YOUR**money**

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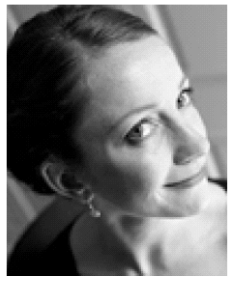
Where there's a will…

…there's a way to reduce your inheritance tax liabilities – a good incentive to make sure your affairs are in order as soon as possible



WORDS
ANYA HART DYKE

'The more tightly wrapped up your estate is, the less scope there is for family fallouts'

It is estimated that each year in Scotland six in ten people die intestate – without having written a will. If there is no known next of kin and no heir steps forward, the estate goes to the Crown – millions of pounds' worth of cash, investments, pensions, property and other assets. Writing a will means you control who benefits from your wealth, and in the most tax-efficient way possible.

Richard Wadsworth at Carbon Financial says that one of the main reasons people don't write a will is because they think the day it'll be needed is still a long way off. 'People don't want to face up to their own mortality – we suffer from a Superman syndrome, if you like,' he says. 'Often, we just don't get round to it. But in my experience, the more a person has to pass on, the more they will want to be sure that it goes to the right people.'

Under Scottish succession law, when someone dies the surviving spouse or civil partner and children are entitled to certain legal rights to the deceased's savings, investments and possessions, whether or not there is a will. It's important to note, however, that these legal rights only relate to moveable property (such as shares, cash etc) and not to land or buildings, which may be the largest asset of the estate.

If a person claims their legal rights, they cannot accept any provision in their favour in terms of the deceased's will. But you need not accept the legal rights due to you. Andrew Laird at Simpson & Marwick explains that where the first of a couple dies it is usual for the children to decide to discharge their legal rights. 'I think this is usually for one of two reasons. Firstly, the child really does wish effect to be given to their parent's will.

'Secondly, they appreciate that to claim their legal rights may result in their surviving parent cutting them out of their will, which would be to the child's long-term financial detriment.'

Legal rights offer a structured distribution of wealth if no will has been written; but without one there is the risk of inheritance tax (IHT) liabilities. In broad terms, if the estate passes to anyone other than the surviving spouse and/or charity, IHT is potentially payable. 'A will could avoid or defer IHT by directing the entire estate to a surviving spouse, for example,' says Wadsworth. 'Without a will, at least some of the estate would automatically pass to children, potentially creating an immediate IHT liability.'

Having a will in place also gives you greater control over how your estate is passed on and can manage the expectations of surviving family members. 'The more tightly wrapped up it is, the less scope there is for family fallouts,' explains Wadsworth. 'There is a great deal of flexibility in what you can put in a will. A solicitor will assume as a starting point that a client will want to pass their estate to any surviving spouse or children, but you can then insert requests for particular items to pass to specific people.'

With many of the largest businesses in Scotland being family-run, a significant proportion of Scotland's wealthy are family business owners. In a survey published last year, 59% of Scotland's very wealthy had 'reservations' about trusting their children and step-children to protect their inheritance.

One option may be a kind of timed release of wealth, choosing either to leave it to a beneficiary outright or to put it in trust, for trustees to exercise discretion as to whom the estate might be paid and whether certain beneficiaries inherit at certain ages. 'If you have a business you wish your children to inherit,' explains Laird, 'and it is currently run by the eldest child because the younger children are too young to currently be involved in that business, you may wish to leave some of the business's shares outright to your eldest child. You can then direct your trustees to make over the shares due to your younger children when they reach a specified age.'

If you don't want every member of the next generation to receive the business, you may wish to equalise the value of the business passing to certain children with other assets passing to those who will not be involved in the business. 'These might seem straightforward issues,' says Laird, 'but they are often not addressed until it is too late.'

There is a halfway house, so-called 'kitchen-table' wills, but there are pitfalls with writing your own will. 'This might save costs in the short term,' says Wadsworth, 'but lawyers are constantly telling me that this is a false economy due to the problems these wills cause, and therefore the costs which are incurred on the death of the individual.'

Among the many benefits of writing a detailed will are minimising tax liabilities, reducing the likelihood of family disputes and, where a family business is concerned, maximising its chances of survival. With the right advice you can be sure that as much of your wealth as possible is passed on as seamlessly as possible.