# WILLS

## Law guide – How to draft your will (Part I)

# Contents

# Making a Will

**What is a Will?**

A Will is a written declaration setting out the way in which a person's property, assets and other wealth are to be distributed on their death. If a person dies without making a Will, they are said to have died intestate. A person who dies with a Will (a testator) is said to have died testate.

**Why you need a Will**

Some of the considerations which make it important to make a Will are:

- If a person dies without making a Will, as mentioned above, they are said to have died intestate. The Rules of Intestacy under Part VI of the Succession Act, 1965 dictate how a person's estate is to be distributed which may not be in line with what you would have liked.
- There are issues that can arise for unmarried couples and unmarried same sex couples who have also not registered a civil partnership if there is no Will. Thus, unmarried couples and unmarried same sex couples who have also not registered a civil partnership cannot inherit from each other unless there is a Will and the death of one partner may therefore create serious financial problems for the remaining partner.
- If you have children, particularly children under 18 or children from another or previous relationship, you will need to make a Will so that arrangements for the children can be made if you die.
- You can choose the individuals and/or professional advisors who will administer your affairs after your death in your Will, i.e. your executors.
- It may be possible to reduce the amount of tax payable on the inheritance compared with what would have arisen under the intestacy rules. You may also decide to get professional taxation advice before you draft your Will.

Having a Will is the only way to be sure that your estate is dealt with according to your wishes when you die. Without a Will your assets may end up being distributed by prescribed rules. It is not the case, as many assume, that if a husband or wife dies their entire estate will always automatically pass to their spouse. The estate will be distributed in accordance with rules of intestacy which are discussed in the chapter 'Dying without a will'.

A Will ensures, therefore, that your estate is distributed as you would like it to be, and that your loved ones are properly provided for as you wish. It may also help to ensure that the people you leave your estate to do not have to pay more tax than absolutely necessary. If you are not married or in a civil partnership, it is even more important that you make a Will, particularly if you have a partner and/or children to whom you wish to leave many or all of your assets.

## Issues to consider

Before you begin the process of creating your Will, there are a number of matters you should consider carefully.

**Who would you like to appoint as executors of your Will?**

You will need to decide whom you would like to appoint as executors of your Will. Executors are the individuals and/or organisations that administer your estate when you die. This is one of the most important decisions when you create your Will and your executors can be one or more of the following:

- trusted individuals, such as a relative, friend or partner
- if married, your spouse
- if in a civil partnership, your civil partner
- a solicitor
- a trust company (a specialist service provider that is authorised to act as an executor)

You should be sure only to appoint persons whom you trust and who will see that your estate is dealt with efficiently and quickly. Often a spouse, an adult child or close relative is appointed as executor, but you should consider whether they will have the necessary time and expertise to administer your estate.

Unless you are appointing a solicitor or a trust company, we recommend that you appoint at least two executors. This is simply because the duties and responsibilities of an executor can be onerous and it can be reassuring to your executors for these to be shared. It can also operate as a safeguard against a sole executor dying before you or becoming unable to act for any reason or abusing his or her position.

Although you can appoint as many executors as you want, it is generally not a good idea to appoint more than three or four as, in the course of dealing with an estate after somebody passes away, some forms will have to be signed by all the executors. Having a large number can slow down the administration of the estate.

**Do you wish to be buried or cremated?**

You might want to think about whether you want to be buried or cremated. While you do not have to state how you wish your body to be disposed of when you die, you may do so if you wish. Whatever you do, it is also important to tell those nearest to you what your decision is and to make sure that the instructions in your Will are kept up-to-date if you change your mind. Furthermore, if you would like to leave your body to medical science, the relevant paperwork could be completed by you and deposited with your Will.

**Leaving gifts of money and specific items**

You should think about whether you wish to leave gifts of money, called pecuniary legacies, (e.g. €10,000) or gifts of specific items (e.g. your car, your CD collection, your wedding ring).

It should be noted that general legacies may be reduced proportionally where there are insufficient funds to pay the full amount of the pecuniary (i.e. money) legacies, i.e. items may have to be sold to raise the cash amount gifted. Furthermore, you may wish to consider charitable legacies to specific charities of your choice. Any such legacies to registered charities in the Republic of Ireland are free of tax in the hands of the charity.

