MAKING YOUR WILL WORK FOR YOU

DO MOST PEOPLE HAVE WILLS AND WHAT IS HAVING A WILL SO IMPORTANT?

Research indicates that 82% of people over 65 years have a will whereas just 51% of people between 45 and 64 and 26% of those aged 35 to 44 years have a will.

Many people underestimate the importance of making a will or many people put off thinking about the inevitable. Would you go away for a few months without leaving your keys with a neighbour or your children with a child minder? So why would you leave permanently without settling your affairs?

Making your will is essential if you want to make sure that your assets will be divided according to your wishes. People can quickly and discreetly arrange their affairs so that there are no disputes, hardships or delays for those they leave behind.

If you don't plan it, it wont happen. There is one certainty – we can last forever!

WHAT IS A WILL AND HOW DO YOU MAKE ONE?

- A will is a legal document detailing how someone's possessions should be divided after their death.
- The person making a will is called a Testator.
- A Testator may change or revoke a will at any time.
- In fact I would recommend that a person regularly review their will.
- A will must be signed and witnessed by two people otherwise it is not valid. Once it is signed properly and witnessed it becomes a legal document.

- It should be kept safely - In most cases people will leave the original will with their solicitor for safekeeping. If you do this it is advisable to tell the executor where the original will is kept. You can, if you wish, take the will away once it is signed and if you do it should be kept in a very safe place maybe a safe at home or in a safety deposit box.

- A will only takes effect after the death of the author.

The fact that a person has made a will does not prevent them from dealing with their property after the will is made.

So, for example, a person makes a will and in doing so leaves all the money in a particular bank account to a daughter. At a later stage this person decided they need that money and was concerned that it could not be spent because it had been left in the will to his daughter.

This is not the case – this person is entitled to do what they want with the money during their lifetime. The same applies for any other property be it a car, a house or shares.

WHY YOU SHOULD MAKE A WILL?

The author of the Will decides what is to happen to THEIR property after their death. If you do not make a Will, the law dictates that your property is distributed amongst your closest relatives.

In making a Will you are in control of how your estate is distributed you can structure your Will so as to avail of the most tax efficient way of dividing your estate. You can choose who is to carry out your wishes by appointing Executors.

Most importantly, parents of young children should make a Will to ensure that they have made provisions to appoint Guardians of their choice, ensuring that each child is properly provided for and that they have the right people in place to manage their assets.

WHY SHOULD YOU USE A SOLICITOR FOR WILLS?

There is nothing to say that you have to use a Solicitor to make a Will but it is advisable. A poorly drafted Will can be worse than having no Will at all. Wills are subject to very strict interpretation and this is for a very good reason – to prevent fraud.

Therefore, any error in wording could result in the Will taking on an entirely different meaning. Take "A" for instance, a spinster with five siblings, one of whom had predeceased her. "A" wished for her estate to be split five ways with her living siblings taking one fifth each and the four children of her predeceased sister taking their mother's share between them.

However, one slight error in the wording in the Will lead it to be interpreted that "A"'s Estate was instead to be split eight ways with her deceased siblings children sharing equally with her other siblings, which was not her intention. Or what about "B" who bought a "DIY" Will and filled in the blanks at home having leaving everything to her three children but had one of her children witness the Will?

The law is very strict – no beneficiary is permitted to witness a Will. The witnesses must be two people who do not stand to benefit. This meant that the child who witnessed "B"'s Will was not entitled to anything.

On the point of witnesses, it is also very important that both witnesses see the author of the Will sign their name to the Will for the Will to be valid and we are often required to produce evidence of this at a later stage.

TOP TIPS?

- First and foremost make a Will – for the sake of an hour or so with your Solicitor – give yourself the peace of mind of knowing you have left instructions for your loved ones.

- If you know what you want to do why delay – why not consider doing it now.

- Once you have your Will made make sure to review it on any major life events or in any case every five years.

- Don’t rush into a decision – in probate if you are going to take on the task of administering the estate yourself make sure you are confident that you can complete the task.

- If in doubt seek legal advice

HOW TO CHOOSE AN EXECUTOR OF YOUR WILL

Your executor carries out (or executes) the wishes set out in your will. Choosing the right person or persons is an important decision.

It should be somebody you trust and is up to the job. Ideally, it should be a job given to two people to act as co-executors.

SO, WHAT DOES AN EXECUTOR ACTUALLY DO?

Their primary task is to extract what is called a Grant of Probate.

When someone dies their assets are frozen and a legal mechanism is required to allow another person to unfreeze these assets and manage the estate left behind.

Probate or Administration is the legal term for a procedure that gives a person, chosen by you, authority to manage this estate.

Some assets, if jointly owned or nominated, can automatically pass to the joint owner or nominated party on death and the executor needs to be able to identify such assets.

For assets that will not pass automatically, an executor needs to go through a number of legal steps to get the Grant of Probate from the High Court.

To do this, they will need to be able to locate the Will.

In most cases the Will is held by the Solicitor that acted for the deceased person and the Executor will have knowledge of it.

It is advisable for anyone who makes a Will to let either the Executor or a family member know where the original Will is kept.

It is usually the Executor who makes contact with the Solicitor when the Testator (person who makes a Will) passes away.

The Solicitor will then make arrangements for the Executors to call for the reading of the Will.

After the meeting the Executors and the Solicitors will be on a fact finding mission to find out the assets and the liabilities of the deceased.

It is very helpful if the deceased has left a summary of assets, bank accounts and insurance policies with the Will as it can be a good starting point in the enquiries.

The details of the assets and liabilities of the Testator must be disclosed to Revenue. Once all enquiries have been completed the Inland Revenue Affidavit is prepared for the Revenue Commissioners. At the same time the Executor will complete the application forms required to issue to issue the Grant of Probate.

Once the application is submitted the papers will be considered by the Probate Office and, if everything is in order, the Grant of Probate will issue.

Once the grant has been obtained, the eExecutor now has a legal duty to adminster the estate in accordance with the law of succession and the wishes of the deceased as set out in their will.

They have the power to gather all of the property of the Testator and distribute it in line with the directions in the will.

So, for example, money in the Testators bank account can be withdrawn, shares can be sold and title to property (e.g. houses) can be transferred to the beneficiaries or sold depending on the instructions in the Will.

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