Making a Will

Why make a Will?

A Will is a legally binding document and is the only way to ensure your wishes are carried out, and that the people you care about are provided for. It also makes it easier for your loved ones to take care of your estate, while knowing that they are acting on your wishes.

Without a Will, there is no guarantee that those you intend to leave gifts for will benefit. If you were to pass away without making a Will, your estate would be divided up according to the rules of intestacy. Who inherits depends on a number of factors, such as marriage and children. Here are some basic guidelines on the rules of intestacy:

- If you are married with no children or grandchildren, your spouse will inherit the whole estate. Your spouse will still inherit if you are separated but still legally married.
- If you have children and a surviving spouse, and the estate is worth more than £250,000, your spouse will inherit all your personal belongings, the first £250,000 of the estate and half of the remaining estate. Your children will receive equal shares of the second half of the estate.
- If you have children, and no surviving spouse, the children will receive equal shares of the whole estate, no matter how much the estate is worth.
- Grandchildren will only inherit if their parent (your child) has predeceased you. In this case, grandchildren would inherit their parents share of the estate.
- If you have no surviving spouse or children, other relatives such as parents, siblings, aunts, uncles, nieces or nephews may inherit under the rules of intestacy, depending on exactly which relatives survive you.

The following people have no right to inherit when someone dies without making a Will:

- Unmarried partners, or partners not in a civil partnership.
- Relations by marriage, e.g. stepchildren, nieces and nephews related biologically to your spouse.
- Friends.

In some cases, close relatives or people who were being maintained by the deceased before they died might have the right to bring a claim against the estate, if they do not feel that reasonable provision has been made for them.

You can find more information about intestacy on the Citizen’s Advice website.

Intestacy rules for Scotland

The law surrounding intestacy is different in Scotland than England and Wales. There are different rules for property, personal belongings and finances. You may have an automatic right to inherit if you were married or in a civil partnership with the person who has died, or if they were your parent.

We would recommend seeking advice from a solicitor.

How to make a Will

Writing a Will is a lot more straightforward than people think. It is a legally binding document, so we would always recommend writing a Will with a solicitor. This is because they may suggest something you hadn’t thought of, such as what happens if one of your beneficiaries dies before you do, and also to make sure the distribution of the estate adds up. This is the best way to avoid any complications for your loved ones in future.
You won’t need to fill in any complicated paperwork ahead of your meeting with a solicitor. You’ll just need a rough list of your assets and ideas about how you’d like them to be distributed. Many solicitors will provide a list of things to consider ahead of your appointment, or you can use our Will Planner to help you prepare.

The following points determine whether or not a Will is valid:

• It must be signed by you and two independent witnesses. Witnesses (or their spouses or relatives) cannot inherit from your Will, and if they are listed as a beneficiary, their gift will become void.

• You must have testamentary capacity, meaning you are able to understand the extent of your estate, the implications of including or excluding certain people, and be able to resist undue influence. If it is later found that you lacked testamentary capacity when you made your Will, it may be deemed invalid. Solicitors are trained and experienced in recognising whether someone has capacity and will usually make notes on why they believe you have capacity, which makes it easier to defend any claims of this nature on the estate.

• If you write on your Will or amend it in any way, it may be deemed invalid, as it might make your intentions unclear or appear that the Will has been forged.

A Will is revoked when:

• You get married.
• The Will is deliberately destroyed – i.e. shredded or burned.
• You make a new Will.

Divorce does not automatically revoke a Will but, if you are divorced, your ex-spouse will not inherit under your Will.

If you would like to make changes to your Will, you can do so using a Codicil. This can be used for small changes, such as adding an extra pecuniary beneficiary, and needs to be signed and witnessed in the same way as your Will. It must be kept with the Will, but should not be stapled to it, as this may invalidate both. For more complicated changes, such as redistributing the residue of your estate, we would recommend visiting a solicitor.

It’s a good idea to review your Will every five years and particularly after any major life event, such as the birth of a child or purchasing a house.

Your Will should always be stored in a safe place, and your executors should be aware of where it is. Many solicitors offer a Will storage service, although some charge an annual fee.

Executors
The role of the executor involves finding out about assets, property and investments, and having these valued if necessary. They will need to obtain details of any outstanding debts and pay these off. In addition, they will need to establish any pension entitlements due, as well as income and inheritance tax, and make any tax returns. Finally, it will be their responsibility to write up the estate accounts and transfer gifts to beneficiaries.

Anyone aged 18 or over can be an executor, even if they are also a beneficiary. You can have up to four executors, but the recommended minimum is two. You should use people you trust, and who are competent with paperwork. You can appoint a professional to be an executor, but they will usually charge for this.
It’s always best to speak to the people you would like to appoint as executors, as it can be a time-consuming task. Many executors will choose to appoint a firm of solicitors to help. Solicitors will charge based on the time taken to administer the estate, and may also take a percentage, usually no more than 1.5% of an estate.

Leaving a gift to charity
Gifts in Wills provide a vital source of income for many charities. At Alzheimer’s Research UK, they fund one in three of our groundbreaking research projects, accelerating tomorrow’s vital breakthroughs to protect our children, grandchildren and future generations from the fear and heartbreak of dementia.

We recognise that your loved ones always come first, but we would be very grateful if you were to consider leaving a gift to Alzheimer’s Research UK and offer hope to future generations of a world free from dementia.

There are a number of ways to leave a gift in your Will:

- Residuary gift – this is a percentage of the remainder of your estate after expenses like debts, liabilities and Inheritance Tax have been taken care of, and any other specified gifts have been distributed. For example, you may choose to leave 1%, 10% or even 100% of the remainder of your estate to charity.

- Pecuniary gift – this is a cash gift specified by you. For example, £500, £1,000, £10,000. It’s important to remember that the value of your gift may be affected by inflation.

- Specific gift – a particular item, such as jewellery or a car.

- Conditional gift – this is a clause which you could include to allow for unforeseen circumstances. For example, you may wish to leave part of your estate to charity in the event that the intended beneficiary dies before you do.

One benefit of leaving a gift to charity in your Will is that you can reduce the amount of Inheritance Tax paid on your estate. If you leave 10% of your estate, or more, to charity Inheritance Tax can be paid at a reduced rate of 36%. You can find out more about Inheritance Tax in our Inheritance Tax factsheet.

To include a charity in your Will, you just need the charity name, address and registered charity numbers. The following is some suggested wording to ensure your gift is valid:

I leave ___________ to Alzheimer’s Research UK, of 3 Riverside, Granta Park, Cambridge, CB21 6AD; registered charity numbers 1077089 and SC042474, for its general charitable purposes absolutely.

Useful contacts
Citizens Advice Bureau
www.citizensadvice.org.uk

Solicitors for the Elderly
0844 5676 173
admin@solicitorsfortheelderly.com
www.sfe.legal

The Law Society
020 7320 5650
www.lawsociety.org.uk

Law Society of Scotland
0131 226 7411
lawscot@lawscot.org.uk
www.lawscot.org.uk

This fact sheet is for information only. Always seek legal advice for any questions or concerns surrounding these issues.