**Do you have children under 18?**

You can specify one or more people to act as a guardian in case you and the child's other parent die simultaneously, or the other parent becomes unable to look after the children for any reason. You should ideally agree this with the child's other parent (if applicable) and ensure you have the agreement of the person(s) you are appointing to act as guardians.

**Rest of your estate ('residuary estate')**

Your residuary estate is defined as what is left of your total estate after payment of any taxes, debts and expenses and after the deduction of any gifts you have made of specific items or money, after you die. For many people this will be the bulk of their estate.

There are a variety of options for giving it away which, for a married person or person in a civil partnership, include giving just the income of the estate to your spouse or civil partner, and holding the rest to be given to others after your spouse/civil partner passes away.

You do need to think carefully about what your spouse or civil partner will need after you pass away, however, and ensure that they are not left in a difficult financial position. In many cases, spouses or civil partners will simply leave the whole of the estate to each other. Please also see below regarding the rights of spouses and civil partners.

**Succession rights of spouses and civil partners**

The provisions of the Succession Act, 1965 offers protection to the surviving spouse or civil partner by giving them, what is called, a 'legal right share' in the estate of the deceased. Where a testator leaves a spouse or civil partner and no children, the spouse or civil partner has a right to one half of the estate. Where a testator leaves a spouse or civil partner and children, the spouse or civil partner has a right to one third of the estate (section 111 of the Succession Act, 1965).

**Claims against your estate**

You should be aware that if you have left out, or made inadequate provision for, certain family members and dependants from your Will, there is a possibility that they make a claim against your estate under a Section 117 application. A section 117 application can only be brought if a person dies testate (i.e. died with a valid Will). See the chapter 'Family and dependants left out of the Will' of this guide for a full explanation of a s. 117 application.

**Alternate beneficiaries**.

In relation to your residuary estate you can nominate alternate residuary beneficiaries (a 'beneficiary' is a person who gets a gift from your Will) in case some or all of those whom you name as the first intended beneficiaries in the Will die before you.

**Pets**

If you have any pets you can think about who you wish to look after them when you pass away, and whether you wish to leave them any money for the upkeep of your pets.

Please note that you need the full address of anyone you name in your Will, whether making a gift to them or appointing them as executor or guardian. If you are making a gift to a charity, you should get the official name, address and, ideally, the Registered Charity Number.

## Inheritance tax on gifts

Inheritance tax, also referred to as Capital Acquisitions Tax (CAT), is a tax on inherited gifts. Any tax that may be due is paid by the individual or the organisation receiving the gift, i.e. the beneficiary.

### Tax free thresholds

A gift or inheritance from a spouse or civil partner is not liable to inheritance tax. This only applies to a legal spouse or civil partner and to divorced persons or where a civil partnership is terminated in certain circumstances. A cohabitant, or partner in the general meaning (i.e. not a civil partner), is treated as a stranger for tax purposes.

If you leave a gift to someone other than a spouse or civil partner then the first portion, known as the tax free threshold, is taken free of tax. The amount of the tax free threshold depends on your relationship to the beneficiary and will also depend on whether any other benefits have been received by them previously.

Where you leave a gift to a child or a child of your civil partner, or a minor child of a deceased child or, in certain circumstances, to a foster child or to a parent (in an unrestricted form) then the tax free threshold is the largest; known as the Group A threshold. If the property is left to a parent (where it is a restricted interest), brother or sister, niece or nephew, or grandchild, then Group B threshold applies, and if property is left to anyone else, e.g. a friend, in law, cousin or partner then Group C threshold applies. See this link for the current threshold amounts - Capital acquisitions tax.

If a person has received other gifts or inheritances since 5 December 1991 then they are added together according to certain rules relating to the date on which the gifts were received and from whom they were received. The effect of this may be to reduce or remove the tax free threshold available for that individual.

