancing work such as drafting a declaration of ownership. This work falls outside the Wills scheme. Our Solicitors have expertise in this area should you require this additional service.

If the property concerned is a joint bank or building society account you could perhaps transfer your share to a new account in your sole name so that you can leave that money to someone other than your co-owner.

If I divorce or remarry, does it affect my Will?

A divorce treats former spouses as if they were omitted from the Will. No gift will pass to them, and even if they are named as executors they cannot act as such. However, the rest of the Will remains valid.

Marriage and remarriage are somewhat different. A marriage usually cancels any previous Will.

As a result you could find you have no Will at all and the intestacy rules would apply.

If you have set a date for a wedding please inform us so that an appropriate clause can be included in the Will to prevent your Will being cancelled.

If you are married and co-habit with a new partner without getting divorced, do make sure you make provision for your new partner and any children. Otherwise, the legal spouse might be able to inherit under a Will you have made and not cancelled, or under the intestacy rules.

Civil Partnerships

The dissolution of a civil partnership has the same effect on the partners' Wills as does divorce for married couples. The formation of a civil partnership revokes the partner's Will unless made in contemplation of their civil partnership. If you are (or about to be) in a civil partnership, please tell us.

If later in life I should become mentally infirm, can I arrange for a relative or friend to look after my affairs?

This is possible by way of an Enduring Power of Attorney which is a separate legal document that should not come into effect until you are incapable of managing your own affairs. You cannot make provision for this in your Will and it is not a service that our Solicitors can provide.

You should, if you believe it is necessary, contact a local solicitor who will need to see you.

Where should I keep my Will?

You can lodge this with your bank or at the Probate Registry. Alternatively, if we draw up your Will we also offer a free secure storage facility.

When should I change my Will?

You do not need to make a new Will if anyone named in it changes address – you can simply leave a note of the new details with your Will. We advise that you should review your Will every two to five years, and especially when there is any major change in your life, such as marriage, separation, divorce, remarriage, or a death in the family.

We are always happy to discuss changes in your Will and will re-write your Will. We will advise on charges at the relevant time.

The Financial Checklist

We suggest that you make a list of all of your assets which should include your home, life policies, your savings, car and other effects and, at the same time, make a similar list of all your liabilities such as mortgage, overdrafts and other debts so as to work out the approximate value of your estate. We have included a financial checklist to assist you.

Inheritance Tax

Inheritance Tax or IHT as it is sometimes referred to is levied on a person's estate when they die.

IMPORTANT INFORMATION ABOUT MAKING YOUR WILL - PLEASE READ

Making a Will need not be complicated if you use the Union's streamlined Will-making service in conjunction with our Solicitors. For straightforward and simple Wills we offer one free Will for each member and his/her partner whether married or not and for partners of the

same sex. Wills of this type will normally be prepared by the Union.

For more complicated Wills, our Solicitors will provide a comprehensive service that includes their Executorship package if required. Depending on the complexity of the estate a fee for preparation may be payable.

To enable your Will to be prepared all you need to do is complete and return this questionnaire. All sections need to be completed, with particular attention being given to the financial checklist that provides the approximate valuation of your estate. The Will questionnaire can be completed by a single person – please give the details under the columns headed 'Yourself', or by a couple – please complete both columns 'Yourself' and 'Your Partner'. It is important for both partners to make Wills because you might die together. In any event you need to make provision for what is to happen after you both die.

On receipt of the completed questionnaire we will confirm whether we or our Solicitors will prepare your Will and then will provide you with details of any fees if applicable. We will not proceed further until you confirm your wishes so there is no danger of you incurring costs without being consulted.

If you require further information or need help or advice in any way regarding the preparation of your Will, then please do not hesitate to contact BTU's Bedford office on 01234 262868 or 24hours@btuonline.co.uk.

Definitions of a simple Will

- Any simple gifts/legacies (if required)
- Everything / remainder to each other
- Subsequent gift over to children
- Further subsequent gift to grandchildren

MAKING A WILL

DO NOT COMPLETE this form BEFORE READING the “Important Information About Making Your Will”. All information provided will be treated as strictly confidential.

Please complete in **BLOCK CAPITALS**, giving full names, addresses and the relationship to you of each person mentioned. **PLEASE TICK THE APPROPRIATE BOX WHERE NECESSARY**

Facts about you and your family...	You...		Your partner...	
	Male	Female	Male	Female
Full Name & Title				
BTU Membership Number				
Permanent address in Scotland only.				
Date of Birth				
Email Address				
I authorise the Union to use this email address for correspondence regarding this application	Yes	No	Yes	No
Work Telephone Number				
Home Telephone Number				
Marital Status				
Date of Marriage				
Date fixed for your wedding/formation of civil partnership				
Have you been married before?	Yes	No	Yes	No
Do you have any children?	Yes	No	Yes	No
If yes, state full names and dates of birth of children and addresses				
Is there anyone who is financially dependent on you that you DO NOT want to benefit from your Will? (e.g. former partner or children).	Yes	No	Yes	No
If yes, give name(s) and full reasons.				

