Making a Will

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WHAT IS A WILL

A Will is the legal document which sets out what is to happen to your property and possessions after your death. It is one of the most effective ways of ensuring that the assets you have worked hard to acquire for you and your family during your life, can be managed effectively after your death. A Will is something that should be an essential part of everyone's life. In a Will, you name as your executors, the people you want to take care of your affairs and give them the powers to ensure that they can do everything legally required to carry out your wishes.

It is important to have a valid Will so that family, friends, relatives or charities benefit in the way you would wish them to. However, you should also ensure that you have taken advice to avoid your estate being depleted by the payment of inheritance tax or nursing and care home fees.

It is often said that the two universals in life are death and taxes. Unfortunately recent years have seen the addition of a third factor - the cost of nursing and care home fees. For instance, if you suffered a stroke and required full time nursing care then unless you are in receipt of full state benefits, the nursing home fees would have to be paid from any assets you own. Even after death, recovery and payment of any such monies can be sought from your estate.

A Will can be very straightforward. For example, you can leave everything to your spouse or partner. It is normally sensible, however, to look further than this and to consider what would happen if your spouse or partner dies before you or at the same time as you. This is particularly important if you have young children.

This booklet provides a basic summary as to how to make a Will and discusses how you might put your affairs in order to minimise inheritance tax and nursing home fees. It also provides information with regards to the benefit of having an Enduring Power of Attorney which gives control to someone of your choosing to manage your affairs in the event of you suffering a stroke or some other debilitating disease or injury.

This booklet has been compiled by Cathal Murray, the firm's Principal and a practising solicitor, in order to provide initial guidance to clients. The aim is to use the firm's experience of drafting Wills and administering Estates to assist clients with the many legal and tax issues that could arise.

WHAT WILL HAPPEN TO MY ESTATE WHEN I DIE

If you have made a Will, the answer is easy. The people you have appointed (your executors) will carry out the instructions set out in your Will. They will pass your assets on to the people you have named as beneficiaries.

It is important that after your death your Executors have details of all your assets and know where to find bank books, shares/savings certificates, deeds, life insurance policies and all relevant financial information. We will furnish you with an Assets Log to deal with this after your Will has been signed.

It is essential that your Will is reviewed regularly to make sure that it still works in the best possible way. Your personal circumstances or those of your family may have changed. Tax laws change, many have altered significantly in the last few years.

After you marry, your existing Will automatically becomes ineffective. If you die without making a new Will, your spouse will inherit something, but your children, parents, brothers or sisters may also get a share under the laws of intestacy.

WHAT HAPPENS IF I DIE WITHOUT MAKING A WILL

If you don't leave a Will, the law decides how your property and other assets are divided. No account need be taken of your wishes. Distant relatives, or even the state, may benefit instead of those you would have chosen. Your estate will be shared out among your next of kin according to a strict order of priority called the 'rules of intestacy'. This means that people you may want to benefit from your estate, such as a partner to whom you're not actually married, may get nothing.

- If you have no children your spouse will be entitled to the first £450,000 of your estate and the balance will be distributed depending on whether you have parents or other relatives. If you leave a spouse and children, your spouse will be entitled to the first £250,000 of your estate together with a portion of the residue depending on the number of children you have.
- If you do not have a spouse, your estate will pass to your children. If a child of yours predeceases you, leaving children, then those children take their parent's share.
- If you do not have a spouse or children, your parents will inherit your entire estate. If both parents are deceased, then your estate is divided between your brothers and sisters (if any brother or sister dies before you and leaves children, then those children (nieces and nephews) take their parent's share.

Even if you have no family, it is surely better for you to decide who is to inherit your property. You may wish to thank your friends by leaving them something, or to benefit your favourite charities.

WHAT IF I AM UNMARRIED

If you and your partner have been together for some time but you have not made a Will, your partner does not automatically inherit everything belonging to you upon your death. The law defines a couple to be 'co-habiting' if you are living together and are not either married to each other or in a civil partnership. If you are considered to be merely co-habiting and therefore not legally related to your partner, it is essential to have made a Will if you want your partner to benefit in the event of your death. If you don't, then your partner may not benefit in the way you would have wished.

Similarly, there may be issues as to your involvement in decisions on medical treatment since a partner is not treated as the legal next of kin. A partner's opinion will not therefore be legally required in the event of a decision having to be made in regard to essential medical treatment such as continuing with life support.

If you and your partner have children it is especially important to make a Will. If you make a Will with the benefit of proper legal advice, it will greatly reduce the chance of any challenges or claims under inheritance legislation.