### Exemptions and reliefs

There are various exemptions available which can reduce or eliminated the amount of tax to be paid. These can also change over time. The following are some of the exemptions currently available:

- **Agricultural property:** To qualify for agricultural relief, 80% of the beneficiary's property (after a gift/inheritance) must consist of agricultural assets. The value of the agricultural property he/she receives may then be reduced when making the CAT return provided other conditions are met.
- **Business property:** If business property, which would generally include assets such as a business or shares in a family company, is inherited, then the beneficiary may be entitled to claim business relief so that the value of the business property inherited is reduced when calculating the inheritance tax (if any) subject to other conditions.
- **Favourite nephews or nieces:** If the beneficiary is a nephew or niece who worked full-time in the business/on the farm with you for five years, and you leave the

business/farm to him/her, then he/she may be entitled to the same tax-free threshold as a son or daughter in relation to that property.

- **Dwelling:** If you leave a house or apartment to a beneficiary who has continuously occupied it as his/her main residence for a period of three years immediately before the date of your death and he/she continues to occupy it for a period of six years after the date of your death, then such a beneficiary may be exempt from tax on his/her inheritance of the house provided all the conditions for exemption are complied with.
- **Minor child of deceased child:** If you leave property to a grandchild who is the child of a child of yours who has predeceased you, and that grandchild is under the age of 18, then that grandchild will be entitled to the same tax free threshold as a child.
- **Surviving spouse or civil partner:** If property is left to the spouse or civil partner of a deceased member of your family, that spouse or civil partner will be entitled to the tax free threshold amount that the deceased family member would have been entitled to in relation to that inheritance.

**Inheritance tax planning**

You may decide that it is advisable to seek professional taxation advice on how best to allocate your estate among your beneficiaries before you finalise this Will.

In seeking such advice you may also wish to consider getting a Section 72 policy which is an inheritance tax planning tool. It allows for an inheritance tax liability to be provided for in a highly tax efficient manner hence easing the burden of transferring wealth from one generation to the next.

Technically a Section 72 policy is a whole of life policy set up to meet the requirements of Section 72 of the Capital Acquisitions Tax Consolidation Act 2003. Usually the policy is set up under a Section 72 trust making the proceeds of the policy exempt from inheritance tax.

## Capacity and mind of the testator

**Who can make a Will?**
Section 77 of the Succession Act 1965 provides that a Will can be made by a person who:

- has attained the age of 18 years or is or has been married
- is of sound mind

Section 31 (1) of the Family Law Act 1995 provides that marriage solemnised after the introduction of this section between persons either of whom is under the age of 18 years will not be valid in law.

However, a person who entitled to appoint a guardian of an infant may make the appointment by Will, notwithstanding that he or she has not attained eighteen years of age or been married.

**Testamentary capacity**

The testator must have the requisite mental capacity – called 'testamentary capacity' - when they sign their Will.

The test for determining whether a person has testamentary capacity to make a Will was laid down in the UK case of *Banks v Goodfellow* (1870) LR5 QB 49 as follows:

- The testator must understand that he or she is making a Will, which will dispose of their assets on death.
- The testator must be capable of knowing the nature and extent of his or her estate.
- The testator must be able to give consideration to possible beneficiaries.

If the testator lacked the requisite mental capacity at the time they signed their Will, then the Will is generally regarded as invalid.

There is a presumption however that, unless the contrary is proved, the testator is sane, so the burden of proving that the testator lacked testamentary capacity falls on the person who seeks to prove, after the testator's death, that the Will is invalid.

**Practical precautions**

If there is any doubt as to whether the testator had the necessary testamentary capacity to make the Will, it may be advisable to arrange for a medical practitioner to examine the testator at the time the Will is to be signed to verify their mental capacity and to have that medical opinion recorded.

**Undue influence and fraud**

A Will must not be made as a result of either the undue influence or the fraud of another person.

Undue influence means coercion; i.e. the testator is coerced into making a Will (or part of a Will) which he or she does not want to make. Presumed undue influence can often arise where there is a relationship of trust and confidence between the parties. In such instances, the mere existence of the relationship alone can be deemed sufficient to establish that the plaintiff could not have acted independently and freely of their own mind to consent to such transaction. If a person has obtained independent legal advice this can often rebut any presumption of undue influence.

Fraud consists of deceiving the testator. For example, it would be fraud to tell a testator that a potential beneficiary had done or said something of which the testator would disapprove, when he or she had not.

A testator must know and fully understand the contents of his or her Will at the time that he or she signs it.

