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## Joint Bank Accounts

Many people, especially couples, have joint bank accounts nowadays, for convenience and perhaps because it is expected. For an elderly person, a son or daughter may be added to a bank account because he or she can no longer manage the account themselves, although a better option is to have him or her grant a Power of Attorney.

However, there is a widely held misconception that you don't need to make a Will if you have a joint bank account, because when one of you dies, the other will inherit all the balance in the account. Even if a Will is made, it is assumed that this will not apply to the joint account. While in practice the Bank might put the account into the sole name of the survivor, the law is very clear that the deceased's share is still part of his or her estate. While this may pass to the survivor in terms of the Will or under intestate rules, this is not always the case.

This can mean that Executors have to ask the person who now has the account in their sole name to pay out some of that money to them, when they thought they were entitled to all of it. What if that person has spent some of the money and cannot pay it back, or is about to be made bankrupt, or lives abroad, or cannot do so because they no longer have capacity?

A further problem often arises in trying to work out how much of the balance in the joint account belongs to each of the account holders. Also, children and spouses are entitled to legal rights when someone dies and the money in the bank account belonging to him or her is included when working out how much they may claim. Exactly how much money in the joint account belonged to the person who died can be a source of dispute at a very distressing time.

If an account was opened many years ago and each contributed varying amounts over the years as financial circumstances changed, how do you work this out? While there is a presumption in law that each party contributed equally to the account, this can be displaced by proving the facts, such as showing only one salary or pension was ever paid in to the account. In many cases it can be very difficult to establish the facts, especially as one of the parties is no longer there to answer these important questions.

We therefore recommend:-

- When opening a joint account, each party discuss what they want to happen to the money in the account should one of them die and they make Wills to this effect, even if this is to be left to each other.

- When making your Wills, please mention that you have joint accounts to your solicitor so that he or she can advise you correctly.
- Both of you put it in writing how much each of you have contributed and the percentages that belong to each of you.
- As your circumstances change over the years, keep the Wills and any written directions or notes updated.

At an earlier stage, if one of the account holders loses their capacity to act, Banks may refuse to allow that person's Attorney to be noted on the account if they are not already the joint account holder, because the other account holder is still entitled to access the funds without telling the Attorney. This can lead to practical difficulties.

If you have any concerns about your own position, please contact one of the members of our team and we will be happy to give you detailed advice.

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**[www.achws.co.uk](http://www.achws.co.uk)**



## Funding Long Term Care in Scotland

It may be the case that you or a family member will need to move into a care home at some point in the future. In such a circumstance your local authority has a duty to provide or arrange this care on a permanent basis if you are assessed by a social worker as requiring care but funding for your care will possibly be an issue for you depending on your financial circumstances.

The following facts should be considered:-

- “Free Personal Care” is available in Scotland. This is an allowance that is offset against the cost of your care and will be paid if you are assessed by a social worker as being entitled to it. With effect from 1 April 2011 the rates applicable are £159 per week for personal care and £72 per week for nursing care if this is also needed. These allowances are not means tested – at least at the moment. Free personal and nursing care was a flagship policy of the first Scottish Executive and was introduced in 2002, but the costs have almost doubled in that time to about £370m a year.
- Your local authority in calculating a contribution by you towards the cost of your care will take into account the level of your income and capital. You will always however be left with “pocket money” to meet personal expenses and this amounts to £22.60 per week effective from 11 April 2011.
- If you have more than £23,500 in capital you will be expected to pay the full cost of your care less your free personal care / nursing care allowance (referred to above).
- If you have capital of £14,500 or less then this is fully disregarded.

- If you have capital of over £14,500 and up to £23,500 both income and capital are taken into account in calculating your contribution. What this means is that the local authority will assess your ability to pay in the normal way and take into account, as weekly income £1 for every £250 or part of £250 over £14,500.

- The liability to maintain a spouse in relation to accommodation charges has now been removed.

- Claiming financial support towards care home fees will lead to a financial assessment of all assets you own. The local authority disregards the value of your house for twelve weeks after your admission to care. If however your house is occupied by:-

1. A spouse or Civil Partner
2. A relative who is aged over sixty;
3. A young incapacitated relative; or
4. A child under sixteen years who is maintained by you

the property that you own will be disregarded.

