

A Guide to making a Will in Ireland



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INTRODUCTION

This E-Guide has been compiled by us to give you an overview and some insight in relation to the process of making a Will in this jurisdiction. It will hopefully give you a better understanding of what a Will is and why it is important to have one in place. Making a Will can sometime be a difficult process given that it forces us to confront the fact that there will be a time when we will not be here to care for our family and loved ones. A relatively small amount of time spent on putting a Will in place can offer significant peace of mind in this regard.

WHY DO I NEED A WILL?

Your Will sets out the provisions you wish to make to ensure your family and loved ones are properly provided for after your death. If you do not have a Will in place on your death you lose control of how your estate is distributed under the rules of Intestacy.

There is an assumption that in the event that a husband, wife or civil partner passes away their entire estate will automatically pass to their spouse/civil partner. This is not always the case and the default intestacy situation can cause issues and complications particularly when young children are involved.

In addition opportunities for tax planning/reliefs (i.e. dwelling house, business relief) will be lost in the event that a properly drafted Will has not been put in place.

HOW MUCH WILL IT COST?

This will depend on the complexity and scope of the provisions contained in your Will. In a lot of cases a Will can be straight forward (i.e. everything to a husband or wife) and we will charge a very reasonable fixed charge for such a Will. However in other cases some work will be required to ensure that your Will is structured efficiently for tax purposes or appropriate provision is made for minor or disabled children.

CAN I AMEND MY WILL AFTER IT IS MADE?

Yes, a Will can be amended or revoked at any time prior to your death on the assumption that you have not lost capacity.

WILL THE CONTENT OF MY WILL BE CONFIDENTIAL?

Yes, no one is entitled to know the content of your Will or even if you have made a Will. We would advise that the persons you have identified as executor/trustees be approached prior to making your Will and asked if they are willing to take on the role.

IS THERE ANYONE I MUST PROVIDE FOR UNDER MY WILL?

As opposed to some foreign jurisdictions where there are forced heirship regimes in place there is little by the way of restriction under Irish law in relation to who must be provided for under your Will.

A spouse (husband/wife) or civil partner is entitled to a legal right share of your estate and if provision is not made under the Will this right can be enforced independently which will undermine or override the provisions made under the Will. Although a child is not entitled to an automatic share of their parent's estate they do have the right to make a claim against the estate on the grounds that their parent has failed to make proper provision for them under their Will.

Under the provisions of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 in certain cases a co-habitant will also have the right to make a claim against your estate if provision has not made for them under your Will.

WHAT INFORMATION DO I NEED PRIOR TO MAKING A WILL?

A sample questionnaire is furnished at the Appendix at the end of this guide which sets out the information that a Solicitor will require prior to making your Will.

BY WAY OF AN OVERVIEW YOU WILL NEED TO IDENTIFY THE FOLLOWING;

- Who will administer your estate and handle your affairs (your executors/trustees) and in the case of minor children who will be charged with taking care of them (guardian).
- Who will your beneficiaries be?
- What are your assets and liabilities?
- Any factor/s which may have an impact on your estate (child from previous marriage/former spouse/partner)

WHY DO I NEED A SOLICITOR TO MAKE MY WILL?

To ensure that the strict rules surrounding the formalities and execution of a Will are adhered to. A Solicitor who specialises in Will drafting will also be able to guide you in relation to issues such as tax planning and the inclusion of Will trusts.

DO ALL OF MY ASSETS PASS UNDER MY WILL?

No, only assets held in your sole name and assets held jointly as 'tenants in common' will pass under your Will. Any property held by you and another person jointly as 'joint tenants' will

pass to the surviving joint tenant by way of survivorship. Jointly held bank accounts will usually pass to the surviving holder, however this is not always the case and the opening mandate signed by the account holders at the time the account was set up should be checked to ascertain what the intention of the parties was. In some instances a bank account may be held in joint names for convenience purposes (i.e. an older person and a younger relation). If this is the case the proceeds of the account can pass back to the deceased's person's estate. In a case of simultaneous deaths jointly held assets will be divided equally between the joint owners with each share passing under their respective Wills.

