

Wills

Introduction

Inclusion Ireland hopes that this leaflet is a helpful tool to guide you in making a will. It is not possible to cover all the legalities of making a will and we have included some useful links for further information. Inclusion Ireland also recommend that legal advice is obtained when making a will as individual circumstances should be looked at when drawing up a will document.

Why should I make a will?

Making a will is a very important process for anybody who owns property or assets. Many parents of a person with an intellectual disability are especially concerned about making proper provision for the future. It is important to make a will as soon as possible as dying intestate (without a will) can create complications with surviving spouses and children receiving different amounts. It is always worth remembering that changes to a will can always be made through a codicil which is a device used to change parts of a will.

Do I need a solicitor?

Although a person can technically make their own will it is usual to involve a solicitor. A solicitor is especially recommended if you are looking to set up a trust fund as the legal accuracy is very important. If a will is made up incorrectly or is not valid then the rules of intestacy kick in and the property is shared out among surviving relatives.

What is a valid will?

In order to make a valid will the following criteria must be satisfied:

- The will is in writing
- The will is made voluntarily without pressure from other people
- The person making the will is of sound mind
- The person making the will is over 18 or has been married
- The will must be signed at the foot of the will & witnessed
- The witnesses or their spouses must not benefit from the will

What is "Sound Mind"?

This means that you have the mental capacity to make a will in the eyes of the law and understand that you are making a will. It is worth remembering that it is the mental condition of the person at the time s/he made the will that is considered and any diminishing of the person's capacity at a later date is not considered relevant.

Do I have to leave my property to my children equally?

No you do not have to leave property to your children equally. However a child (whether under or over 18) may bring an application under the Succession Act that proper provision has not been made for them under the will. The court will look at the child's position in life as well as any payments made to them during the lifetime of the testator.

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Should I make special arrangements for my son or daughter with an intellectual disability?

Careful consideration should be taken when leaving property to a person with an intellectual disability. While many parents wish to ensure their child's future, it is especially important that the means test for state benefits the person receives is regarded. It is also possible that a person with intellectual disability who is left a lump sum in a will could be made a Ward of Court and have their decision making ability removed by the High Court.

A trust fund can be useful as generally speaking the capital in a trust fund will not interfere with state benefits and once off payments are also generally not assessed as means. Regular maintenance payments would be considered as cash income however and be assessed as means. Advice should be sought from the Department of Social and Family Affairs for the latest information.

Many parents look towards setting up a trust fund and often use a discretionary trust. A trust fund means that the money is held by people called trustees and used for the benefit of a named person called a beneficiary. The trustees have control over when and how much they give to the beneficiary. Because the trust is at the discretion of the trustees it is important that trustees are people who will take heed of your wishes. It is also important that a discussion is held between the people making the will and trustees so that they are aware of their responsibilities and willing to take on the task.

A trustee could be someone in your family, a friend or a professional person such as solicitor or accountant. Careful thought should also be given to the number of trustees. It is often a good idea to have three trustees as where there are two trustees there is a chance that a disagreement could occur over how to use the money. The age of the trustees is important too as it is desirable that the trustee outlives the beneficiary.

Are there Tax implications when making a will / trust fund?

There are always tax implications when inheritance is involved and the Revenue Commissioners website (links below) should be consulted when drawing up a will

Useful Links

Citizens information Guide to making a will

http://www.citizensinformation.ie/categories/death/before-a-death/making_a_will

Free Legal Advice Centre Guide to Making a Will

<http://www.flac.ie/download/pdf/wills.pdf>

Department of Social & Family Affairs Means Test

<http://www.welfare.ie/EN/Publications/SW29/Pages/3Whatisameanstest.aspx>

Revenue Commissioners Guides to Tax

<http://www.revenue.ie/en/tax/cat/index.html>

<http://www.revenue.ie/en/tax/cat/gift-inheritance.html>

<http://www.revenue.ie/en/tax/cat/discretionary-trust-tax.html>