WHAT IS THE SIGNIFICANCE OF JOINT PROPERTY

If property is owned along with a spouse or partner, the Property can be held as 'joint tenants'. In that case the share of the deceased partner will normally pass to the survivor. It might also be held as 'tenants in common' in which case it will be dealt with in accordance with either the contents of the Will or under the rules of intestacy. This is particularly important if a couple is neither married nor in a civil partnership.

With bank accounts, it is not unusual to open a joint account for convenience (e.g. where the original account holder is elderly or immobile to enable a relative to pay bills) or for a specific purpose (e.g. to pay for the funeral). It is therefore important when opening such accounts to specify in writing whether it is intended that the surviving joint account holder is to keep the money or if you wish the balance in the account to form part of your estate and pass under the terms of your Will. You should take specific steps to ensure that your intention is perfectly clear as to what is to happen to the account on your death.

WHAT IF I HAVE NO CASH ASSETS

If your only asset is a house, business or farm and you do not have sufficient cash, you can leave the house to a particular beneficiary on condition that they arrange for cash legacies to be paid to others within a certain time period after your death. In the case of an elderly relative, you could consider leaving the house, business or farm to them for their lifetime and state in your Will what you want done with the property after their death.

WHAT IF I HAVE YOUNG CHILDREN

If you have children under 18 years of age, your Will should give clear directions for the care of those children and how they are to be provided for in the event of your death. Unmarried couples additionally, should ensure that each of their Wills clearly states who is to have custody and guardianship of their children if one of them dies. Most importantly, both married and unmarried couples should ensure that their Wills clearly state who is to have custody and guardianship should both spouses/partners die simultaneously.

- **GUARDIANS**

A Guardian is the person you select to take over your role as parent in caring for your children who are under 18 years of age. Guardians may be anyone of your choosing but you should consult with such a person before making them a Guardian.

- **TRUSTEES**

You can appoint a trustee to look after the assets in your estate; an Executor can also be a Trustee. Your Will should give your Trustees enough powers to allow them to be flexible in deciding what maintenance and other payments should be made to beneficiaries with a disability or under the age of 18 years.

- **PROVISION FOR CHILDREN**

You may wish your estate to be divided equally between your children when they reach a specified age. You can arrange for them to receive an income from the estate, possibly from 18 years of age. Alternatively, you may set up a 'discretionary trust' for your children *(see the section entitled 'What is a Discretionary Trust?')*. If the children are likely to stay with a relative, consider enabling your Executor/Trustee to advance money to the new household budget, including allowing for money for increased mortgage payments on a larger home to accommodate both families.

ENDURING POWER OF ATTORNEY (EPA)

A time may come when you are incapable of managing your property and financial affairs and will need someone to do this for you. Mental incapacity can happen to anyone at any time, possibly by accident or through illness, for example if you were to suffer a stroke or injuries sustained in a serious road traffic accident requiring full time nursing care. An Enduring Power of Attorney allows you to formally appoint a friend, your partner, relative or professional that will allow them to act on your behalf in the event that you are incapable of managing your property and financial affairs.

You can limit the power to certain parts of your affairs. For example, you may wish them to handle your money but you might want to exclude the sale of your house from their power or you can include a restriction that the power will only commence in the event that you suffer mental incapacity. You can cancel or amend the Enduring Power of Attorney at any time while you are mentally capable.

To become effective, all Enduring Powers of Attorney need to be registered with the High Court in the Office of Care and Protection, but registration is not required until the point where your attorney believes you are no longer capable of managing your affairs.

WHO SHOULD I APPOINT AS AN ATTORNEY

Because you are giving your attorneys such wide powers you must choose someone you can trust absolutely. You should normally appoint more than one attorney. You should choose someone with the skills to make the right decisions about your personal welfare. You might, for instance, appoint a family member who knows you well and someone independent, who can be objective. If the attorney you have chosen dies or becomes incapable or no longer wishes to act on your behalf you will need to appoint a new attorney.

WHAT IS A DISCRETIONARY TRUST

A Discretionary Trust is a type of trust in which a class of potential beneficiaries are selected. It gives the Trustees power to determine how much, if anything, each beneficiary should receive and when they should receive it. The person creating the trust does not decide in advance the precise extent of each beneficiary's entitlement. This type of trust is therefore a very flexible method of giving, as the gift can be adapted in accordance with changing circumstances. A Discretionary Trust can be useful where beneficiaries are young, have a disability, are elderly, where you wish to make provision for a dependant relative or for tax planning purposes for larger estates.

