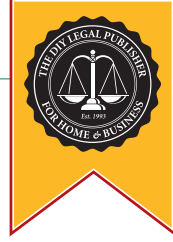


LAWPACK



Self-Help Kit

Last Will & Testament

Guidance Manual





► Important Facts about this Lawpack eKit

This Lawpack eKit contains the information, instructions and forms necessary to make your own Will in Scotland. It is not suitable for England, Wales or Northern Ireland. It is important that you read and follow the instructions in 'How to use this eKit' on page 3.

There is an infinite number of provisions a person may make in a Will. The Will Forms included in this Lawpack eKit cover the most common ones, but we do not cater for all circumstances.

The information this eKit contains has been carefully compiled from reliable sources, but its accuracy is not guaranteed, as laws and regulations may change or be subject to differing interpretations. This is particularly true for any figures given, which are liable to change in the next Budget. The law is stated as at 1st February 2009.

Neither this nor any other publication can take the place of a solicitor on important legal matters. This Lawpack eKit is sold with the understanding that the publisher, authors and retailer are not engaged in rendering legal services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

As with any legal matter, common sense should determine whether you need the assistance of a solicitor rather than relying solely on the information and forms in this Lawpack eKit.

We strongly urge you to consult a solicitor if:

- substantial amounts of money or property are involved;
- you do not understand the instructions or are uncertain how to complete and use a form correctly;
- what you want to do is not precisely covered by the forms provided;
- you and your spouse have different domiciles;
- you own or have an interest in property abroad or have written a Will abroad.

The contents of this Manual have been approved by Neill, Clerk & Murray, solicitors, under Scottish law.

EXCLUSION OF LIABILITY AND DISCLAIMER

Whilst every effort has been made to ensure that this Lawpack eKit provides accurate and expert guidance, it is impossible to predict all the circumstances in which it may be used. Accordingly, neither the publisher, author, retailer, the solicitors who have approved the contents of this eKit, nor any other supplier shall be liable to any person or entity with respect to any loss or damage caused or alleged to be caused by the information contained in or omitted from this Lawpack eKit.

In no event shall our liability exceed the purchase price of this eKit. Use of this Lawpack eKit constitutes acceptance of these terms.

This Lawpack eKit may not be reproduced in whole or in part in any form without written permission from the publisher, except that forms may be photocopied by the purchaser for his or her own use, but not for resale.

© 2009 Lawpack Publishing Limited



This is an excerpt from Lawpack's *Last Will and Testament (DIY Will Scotland)* eKit. To find out more about making a Will quickly and inexpensively, [click here](#).

► Contents

How to use this eKit	3
Domicile	4
Making your Will in Scotland	5
Why a Will is important	5
What is intestacy?	5
Who should make a Will?	6
How long is a Will valid?	6
When is it necessary to prepare a new Will?	7
Preparing to make your Will	7
Executors and trustees	8
Guardians	9
Beneficiaries	10
Adults	10
Underage children	10
Charity	11
Gifts	11
Specific gifts and legacies	11
The residuary gift	12
A replacement residuary beneficiary	13
Disposal of property during your lifetime	14
Property that does not pass under your Will	14
Tax considerations in estate planning	15
Witnesses to your Will	17
Signing your Will	17
How to revise your Will	17
Safekeeping of your Will	18
What happens when someone dies?	18
Using the Scotland Will Forms	18
Using the Record-Keeping Forms	19
Glossary	20



▶ How to use this eKit

This Lawpack eKit can help you achieve an important legal objective conveniently, efficiently and economically. Nevertheless, it is important for you to use this Lawpack eKit properly if you are to avoid later difficulties.

- This eKit is for those people making a Will who are domiciled in **Scotland**. **It should not be used by those people domiciled in** England, Wales, or Northern Ireland. An explanation of domicile is given on page 4.
- Read carefully the parts of this Manual that are relevant to you. They contain the instructions you need to complete the Scotland Will Forms in this Lawpack eKit. If, after thorough examination, you decide that your requirements are not met by this Lawpack eKit, or you do not feel confident about writing your own documents, consult a solicitor.
- Refer to the completed examples and use the worksheets. When completing a Will Form, do not leave any section blank. If any section is inapplicable, write 'not applicable' or 'none.' This shows that you have not overlooked the section. If you do not fill the whole of one section, then put a line through the remaining blank space.
- Always use a pen or type on legal documents; never use pencil.
- If you cross out or erase anything on the final version of your Will Form you and your witnesses must sign in the margin against what is crossed out or erased.
- You will find a helpful glossary of terms at the end of each section of this Manual. Refer to the relevant glossary if you find unfamiliar terms.
- Once your Will is completed, you can, if you wish, photocopy and complete the additional documents at the end of this Manual that will be useful in the administration of your estate: Form of Letter to Executor, Funeral Wishes, Location of Important Documents, Important People to Notify and a Property Inventory.
- Do not amend the Will in any way once it has been witnessed – if you wish to change your Will, you should make a new one.
- Always keep legal documents in a safe place and in a location known to your spouse, family, executor or solicitor. Consider using Lawpack's Will Storage Service, details of which are contained in this eKit.