A testator who has the necessary capacity and has signed their Will is presumed to have the requisite knowledge and approval. However, there are circumstances where the presumption does not apply. This occurs in the case of a blind or illiterate person or a person who does not sign personally. The presumption of the testator's knowledge and approval does not apply if the testator is deaf and dumb, blind or illiterate or another person signs the Will on his/her behalf (for example, because he/she has an injured hand).

Where there is doubt as to whether a testator has the requisite knowledge, the Probate Office registrar will require evidence of the testator's actual knowledge and approval. In cases where the testator is blind, illiterate or does not sign personally, it is best that the Will is read out and approved by the testator in front of the witnesses. At the end of the Will (where provision is made for signature by the witnesses), a clause should be inserted confirming that the Will was read over to the testator and the testator understood and approved its contents. This clause is known as the attestation clause. Without such an attestation clause, the Probate Office will require affidavit evidence of the testator's knowledge and an affidavit sworn by the attesting witnesses who were present at the signing of the Will.

Where there are suspicious circumstances surrounding the drafting or signing of the Will, it will be up to the person seeking to rely on the Will to rebut the presumption.

## Appointing executors and guardians

**Executors**

These are the people and/or organisations (e.g. a solicitor's firm) who are left to manage and administer the testator's (someone who makes a Will) affairs after death and should therefore be expressly appointed in the Will. If the testator fails to appoint executors, administrators are appointed by the court to manage the estate. What this means is that those relatives who benefit from the estate according to the rules of intestacy may apply and be appointed as administrators. By making a Will, you are given the opportunity therefore to choose the people whom you would like to administer your estate when you die.

The testator can appoint any number of executors. However, at least two executors should be appointed. In a small and straightforward Will the major beneficiary is often appointed as the sole executor. Difficulties can arise when a single executor dies or becomes ill and is not able to continue administering the estate, so it is a sensible precaution where a single executor has been appointed to provide for a substitute to take their place if the original executor dies or becomes ill.

Executors should be chosen carefully. If the estate is uncomplicated, trustworthy relatives or family friends would be suitable. However, should the estate be complex, it may be sensible to appoint a professional executor together with the relative or friend. Whatever decision is made, the testator should check whether a particular person is prepared to act.

**Trustees**

If a trust is created under the terms of the Will, then the testator must appoint both executors to manage, administer and distribute the assets, and trustees to run the trust which will come into effect. Where executors and trustees are required, it is practical and convenient to appoint the same people to perform both functions.

The trustees will need to obtain a receipt for all the trust property, which means that they will have to show that they have discharged their obligations regarding distribution of the assets by handing over the correct trust assets, in their shares, to the correct recipients.

**Paying trustees**

Where a professional person is appointed, it is usual to include a clause that will allow that person to charge reasonable remuneration for acting in a professional capacity. This is called a charging clause.

**Appointment of guardians**

If the testator has any children younger than 18, they should consider who would be responsible for those children on their death. Equally, the testator may be concerned about any future children who might be under this age at the time of their death. Where a dispute arises over the care of children, the court has the final say. This means that, after considering

all the facts and taking into account all the circumstances, the court will make an appropriate order appointing a guardian to look after the minor child or children. The intention in your Will to appoint guardians may be considered by the court.

It is always important to ask the person or persons that one intends to appoint as guardian. After all, they should be aware of the position in advance and can indicate whether they are willing to act or not. Provision should also be made for the costs of the children's upbringing, i.e. by making a gift to the child in your Will to meet their needs and expenses.

You could also appoint the guardians as your executors which then allows them to use these funds for the benefit of the child until they reach the age of 18. In addition, you could make a gift to a child and specify that they cannot receive this gift until they reach a certain age.

Any parent who has parental responsibility for their child (generally both parents if married or divorced and the mother if never married) may appoint one or more individuals to be the child's guardian. Such an appointment must be made in writing, dated and signed by the parent. The appointment need not be by Will, but a clause in the Will is sufficient. A person can also cancel the appointment in writing, provided the cancellation is signed and dated even if the original appointment was in a Will.

The appointment of the guardian takes effect on the death of the parent provided generally that there is no surviving parent with parental responsibility for the child at that time. If there is a surviving parent with parental responsibility, then the appointment of the guardian takes effect only on the death of the surviving parent.