Other assets such as Credit Union accounts will usually pass outside your estate to a named beneficiary by way of Nomination etc.

WHAT ABOUT PROPERTY/ASSETS HELD ABROAD?

The general rule of International Succession law is that that law of your domicile (your home country or where you permanently reside) governs the administration of your real property in that country and your worldwide moveable property (i.e. cash, shares etc). Whereas the law of the place where immovable property (real property) is held governs the administration of immovable property.

If you own property abroad you should make a Will in the jurisdiction in which it is held. You should also ensure that you do not revoke the foreign Will when making your Irish Will and confirm that your Irish Will applies to all assets excluding the foreign property.

If you feel the time is right to make your Will or you have any queries in relation to making a Will please feel free to contact us at [01-6684366](tel:01-6684366) or info@johnnoconnorsolicitors.ie.

APPENDIX
-SAMPLE WILL QUESTIONNAIRE-

1. PERSONAL DETAILS

Your full name

Your Address.

Have you made any Previous Wills, if so where are the held

Your Occupation

What is you nationality/tax residency/domicile

2. MARITAL STATUS/CHILDREN

Are you:

a. Married/Civil Partner

b. Single

c. Divorced

d. Separated

e. Widowed

f. A deserted spouse.

FULL NAME OF YOUR SPOUSE/CIVIL PARTNER IF MARRIED/IN A CIVIL PARTNERSHIP:

If single do you co-habit with anyone and if so how long have you co-habited.

DO YOU HAVE ANY CHILDREN? IF SO, ARE THESE CHILDREN:

Children of your spouse/Children of a previous marriage/Non marital children

WERE YOU PREVIOUSLY MARRIED, WIDOWED OR DIVORCED?

Do you wish your spouse/civil partner to benefit under his Will and if so, to what extent?

DO YOU WISH TO BENEFIT YOUR CHILDREN UNDER YOUR WILL?

If you are divorced did you obtain an Irish or a foreign divorce? In the case of a foreign divorce, where was that divorce obtained? Have to your knowledge any Orders been made under the said decree blocking mutual succession rights between you and your previous spouse.

If you are legally separated has a decree of judicial separation been obtained or alternatively a Separation Agreement been entered into? Have to your knowledge any Orders/provisions been made under the said decree or agreement blocking the mutual succession rights between you and your spouse.

3. YOUR EXECUTORS/TRUSTEES/GUARDIANS

Name & Address of Your Executors

Name & Address of Your Trustees

Name & Address of Testamentary Guardians (for any minor children)

4. YOUR ASSETS/LIABILITIES

Please Furnish Details of the following;

Property and Contents:

Shares:

Bank Accounts:

Joint Property:

Settled Property:

Pension Scheme Benefits:

Section 60 Policies

Life Assurance Policies:

What are your main liabilities (mortgage, term loan)?

5. LEGACIES UNDER YOUR WILL

Do you wish to leave any cash legacies under your Will?

If to more than one beneficiary will they take as joint tenants or tenants in common?

In the event of the intended beneficiary's death do you have an alternate beneficiary in mind?

Do you wish to leave any cash legacies to charity?

Do you wish to leave any of your personal property to a specific person?

6. THE RESIDUE/REMAINDER OF YOUR ESTATE

Who do you wish to leave the residue of your Estate to, if more than one person will to one they take as tenants in common or joint tenants?

7. TRUST PROVISIONS

Do you require a trust to be established under the terms of your Will?

What special powers should be given to the Trustees? (for example)

- Power to apply income for the benefit of the beneficiaries of the trust.
- Power to accumulate the income
- Power to run a business
- Power to borrow and mortgage
- Powers of investment
- Powers to insure/lend

8. TAX PROVISIONS

Have you made gifts to beneficiaries who you intend to benefit under your Will and furnish details of same?

Has to the best of your knowledge any beneficiary under your proposed Will received prior gifts/inheritances from any other person?

Do you own any business or agricultural assets?

Name & Address of your accountant, tax advisor, estate agent/valuer



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