PENSIONS
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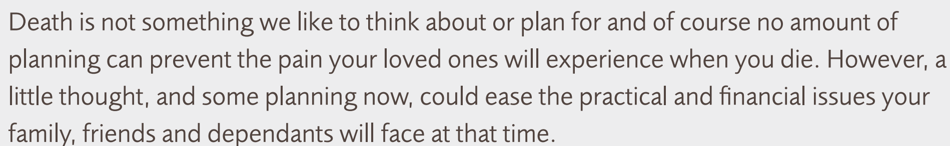
Irish Life

MAKING A WILL

A GUIDE TO HELP YOU



Death is not something we like to think about or plan for and of course no amount of planning can prevent the pain your loved ones will experience when you die. However, a little thought, and some planning now, could ease the practical and financial issues your family, friends and dependants will face at that time.

Irish Life does not provide legal or tax advice, however we have designed this booklet to highlight the importance of making a will. While making a will is normally straightforward, it is recommended that you take professional legal advice. The information in this booklet is not intended to cover all the legal issues that might be important for you and it does not represent legal advice. A solicitor can provide advice on all legal aspects, taking into account your wishes as well as your financial and family circumstances.

SECTION 1

MAKING A WILL

WHY MAKE A WILL?

Making a will is the only way you can be absolutely certain your wishes will be carried out after you die. You choose who gets what.

A will allows you to appoint someone trustworthy and capable to sort out your affairs after you die. You choose an 'executor' who takes on this responsibility.

A valid will can save time and money for those left behind.

If you have young children, you can choose a guardian to look after them if you and your husband, wife or partner die together. You can also appoint a trustee to manage the financial side of things for the benefit of your children.

Making a will automatically involves a checklist of your assets and liabilities. This can give you a good idea of whether or not you have made adequate financial arrangements for your dependants. Will they have enough funds to manage financially over the long term? Do they have immediate access to money in the short term or is everything in your name?

A will can play an important role in reducing any inheritance tax your beneficiaries may have to pay by taking advantage of certain reliefs and allowances.

ESSENTIAL FOR PROPERTY OWNERS

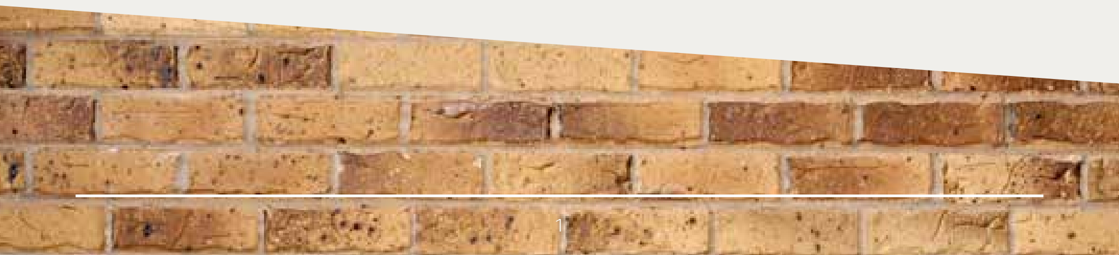
If you have bought a property, it's almost certain that your solicitor told you to make a will. This is excellent advice, but is often forgotten or ignored in the excitement of becoming a homeowner.

Your home is probably your most valuable asset - even taking into account any mortgage you still have! If you die, the mortgage will be paid off, assuming you have appropriate mortgage protection cover.

NOT ONLY BRICKS AND MORTAR

Whether you own a home or not, you are likely to have assets which you will want to pass on when you die. Do you own a car? Do you have savings, for example a bank, building-society or post-office account? You may have other investments, life insurance or benefits from a pension plan, that will be paid to your 'estate' when you die.

What about personal items, jewellery, furniture and art, that have a sentimental as well as financial value?



A MUST FOR ALMOST EVERYONE

If you do not have a will can you honestly say that you know what will happen to your assets if you die?

What if you're single with no dependants?

Even if you are married, what would happen if you and your spouse or civil partner died together?