Where the parents are married and there has been no legal dispute over the children, both parents retain parental responsibility until their respective deaths. By way of example, a father includes a clause in his Will appointing a guardian for his children. The appointment will only take effect at his death if the mother is by then already dead. If the mother survives, the father's appointment of a guardian only takes effect on her eventual death. If she has appointed a different person as guardian for the child then both appointees will share parental responsibility. It is clearly better to avoid such a situation and parents should consider appointing the same person as the guardian where possible.

# Contents of a Will

**Introduction**

In addition to those provisions in a Will that deal with the appointment of executors and guardians (see 'Appointment of executors and guardians'), or that specify who is to inherit what property (see 'Gifts and beneficiaries'), a Will typically includes the provisions detailed below.

**The opening clause**

In all Wills it is traditional to have an opening clause that identifies the testator (the person making the Will), their full name and address, as well as any other names by which they have been known. This makes it easier to identify the person who made the Will should any problems arise. The opening clause usually includes the current address of the testator being the last address where the testator lived.

The opening clause further states that the Will is 'the testator's last Will and testament' and that helps to demonstrate that the testator intended the document to be a Will.

**The revocation clause**

The revocation clause revokes any previous Wills made by the Testator. It is important to express the fact that the current Will replaces all previous Wills and testamentary dispositions (i.e. documents that are Wills or alter existing Wills (e.g. codicils) or are part of existing Wills) that were prepared and signed by the testator as it makes the testator's intention absolutely clear.

NB: If you have a foreign Will to deal with any foreign assets, care should be taken not to revoke any such Will if this is not your intention.

**Funeral instructions**

The testator may also wish to give specific instructions with regard to burial. If it is the testator's wish, for example, to be cremated then this may be expressed.

## Types of gifts

In Wills, you are generally able to make three different types of gift - specific, pecuniary (i.e. related to money) and residuary. These three types of gift are described below:

**Specific**

A specific bequest is a gift of a particular item, or group of items of property. For example, you may leave a piece of jewellery or all of your jewellery to a friend or relative.

The item or items may or may not be owned by the person making a Will when the Will is made.

Where the gift is of specific property that the testator owns when he or she makes their Will and the testator disposes of that property during his or her lifetime, the gift will fail. This is because only that specific thing can be gifted. This is known as 'ademption' and the gift is said to be 'adeemed'. For example, the gift in the clause *'My yacht to my friend Niamh'* in the Will of a testator who sold the yacht a few months prior to his death for €30,000 is said to have been adeemed. Unlucky Niamh cannot claim the €30,000.

Where the gift is of property that the testator did not own at the time the Will was made, it will not be adeemed. The property that is the subject of the gift will need to be provided out of the testator's general estate; for example, if a testator makes a gift of 4,000 shares in a quoted company, the executors of the estate will need to use money in the estate to purchase such shares, or sell other assets in the estate to raise money for this purpose.

The gift, however, even though it is not adeemed, may fail - for example, if (using the above example) the quoted company has ceased to exist by the time of the testator's death.

See the chapter 'Losing a gift' for more information.

**Pecuniary**

A pecuniary gift is simply a gift of money.

**Residuary**

A residuary gift is a gift of what is left of your estate, known as the residuary estate or residue, after payment of debts, expenses and deduction of gifts you have made, if any, of a specific or pecuniary nature as described above, after you die.

Normally, a Will states that all the debts, expenses and any other gifts are to be paid out of the residue before it is distributed.

**Residuary estate**

For many people this will be the bulk of their estate and there are a variety of options for giving it away, which for a married person or person in a civil partnership include giving just the income of the estate to your spouse or civil partner, and holding the rest to be given to others after your spouse or civil partner passes away.

You do need to think carefully about what your spouse or civil partner will need after you pass away, however, and ensure that they are not left in a difficult financial position. See also below regarding the succession rights of spouses and civil partners.

In many cases, spouses or civil partners will simply leave the whole of the estate to each other. You could also give a proportion of your residuary estate, expressed as a percentage, to specific individuals or organisations such as a charity and then leave the rest to your spouse, civil partner or partner as the case may be.

**Succession rights of spouses and civil partners**

The provisions of the Succession Act, 1965 offers protection to the surviving spouse or civil partner by giving them, what is called, a 'legal right share' in the estate of the deceased.

