

WRITING YOUR WILL IN SCOTLAND

OUR TEN TOP TIPS FOR OUR FRIENDS IN SCOTLAND

Scotland has a proud military heritage and we're deeply honoured to serve wounded veterans and families across the country.

When it comes to making a Will, Scottish law is significantly different to those covering England and Wales. This factsheet isn't a substitute for professional legal advice but, used together with our legacy booklet, we hope it will give you the information and inspiration you need to start planning your Will.

Writing a Will is the best possible way to provide for the people and causes you love, and to let friends and family know how you'd like to be remembered. And contrary to what you might have heard, writing a Will doesn't have to be complicated or costly. This checklist will help you get your thoughts in order; and our free Will-writing service can also help you make a simple Will for free.

1) List everything you own

Your assets might include your home and any other properties or land you own, bank or building society accounts, savings, stocks, shares and other investments, business interests, insurance policies and pensions. You'll also need to mention valuable possessions such as your car, furniture, jewellery and other items of worth. You might find it helpful to get an up-to-date valuation for bigger assets before you write your Will.

You should also check how larger assets such as your house are owned. If they are owned jointly with someone else, you may need to seek legal advice to confirm if your share is to be dealt with under your Will or will pass automatically to the survivor.

2) Work out what you owe

Your liabilities include any outstanding mortgage or rent payments, car finance agreements, credit cards, bank loans, business loans, school or college fees, or personal debts you might have.

3) Work out the value of your estate

Subtract what you owe from the total value of your assets to get an idea of how much your estate is worth. Your estate will pay your funeral costs, any taxes due and any gifts left in your Will. What is left over is called the residue of your estate.

4) Decide who you'd like to provide for

Think about the people and causes you'd like to provide for in your Will.

When listing beneficiaries, please include their full names and addresses so they can be identified easily. If leaving a gift to a charity, we recommend including their registered name, address and charity number.

E.g. Help for Heroes, 14 Parkers Close, Downton Business Estate, Downton, Salisbury, SP5 3RB. Registered charity number in Scotland: SCO44984.

5) Choose someone to carry out your wishes

The people you appoint to carry out your wishes are called your Executors. They can be professionals (e.g. your lawyer or accountant) or trusted friends or relatives.

In Scotland, there is no limit on the number of people you can appoint as Executors. But before you name someone as an Executor in your Will, please check that they are willing to accept this responsibility.

6) Decide who will take care of your dependants

You can appoint someone to be a guardian for your children while they are under the age of 18. That person will assume your parental rights and responsibilities for those children.

Depending on the circumstances of your children or other relatives who may benefit under your Will, you may wish for their entitlement to be held in trust for their benefit. You should ask your solicitor for guidance.

You may also wish to make similar arrangements for any pets.

7) Consider Legal Rights

In Scotland, children and spouses or civil partners have an automatic claim on an estate, no matter what the Will says. This is known as **Legal Rights**.

Scots law distinguishes between **heritable property** (which means land and buildings) and **moveable property** (meaning money, shares, cars, furniture, jewellery and all other assets). This distinction is important because Legal Rights can only be claimed from your net moveable estate. Heritable property is not included in a legal rights claim.

The extent of the legal rights claim depends on your family circumstances:

- Your surviving spouse or civil partner's legal rights claim amounts to
 - (i) one-third of the net moveable estate if you were survived by children or
 - (ii) one-half of the net moveable estate if you were not survived by children.

- Your children are collectively entitled to
 - (i) one-third of your net moveable estate if you were survived by a spouse or civil partner or
 - (ii) one-half of the net moveable estate if you were not survived by spouse or civil partner.

If a child dies before you and leaving children of their own, then those children (i.e. your grandchildren) may claim legal rights.

Any person who has rights under a Will as well as a potential legal right claim has to choose between them: he or she cannot have both.

Legal Rights can be important if you leave a significant proportion of your estate, either as a legacy or as a share of the residue, to charity. If you have concerns about Legal Rights, you should seek specialist legal advice.

8) See a qualified legal adviser and check your draft Will carefully

We wholeheartedly recommend seeking professional advice from a Wills and Trusts solicitor as they can help you can consider your responsibilities and options.

You can find a solicitor through the Law Society of Scotland website, www.lawscot.org.uk/find-a-solicitor, or our trusted expert partners can help you write a simple Will for free. See **Using our free Will-writing service** on page 14 of our new Will-writing guide for more information. You can also visit the Get Help With Writing Your Will page in the legacy section of our website: www.helpforheroes.org.uk/legacies

When your adviser sends you the draft copy of your Will, please read it carefully. If you spot a mistake, have any questions or have changed your mind about something, don't be afraid to say so. This is your Will and it must reflect your wishes.

9) Signing and witnessing your Will

Wills in Scotland should be signed by you at the bottom of every page in the presence of an independent witness. The witness signs on the last page only, adding his or her full name and address, together with the date and place of signing.

It is best practice for your witness to be independent, so he or she should not be an executor or beneficiary under the Will.

A Will which is signed by you only on the last page, and is not witnessed, could still be valid under Scots Law but your Executors will need to take additional steps to make your Will acceptable to the Scottish Courts.

10) Keep your Will somewhere safe

Store your Will safely and let your executors know where that is. This is important, as your original Will needs to be presented to the Scottish Courts.

Your Solicitor may be able to store your Will for you, so please ask them if this is a service they offer.

It is a good idea to keep your Will, and your Letter of Wishes if you've written one, with other important documents such as your birth certificate, marriage certificate, divorce papers, property deeds, insurance policies, bank and building society account details and your funeral plan. Storing your essential paperwork will make things easier for your executors when the time comes to carry out your wishes.

OTHER IMPORTANT POINTS TO REMEMBER

1) In Scotland, anyone over the age of 12 and of sound mind can write a Will.

2) If you already have a Will when you get married or enter a civil partnership in Scotland, your marriage will not invalidate your Will. As with all life-changing events though, we recommend you review your Will at such an important time.

Please bear in mind that your spouse or civil partner will gain legal rights to your moveable estate (see point 7 on pages 2-3 of this document).

INFORMATION ABOUT CHARITIES REGISTERED IN SCOTLAND

To find the registered details of good causes you may want to name in your Will, visit the website for the OSCR: www.oscr.org.uk or email info@oscr.org.uk for guidance.