

TIPS FOR MAKING A WILL



Making a will is often something we think of as something to do when we are older, but really it should be something that we do as soon as we have assets or children. It is not the most glamorous of topics but is something that we should pay attention to and seriously think about.

What happens if I do not write a will?

While there are no current legal requirements to make a will, if you do pass away without one, your estate will be distributed in accordance with the law on succession. This means that your assets will be dispensed amongst your surviving family members, in a way that is set out in law. While this does ensure that your estate is distributed amongst your family, it may not be in alignment with your own personal wishes.

SOME KEY CONSIDERATIONS

The legal terms

The person who makes the will, in legal terms, is referred to as the testator while an executor is an individual, chosen by you to deal with your estate following your death. Of course, it is advisable to appoint a person who you not only trust but who is also likely to outlive you.

Age: While there certainly exists no 'correct' age, it is advisable to begin contemplating contacting a solicitor as soon as you purchase property, following you or your partner having a baby or following the inheritance of property or other assets.

Jointly owned property: If your home is jointly owned, it is important to note that this will be excluded from your will and passes by way of survivorship to the surviving joint owner. Similarly for any jointly owned bank accounts, they will automatically transfer to the survivor unless the joint bank account was for the purpose of convenience.

Marriage: When you are married, it is important to note that your spouse is entitled to a legal right share of your estate. This is half of your estate if you don't have children, and one third of your estate if you do have children. Even if you have not made provision for your spouse in the will, this entitlement still applies.

Children: It is vital to have a will in place if you have children under the age of 18. A will provides for guardians for your children in the instance of your death. It is important to have the conversation with guardians prior to putting their names on the will.

Taxes: Consideration should also be given to inheritance tax and proper tax and estate planning advice should be obtained when putting a will in place. The cost of tax advice and legal advice for making your will, can be a small cost to pay when you consider the tax savings.



HOW LONG DOES THE PROCESS TAKE?

The length of the drafting process will depend on the complexity of your situation. For instance, the time required to draft a will for a person who owns multiple businesses, has a farm or has numerous investment properties may take longer than, for example, a person whose property portfolio consists solely of his or her family home.

Of course, it is advisable to carry out a certain amount of preparation before meeting with your solicitor. This may include drawing up a clear and concise list of individuals who you wish to benefit as well as a separate, comprehensive list of your assets, double checking to ensure all are included and up to date.



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POTENTIAL DIFFICULTIES/MISTAKES

- Difficulties may arise where the intentions of the will's creator are not completely clear. Ambiguity may exist as to precisely which property, or which relative they are referring to in a particular sentence or paragraph. There may even be confusion regarding the identity of one of the people positioned to benefit from the will. For instance, you may make a gift to your niece Sarah, however you have two nieces named Sarah. Perhaps one on each side of your family, if married. Therefore, close attention should be paid to all information included in your will, particularly names and to the description of relationships.
- Even if a testator's wishes are clear, there are instances where they may be incomplete. For instance, if a testator has only made reference as to how some of their property is to be distributed upon death but there exists additional property which has not been accounted for at all, this will create what is described as a 'partial intestacy' whereby the distribution of the remainder of the property will have to be governed the framework set out in a separate Act, known as the Succession Act. This distribution scheme may not reflect what the testator would have wanted.
- If you are the owner of property in another country - it is advisable to make a different will in that country in order to account for differences in the law of succession between countries.
- While your will may be stored in a location of your choice, it is strongly advisable that your solicitor stores the will on your behalf. Not only is there virtually zero chance of your will being misplaced, but often wills are stored under lock and key in fireproof safes, a level of security it is unlikely any other facility could provide for.
- Oftentimes, it is necessary to amend your will several times throughout your life. Failing to do so, will in turn result in the failure to take into account changes which may have taken place since your last draft. Additional children may have been born in the interim and because your will has not been amended to take account of this, these children may fail to benefit upon your death.

In an effort to prevent such difficulties occurring, it is advisable to consult with and appoint a competent solicitor with experience in will drafting.

The bottom line is that if you have assets, however small and particularly if you have children under the age of eighteen, a will is an excellent tool to assist in securing peace of mind for the future. You can then rest assured knowing that regardless of what you might be faced with in life, your loved ones will be provided for and your assets distributed in accordance with your wishes.

Emma Comyn, Partner at Comyn Kelleher Tobin (CKT) deals with peoples' estates from extremely complex to simple straight forward affairs every day. Emma assists clients to put their will in place.



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Disclaimer: The information provided in this article is as a general guide only. You should contact a solicitor for legal advice specific to your situation.

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