ADVANTAGES OF A DISCRETIONARY TRUST

- A Discretionary Trust can be useful where the person making the Will wants to benefit a wide group of people (for instance to include grandchildren, persons not yet born and future spouses) and would like to provide for some flexibility as to who should benefit or the amount they should be given.
- With a Discretionary Trust the Trustees are in a position to decide whether or not to distribute or withhold any income which is produced from the trust. For example, Trustees may decide to distribute a lot of income to a particular beneficiary in one year when his other income via employment is low and so his tax liability would be low.
- Trustees are also able to postpone any distribution thereby converting income into capital.
- Trustees are able to distribute the income wisely to benefit a larger group as opposed to one specific beneficiary. Again this has advantages in respect of tax depending on each beneficiary's situation.
- As each beneficiary of the Discretionary Trust only has the hope of receiving income or capital from the said Trust it therefore protects assets from a beneficiary's creditors.

INHERITANCE TAX

Inheritance tax may be payable in an estate which exceeds a certain value. There is a tax-free threshold which is set by the government every year. Inheritance tax is paid on the balance of the estate above that threshold at a rate of 40%.

We will be able to advise you how a properly drafted Will can help to reduce your inheritance tax bill. Bequests made to charities, including religious bodies, may be exempt from tax. Various other inheritance tax reliefs are available, for example, Agricultural Property Relief or Business Property Relief. If a gift is given during your lifetime then a small gift exemption can be claimed. The current Small Gift Exemption is £3,000 from any one person in any one calendar year. There are also further gift exemptions available on the occasion of a wedding. A lifetime gift can be a very effective measure for property that is likely to increase in value, although this may trigger a liability to Capital Gains Tax or Stamp Duty and professional advice should be sought from your Accountant.

HOW CAN THE IMPACT OF INHERITANCE TAX BE REDUCED

It is important to plan the passing-on of your assets so as to minimise the tax that your beneficiaries may have to pay. This involves:

Step 1 Considering the reliefs currently available to you and your spouse. This would normally involve us working closely with your accountant and independent financial advisor.

Step 2 Consider dividing up your property to use all available tax-free thresholds. This could involve transferring some property or other assets to your children or other relatives while you are alive.

Step 3 Consider establishing a fund to pay inheritance tax following your death. You may consider an insurance policy to cover any such Tax Liability.

WHAT SORT OF COMPLICATIONS CAN ARISE

Difficulties can arise if someone feels that they have not been properly considered in the making of the Will. This can be a spouse, children, other dependent relatives, a carer or someone who carried out work for the deceased without payment, on the understanding that they would inherit an asset after their death. For instance, someone may have been promised by the deceased that they would benefit in some way but there was no provision made in the Will or no Will was made, with the result that they are not entitled to anything.

Any of the above circumstances could result in a claim being made against your estate. A Caveat might be lodged which could result in the estate not being fully administered until the grievance has been dealt with, or a claim for dependency might be made. If any such claims are successful then the estate assets would be reduced by the amount awarded by the Court as well as the legal costs incurred. By taking the correct advice and carefully planning your Will, you can reduce the chances of such complications.

WHAT TO DO NOW

Before we meet to discuss your Will, please consider the following points. It may be useful for you to make some notes and questions which you can bring to the appointment whilst completing the personal details form at the end of this booklet.

- **Assets and Debts**

Make a list of your assets and debts. This will include your home, or your share of it and your furniture, car, antiques, jewellery etc. You should also list bank and building society accounts, with approximate balances and the value of any other investments, such as life assurance policies and pension benefits. Any money you owe, for example on a mortgage or any hire purchase agreements, or credit cards should be on a list of debts. It is important that we know whether or not any mortgage will be covered by life assurance in the event of your death. Consider at length who you should leave your home, other property, business, land, house contents, jewellery, family heirlooms and machinery to: consider the possibility that some relatives/friends may be disappointed and think about any explanation you would like your Executors to give.

- **Nearest Relatives**

Set out particulars of your immediate family, i.e. the names of your spouse, civil partner, children, dependants and your closest living relatives. We need to know this in case you do not include them in your Will so as to avoid a potential challenge to it.

- **Executors**

An advantage of making a Will is that you get to choose the persons best suited to take on the role. It is very common to appoint a spouse or partner as executor but it may be useful for a relative, family friend or professional to act instead, or in addition. The partners at James McNulty & Co are always happy to accept appointment as executors. Whoever is dealing with your affairs after your death will probably need to employ solicitors to help them and it is often effective for the solicitors themselves to be the executors.

- **Guardians**

If you have children under the age of 18, you can appoint guardians to act in the event of your death. If your partner does not have legal parental rights for your children, you may wish to appoint him or her as guardian. You may also wish to appoint guardians to care for your children if you both die. Where you are appointing guardians, it is essential that the guardians are aware of your wishes for each child's future.

