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Caesar & Howie
The Central Scotland Law Group

Why Make a Will

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The Caesar& Howie Group
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At present it is thought around two thirds of the adult Scottish population do not have a Will. Perhaps the reason is that people do not want to think about dying. Many people are also under the misconception that their estate will be inherited by their spouse and close family anyway so there is no need to go to the expense of having one drawn up.

This article is going to briefly set out five reasons why it is important to have a professional Will drawn up.

1. Your Wishes

Quite simple if you draw up a Will then your estate will be distributed according to your wishes. If you die without a Will, then your estate will be distributed according to The Laws of Intestacy for Scotland. There is no come and go on this and even if it ends in an unjust situation the rules must be followed to the letter. There are many misconceptions about Intestacy Law.

First of all the surviving husband and wife do not automatically inherit everything. Yes they do get first bite of the cherry but if the estate reaches a certain limit then other relatives will be entitled to some money. For example the surviving spouse is only entitled to the house that he/she resided in up to a certain value fixed from time to time by the Scottish Government. Due to the increase in property prices there will be a number of estates where the spouse will not even be entitled to inherit the whole home. In addition the surviving spouse is only entitled to one house. If you leave a holiday house the surviving spouse will automatically be barred from inheriting it.

Commonly unjust situations start arising if the deceased left a husband or wife but no children when siblings and parents are entitled to a share, sometimes a large share, of the estate.

Another misconception is the rights of co-habitants. If you die leaving a co-habitee they are not automatically entitled to a share of the estate. Until fairly recently co-habitees had no rights whatsoever. Now new legislation is in operation where they can apply to the courts to obtain a right to the estate. This application has to be made within 6 months of the date of death. Please note surviving spouse and all other relatives with intestacy rights have an automatic right to a share of the estate. They do not have to go through the traumatic experience of going through a court application. Furthermore the entitlement to the estate is not guaranteed. The court has discretionary powers and it will depend on the circumstances of the case. This means that the co-habitee will have to prove that the relationship was a strong one and the deceased would have wanted them to have a share of the estate.

The simple truth is the rules used to wind up an estate where there is no will do not work particularly well in many situations nowadays. The rules by and large recognise marital and blood relationships, not recognising informal relationships which are fairly common nowadays.

2. Appoint Executors

When you draw up a Will you will appoint Executors. The Executors are the people who are responsible for the winding up of the estate. You can therefore choose the most appropriate person, the person you would want to do that intimate and sometimes difficult job. If you do not draw up a Will the Courts will appoint a relative to be the Executor. For many people that person might not be the person you would have chosen to be your Executor.

3. Avoid Delays and Legal Costs

There are more procedures to be followed in the legal administration of winding up of an estate where there is no Will. Obviously this means it will take longer for your estate to be wound up and distributed and it will incur additional administration and legal costs.

4. Provision for Children

Every parent with children under the age of 16 should have a Will in place. If you do not have a Will your children will automatically inherit their share of the estate at the age of 16. If you draw up a Will you can defer payment of their inheritance to say 18 or 21. You can also set up a Trust to ensure their needs are met until they reach this age. Also you can nominate Guardians for your children. Most parents have a strong feeling about who they would like to look after their children if they died prematurely.

5. Tax Savings

A will can be drawn up in a number of ways to minimise your liability to Inheritance Tax and in some cases Capital Gains Tax. It is no longer the case that Inheritance Tax is a tax on the wealthy. Due to the surge of property prices recently many home owners will find that their estate will be liable to Inheritance Tax on death. Specialist advisers can draw up Wills in such a way that they can often minimise an estate's liability, sometimes quite considerably.

On these 5 reasons alone it can be seen just how important it is to draw up a Will. It is false economy to think you do not want to go to the expense of making a Will. Your family could suffer for this decision.