If you own property with a friend or partner, do they automatically inherit your share if you die? Do you automatically inherit their share?

Making a will

- To make a will you must be 18 or over or married, and be of sound mind (have full mental capacity and understand what you are doing).
- Your will must be signed or "marked" in front of two witnesses. A witness cannot be someone who will benefit under your will, or the spouse or civil partner of anyone who will benefit. A witness must also be over 18 years of age. The witnesses do not have to read your will or know what it contains - they are just witnessing the fact that it is your signature.
- You can change a will or withdraw it at any time before you die, as long as you are still of sound mind.
- If you already have a will, you should review it as your personal or family circumstances change.
- If you are making a will or changing an existing will, you should always use a solicitor who will make sure the job is done properly and legally and that your wishes will be carried out.

LEGAL CONSIDERATIONS

WHAT HAPPENS IF YOU DON'T HAVE A WILL?

If you die without a will, you are said to die 'intestate' and the law (The Succession Act 1965) says who is entitled to all your possessions.

If you are married or in a civil partnership, with no children, your spouse or civil partner gets everything.

If there are children, your spouse or civil partner gets two thirds of your estate and the other third is divided equally between your children. Your spouse or civil partner is entitled to claim the family home as part of their entitlement.

If you die, leaving no spouse or civil partner, your entire estate is divided equally between your children. If one of your children has died before you, leaving children, those children (your grandchildren) will take their parents share.

If you die, without a spouse, civil partner or children, your parents inherit everything. If only one parent is living, they inherit everything.

If you die, leaving no surviving spouse, civil partner or children and your parents have died before you, your estate is divided equally between your brothers and sisters.

If any of your brothers or sisters have died before you, leaving children, those children (your nieces and nephews) take their parents' share.

If you die, and none of the family members shown above are alive, the Succession Act contains detailed rules for identifying your 'next of kin' (your closest 'blood' relatives) who will inherit your full estate.

IF YOU HAVE A WILL

As well as setting the rules when someone dies without a will, succession law covers many issues relating to wills and entitlements on death.

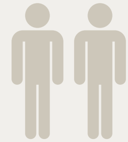
For example, the Succession Act gives your spouse or civil partner a legal entitlement to a share of your estate, even if you leave a will.

No matter what you put in your will, your spouse or civil partner is entitled to receive at least one half of your total estate, if you die and do not have any children.

If you leave children, your spouse or civil partner is still entitled to one third of your estate and may claim the family home as part of this entitlement.

If you leave a will, your children do not have any specific legal entitlement to a share of your estate. However, children can make a claim, through the courts, for a share in your estate if they can prove that 'you did not make proper provision for them in accordance with your means'.

"Children" here means all your children including adopted children and children from relationships where you were not married.



MARRIED, SEPARATED OR DIVORCED

It is important to note that the inheritance rights provided under the Succession Act already outlined currently only apply to a legal spouse or civil partner.

The law as it stands at the moment does not give any automatic entitlement to a co-habiting partner. In these circumstances, it's really important to make a will, otherwise your assets may not go to the person you really care about.

If you are divorced, your ex-husband or ex-wife will have no entitlements under the Succession Act, as they are no longer your legal spouse or civil partner. You may, of course, have to provide for an ex-husband or ex-wife as part of the divorce settlement.

If you are separated but not divorced, your spouse or civil partner is still your legal spouse or civil partner, and could be entitled to claim a share of your estate. However, they may have agreed to give up this entitlement as part of the separation agreement - assuming there is a legal agreement. You may need to check and you should get professional legal advice in relation to your options if this situation applies to you.

OTHER RELATIONSHIPS

Civil Partners, Cohabitants and Common Law relationships

Our society today is changing. More and more people are living together in 'non-married' situations.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 introduced new definitions for, and extended certain rights, to these relationships.

CIVIL PARTNERS

The Act defined civil partnership as a relationship between two individuals of the same sex, neither of whom are married or in an existing civil partnership or under the age of 18.

The legislation changed the Succession Act which we referred to already and gave registered civil partners similar rights to those of a legal spouse on death, subject to the financial needs of any children being met.

