

# SOLICITORS FOR OLDER PEOPLE SCOTLAND



In partnership with



Love later life

## Handy Guides for Older People



Legal Aid  
Powers of Attorney  
Wills  
Advance Directives  
Care Costs  
Trusts  
Equity Release  
After a Death

# Introduction



## The Message

We hope you take the time to read this simple pamphlet. We have found over the years that many older citizens just don't know enough about the legal issues affecting them and their families. The one page guides here are our attempt to simplify the main legal concepts of interest to older people. Sadly very large numbers of people do not take the simple steps they should as they move into their retiral years. We would like to change that. So the main message is – after reading the information in the guides – please take action to protect your family and loved ones.

We can start work for you from just one phone call or meeting if you prefer. Our first discussion is free and we always assess older clients for legal aid. This can be done in one very short call – and we find a high percentage of pensioners do qualify for legal aid.

**Call 0800 152 2037**

**[www.sops.org.uk](http://www.sops.org.uk)**

# Legal Aid in Scotland



- Law centres and many solicitors in Scotland provide legal aid
- Legal aid covers lots of legal work – not just court or tribunal cases
- “Advice and Assistance” (AA for short) is legal aid for non court work
- AA is relatively generous to pensioners in Scotland and simple to get
- For some people AA is free – others have to pay a contribution
- Many house owning pensioners qualify for AA
- AA can be granted immediately by solicitors and law centres
- You can check with any solicitor if they do legal aid by telephone
- You can also check if you qualify for AA eligibility over the telephone
- AA covers Wills, Powers of Attorney, Advance Directives and much more
- SOPS solicitors do “Free First Interviews” covering AA eligibility
- At a first meeting you need to take proof of ID and Income
- For court actions a more complex legal aid scheme exists

***LEGAL AID IS AN ENTITLEMENT YOU SHOULD USE IF YOU NEED IT***



For more detailed information visit [www.slab.org.uk](http://www.slab.org.uk)

# Powers of Attorney



- These are formal legal documents
- In them you appoint someone to act for you if you lose legal capacity
- You can only complete one if you have legal capacity
- The person you appoint is your "Attorney"
- You can appoint more than one Attorney
- The Attorney's legal powers are contained in the document
- Powers are categorised as "legal and financial" or "welfare"
- Sometimes there are different Attorneys for different categories of powers
- People usually appoint their partners and adult children as Attorneys
- All Powers of Attorney must be registered with the Public Guardian
- Attorneys can only act for the benefit of the person appointing them
- Attorneys are subject to a legal control framework
- Their powers can be removed if used improperly
- All adults should complete a Power of Attorney
- Court actions can be avoided if Powers of Attorney are in place
- You can cancel or "revoke" your Power of Attorney
- Many pensioners can get legal aid for Powers of Attorney
- You cannot appoint a bankrupt as your Attorney



**A POWER OF ATTORNEY SAVES SO MUCH TROUBLE  
IF SOMEONE LOSES LEGAL CAPACITY**

# Making Your Will



- All adults should make wills
- You can write your own will but it is much safer to go to a solicitor
- Legal aid is available to many pensioners to make wills
- In your will you appoint “executors” to put your will into effect
- Executors chosen are usually surviving partners or children
- With no will you cannot choose your executors or where your property goes
- The “Beneficiaries” are the people you choose to inherit your property
- Executors can also frequently be beneficiaries as well – e.g. your spouse
- A will must be properly completed following legal rules to be valid
- “Legacies” are gifts made in wills of money or property
- Your “estate” is the name for all your property at the time of death
- Executors must pay any debts due by you at death
- After paying debts and legacies the rest of the estate is called “residue”
- You must leave the residue to some person or persons or organisation
- Spouses and children can make certain claims whatever the will says
- Wills should be reviewed periodically and changed if necessary



*A WILL SHOWS CARE FOR YOUR LOVED ONES AND  
HELPS EVERYBODY*

# Advance Directives (AD's)



- These are sometimes called “Living Wills”
- They are formal legal documents
- In them you state your “end of life” treatment wishes
- AD's come into play when the power to communicate is lost
- Usually AD's limit some interventionist treatments if death is imminent
- For example asking for no resuscitation
- Many people don't want to stay alive in a vegetative state.
- But you can state any wishes you like
- Generally AD's state all palliative care treatments should continue
- Carers and welfare attorneys should know of an AD
- AD's are usually held with medical records
- Discussing AD's with your doctor is sensible
- AD's are nothing to do with assisted suicide
- Doctors will generally follow appropriate AD's
- AD's give guidance to your family and loved ones
- This guidance is invaluable in making end of life decisions with doctors
- AD's can be revoked if you can still communicate
- AD's will stop family disagreements on treatment
- Many pensioners can get legal aid for AD's



*AN ADVANCE DIRECTIVE GIVES INVALUABLE GUIDANCE  
TO DOCTORS AND CARERS*

# Care and Care Costs



- There are various ways of receiving care
- Ranging from care in your own home to full nursing care in a care home
- You can ask the local authority for a free “assessment of care needs”
- The assessment is carried out by care professionals
- Personal care is help with daily tasks e.g. personal hygiene, eating, mobility
- Nursing care is similar help but requiring a qualified nurse
- If you are over 65 both personal and nursing care can be free in Scotland
- Nursing care if required is free at any age
- There can be a wait for care delivery after assessment subject to need
- Care home accommodation costs are normally not free
- But some people with health problems may qualify for free NHS funded care
- Payments for accommodation costs are assessed by a means test
- Capital and income are taken into account – many people have to contribute
- The value of a house owned is usually included with some exceptions
- Property used but not owned (e.g. a house in a trust) may not be included
- Immediate Care Plans “forward fund” care with a one off payment
- Councils have no power to force house sales.
- In fact councils should offer interest free loans
- Families should plan years in advance of care being required
- Because forward planning can often ensure houses need not be sold