Our Solicitors can act as sole executor or as a co-executor with a friend or member of the family. The administration of the estate is not part of the Will service. As executors they will be happy to offer the support and advice that is so vital for the efficient administration of the estate at a fee which will be agreed at the time of your death with your executors. If your partner is your sole beneficiary or most of your assets are held jointly, we would recommend that you appoint him/her as one of your executors.

	You...				Your partner...			
	(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)
<p>Who do you wish to appoint as executors?</p> <p>(Please note – if you are naming children as beneficiaries under your Will, you should name two executors in addition to your partner assuming that you wish your partner to be an executor).</p> <p>Please read the options (a) to (d) below and then tick one of the boxes on the right above.</p> <p>(a) I wish my partner to act as my executor but if he/she dies before me, I wish the two persons named to the right to act as my executors.</p> <p>(b) I wish BTU’s Solicitors to act as my sole executor</p> <p>(c) I wish BTU’s Solicitors to act with the persons named to the right as my joint executors</p> <p>(d) I wish the persons named to the right to act as my executors.</p> <p>If you have chosen (a), (c) or (d) please state full names, addresses and relationships of your chosen executors in the box to the right.</p>								
<p>Who do you wish to appoint as guardians after your partner has died? Please name the people whom you would like to look after any children under 18 years of age you may have at the time of your death. Please limit guardians to two.</p>	Full name:				Full name:			
	Address:				Address:			
	Relationship:				Relationship:			
	Full name:				Full name:			
	Address:				Address:			
	Relationship:				Relationship:			
<p>No child will inherit before the age of 18. In the meantime their share will be looked after by Trustees until they reach 18. Do you wish to state a different age, beyond 18, at which a child should inherit (e.g. 21, 25)? If Yes, tick the appropriate box and state the age to the right.</p>	Yes	No			Yes	No		

Gifts	You...	Your partner...
<p>Do you want to make gifts of specific things or sums of money to any individuals or organisations, for example to charities?</p> <p>If so, please state details of the gifts and full names and addresses of intended beneficiaries. Please remember to give a full description to avoid any misunderstandings later. You must include the beneficiaries' full names, addresses and their relationship to you.</p>	<p>Use a separate sheet if necessary.</p>	<p>Use a separate sheet if necessary.</p>
Residuary Gifts (TO BE COMPLETED IN ALL CASES)		
<p>(a) Do you wish your partner to inherit the whole estate (subject to the gifts above)?</p> <p>(b) if no, or your partner has died before you or at the same time, whom do you wish to inherit your estate? (e.g. children)</p> <p>Please give full names, addresses and relationship to you of any beneficiary not mentioned elsewhere in the questionnaire.</p>	<p>Yes No</p>	<p>Yes No</p>
<p>Do you wish to be buried or cremated?</p>	<p>Buried Cremated</p>	<p>Buried Cremated</p>
<p>Do you suffer from any disability which makes reading or signing your Will difficult? If yes, please give details.</p>	<p>Yes No</p>	<p>Yes No</p>
Declaration		
<p>Notwithstanding that your Wills may contain similar provisions, you have not made mutual Wills and either one of you is able to change your Will at any time without reference to the other person.</p>		
<p>I declare that the above information is correct and that I wish my Will to be drawn up in these terms.</p>	<p>Signature / Date</p>	<p>Signature / Date</p>

Financial checklist to value your estate.

This information is received in strict confidence and will not be disclosed to anyone outside of BTU or its Solicitors.

WE MAY NOT BE ABLE TO PREPARE YOUR WILL WITHOUT THIS INFORMATION.

Property and Financial Assets	You...		Your partner...	
Approximate values only required.	Your share of joint property	Sole property	Your share of joint property	Sole property
Own Home	£	£	£	£
Other houses, land or buildings	£	£	£	£
Household contents	£	£	£	£
Cars, boats etc.	£	£	£	£
Jewellery	£	£	£	£
Fine art/antiques	£	£	£	£
Lump sums due (i.e. damages, inheritance, redundancy)	£	£	£	£
Bank/Building Society accounts	£	£	£	£
National Savings & Premium Bonds	£	£	£	£
Stocks & shares	£	£	£	£
Unit trusts	£	£	£	£
Life Policies (please indicate whether they cover any mortgages or other loans)	£	£	£	£
Death benefits under a pension	£	£	£	£
Assets of any sort held outside Scotland (please state where held). If you have a Will relating to a foreign property please enclose a copy.	£	£	£	£
Other assets	£	£	£	£
Total Assets	£	£	£	£
Liabilities	You...		Your partner...	
Home mortgage	£	£	£	£
2nd mortgage or further advance	£	£	£	£
Bank loans	£	£	£	£
Overdraft	£	£	£	£
Credit card debt	£	£	£	£
Other debts	£	£	£	£
Total Liabilities	£	£	£	£
Net Estate	You...		Your partner...	
Total assets	£	£	£	£
Less total liabilities	£	£	£	£
Current value of your estate	£	£	£	£
Please insert the value of any 'Lifetime Gifts' made within the last fourteen years (if over £3,000 in any one tax year) on a separate sheet.				