bipolar scotland

with you through the highs & lows

A Guide to

Leaving a Legacy and Making a Will

Leaving a Legacy

Making a will is the most efficient way to ensure your wishes are carried out and family and friends have what they need when you are no longer there for them

It also gives you a wonderful opportunity to make a real and lasting contribution to an organisation like Bipolar Scotland. As with all voluntary sector organisations, Bipolar Scotland are dependent on time limited grants to provide their services. For many organisations, legacies can be a vital source of income which allow them to both sustain and develop services. A legacy could take the form of money or any other gift.

Leaving a legacy to Bipolar Scotland in your will would be one of the most effective ways that you could help the organisation continue its current work and develop new services for people who experience Bipolar Disorder and their carers.

Making Your Will

This booklet aims to provide information for anyone wishing to make a will. It gives basic information about the steps to take in making a will and the points to note in making sure a will is valid, guidance on the type of information to put in your will and legal rights for relatives.

This booklet does not provide a complete guide to the law. Legal advice should be sought if you are in any doubt about your individual situation. Bipolar Scotland is not able to offer this.

This booklet is for people living in Scotland only. There are different legal requirements for making a will in England, Wales and Northern Ireland.

Making your own will

Most agencies advise that you should consult a solicitor to make even a simple will as problems can arise after your death if mistakes have been made or if a bequest is not entirely clear. Sorting out any mistakes can prove to be very expensive.

However, you can make your own will. Should you choose to do so, the following points are important:

- You must sign the will on every page. It is better that you sign in the presence of a witness, but you may sign alone and acknowledge your signature to a witness later. In each case the witness signs below your signature on the last page only and adds her/his name and address.

- If you are blind or unable to write then your will can be signed for you by a solicitor, advocate, justice of the peace or sheriff clerk. The first two will normally charge for doing this.

- The person witnessing your signature must know you, be over 16 years of age or older and not be mentally incapable of acting as a witness. The person should

be independent as using a beneficiary or a close relative of a beneficiary may make the will easier to challenge.

- Make sure that you date your will and state that it revokes all earlier wills. This ensures that your executors can disregard earlier ones. Decide who will be the executors to look after your affairs, ask them and, if they agree, name them in the will and include their addresses. This is important so that they can be located more easily.

- You should choose who you want to be the main beneficiaries of your estate. You may wish to leave them specific items as well as the residue (what remains after debts and other legacies have been paid). Put the full name, relationship if any, and address of each beneficiary and a full description of any items you are leaving them.

- You may wish to leave specific sums (pecuniary legacies) or goods (specific legacies) to other people. Choose them and give their names and addresses. Make sure you clearly identify the items in your will, giving a good description or its location or else it may be difficult to find the item. If they die before you, the gift will generally fall into the residue unless you specify it should go to someone else.

- You also have to decide if you wish your estate or the beneficiaries to pay any Inheritance Tax, government duties or delivery costs and state this in your will.

- Make provision in your will for what is to happen to any bequest if the beneficiary dies before you. This is particularly important with bequests of the residue as if you say nothing the bequest will be dealt with under the rules of intestacy.

- You should appoint executors (see Section 3). If you appoint a solicitor, accountant or other professional you should authorise them in your will to charge their normal fees.

- If you have children under 16 you may wish to appoint guardians for them in case they are orphaned on your death.

- Be careful if you decide to use a pre-printed will form from a stationery shop – (e.g. WH Smith). These are often designed for use in England and Wales where the legal requirements for a will are different. You should check carefully whether the form could be used in Scotland.

Going to a solicitor

Unless your will is going to be very simple it is advisable to consult a solicitor, particularly if you want to leave significant sums to people other than those who might expect to inherit, such as your husband, wife or children. Your local Citizens Advice Bureau (CAB) can advise on

the choice of a local solicitor and may run a free legal session staffed by solicitors.

Local CAB offices are listed in the telephone directory.

The costs of making a will varies according to the complexity. You should ask what the cost would be before giving the solicitor your instructions.

If your income is below certain limits legal advice and assistance may be available through legal aid. The CAB or the Scottish Legal Aid Board (44 Drumsheugh Gardens, Edinburgh, EH3 7SW, tel: 0131 226 7061) can give you a list of solicitors who operate the scheme in your area. The income limits change regularly and you should consult the CAB or the Scottish Legal Aid Board for the up to date figure.