- **Specific Gifts**

Consider if anybody, for example, godchildren or grandchildren, is to receive a specific sum of money or any specific assets, such as jewellery or particular pieces of furniture, paintings or your car.

- **Charities**

Do you wish any charities to benefit? Remember, any regular charitable payments will cease automatically on your death.

- **Beneficiaries**

You must consider who is to receive money, property or any other assets which you leave. If this is to be your spouse or partner, what is to happen if you both die together in a car accident? Alternatively, what if you and your children die together?

- **When are children to receive their share**

Are you happy for your children, or any other children who may receive gifts under the Will, to inherit outright at 18, or would you prefer them to be a little older, say 21 or 25?

- **Letter of Wishes**

A Letter of Wishes is something which you can place with your Will as a guide to your executors on funeral arrangements, funeral music, distribution of personal and household belongings, personal statements of affection, advice to guardians on how you would like your children raised, their religious upbringing, education etc. and provide an explanation as to why you have excluded someone from your will if you think it may be challenged later- it should be signed but not witnessed.

- **Names and addresses**

You should bring with you a list setting out the full names and addresses of everybody to be referred to in your Will.

- **Residue of your Estate**

Whatever is left in your Estate and may comprise most of your estate or it may include a policy or an account overlooked by you or a legacy which you stand to inherit after your own death. Decide who should be left such assets.

DIGITAL ASSETS

One of the first things you need to do before writing a will is to list your assets. Your home, money, investments, the list goes on. But spare a thought for your online or digital assets, too. What do you have on Facebook, or Gmail? Where do you keep your digital photographs or videos? What about websites that may have money in them, like Amazon? Not to mention financial, insurance, retail or social media accounts you access routinely on your computer or smartphone.

Your family will need to get to grips with your affairs after your death, so they will need access to financial and other information. Some of this is very likely stored on your computer, so they should be able to get to it, assuming they have your password. But it's worth playing safe and having a backup plan, just in case it gets stolen or hacked.

Your online accounts are a different matter. Your family will probably not even know about all the accounts you have, let alone have access. Rather than letting them helplessly second-guess your passwords, there are a number of steps you can take to hand over control when the time comes. Some also have the option of deleting the account on your death.

Many of us run so much of our lives online that it can feel overwhelming getting to grips with your digital assets. The headings below will help you make a start:

- Financial information
- E-mail, contacts and calendar
- Social media
- Personal and sentimental items
- Digital items that may have a value, now or in the future
- Hardware that requires passwords or codes, eg phones, tablets
- Passwords

Make a note of the financial services you use in our Personal Assets Log. This may include bank and building society accounts, mortgage, investments, pensions, loans, hire purchase agreements, insurance, telephone and utility accounts. If you can't bring them all to mind, look through your bank or credit card statements. You'll need to make a list of passwords, so you could set up a code, eg financial-doc1 for bank account details, and store the passwords in a separate document.

- **Email**

Your family will very likely need your correspondence to sort out your estate, so that means giving them access to email. You may have a number of email accounts, so write down which ones you use, again, storing the passwords separately.

- **Contacts & Calendar**

Many people have swapped their old address books or appointment diaries for their online equivalents, such as Outlook, or Google Calendar or Contacts. Your family could be badly stuck if they can't access this information after your death.

If you're a Gmail user, Google's Inactive Account Manager can help. You can set it up to allow your family access to your email and other Google products if your account has not been used for a number of months. You specify who should be contacted and when and enter their email and phone number. You don't need to tell them you've done so. Google also gives you the opportunity to delete your account at this stage. The system will alert you first – just in case – and also send you a six-monthly reminder. Remember that you will need to keep your contacts' emails up to date for this to work.

If you're a Yahoo user, you will need to make other arrangements. Yahoo will not give access to a person's family after their death at the time of writing, so if you want someone to have access, you will need to arrange for them to have your sign-in details.

- **Social Media**

Most of us are on Facebook and have accounts on many other networks, including LinkedIn and Twitter. Make a note of all the ones you use that you want kept, or information retained. Again, some have a way of enabling your relatives to gain access to your accounts after you have passed on. Facebook will remove accounts of deceased persons on request, once it has a death certificate or a document such as a power of attorney. You can also get your page memorialised, so when the time comes your family and friends can post tributes to you.

- **Personal & Sentimental Items**

These might include photos, videos, and music files, which you would want your family to keep after you've gone. These may be stored on social media, including Flickr or similar, or on file-sharing sites like Dropbox or Google Docs. Make a note of which platforms you use and add the passwords to your document.