Where a testator leaves a spouse or civil partner and no children, the spouse or civil partner has a right to one half of the estate. Where a testator leaves a spouse or civil partner and children, the spouse or civil partner has a right to one third of the estate (section 111 of the Succession Act, 1965).

**Claims against estates**

You should be aware that if you have left out certain family members and dependants from your Will, there is a possibility that they could make a claim against your estate under a section 117 application. A section 117 application can only be brought if a person dies testate, i.e. died with a valid Will.

See the chapter 'Family and dependants left out of the Will' of this guide for a fuller explanation of a section 117 application.

**Gifts to children**

If you have given income or capital to a person under the age of 18, then you can give your trustees the option of giving the income or capital to the minor before they reach this age. Generally, such a person would not be able to receive the gift. Specific authorisation in the Will is required. 'Income or capital' does not, however include shares or other assets such as real property where a transfer of title is required.

This authorisation does not give the minor the right to demand the income or capital. Your trustees can still choose whether or not to give the gift to the minor. It may be convenient, however, to give your trustees this flexibility. Otherwise, your trustees would continue to have responsibility until the minor reaches the age of 18, which would increase the costs of administering your estate perhaps unnecessarily or disproportionately; or else the trustees

could give the gift to the minor's parent or guardian (or a person with parental responsibility for the minor) on behalf of the minor, which carries a risk that the income or capital will not be properly applied for the benefit of the minor.

## Types of gifts

In Wills, you are generally able to make three different types of gift - specific, pecuniary (i.e. money) and residuary. These three types of gift are described below.

**Specific**

A specific bequest is a gift of a particular item, or group of items of property. For example, you may leave a piece of jewellery or all of your jewellery to a friend or relative.

The item or items may or may not be owned by the person making a Will when the Will is made.

Where the gift is of specific property that the testator owns when he or she makes their Will and the testator disposes of that property during his or her lifetime, the gift will fail. This is because only that specific thing can be gifted. This is known as 'ademption' and the gift is said to be 'adeemed'. For example, the gift in the clause *'My yacht to my friend Niamh'* in the Will of a testator who sold the yacht a few months prior to his death for €30,000 is said to have been adeemed. Unlucky Niamh cannot claim the €30,000.

Where the gift is of property that the testator did not own at the time the Will was made, it will not be adeemed. The property that is the subject of the gift will need to be provided out of the testator's general estate; for example, if a testator makes a gift of 4,000 shares in a quoted company, the executors of the estate will need to use money in the estate to purchase such shares, or sell other assets in the estate to raise money for this purpose.

The gift, however, even though it is not adeemed, may fail - for example, if (using the above example) the quoted company has ceased to exist by the time of the testator's death.

See the chapter 'Losing a gift' for more information.

**Pecuniary**

A pecuniary gift is simply a gift of money.

**Residuary**

A residuary gift is a gift of what is left of your total estate - known as the residuary estate or residue - after payment of any taxes, debts and expenses outstanding and the deduction of any gifts you have made of specific items or money as described above, after you die.

Normally, a Will states that all the debts, expenses and any other gifts are to be paid out of the residue before it is distributed.

**Residuary estate**

For many people this will be the bulk of their estate and there are a variety of options for giving it away which, for a married person or person in a civil partnership, include giving just the income of the estate to your spouse or civil partner, and holding the rest to be given to others after your spouse or civil partner passes away.

You do need to think carefully about what your spouse or civil partner will need after you pass away, however, and ensure that they are not left in a difficult financial position. See also below regarding the succession rights of spouses and civil partners.

In many cases, spouses or civil partners will simply leave the whole of the residuary estate to each other. You could also give a proportion of your residuary estate, expressed as a percentage, to specific individuals or organisations such as a charity and then leave the rest to your spouse, civil partner or partner as the case may be.

**Succession rights of spouses and civil partners**

The provisions of the Succession Act, 1965 offers protection to the surviving spouse or civil partner by giving them, what is called, a 'legal right share' in the estate of the deceased.

Where a testator leaves a spouse or civil partner and no children, the spouse or civil partner has a right to one half of the estate. Where a testator leaves a spouse or civil partner and children, the spouse or civil partner has a right to one third of the estate (section 111 of the Succession Act, 1965).