Appointing an executor

Executors are your representatives who look after your estate when you die. You should think very carefully as to who is best for the job. They will pay any outstanding debts and taxes and distribute your property and possessions according to your will. You should make sure that they could deal with day to day matters to do with your home as well as handling the business of administering the estate.

Executors should be named and their addresses given in your will and they are known as executors –nominate. Normally people choose their spouse or children. It is a

good idea to choose people who are younger than you as they are more likely to outlive you.

You can choose any number of executors, but it is best to appoint at least two. That way you can get people with different skills. Appointing a single executor will leave no-one to act should the appointee die before you. A large number of executors become unwieldy even though three or more executors can make decisions by a majority.

You will probably want to ask their permission before naming them, though this is not a legal requirement. Executors, on learning that someone has died and they have been appointed, can decline to act, as long as it is not a situation where there was a sole executor. A sole executor should appoint another to act as an additional executor and then resign leaving that person to act alone. This avoids an application to court.

Executors can be beneficiaries under the estate and can claim reimbursement of any expenses they incur in carrying out the task. They generally do not receive remuneration unless the will specifically states so.

You can choose professional executors such as solicitors, bank managers or accountants. Make sure that you understand what costs will have to be met from your estate. As for a scale of charges, as this will vary

among the different professions. If there are large investments to administer there may be advantages to appointing professionals. If you appoint professionals to be executors, your will should allow them to charge their normal fees. If there is no provision in the will then all beneficiaries need to agree on the remuneration.

If you do not name any executors in your will, the residuary beneficiaries usually become the executors.

Revising a will

Changes in family and financial circumstances can affect how you wish to distribute your estate. It is therefore important to review and update your will periodically.

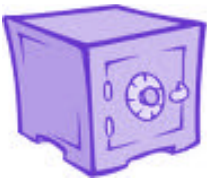
Your will is not cancelled if you get married later nor does any bequest to your ex-spouse usually become invalid on divorce. If you want to make changes following your marriage or divorce (and most people do) you must alter your will. Children born after a will that fails to provide for them may apply to the court for the will to be set aside, but this is hardly ever done. Making the bequest to “my children” or mentioning future as well as existing children avoids this problem.

You can make minor changes to your existing will in a separate legal document called a Codicil. This mist be witnessed as for a will (see Section 1) but you do not

need to use the same witness as for the original will. If anything substantial in your will needs to be changed you should make a new will revoking the former one. Never make alterations on the original document. Keep the Codicil with the original will. Remember to date any Codicils you make.

Where to keep the will

You may choose to keep your will at home with other important papers, leave it in the keeping of your solicitor or lodge it in the bank. Banks usually charge for this service. Where solicitors make a will for clients, they normally keep the original and send you a copy. You are entitled to the original if you wish to hold it. A copy will not be sufficient to settle your estate matters. Your executors should be told where your will is and be able to get access to it when you die.



Make sure that you list all sources of savings e.g. National Savings, bank and building society accounts, insurance policies and inform all executors where to find all the relevant papers. Also list your debts and liabilities, as these will need to be paid out of your estate before beneficiaries receive their share. If you have particular views about your funeral, write a letter to your executors explaining how you would like it conducted and let them know where they can find this letter when you die. You may wish, for example, to keep it with your will but since this document may not be read until after the burial or

cremation, it is wise to tell your executors that the letter is kept with it.

In that letter, you should state whether you wish to have a burial or cremation, tell them whether you have already purchased a burial plot and give them the details, and specify any instructions, such as where you wish the ceremony to be held and the type of ceremony you prefer.

If you wish your body to be donated for medical research, or for use in training doctors, arrangements should be made in advance with the chosen institution or university.

If you wish to have any organs used for transplant purposes then this should be discussed with your doctor in advance and you should carry a donor card. By the time this instruction is found in the will it could be too late to instruct the hospital.

Legal Rights

Whatever you say in your will, a widow, widower or child (of any age) always has a claim for legal rights in your estate after you die. This means you can never exclude these persons. These are fixed rights to a proportion of the "movable estate" (e.g. money, cars, shares, jewellery), which can be claimed without going to court.

