
Property & Financial Matters Family Dispute Resolution

Wills

A will is a written document in which the willmaker sets out their wishes for the distribution of their property after death.

To be valid a will must be signed by the willmaker and two witnesses who must be present together at the time of the signing by the willmaker.

It is possible for a person to draw up their own will. There are will forms available at any newsagent.

If you have difficulties or your will is likely to be at all complicated it is best to see a lawyer or the State Trustee.

The person who dies without having a valid will is said to have died intestate.

Marriage and Divorce

Both marriage and divorce affect a will. When a person marries their will is automatically revoked except for bequests to their new spouse. It is advisable to make a new will immediately after marriage.

A will remains in force after a married couple separate.

Divorce automatically revokes some parts of a will, namely:

- any bequest to a former spouse;
- the appointment of a former spouse as an executor;
- any other power exercisable by or in favour of a former spouse.

Provisions not relating to the former spouse can still be valid e.g. gifts to children.

It is advisable to make a new will after you have separated or divorced.

Children

It is possible to appoint guardians for children under 18 in a will. The Family Court has power to override such appointment if it sees fit.

Other Beneficiaries

The laws relating to intestacy make some provision for distribution of property to spouses and children (including ex-nuptial children). Domestic partners are included in the scheme of intestacy in the Succession Act 105. It is important to make a will to give effect to a wish to benefit these people.

The information contained in this handout is general information only. It is supplied on the understanding that the Family Relationship Centre is not providing legal advice on a particular matter, or at all. The handout contains information that is intended to assist those attending Property & Financial Matters Family Dispute Resolution.

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The Family Relationship Centre does not accept any responsibility for any errors or omissions in the accuracy or completeness of this material.

We strongly recommend the obtaining of specific independent legal advice.