*CARE AND PAYING FOR IT ARE COMPLEX SUBJECTS -  
TAKE ADVICE TO FIND THE BEST ROUTE*

# Trusts



- A trust is where someone owns assets for the benefit of others
- The assets can take any form, money, property, shares
- The “trustees” are the asset owners
- The “beneficiaries” are the people who benefit from the assets
- Trusts can be set up by operation of law or by private arrangement
- Private trusts are set up by “trust deeds”
- The person setting up a private trust is called the “settlor”
- The trust deed explains why a trust is set up – the trust “purposes”
- Trusts can preserve property or manage it better for vulnerable people
- “Discretionary Family Trusts” are set up for the benefit of family members
- These trusts may have a side effect of removing property from a care cost assessment
- You should never set up a trust without legal advice
- However trusts are basically a simple concept
- Trusts are very common – many charities are trusts
- Private trusts are effectively secret
- Most trusts are “tax neutral” but tax advice should be taken
- Trusts can end on specific events happening
- At the end of a trust the assets are usually distributed to the beneficiaries



*A TRUST CAN PRESERVE PROPERTY AND HELP FAMILIES*

# Equity Release (ER)



In partnership with  **ageScotland**  
Love later life

- Homeowners over 55 can release equity from their home
- This is usually by a mortgage where interest is not paid but accumulates
- There are no income requirements for the mortgage
- The lender takes a security over the property
- The debt and interest is paid off when the house is sold
- The house must be sold when the last surviving owner dies or goes into care
- The money can be taken as a lump sum or in instalments
- Any money raised this way is free of tax
- The money can be spent in any way you want
- You can only borrow a percentage of the value of the home
- The percentage you can borrow usually increases with age
- Most ER cases are done through specialist financial advisors and solicitors
- "Home Reversion Plans" are another form of ER
- In these you sell a percentage of the house but still have security of tenure
- Most ER cases are taken to fund a better lifestyle in retirement
- Any ER case will reduce the value of your estate when you die
- There are up front charges in ER loans and legal costs
- Sometimes taking ER can affect benefit entitlement
- Most ER contracts have a "no negative equity" guarantee
- This means the loan and interest can never exceed the house value
- ER brokers are registered by the Financial Conduct Authority



*EQUITY RELEASE IS REALLY HELPFUL FOR MANY  
RETIRED PEOPLE BUT PROPER ADVICE IS NEEDED*

# After A Death

SOLICITORS FOR  
OLDER PEOPLE  
SCOTLAND



In partnership with  ageScotland  
Love later life

## Dealing with Someone's Estate (the property owned at death)

- Wills normally appoint "Executors" who deal with the estate after death
- Executors put into place what is stated in the will
- Executors prepare an inventory of the estate
- Executors must be "confirmed" by the sheriff court before acting
- Where there is no will relatives may apply to be executors
- Being an executor is an important duty subject to legal rules
- Where there is no will the law dictates who inherits the estate
- Executors should seek legal help – fees are paid out of the estate
- People with no legal authority should not try to deal with deceased's property
- There are simplified rules for "small estates" (valued under £36,000 at the time of print)
- It takes time to "wind up" estates – frequently over a year
- Tax due and debts due must be paid first
- For larger estates inheritance tax may be due
- "Beneficiaries" are the people who inherit the property
- Frequently beneficiaries are also executors e.g. a surviving spouse
- Executors may have personal liability for mistakes – care is crucial
- Beneficiaries can see "statement of estate" showing inventory and costs
- Sometimes by agreement beneficiaries may agree to adjust will provisions
- Spouses and children can make certain claims whatever the will says
- Executors can only act after death and have no powers before then



EXECUTORS SHOULD ACT WITH CARE AND TAKE  
ADVICE

# About

## About Solicitors for Older People Scotland (SOPS)

We are an affinity group of Scottish Law Firms providing legal services to older people in Scotland. We seek to provide these services in a caring and sensitive way, and try to remove any fear older people may have about seeking legal help.

We all adhere to a comprehensive Code of Practice which includes a commitment to obtaining Legal Aid for older people where we can and otherwise charging reasonable fees. We believe issues facing older people and their families are much better dealt with by planning ahead to allow for the effects of ageing – and we encourage all our clients to do this.

**Call 0800 152 2037 or email [info@sops.org.uk](mailto:info@sops.org.uk)**

These guides are intended to give very basic introductions only to some legal issues. They do not constitute legal advice and cannot be treated as providing the same.

**[www.sops.org.uk](http://www.sops.org.uk)**



Please contact us if you or a family member require our help in relation to any of these matters.

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Email \_\_\_\_\_

Further information is required for \_\_\_\_\_

Return to:

Solicitors for Older People Scotland, 29 George Street, Bathgate, West Lothian,  
EH48 1PG or Telephone: 0800 152 2037



# accident claims service

- ✓ **Specialist, regulated, personal injury solicitor**
- ✓ **Win - no charge**
- ✓ **Lose - no charge**
- ✓ **Keep 100% of what you are awarded**



**0800 021 4743**

SOLICITORS FOR  
OLDER PEOPLE  
**SCOTLAND**



In partnership with  **ageScotland**  
Love later life

The types of claim covered by this service are:

- **Road traffic accidents including pedestrians, passengers, motorcyclists and cyclists**
- **Accidents at work**
- **Falls, Slips and Trips**
- **Serious & fatal injuries**
- **Illnesses caused by asbestos & industrial illness**

If you are injured and suffer loss because of the fault of another party, you could be entitled to compensation. When you contact us we will assess whether your case has good merits.

---

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