► Domicile

Consider whether the Will Forms for Scotland are appropriate for you. It is important that you use the Will Forms applicable to where you are domiciled, because the law differs between the different jurisdictions in the United Kingdom.

Domicile is essentially – but not only – a question of where your permanent home is. If you have spent your whole life in one country and you consider that country to be your home, the position will be clear: that country will be your domicile. If you, or (when you were young) your parents, have moved countries, you should consider the paragraphs below in order to decide where your domicile is. If the situation is complex, or if you are in any way unsure, you should take legal advice.

At your birth you acquired a ‘domicile of origin’. This is the domicile of your father if you were legitimate, or of your mother if you were not.

Your domicile may have changed later if two conditions were satisfied: first, that you resided in a different country; and second, you intended to reside there permanently or indefinitely. This is a ‘domicile of choice’. Before you were 16, your domicile changed if – and only if – the domicile of your father, if you were legitimate, or your mother, if not, changed.

A domicile of choice may be abandoned if you no longer reside in the country and no longer intend to reside there permanently or indefinitely. If no new domicile of choice is acquired then the domicile of origin arises.



Making your Will in Scotland

► Why a Will is important

Without a valid Will you cannot control who will inherit your property after your death. Should you die intestate (without a Will), your property will be distributed according to law, which is likely to be inconsistent with your personal wishes. In some cases your estate may go to the Crown instead of the people you want to benefit. By making a Will you can determine precisely who will inherit your property and let your loved ones know that you have considered their needs.

Equally important, you can determine who will administer your estate and who will act as guardian for any minor children you have if they are left without a surviving parent. You can also use your Will to express your preferences for burial or cremation and for donating organs or your entire body for medical purposes. In addition, making a Will gives you the opportunity of reducing the Inheritance Tax liability of your estate. This is particularly important if you have substantial assets.

When you die, your property must be gathered in and distributed to your beneficiaries. Your executors are responsible for this task and they are appointed either by you in your Will (Executor Nominated), or by the Sheriff Court (Executor Dative). Before your executors can uplift (secure the release of) and deal with your assets they must normally obtain 'Confirmation'. Confirmation is granted by the Sheriff, and gives the executors authority to administer the estate.

► What is intestacy?

If you die without making a Will, or if your Will is invalid, you die intestate. The management of your estate is then placed in the hands of executors who are appointed by the court and who are likely to be close members of your family. The executors distribute your estate according to the rules of intestacy.

The rules are complex but, broadly speaking, the bulk of your estate will go to your spouse or civil partner* (but not necessarily wholly, whether or not you have children) or to your children and, if none, to other members of the family. The effect of the rules depends partly on the size of your estate. If your estate is large, less than you expect may go to your spouse or civil partner.

It is also possible to die partially intestate. This occurs if you fail to deal with all of your property in your Will or if a particular beneficiary dies before you. You should avoid intestacy if you make a valid Will in accordance with the instructions in this Lawpack eKit.

*Since 5th December 2005 it has been possible for same-sex partners to register their relationships so becoming 'civil partners'. For many purposes, and for most of the rules relating to Wills and intestacy, civil partners are treated in the same way as spouses.



▶ Who should make a Will?

Every adult can and should make a Will. Children under the age of 12 cannot make a Will as they are not deemed competent.

The only qualifications necessary are that you are over 12 and of sound mind. If there is a history of mental disorder or if an illness may be affecting your judgement in any way, you should consult a qualified doctor just before preparing your Will. This will help establish your competence and will be useful should your Will be contested later on the grounds of mental incapacity.

If you are married or in a civil partnership, both you and your spouse or civil partner should prepare Wills. This is true even if marital assets are primarily in the name of one spouse or one civil partner. Usually you will wish to name your spouse or civil partner as your main beneficiary and include a replacement gift to take effect if he or she predeceases you.

If you are not married and not in a civil partnership but are living with someone and you want that person to benefit from your estate, it is particularly important to make a Will. This is so because the rules of intestacy make no provision for unmarried partners (other than civil partners). If you were to die intestate, your partner (if not a civil partner) may receive nothing from your estate. The Family Law (Scotland) Act 2006 allows a cohabitant of a person who dies intestate to apply to the court for payment out of the deceased's net estate of a capital sum or for the transfer to the surviving cohabitant of the deceased's property, which can include a house. The court has to take into account the size and nature of the deceased's net intestate estate, any benefit being received by the surviving cohabitant on, or as a consequence of the deceased's death (e.g. being paid out from a Life Policy), any benefits received other than from the deceased's net intestate estate and the nature and extent of any other claims on the deceased's estate e.g. from children. The maximum the court can award is the same as the cohabitant would have received if they had been married or a civil partner of the deceased. Any award made by the court is at the discretion of the court and accordingly if you wish to ensure that your unmarried partner is provided for, you would be best to make a Will.

▶ How long is a Will valid?

