

Planning for the Future.

Succession Planning

You may not think that succession planning applies to you, but planning for your future is always incredibly important regardless of your wealth. Succession planning covers a broad spectrum of issues, and it is important to take in to account your own individual circumstances.

If you own your own house, a family company or business, landed estate or farm, it would be wise for you to consider planning for the future ownership for these types of assets at the earliest opportunity so that you can plan for and mitigate any tax liabilities as far as possible. This type of planning is not always straightforward as no two families' circumstances are exactly the same.

Implementing a good succession plan early can provide savings in tax, protect against family disputes and guard against unwanted claims on your estate, whilst also providing peace of mind.

If you live in a tied house, you may need to look into the creation of a lease, or perhaps a lease review to allow provisions for a cohabitee on your death. It is important that all eventualities are discussed to allow you to make the necessary steps in protecting yourself and your family going forward.

Thorntons Law LLP Associate, Stuart Mackie (below) and Trainee Solicitor, Lauren Smith have prepared Articles on The Importance of Wills, Protecting the Family Home and Powers of Attorney to give you an insight in to the things to think about when planning for succession. For more information please contact Stuart Mackie, Associate, E: smackie@thorntons-law.co.uk T: 01674 902458.



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The Importance of a Will

Preparing a Will is incredibly important, regardless of the value of your assets. The process of making a Will is mainly very straightforward, and as such can be completed fairly quickly by a qualified solicitor.

People presume that your Will is just a document setting out the wishes you have for your fortunes. This may be true; however, it also allows you to make one of the most important decisions – who is given permission to deal with your estate. This is referred to as appointing an Executor. An Executor is a person, or persons, who you have appointed to deal with your affairs upon your death. It is very important that you choose someone who will be willing to take charge of your affairs and get things done.

If you have a Will in place, you are able to ensure that your wishes are granted on your death. With a Will in place you decide how your assets, known as your estate, will be divided and who they should be bequeathed to. A Will allows you to specify a particular item in your estate and bequeath this as you wish. For example - if you have a shotgun and you wish a certain person to inherit this, you can stipulate this in your Will as a specific legacy and your Executor is duty bound to ensure that this wish is carried out.

It is a common misconception that your estate will fall to your spouse or partner on death if you do not have a Will. In reality, your estate will be distributed in accordance with the Intestacy Rules under Scots Law which are complex and often seen to be unfair. For example - if you die without a Will and married, your spouse is not automatically entitled to your whole estate outright and actually, (after the property and initial cash sum allocated to the spouse has been taken) your children could end up inheriting a cash sum which may leave a spouse in potential financial difficulty. This issue is particularly important for cohabiting couples who are not married or couples with children from previous marriages. If you were to die intestate, your partner would be required to request permission from the Court to inherit from the estate and in other circumstances, your children could be disinherited.

To die intestate (without a Will) means that the Court is required to be involved, even with smaller estates. If you do not have a Will appointing an Executor, you must instruct a solicitor to deal with appointing an Executor. This alone costs significantly more than a Will, so it makes financial sense to have a Will in place. A Will also allows you to make provisions of a personal nature, such as your funeral arrangements or to specify who you wish to look after your furry friends when you no longer can.

When considering a Will it may be worth thinking about protecting the family home. Please see our Protecting the Family Home Article for more information regarding safeguarding your estate.

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Protecting the Family Home

Care Home planning and Care Costs are not subjects which are usually discussed within a household. For many of us, it does not cross our minds that we may one day end up in a care facility and therefore most of us are unaware of the impact this can have on us financially.

The current average weekly cost for care is around £1,000, If you qualify to have your personal care costs and nursing care costs paid by the Local Authority (eligibility is based on an assessment of personal needs, not a financial assessment), then these are paid at flat rates of currently £177 (personal) and £80 (nursing) per week, tax free. The balance of the weekly costs is regarded as your accommodation costs.

The rules regarding your contribution to accommodation costs are that, in essence, the whole of your available income (other than around £27.75 per week which can be retained for personal expenses) must be put towards the costs of the accommodation; obviously, if your available income is greater than the accommodation costs, the excess is retained by you. If your income does not meet the whole of the accommodation costs then sometimes your capital needs to be used to help meet the balance of the costs. Effectively, your care costs are met firstly by income, then by savings, and then by the funds held in your heritable property if the house is no longer occupied.

In a recent survey by The Gamekeepers Welfare Trust of April 2020, 22% of people asked stated that they own their own home – whether they live in it for work or not. Normally, these properties are boltholes for people to relax in their retirement. It would be devastating to think that a property you have worked all of your life to enjoy could be taken from you to meet care costs.

There are ways in which you can protect your assets against being used to fund any potential future care costs. These range from simple actions such as a couple altering how the title to your property is stated in your title deeds or through the use of gifting and Trust arrangements. The suitability of different options very much depends on an individual and their personal circumstances.

We are all living longer but our minds don't always keep up with our physical health, if you lose the ability to make decisions for yourself, no one automatically has the right to make decisions for you. We would always recommend having a Power of Attorney in place to allow your nearest and dearest to deal with welfare and financial decisions for you. Our Article on Powers of Attorney provides you with more information in regards to creating a Power of Attorney.

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Powers of Attorney

Gamekeepers and land workers may be used to the unpredictable nature of life, however, there is one aspect that they can't control –old age and incapacity, we are living longer but not necessarily with full faculties or physical ability. Most people take out insurance of some kind to cover against damage to our possessions, but fewer are aware that you can put a Power of Attorney in place to cover against the possibility of something happening to you personally (such as dementia, head injuries or strokes) something that causes us to be unable to make decisions for ourselves.

A Power of Attorney is a legal document that allows you to appoint someone to deal with your affairs and make decisions on your behalf. It lets you choose a person (or people) you trust to act for you, at times when you cannot do things for yourself either due to physical or mental infirmity.

There are two different types of Power of Attorney:

1. Continuing Power of Attorney – this covers any decisions regarding your finances and property
2. Welfare Power of Attorney – this covers and decisions regarding your health and welfare. (It should be noted that your Welfare Attorney will only be able to make decisions about your health and welfare when you be unable to make those decisions yourself.)

Both of the above Power of Attorney documents are usually incorporated into one document, but you do not need to have the same Attorney(s) for both.

A lot of people think that granting a Power of Attorney means giving up your right to deal with your affairs, and this is simply not true. The appointment of an Attorney does not mean you give up the authority to manage your own affairs or lose your autonomy. Instead, having a Power of Attorney in place is simply ensuring somebody else who is authorised by you to deal with your affairs, can do so, should the need arise.

Your Will, Power of Attorney and advice on protecting assets can all be completed together with a total of 2 visits to your solicitor. They are generally very simple and quick to prepare and relatively inexpensive. It is not difficult to do and our clients feel a great sense of relief when they have these documents in place.

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