COHABITANTS

A cohabitant is one of two adults, who can either be of the same or opposite sex, who live together as a couple in an intimate and committed relationship.

A qualified cohabitant is defined as an adult who was in a relationship of cohabitation with another adult as a couple for a period of two years or more, where they are the parents of one or more dependant children, and of 5 years or more in any case.

The inheritance rights given to civil partnerships under the Succession Act have not been given to cohabitees, so couples who are not married, no matter how long they have been living together, have no automatic right to their 'partners' estate in the event of death.

It is also worth noting that any inheritances or gifts they do receive from their 'partner' will be subject to Capital Acquisitions Tax (see Section 3).

Your solicitor should make sure any particular issues to do with the Succession Act are dealt with when drafting your will.

PROPERTY

When you buy property jointly with someone else, it is important to be aware that legally the property can be held 'jointly' in one of two ways.

1. **'As joint tenants'** - this is the most common and it is the way a married couple or partners would normally own their own home.

   What this means is that if one of the joint owners dies, their share of the property automatically passes to the surviving owner. Property held in this way is not governed by the rules of the Succession Act and does not have to be dealt with in a will.

2. **'As tenants in common'** - this method of joint ownership would normally be used where two people buy an investment property together or two or more friends buy a house together.

   If property is owned jointly in this way, each person's share is totally independent. If one of the joint owners dies, their share goes to their estate and will pass on to the people who benefit in their will. If there is no will, the property will pass based on the rules of the Succession Act.

   Holding property as joint tenants, as described above, is one way of making sure that it will automatically pass to the joint owner.

Don't worry about remembering the legal names we have used - but make sure you know exactly who will be entitled to your share of any jointly-owned property if you die. If you're not sure, talk to your solicitor

The following examples highlight the problems that can arise in everyday situations when someone dies without a will.

1 SINGLE

Amanda is aged 30 and single. Amanda has two brothers who are married with children. Her mother, who is a widow, is aged 78.

Amanda works for a large private company and is a member of the company pension plan. She thinks the company pension scheme provides some payment if she dies before she retires. She also owns her own apartment. There is a mortgage on the apartment, but this is covered with a mortgage protection plan that will clear the loan if she dies or suffers certain specified illnesses. She also has some savings and a bank account which is overdrawn from time to time.

Amanda has not made a will. Amanda dies.

As Amanda has no will, her mother inherits all of her assets and maybe an inheritance tax bill. This may be perfectly acceptable, but what if Amanda had other ideas?

Perhaps she would have liked to leave something to her brothers' family, to a favourite niece, nephew or godchild when they reach 18.

Maybe she wanted to give something to a friend - even if it is only a much-admired piece of jewellery.

Who will apply to the court to 'administer' her estate?
Would her mother take on the job?
Would one of her brothers?
Which brother?
Will they employ a solicitor?

Without a will nobody will know - they are not likely to ask!

2 MARRIED COUPLE

Connor and Anne are married. They own their own home jointly, with a mortgage. Connor runs his own successful business and has, what he believes to be, a fairly good pension. He recently took out a life insurance plan that covers both death and serious illness. They also have some savings. Anne works in the home and looks after their two children, Mark aged 4 and Rebecca aged 2.

Connor and Anne have not made a will, as they understand that if anything happens to one of them, the other will get everything. Connor read recently that passing on an inheritance to a spouse or civil partner is exempt from inheritance tax - so he has no worries about that.

Connor and Anne were killed in a car crash coming home from a night out to celebrate their anniversary.

The children get everything, but:

- who will apply to the court to administer the estate?
- who will apply for guardianship of the children, who will manage things legally, including financial matters, for the children?
- is there likely to be a dispute over responsibility between Connor's and Anne's family?

Are there enough funds to provide for the children over the next 20 years?

Where will the children live?

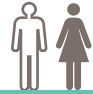
Will the family home be sold?

What will happen to Connor's business - will it be sold or managed by someone who will eventually hand it over to the children in about 20 years?

Will there be an inheritance tax bill?