Once prepared, your Will is valid until revoked, which may occur in one of three ways:

1. By destruction, combined with the intention to revoke.
2. By making a new Will that revokes the old Will, by use of the phrase, 'I revoke all previous wills and codicils'. The Lawpack eKit Scotland Will Forms all contain this revocation clause. If you have made a separate Will dealing with property abroad, you should consult a solicitor.
3. Probably if you have a child, after having made your Will, where the Will makes no provision for that child. The law presumes that you would wish to provide for your child in your Will, and therefore if no mention of the child is made in your Will, the law presumes (which presumption would be difficult to overcome or rebut) that because the child is disadvantaged by not being provided for, the Will is revoked.



Other than in one of these circumstances, your Will remains valid for an unlimited period of time.

Note that marriage, civil partnership, divorce and remarriage do not revoke a Will.

► When is it necessary to prepare a new Will?

You may need to revise your Will for any number of reasons. Common occasions for revising a Will include:

- **Change in financial circumstances** – you may have recently acquired assets which you would like to give to particular beneficiaries, or perhaps due to hard times your estate may have become insufficient to provide for the legacies you have made.
- **Marriage or civil partnership** – does not revoke a previous Will, but you may well wish to make a new Will to provide for your new family.
- **Family additions** – the birth of a child may necessitate a new Will as your existing Will may not provide for this child. (See ‘How long is a Will valid?’)
- **Changes in taxation** – if your estate is large enough (or becomes large enough) to attract tax, new taxes, reliefs or changes in the rates may call for changes in your Will.
- **Going to live abroad** – it is normally desirable to make a Will in the country where you reside to simplify the administration of your estate. It may also be helpful if you need to establish a change of domicile. Local advice should be sought.
- **Divorce** – does not revoke a previous Will. For this reason, great care must be taken when using the words ‘husband’ or ‘wife’ in a Will, because when used alone, the word will ‘speak from your death’, which means the gift will go to whomever is your husband or wife at the time of your death. In this case, an earlier spouse would lose his or her gift to a later spouse, possibly contrary to your intention. For the avoidance of doubt, always identify your spouse by name when making your Will, e.g. ‘my wife, Gillian’, and draw up a new Will on separation or divorce. Divorce is a complex issue and we recommend you consult a solicitor if in doubt.
- **Dissolution of a civil partnership** – the dissolution of a civil partnership has the same effect as a divorce.

In any case, it is a good idea to review your Will from time to time and in any event not less often than every five years, so that it is always up to date.

► Preparing to make your Will

Before making your Will consider carefully what you wish it to contain. The two principal decisions are: first, who should manage your property and distribute your property according to the terms of your Will (the executor) and second, how you wish your property to be distributed after your death.

Before you make your Will:



- List the assets you own.
- Decide who is to receive those assets.

First make an inventory of everything you own, whether in your name alone or jointly with others. You will find in this eKit a Property Inventory that will help you to ensure the list is complete. First make an inventory of everything you own, whether in your name alone or jointly with others. You will find in this eKit a Property Inventory that will help you to ensure the list is complete. Then decide how you wish that property to be distributed. You can make gifts of specific property to particular people as well as gifts of sums of money to particular people. Items or money that you do not specifically allocate will form the 'residue' of your estate and you must decide who is to receive this.

Whether or not you make a Will, your spouse, or civil partner and issue are entitled to claim 'legal rights' which enable your surviving spouse or civil partner and surviving children (and surviving issue of predeceasing children) to claim part of your estate at death as an alternative to (but not in addition to) the benefits that you might have provided for them in your Will. In effect, these legal rights protect your spouse or civil partner and issue against getting little or nothing from your estate. Such legal rights cannot be overruled by a Will. These legal rights are (a) in the case of a surviving spouse or civil partner where your children (or remoter issue) survive, one third of your 'moveable estate' (i.e. all your estate other than land and buildings), and where you leave no surviving children (or surviving remoter issue), one half of your moveable estate and (b) in the case of surviving children (and surviving issue of predeceasing children) where there is a surviving spouse or civil partner, one third of your moveable estate and where there is no surviving spouse or civil partner, one half of your moveable estate.

It is always best to draft your Will as simply as possible in plain English. Avoid the use of legal words and phrases if you do not understand precisely what they mean.

► Executors and trustees

An executor is a person named in your Will as having the responsibility of managing your property after your death and distributing that property according to the terms of your Will. That person will have to collect in and preserve your assets, pay all relevant taxes and liabilities, obtain a grant of Confirmation, sell those assets that need to be sold and finally distribute your assets to your beneficiaries.

In some instances money may not be paid directly to all your beneficiaries and may be held for their benefit. This is most common where the gift is to minor children or to someone pending their fulfilling a condition such as reaching a certain age. If this happens, the money will be paid to the person or persons you appoint as trustee. We recommend that you appoint the same person or persons as both executor and trustee and the Will Forms have been drafted to this effect.

Trustees are then responsible for holding the monies and looking after them for the benefit of the beneficiaries. They are entrusted with investing the monies and generally safeguarding them. In some instances, they have the ability to distribute all or part of it to the beneficiaries or use it for their benefit if they think this is in the interest of the beneficiaries.