OHT Guide

Making a Will

Why make a Will?

By making a Will, you can distribute your assets in a planned manner, ensuring that they pass to the beneficiaries that you wish to benefit, and that any protection required is provided.

If you do not make a Will your assets will pass by operation of law when you die. They may pass to beneficiaries you would prefer not to benefit, or in a manner which increases the overall tax.

If you leave assets to minor children they cannot take them until they are 18. However as each child reaches 18 he or she will automatically become entitled to the assets unless your Will provides otherwise. Many parents would prefer to retain assets in safekeeping until children are older than 18 years.

In making a Will you are taking the opportunity to ensure that:

* The estate is administered in line with your wishes.
* Relevant tax planning options that are considered.
* Assets are safeguarded and pass when beneficiaries are mature enough for the responsibility.
* Provision is made for the needs of family members.
* Additional provision is made for anyone who needs an extra level of protection.
* The value of assts such as businesses can be protected by passing the assets to beneficiaries who are experienced in business and financial matters.

What Points should you Consider?

How wealthy are you?

A statement of assets should be drawn up to assist you in reviewing your assets and deciding who should benefit from them after your death. It is important to bear in mind that you may have certain intangible future benefits that will add value to your estate. For example you may have life assurance which would pay off your mortgage or pass to your estate on your death. In addition your company or employer may have some form of death in service benefit, or you may be entitled to a benefit from a pension.

If a mortgage is secured by a life policy the "on death" value will be the market value of the property, but if a mortgage has no associated life insurance the "on death" value will only be the equity (i.e. market value less loan).

Who should act as Executors?

The Executors' role is to carry out the wishes expressed in your Will and at least two should be appointed (in case one predeceases you). Ideally your executors will be familiar with your assets, and could take over the running of your business, or would know who to appoint in order to ensure that your business affairs continue running smoothly. They should be aware of who to contact if they require advice on your financial and legal affairs, and where your Will is located.

Do you need Guardians or Trustees?

If you have children under the age of 18 it is advisable to appoint guardians in case both parents die while the children are young (possibly in an accident). If children are left with no legal guardian relatives can apply to Court to have guardians appointed, but this can be a slow and costly process. By appointing a guardian you can make this decision yourself.

If your children are young, or will inherit considerable wealth, or if a family member needs protection, you may wish to consider providing in your Will that control of assets should pass to trustees who can act in the beneficiaries' best interests.

Are there any Special Bequests?

If you have some items of special or sentimental value (such as jewellery, works of art etc.) you may want to pass these to a particular beneficiary. In addition you may wish to leave cash sums to certain beneficiaries or certain charities.

What if your Wealth Increases?

A Will does not have any effect until your death, so it covers any assets you acquire before you die. A general "catch all" clause (called the "residue clause") will normally be included in a Will to pass on any assets not specifically mentioned. Any assets you acquire after you

make the Will can pass under the residue clause.

Does Anyone have a Right to your Estate?

You are entitled to leave your assets any way that you think fit, subject to certain legal rights.

A spouse or civil partner is entitled to a legal right share. If you make a Will your spouse or civil partner is entitled to a minimum of 1/2 your estate if you have no children, and 1/3 of your estate if you have children. A child's claim against an estate (see below) cannot affect a spouse's share but may impact on a civil partner. A spouse or civil partner has the right to acquire the family home and contents as part of his or her share.

If the relationship breaks up then separation or divorce does not extinguish these rights, but they are routinely given up under separation agreements or extinguished by Court Order. If a decree of divorce/dissolution is granted to civil partners the succession rights are automatically extinguished. If a person dies a divorced spouse or a civil partner whose civil partnership has been dissolved can apply to court and ask for a share of the estate of the former spouse/civil partner, provided that the application is made within six months of the date of the Grant of Probate or Administration and the divorced spouse/civil partner has not remarried or entered into a new civil partnership.

A child of a testator does not have any automatic entitlement to a share in the estate. However a child may apply to court under S. 117 Succession Act 1965 for provision to be made from an estate if his parent has failed in his moral duty to make provision for the child in life or by Will.

A financially dependent cohabitant may apply to court for provision from the estate of a deceased cohabitant

Assets held as joint tenants will pass to the surviving joint tenant on death, and are not part of the estate.

Can you reduce Tax for Beneficiaries?

Irish inheritance tax (known as CAT) is charged at a rate of 33% after deduction of a tax free threshold. There is no Irish inheritance tax between spouses so a spouse takes all assets tax free. The amount of CAT payable depends on the relationship with the beneficiary. A child can inherit up to €280,000 from a parent tax free if he has not received any prior gifts or inheritances. A near relative such as a sister or nephew can inherit up to €30,150 tax free if there are no prior benefits. Other persons only have a threshold of €15,075.

Inheritance tax can be quite complex, so formal advice may be required. The following points may assist in reducing or funding tax.

- Certain property attracts CAT reliefs (some dwelling houses, business assets or certain agricultural property).
- If assets are divided among the members of a family additional tax thresholds may be available and gifts are tax efficient in some circumstances.
- Minor gifts (up to €3,000 per person per year) are not subject to gift tax. Two parents can pass up to €6,000 per year tax free to each of their children.
- Benefits passed by a parent to a child during the parent's life, which are made to maintain the child and are within the parent's means may not be subject to CAT.
- It is possible to insure against inheritance tax.

Discretionary Trust

If your children are young, or if there is a specific beneficiary that you want to make provision for and protect, it may be advisable to consider a discretionary trust. A discretionary trust passes assets to trustees, who will look after the assets, and use their discretion as to whether funds should be paid to beneficiaries. Typically the trust will be used when beneficiaries are very young (and therefore cannot legally hold assets, or may not be able to manage them), or when beneficiaries need particular protection.

There can be a tax disadvantage to using a discretionary trust, as discretionary trustees are subject to discretionary trust tax ("DTT") which is a 6% tax on the capital value of the trust when it is set up, and a 1% annual tax afterwards. The discretionary trust defers payment of inheritance and gift tax, as beneficiaries will only be subject to this tax when they receive a benefit from the fund, not when the trust fund is set up. The DTT is the price paid for the flexibility of a discretionary trust, and the benefit of deferring CAT.

Reviewing a Will

Clients should bear in mind that a Will continues in existence until it is replaced, or revoked. It is advisable to review your existing Will every five years or so, or if you experience a substantial change in assets level, or personal circumstances.

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Caveat: *These notes are intended as a general guide to making a Will. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*

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