In other words, if a husband or wife leaves his or her

whole estate to the other, the children still have a claim for legal rights of one third of the moveable estate on the death of the first parent. The third is divided among surviving children, and children of a predeceasing child would have a share.

This is a claim that need not be exercised, but if there are minor children, who are not capable of deciding not to claim, funds must be set aside for them until they reach 16 years of age when they decide whether or not to claim them. Legal rights would then have to be claimed within 4 years.

Taxes on your death

There is no inheritance tax where everything is left between husband and wife and the survivor is domiciled (has her permanent home) in the UK. Beyond that relationship, inheritance tax is payable, the amount depending on the size of the estate. For the year 2004 – 2005 no tax is charged on estates under £263,000. This figure tends to increase every year. This will include the value of the house if you own it, and any gifts you have made within the last seven years except those that are exempted (free of tax). You get an annual exemption of £3,000 in each tax year, plus £3,000 from the previous year if you did not use it then. Your spouse would get the same. There are other exemptions allowed, such as on wedding gifts – up to £5,000 by each parent or step-parent, £2,500 by each grandparent or great grandparent, or £1,000 by any

other person; gifts made out of income that form part of the normal expenditure and do not reduce the standard of living; gifts of up to but not exceeding £250 per year to any number of individuals; gifts to charities; gifts to political parties; gifts for national purposes such as to a national museum, local authority, National Trust or University, gifts for public benefit, such as to land or buildings of scenic, historic or scientific interest; gifts to housing associations; and maintenance trusts for historic buildings.

What happens if you do not make a will?

If you do not make a will, you die intestate and your property will be divided according to specific legal rules set out in the Succession (Scotland) Act 1964. Cohabiting partners have no rights in this situation. Children include adopted children and all children have the same rights whether or not their parents were married to each other. These are the surviving husband's or wife's rights to the deceased's (share of) the house (up to £130,000), the furniture in the house (up to £22,000) and a payment the size of which depends on whether there are any children. If there are no children, then there is a right for up to £58,000.

If there are children, then a spouse has a right to for up to £35,000. There are no prior rights if a person dies leaving no surviving spouse. These figures change every few years. The right to the house applies only if the surviving spouse was living when the deceased died. If the house was rented the surviving spouse can usually

take over the tenancy.

Legal Rights

After prior rights have been dealt with, a surviving spouse and children have rights to a proportion of the "moveable estate" (i.e. money, cars, shares, jewellery). If there are no children, the spouse is entitled to one half of the balance of movables. If there are children, the spouse is entitled to only one third of the movables and the children also have a right to one third.

Free Estate

After prior rights and legal rights have been dealt with, what is left is called the free estate.

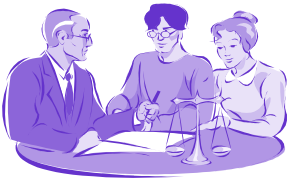
The free estate goes to surviving relatives in a strictly laid down order. Issue of the deceased (children and descendants of predeceasing children) come first; if there are no issue, half goes to the parent(s) and half to brothers and sisters (or descendants of predeceasers); if there are no parents their half goes to the brothers and sisters of their descendants and vice versa; if there are no issue, parents, brothers and sisters or their descendants the free estate goes to the surviving spouse. After the spouse come uncles, aunts and their descendants, then grandparents, great-uncles and aunts and their descendants, great-grandparents and so on. If no relative however remote can be traced your estate goes to the Crown, i.e. the government.

If a person dies leaving issue only (and no spouse), then the issue take the whole estate. If a person dies leaving no issue, parents, brothers and sisters or their descendants the surviving spouse simply inherits the whole estate.

The Scottish Government have a leaflet, Rights of Succession, which explains this in more detail. You can obtain copies of the leaflet from: Justice Department, Civil Law Division, Room 2W(R), St Andrews House, Regent Road, Edinburgh, EH1 3DG, or from their website on: www.scotland.gov.uk

The information contained in this booklet is based on current Scottish law as at August 2005.

This booklet was last updated in August 2005.



Legacies & Wills

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