- If you give away capital (for example your house) in order to avoid a liability for care home fees, you may still be assessed as if you own the capital that you have given away. The local authority will look at the circumstances and events leading up to the gift in order to assess whether your intention was deliberately to deprive yourself of capital. If the local authority makes a finding of deliberate self-deprivation, the value of the capital given away will be included within your means tested assessment as “notional” capital. Providing however that there are other reasons for making a gift other than simply trying to avoid care costs and the risks are fully explored and appreciated, there is no reason why a gift of this nature should not take place.

## Inheritance Tax News for 2012

Earlier this year in the Budget George Osborne revealed that from April 2012 the rate of Inheritance Tax would be cut to 36% for estates where at least 10% of the net chargeable estate is passing to charity and the deceased died on or after 6 April 2012. This proposal is now in a Consultation period which will end on 31 August 2011. At the moment, Inheritance Tax is payable at 40% on the balance of assets in an estate which exceed the “nil rate band” threshold of £325,000. A gift to charity made either in a person’s lifetime or in terms of his or her Will currently attracts no Inheritance Tax liability and it does not “use up” part of the nil rate band. However, any Inheritance Tax payable over the value of the estate on death which exceeds £325,000 will be at the rate of 40%.

An example of how this proposed reduction would work in practice would be, taking an estate with a value of £500,000, as follows:-

The deceased’s Will provides that his entire estate is to pass to his son.

Estate chargeable to IHT	£500,000
Deduct nil rate band	-325,000
	£175,000
£175,000 @ 40%	£70,000 IHT payable
Son gets £500,000 - £70,000	£430,000

Alternatively:-

The deceased’s Will provides that 10% is to pass to charity. The remainder is to pass to his son.

Estate chargeable to IHT	£500,000
Deduct nil rate band	-325,000
	£175,000
Less:- legacy of 10% of net chargeable estate (£17,500)	

£157,500 @ 36%	£56,700 IHT payable
Son gets £500,000	
- £17,500-56,700	£425,800

The son is £4,200 and HM Revenue & Customs is £13,300 worse off in the second scenario but the charity is better off by £17,500. Therefore, it is for the individual to consider whether the priority is benefiting their family, helping a charity or mitigating their contribution to the Treasury coffers! Please contact us if you would like any further information on this subject. Full details on the Consultation can be found on:

[www.hmrc.gov.uk/consultations/index.htm](http://www.hmrc.gov.uk/consultations/index.htm).



## Top Tips for Executors

You may be named as an Executor in the Will of your spouse, parent or friend but are you aware what this important appointment actually entails? After a person dies the Executor or Executors named in terms of the deceased's Will or appointed by the Court if the deceased died without a Will, are responsible for investigating the nature and extend of the assets held by the deceased, completing the necessary paperwork to obtain Confirmation (the Scottish equivalent of Probate) and, if applicable, preparing the required Inheritance Tax forms and additional information to be submitted to H M Revenue & Customs. Once the Grant of Confirmation has been issued by the Court, this formally authorises the Executors to ingather the deceased's assets and to deal with them as per the terms of the Will. This will involve transferring the subject of any specific legacy to the correct beneficiary (e.g. jewellery to a family member), closing bank accounts, cashing in policies and selling property and investments and then distributing the net proceeds in accordance with the Will.

Acting as an Executor involves taking on a great deal of responsibility and, in most cases, it is usual to instruct Solicitors to act as Agents in the estate administration process. The Solicitors will prepare the necessary Confirmation and Inheritance Tax paperwork and deal with the investigation and distribution stages. However, there are a number of practical things which an Executor can do to help us make the process run more smoothly and efficiently. Here are some of our tips:-

- Register the death: this needs to be done within eight days of death and you need to telephone the local Registrars Office to make an appointment in advance. When an Executor registers the death he or she needs to take along

the deceased's Birth and Marriage Certificates and the Medical Death Certificate (issued by the doctor certifying the death). It is important from an administration point of view that full Extract Death Certificates are obtained. The Abbreviated Death Certificate which is given automatically when the death is registered is rarely accepted by banks and life offices when the death is being intimated to them. Depending on the number of assets held by the deceased, it is a good idea to get at least two or three Extracts as some institutions will not accept copies. Each Extract costs £10 but the outlay can be recovered from the estate.