Ideally, you should get an external hard drive and back up all your most precious digital files to it. Make sure your family knows you've done this, and where you've put it. Your list of digital assets won't include such items as ebooks, or apps or music on your iTunes account. Due to digital rights, you don't actually own these – even though you paid for them. However Apple does offer a Family Sharing feature, which is good for up to six people.

Your tablet or smartphone is of very little use to anyone without a key code to get into it. Again, make a list and keep the passwords, key codes or pattern locks elsewhere.

- **Passwords**

As soon as you start on your passwords document, you will need to keep it very safe indeed. If you're writing it on your computer, you might password-protect the document, though of course, you'll have to give someone else the password at some stage. Once it's prepared, think of a safe place to store it. One option would be to print it and keep it in a sealed envelope with your will.

- **Useful Links**

Google's Inactive Account Manager: https://support.google.com/accounts/answer/3036546
Yahoo Digital Will: https://yahoopolicy.tumblr.com/post/97570901633/your-digital-will-your-choice
Apple Family Sharing: https://www.apple.com/family-sharing/
Facebook – remove a deceased person's account: https://www.facebook.com/help/1518259735093203?sr=1&query=death&sid=0KEu45G2MxRPmmFEc
Facebook – memorialise account: https://www.facebook.com/help/1506822589577997/

- **Why this needs to be addressed in your Will**

If you do not specify what should happen to these online accounts in your Will, then you could cause problems for your executors. Not only will they have trouble tracing or accessing accounts, but there is a risk of online fraud and abuse. Were a digital asset of financial value is left dormant after death, it will be an attractive target for cybercriminals.

- **What I should do about my digital assets**

Think about the digital assets you own and how you want to deal with them in your Will. For example, if you have a social media account containing extensive personal information which you would not want to stay online after your death, you can use your Will to govern who deactivates, removes or even memorialises your online social presence.

You can leave any digital assets with financial value to whoever you choose, so think about how you want these to be managed. Who is to gain access to the accounts and who will inherit their value?

Also consider whether you have the right to leave digital assets with a sentimental value, such as your iTunes account or YouTube channel as this will depend on the terms and conditions of the ISP. What you can do is download your music library so that all is not lost when the licence terminates on death. Making a list of all your digital assets to discuss with your solicitor will help you to decide which ones you can include in your Will and how to do it most effectively.

INSTRUCTIONS FOR MY WILL

This form is designed to give us some preliminary information about you, your family and your wishes for your Will. Please complete the form in readiness for our meeting or, if no meeting has been arranged, return the form to us. You may not be able to answer all the questions, but it would be helpful if you could complete as much of this form as possible. Couples who wish their Wills to mirror each other can complete just one questionnaire with all the details.

PERSONAL DETAILS

Full Name (s) ....

....

Address ....

....

Occupation (s) ....

....

Date of Birth (s) .... / ....

National Insurance No (s): .... / ....

Instructions in relation to burial & headstone ....

....

....

EXECUTORS AND TRUSTEES

Name ....

Address ....

Name ....

Address ....

FAMILY DETAILS

Your Spouse/ Civil Partner/ Partner:

....

Children:

Name	Age
....	....
....	....
....	....
....	....
....	....
....	....

Other dependants, aged parent or disabled relation:

....

....

....

Guardians of children:

....

....

....

DETAILS OF ASSETS

House	Value: ....
Contents (insurance value)	Value: ....
Bank/Building Society accounts	Value: ....
	Value: ....
	Value: ....
Post Office	Value: ....
Business	Value: ....
Pensions	Value: ....
Life Insurance Policies	Value: ....
Other Property	Value: ....

SPECIFIC DEVISES OR BEQUESTS

(1) Beneficiary: ....

Property: ....

(2) Beneficiary: ....

Property: ....

(3) Beneficiary: ....

Property: ....

PECUNIARY (CASH) LEGACIES

Beneficiary .... £ ....

Beneficiary .... £ ....

Beneficiary .... £ ....

RESIDUE OF ESTATE

Beneficiary ....

Name of Accountant ....

Name of Financial Advisor ....

Specify any assets (including house) that you hold jointly

....

....

Location of Life Insurance Policies

....

Location of Title Deeds

....

....

Storage of Your Will

It is useful to inform close family where your Will is stored. We can provide you with our Personal Assets Log after signing your Will which you can keep with your personal papers. This confirms we hold your Will in our fireproof safe and details of where your accounts and policies etc are, without revealing the actual contents of your Will.

Additional Notes/Questions

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