

WHY MAKE A WILL?

For most of us, making a Will is something we would really prefer not to think about. It's importance however cannot be over emphasised. Why would you allow the rules which the Law sets out to decide what happens to everything you own? It's your property and YOU should be the one to decide who takes charge of it and how it will be distributed. There may be some particular items of personal belongings, furniture or jewellery which you would like to leave to certain members of your family or to close friends. You may wish to leave specific amounts of money to certain individuals or charities. Who gets your estate should be entirely up to you and this is easily achieved by setting out your intentions in the form of a Will.

If you die without a valid Will, your entire assets are "frozen" until such time as someone is appointed to take charge of your estate and divide it in accordance with the Law of Intestacy. (In legal terms, if you die without a Will, you are said to have died "intestate"). Friends and charities cannot benefit. Some relative to whom you would not wish to leave anything could inherit a substantial part of what you own, while some other relative who deserves to benefit may get nothing. Your dependants could end up being cared for by people you would not have chosen and inheritance tax may have to be paid unnecessarily.

Do you know who will be entitled to your estate if you die without a valid Will?

Well, if you are survived by a spouse and are without children, then your surviving spouse is entitled to everything. If you are survived by a spouse and children, then your spouse is entitled to two-thirds of your estate and the children are entitled to the remaining one-third equally among them. If you are not survived by a spouse, then your estate will go to your "next-of-kin". The guiding principle in establishing "next-of-kin" is based on degrees of blood relationship, giving preference to all descendants over ancestors and others. If you are survived by children, these are your next of your kin and they share equally. (The children of a predeceased child take that predeceased child's share). If you are survived by grandchildren only, they share everything equally. If you are not survived by children or grandchildren or great-grandchildren then your parents are your next of kin. If you are not survived by children, grandchildren, great-grandchildren or parents, then your brothers and sisters share equally as your next of kin. If you are not survived by children, grandchildren, great-grandchildren, parents or siblings, then your nephews and nieces are next entitled. Often, the costs and time involved in tracking down "next-of-kin" is considerable. The whole process can be tedious, difficult and frustrating.

A Will is especially important for anyone with young children or a child of any age with a special need. It is also very important for someone who is the main carer of an elderly or dependant relative to make a Will. If you have young children, then

you should make provision for what happens to them in the event of your untimely death. You may nominate Guardians and give them responsibility for the daily and long term care of your children and for making sure that your children are properly looked after. You may also nominate Trustees to take care of and invest your assets until your children are older. This is of particular importance in the case of one parent families or unmarried parents living together. Nominating guardians and trustees in such cases is invaluable.

While children cannot inherit until they reach the legal age of eighteen, many parents consider this too young, particularly if the inheritance is of a significant size or carries a significant responsibility. The trustees may be given power to hold the property in trust until the children are older but with power to release the property or part of it earlier if the trustees deem it appropriate. You can decide exactly how and when the transfers will operate under the provisions of your Will.

Another instance where it is particularly important to make a Will is where two people reside together as a couple but are not married to each other. If in such a case one dies without a valid Will, then the surviving co-habitee inherits nothing (unless they are already joint owners of the property). On the other hand, if a married couple are separated but not divorced and one dies, the survivor could end up inheriting everything and this might be contrary to what the deceased would have wished for.

Sometimes people open joint Bank accounts with the intention that the joint account holder will get what is in the account when the other party dies. This can often lead to a dispute unless the intention is clarified. Where a joint Bank account is held with a spouse or child, it is presumed that the spouse or child will be fully entitled to the money on the death of the other party. If however a joint Bank account is opened with some other relative or friend, that legal presumption does not exist. The owner of an account may suffer from some physical disability or may be elderly and he or she may open a joint account with a friend or relative so that the friend or relative could operate the account on the owner's behalf. The owner may not intend the friend or relative to get what is in the account on death. The intention of the account holder would have to be established and a very simple way of letting that intention be known would be in a Will.

A Will has no effect until the person who made it dies and it may be revoked or altered or re-made any number of times (provided the person making it is mentally capable).

A Will should always be kept in date by reviewing it on a regular basis and particularly as your own circumstances change, for example on getting married, on the birth or adoption of a child or grandchild, on the death of someone mentioned in the Will, on acquiring new property or in the case of a substantial increase in the value of your existing property.

Another good reason to make a Will is to protect your estate from Inheritance Tax. It is possible to make your Will in such a way that "the Taxman" gets nothing. Under the current regime, children and parents are exempt from Inheritance tax up to a total of €335,000.00. Brothers, sisters, nephews, nieces, grandchildren and grandparents have an exemption up to €32,500.00. Everyone else has an exemption

limit of €16,250.00. If, for example, you leave €30,000 to your first cousin, he will pay tax at 33% of the excess over his exemption. He will therefore pay €4,537.50 Inheritance tax. If, on the other hand, you leave the €30,000.00 to your first cousin and his wife, no Inheritance tax will be payable as between them they have a total exemption of €32,500.00 (i.e. €16,250.00 each).

We often find that people postpone making a Will because they are not fully sure of what they want to do, or because they feel they have not much to leave. In many cases, the Will is never subsequently made and the loved ones are left to sort everything out. If you are over eighteen years of age, you should have a Will.

To make a successful Will is neither difficult nor expensive. One day, its existence could make such a difference.

The content of this leaflet is provided for general information purposes only, does not constitute legal or other professional advice and does not form the basis of a contract, either express or implied. Whilst every care has been taken in the preparation of the content, any law referred to is subject to change and may have changed between the time of publication and when you read it. We are not liable for any errors or omissions in the content or for any actions or non-actions taken in reliance thereon and we recommend seeking legal advice to interpret and advise on any aspect of the law.

May 2009 (Revised October 2019) Wolfe & Co. LLP Solicitors
Market Street, Skibbereen, Co. Cork - web: www.wolfe.ie
Tel: 028-21177, fax: 028-21676, e-mail: info@wolfe.ie