- Organise the funeral: it is important to check the Will and any accompanying Letter of Wishes to ascertain if the deceased left any particular funeral instructions. Money from a deceased's bank account can usually be withdrawn to pay the deposit requested by the funeral directors if a certified copy of the Will is shown. If anyone pays for funeral flowers or the cost of holding a wake it is important to retain the receipts for these expenses as they can also be reimbursed from the estate.

- The deceased's assets: in preparing the Confirmation Application it is necessary to compile a full inventory of all of the assets that a deceased person had when they passed away. To ascertain what these are the Executor will need to pass to the Solicitors all relevant paperwork which may evidence these assets. Of course this can be easier said than done and how difficult this task is to complete will very much depend on the number of assets held by the deceased and the organisation of his or her filing system! If in doubt, it is best to hand over more papers rather than less. The Solicitor will be experienced at going through all of the documents and will be able to ascertain which organisations to contact in the first instance. The Solicitor may also suggest doing an Asset Search through an independent company and, if there is any question that something may have been missed, this course of action (and fairly minimal outlay) is to be recommended.

- If the deceased is a widow or a widower the Executor should try and locate as much paperwork as possible regarding the administration of the predeceasing spouse's estate. This could be as little as finding out the

name of the firm of Solicitors which dealt with the administration of the spouse's estate or even finding copies of the Will and Grant of Confirmation which may have been retained by the deceased after his or her spouse died. This paperwork is required in the event that Inheritance Tax would be due on the deceased's estate and the unused portion of the Inheritance Tax allowance (known as the "nil rate band") needs to be transferred to be applied against the estate of the deceased to reduce or negate any Inheritance Tax due.

- Returning paperwork timeously: this may seem obvious but the estate administration is often slowed down by the fact that Executors fail to sign and return documentation to the Solicitors without delay. Even if the Solicitors are carrying out the day-to-day administration, there will still be a number of papers for an Executor to sign. If you are unsure about what you have been sent or asked to sign it is always best to contact the Solicitor dealing with the estate as soon as possible so that this matter can be clarified.

It should be remembered that, even if you are appointed as an Executor in terms of the deceased's Will, you may resign if you feel that you do not wish or feel able to act. The only proviso is if you are named as a sole Executor you must assume another Executor before resigning yourself. The Solicitor involved will be able to help by preparing the necessary documentation to implement this.

If you have any questions about estate administration, please do get in touch.

The estate agency division of Archibald Campbell & Harley Solicitors has launched a new website to promote their estate agency offering.

If you are thinking of buying or selling a property, please visit our new website [www.achproperty.com](http://www.achproperty.com)

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## Where there's a Will there's a War

Disputes about Wills are increasing, particularly in England, where it was recently reported that there had been an increase of 38% in one year in inheritance cases before the English courts. Such cases have all the elements of human drama – money, family feuds, long-buried grudges, painful rejection, mistresses and dark secrets – and all the more intriguing because the key witness is unavailable.

Disputes tend to be either over the amount of the inheritance; or centre on the Will, with claims that it was forged, the person did not understand what they were doing, or had been forced into signing the Will. While only a small proportion of cases reach the courts, one survey has found that one in 10 people have been involved in a dispute over a death in the last six months. It often comes as a shock to find out Auntie Jessie's promise to leave you her best china was just a ruse to get you to visit her more often, and instead it has all gone to charity.

During the property boom there was more to fight over, but in a recession the pie gets smaller and some people feel they deserve a bigger slice. A further complication is the increasing complexity of family life, where couples can have children together and from previous relationships, or may have no children themselves and each of their wider families expects a greater share.

Charities are dependent on legacies to a far greater extent than ever and are making sure they get all of which they are entitled. Some even pay to get information about Wills recorded in the public records to check whether they have been left any money, and if that has not been paid, they will pursue the Executor.

The best way to minimise the risk of this happening to your family is to make sure your Will has been properly drawn up by a qualified solicitor and to check with us at least once every five years to make sure that it is all still in order. Surely a happy family is the best legacy to leave?

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