

Have You Made a Will Yet?

Like health insurance and regular dental check-ups we all need a Will. We are continually amazed by the amount of people who have not made a Will. You have perhaps often thought about it, yet like so many others actually defer making a Will. Or, if you have one, you don't get around to updating it as circumstances change. The irony is that of all the uncertainties we seek to guard and insure against, the one thing we can be certain of is death. So why is it that we put it off?

Often it is the unpleasant thought of looking death in the eye, an inevitability that we would rather all ignore, or while it may cross your mind it gets shelved along with all your other good intentions until the next major life event! Yet for anyone who has children, assets or indeed both, the importance of a Will cannot be overstated.

Although the *Succession Act* provides for who is to inherit in cases of *intestacy* (if you die without making a Will) these rules may not be the preferred option for every individual. There is no room for flexibility or for *Tax Planning* nor is there the opportunity to create a *Trust* or name *Guardians* for the protection of minor children.

In short, the failure to make a Will means that your entire distribution of your estate is out of your control and important protections and *tax minimising opportunities* might be missed.

Take for example if you are married with children and your spouse dies. Under the *Rules of Intestacy* the surviving spouse automatically inherits 2/3 of your estate and your children between them the remaining 1/3. However, if the children are under 18 this share must be held for them by the surviving spouse until they reach 18 and in the meantime are limited to the powers under the *Succession Act* as to how the property can be dealt with.

Additionally, if the children are over 18 years old, would you want your spouse to have to sell the principle asset to satisfy the legal entitlement of the children seeking their 1/3 share?

Equally, as we travel more, what would happen to minor children if both their parents were to die together? Who would want to see two distraught families having to battle it out to determine who should be *Guardians* and *Trustees*? Or if you are separated or divorced would you not want to appoint guardians and trustees to step into your shoes if you die before your children turn 18.

Take for example those of you with a partner to whom you are not married, the *Succession Act* makes no provisions for you. Such persons are legally deemed to be strangers and have no automatic entitlement to inherit regardless of the length of the relationship. Imagine then trying to understand why your partner's parents or brothers and sisters are to inherit all of the estate that you both have shared and enjoyed through your life together. More often, if previously married and not legally separated, the person entitled might in fact be your estranged spouse.

What about specific bequests to god-children, charities or to friends who have been good to you? These require mention not just in your thoughts but on paper if they are to have effect.

Those who have Wills, taking the time to review them, is almost as important. Have the *Guardians* you nominated become too old for the task? Have your children grown up and so is the Trust no longer relevant? Has the *Beneficiary* or the *Executor* died? Have your financial circumstances changed? Have you perhaps left a particular property to someone in your Will but you now no longer own this asset?

Or, of course if you have married since your Will was made, then your Will has been automatically revoked by that marriage, unless made in its contemplation. Be aware however, that although marriage automatically

revokes a will, separation or divorce does not, and your will leaving everything to your now estranged spouse will still be valid!

Leaving aside the fact that it makes life considerably easier for those left behind if there is a Will in existence, a Will is also an opportunity for some *Tax Planning* and may afford you a chance to review your affairs while you can do something about it and make some decisions which may otherwise not have been considered, giving rise to significant tax savings.

The present recession has cast a shadow of gloom over many people. A Will can provide an excellent opportunity to take a global look at your assets with a view to dealing with your assets on death in a tax efficient way.

This article is just a tiny reminder to direct your mind to your Will and then to do it (and remember a drafted but unsigned Will is just as bad as no Will, as it is of no effect until it has been signed and witnessed correctly). Now is the time to do it while the inevitable is still a long way off!

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