

HOW TO MAKE A WILL – STEPS INVOLVED

Why make a will?

The benefit of making a will is that you can decide how your assets are distributed on death rather than having the law of intestacy decide what happens to your property. A will can ensure that proper arrangements are made for your dependents and that your wishes are honoured (subject to right of spouses and children). You may by your will dispose of all property which s/he is beneficially entitled to at the time of his/her death. The word property herein includes both real (e. g. Land, buildings etc) and personal (e. g. cash, jewellery etc) property. You are generally free to dispose of your assets as you wish, however, but the law does provide some degree of protection for spouses and children. This should be borne in mind when deciding how to distribute your belongings.

Are there any requirements to be met before I can make a will?

A person making a will must be of sound disposing mind. In the eyes of the law a person must be mentally capable of making a valid will. It is a person's mental conditions at the time they make the will which is relevant. There is a presumption of soundness of mind and any person who wishes to challenge a will claiming that the person making the will (known as the Testator) was of unsound mind must prove that this was the case. The elements required when making a will are: 1. That the person making the will knows that s/he is making a will. 2. That s/he is capable of knowing the nature and extent of his/her estate. 3. That s/he be able to give consideration to those persons who might be expected to benefit from his/her estate and decide whether or not to benefit them. In order to make a will you must also be over 18 years of age or have been or be married.

Can I dispose of assets held jointly with other persons?

You may not dispose of property in a will which you do not own. In this regard difficulties can often arise if you hold assets in joint names with anybody else. This could comprise a joint Bank account or other property in which you are co-owner. These could be held as joint –tenants so that on your death the account/property passes automatically to the survivor/s or as tenants in common so that on your death your respective share passes as directed under your will. If you open a joint bank account with a spouse or child it is presumed that either one of you will be fully entitled to the money in the account when the other dies. This presumption may be rebutted only where it is clear that the owner's intention was not be benefit the other party for example where a person with a disability opens a joint bank account with a relative purely to for convenience purposes.

How is the family home dealt with?

If the family home is held by both spouses as joint tenants, the surviving spouse automatically inherits the deceased spouse's interest. In the case of an unmarried couple where the family home is held as joint tenants, the surviving partner automatically inherits the deceased partner's interest but may be liable for capital acquisitions tax unless they qualify for relief from capital acquisitions tax. If the family home is not bequeathed to a surviving spouse they may require that the family home be given to him/her in satisfaction of the legal right share or the share on intestacy. If the family home is worth more than the legal right share set down by law then normally the spouse would have to pay the difference into the deceased's estate. However, the surviving spouse may apply to the court to have the dwelling house given to him/her either without paying the difference or by paying such sum as the court thinks reasonable. The court may make such an order if it thinks that hardship would otherwise be caused either to the surviving spouse or to a dependent child.

How do I make sure my young children are properly provided for?

When making your will you should give directions for the care of children under the age of 18 and how they are to be provided for. Unmarried couples should also ensure that they decide who is to have custody and guardianship of their children in the event of one of them dying. A Guardian is the person who takes over the role as parent in rearing children under 18 years of age. Generally a trustee is appointed to look after the assets in your estate. Your Executor could also be your Trustee. You should ensure that your Trustees have enough powers to allow them to be flexible in deciding what maintenance and other payments should be made for the benefit of beneficiaries who are under the age of 18 year or who have a mental disability. Your will should provide that your estate will be divided as per your requirements between your children when they reach a specified age. You can arrange for them to receive an income from the estate from a certain age onwards e. g from 21 years of age. Alternatively you can set up a discretionary trust for your children until the youngest reaches the age of 18. This provides your Trustees with full power to apply capital and income at their discretion for the benefit of your children. It is up to the Trustees to decide how much each child will receive. A discretionary trust can be useful where beneficiaries are young or suffer from a disability.

Is it possible to change or cancel a will?

Yes, a person may change/ revoke a will at any time prior to death. Generally, when a person makes a new will all former wills are automatically revoked. A will is also automatically revoked when a person marries unless they made a will in contemplation of marriage

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