These are just some of the issues that could be dealt with now, by making a will and reviewing your plans and finances.

3 SEPARATED OR COUPLES LIVING TOGETHER



Deirdre became separated from her husband many years ago - he literally walked out and there has been no contact for many years. She now lives with her partner John in a home they bought together last year.

Deirdre has a daughter, Anna aged 7, from her marriage. However John and Anna consider each other as father and daughter.

Deirdre has some life insurance that she took out to provide for her daughter in case anything happens to her. She also has a few savings. Neither Deirdre nor John has made a will.

What happens if Deirdre dies?

Depending on how the family home is owned, John may automatically inherit Deirdre's share of the family share of the family home if joint tenants. He may not. If he does, he may have to pay inheritance tax.

John has no legal entitlement to any other assets.

As there is no will, the Succession Act says that Deirdre's ex-husband has an automatic right to two thirds of her assets.

This is assuming that her ex-husband has not given up this right as part of a separation agreement. In certain cases, a spouse or civil partner who is 'guilty of desertion' can lose this right.

Her daughter Anna also has rights, either to a third, or to everything if the ex-husband is found to have no entitlements.

The issues of a guardian for Anna, where she will live and who will manage her money or assets, will all need to be decided - by applying to the courts.

Many of these potential problems could be avoided, or dealt with according to Deirdre's wishes, if she had talked to a solicitor about making a will.

A LIVING WILL (ENDURING POWER OF ATTORNEY)

A will means that your affairs are dealt with, in line with your wishes, when you die. A will has no effect whatsoever until after your death.

What if you have an accident or become ill and cannot manage your own affairs while you are alive? If this happens, your husband, wife or a family member may decide to apply to the court to have you made a 'ward of court'. The court will then appoint someone to manage your affairs.

A 'living will' allows you to appoint someone to look after your affairs if you are no longer able to do it yourself. It is normal to appoint at least two people to this job - who will act jointly in all decisions. The people you choose have absolutely no authority or power whatsoever until you become unable to manage your affairs. Even then they have to go through a detailed legal procedure to take control and must produce medical evidence to show that you do not have the mental capacity to manage your own affairs.

If you are talking to your solicitor about making or reviewing your will, you should also ask about 'an enduring power of attorney' and whether this might be appropriate for you.

THE ROLE OF A PERSONAL REPRESENTATIVE

When you die, your 'personal representatives' take over responsibility for sorting out your affairs. Your personal representative is the 'executor' who you choose in your will. If you don't have a will 'an administrator' is appointed by the court to do this job. Usually a spouse or civil partner, partner, or close relative, will apply to the court for this role.

The personal representative's job is to gather all your assets, pay off any loans or debts, including funeral expenses, and pass what's left to beneficiaries in line with your will, if you have made one. He or she is also responsible for sorting out any tax issues you may have, to pay any income or capital gains tax due, or to reclaim any tax which you may have overpaid.

They also provide details of all your assets and your intended beneficiaries to the Revenue Commissioners.

SECTION 3

INHERITANCE TAX

The beneficiaries of your estate may have to pay inheritance tax on anything they receive from you. They will have to pay this normally within a relatively short time after your death. Everything is taken into account including:

- the family home;
- a holiday home or an investment property;
- the value of any investments you have, including bank accounts, savings plans, your life insurance and pension benefits;
- all personal property such as jewellery;
- the car;
- furniture; and
- house contents.

Anything you leave to your husband, wife or registered civil partner will not have inheritance tax charged on it.

Others can receive a certain amount tax-free. The amount varies depending on their relationship to you and is also affected by any other gifts or inheritances they may have received in the past. The tax-free amounts will change from time to time and you should consult your financial adviser or solicitor who will be able to tell you the up-to-date amounts.

If the total amount of gifts and inheritances the person receives is greater than this tax-free amount, the additional amount is taxed.

You should be aware that a partner, or a friend, only qualifies for the lowest threshold.

They will have to pay tax on the value of anything they receive above this limit.

NOTE:
There are some reliefs available that may help to reduce the tax bill.

DWELLING HOUSE RELIEF
(OR FAMILY HOME RELIEF, AS IT HAS BECOME KNOWN)

The family home may be exempt from tax if the person who inherits it has lived there for three years before they inherit it and continues to live there for six years afterwards. And, at the time they receive the inheritance, they must not own any other 'residential property'. Even owning a share in another residential property means this relief will not apply.

Because of the reference to 'family home', this relief is often misunderstood. Consider the following example.

Philip and June are married. They have made a will leaving everything to each other. When both Philip and June die everything will pass to their daughter Mary, who lives with them. As well as the home (their most valuable asset), they own a holiday cottage in Kerry, plus some savings and personal property.

Philip and June believe that Mary will not have to pay much inheritance tax, as they know the family home will not be liable to tax.

This is not correct. Mary could have to pay inheritance tax on the family home, as Mary will also become the owner of another 'residential property' (the cottage in Kerry).

This relief can benefit children who are living at home or partners who have lived together for more than three years, as long as the only residential property involved is the family home!

BUSINESS AND AGRICULTURAL RELIEF

The value of a farm or a business is reduced by 90% for inheritance tax if certain conditions are met. The conditions for these reliefs are complicated and you should talk to an expert if you own your own business or farm and are worried about inheritance tax when you die.

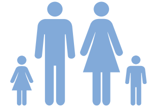
LIFE ASSURANCE

To encourage people to plan ahead and to have cash available to pay inheritance tax when they die, relief is available on certain life assurance plans. If you take out a life assurance plan, specifically for inheritance tax, your beneficiaries will not have to pay inheritance tax on the funds paid out on the plan – as long as they are actually used to pay the tax bill.

Tax is a complicated subject. This gives only a brief guide to some of the inheritance tax rules applying in January 2016.

These rules may change in the future. You should discuss your personal situation and the likely effect inheritance tax will have on your plans with your tax or financial adviser.

PROVIDING FOR YOUR FAMILY



Do you have a spouse, civil partner, children or anyone who financially depends on you? Would they be left with enough to live on if you died tomorrow?

Do you have a mortgage? Will it be cleared if you die or suffer a serious illness? What funds will be available to your family from life insurance plans; savings or investments; from a pension plan?

HOW WILL I KNOW HOW MUCH IS ENOUGH?

The current social welfare pension for widows and widowers provides only a limited income.

As a general rule we estimate your family will need to have a lump sum of about 10 times your yearly income if you die - if you are the main breadwinner. You may need slightly less to replace a second income. It is also important to make sure the family will be able to meet extra costs and ongoing expenses if a spouse or civil partner working in the home dies.

We saw earlier that access to assets and cash can be a problem if you are seriously ill and cannot manage your own affairs. An enduring power of attorney can overcome the legal difficulties, but these will be insignificant if your dependants don't have enough money to live on and to cover medical expenses. The financial strain on a family following a serious illness can be even greater than after a death.

If you really want to get your affairs in order, now might be a good time to check that your family are financially protected if you die or become seriously ill.

Your need for financial protection will depend on your age, income, family circumstances, number and age of dependants, what assets you already have and so on. You should contact your financial adviser or broker if you want to discuss any aspect of financial planning.

SECTION 4

PUTTING YOUR AFFAIRS IN ORDER

1. Consider and make a list of all of your assets and liabilities.
2. Meet with your financial adviser or broker to assess your protection needs.
3. Make an appointment with your solicitor

See a solicitor if you need to make a will or make changes to your existing will. You will need to choose an executor or executors. If you have young children, you should consider appointing guardians and trustees.

Make sure your partner or someone close to you knows you have made a will and knows where to find important documents including your will, deeds of the house, mortgage details and other financial information

This booklet is designed to give you some information on making a will and to outline some of the legal, financial and tax issues that can arise after your death. It is based on Irish Life's understanding of the current legislation but does not constitute advice and has not been based on the specific needs or circumstances of any individual.

Do not just rely on the information provided. You should get professional advice about your circumstances, and use a solicitor to make a will.

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