**Claims against estates**

You should be aware that if you have left out certain family members and dependants from your Will, there is a possibility that they could make a claim against your estate under a section 117 application. A section 117 application can only be brought if a person dies testate, i.e. died with a valid Will.

See the chapter 'Family and dependants left out of the Will' of this guide for a fuller explanation of a section 117 application.

**Gifts to children**

If you have given income or capital to a person under the age of 18, then you can give your executors the option of giving the income or capital to the minor before they reach this age. Generally, such a person would not be able to receive the gift. Specific authorisation in the Will is required. 'Income or capital' does not, however, include shares or other assets such as real property where a transfer of title is required.

This authorisation does not give the minor the right to demand the income or capital. Your executors can still choose whether or not to give the gift to the minor. It may be convenient, however, to give your executors this flexibility. Otherwise, your executors would continue to have responsibility until the minor reaches the age of 18, which would increase the costs of administering your estate perhaps unnecessarily or disproportionately; or else the executors

could give the gift to the minor's parent or guardian (or a person with parental responsibility for the minor) on behalf of the minor, which carries a risk that the income or capital will not be properly applied for the benefit of the minor.

## Making a gift to an Irish charity

While you will naturally want to make adequate provision in your Will for your family and friends, you may want to consider making a gift to an Irish charity as well.

Making a gift to a charity is relatively simple. You need to get the name, address and, preferably, the Registered Charity Number of any charities you wish to give to and decide what gift(s) you wish to make. You can make a gift of money, specific items, or include them as a residuary or alternative residuary beneficiary.

**Specific wishes regarding use of the gift**

In making a gift you may wish to specify that it should be used for a particular purpose, or purposes, by the charity. In doing so, however, your gift becomes conditional and restricted. If the charity is unable to meet the conditions you have specified there could be difficulties in making the gift.

This may not be a problem, however, if your wishes are closely related to what the charity already does.

A more flexible way of stating you wishes would be to use a Letter of wishes. A letter of wishes is not legally binding and therefore it allows you to express your hopes for how the gift will be used but does not bind the charity if there are difficulties in carrying out your precise instructions.

**Taxation of gifts received by a charity**

A gift is exempt from Inheritance Tax once the Revenue Commissioners are satisfied that it has been or will be applied to purposes which, in accordance with Irish law, are public or charitable.

Charities meeting required criteria can apply for 'charitable tax exemption' status to the Revenue Commissioners. In granting this exemption the Charities Section of the Revenue Commissioners assigns the charitable body a CHY reference number. The full list of bodies granted this exemption is published on the Revenue Commissioners' website at Charities with tax exempt status.

If you decide to make any gifts to charities in your Will, you should also inform the charity, or charities, that you have done so.

**Type of charitable gifts**

The LawOnline Wills process gives you the option of leaving a gift to a charity. There are three different types of gifts or legacies that are most commonly given through Wills to bodies such as these, as follows:

1. Residuary gift: Your residuary estate, or residue, is what remains of your total estate after deducting any debts, taxes or expenses that are due and the value of any specific legacies that you have made in your will, e.g. legacies to your closest family members. You could then leave all, or a percentage, of the residue to a charity in the knowledge that you have already taken care of the people closest to you.
2. Pecuniary gift: This is a gift of a specific or fixed amount of money.
3. Specific gift: This is the bequest of a particular item or asset such as property, jewellery, shares etc..

**Using a codicil to make a gift to charity**

Where you would like to make some relatively simple and straightforward amendments or alterations to your Will, but you do not wish to create a new Will, you should use a codicil to do so.

Thus, if you have already made a Will and now wish to make a gift to a charity you can do so by using a codicil without having to draft an entirely new Will.

LawOnline provides a codicil document process specifically for the purpose of making a gift to a charity – see Codicil making a gift to an Irish charity.

**Charities Regulator**

The Charities Regulator lists all charities operating in the Republic of Ireland. The register can be accessed at Charities Regulator and contains the following information about each charity:

- name of the charitable organisation
- principal place of business
- other names, abbreviations, etc.
- the Registered Charity Number
- governing form
- whether it is an educational body
- CHY & registered company numbers (if both applicable)
- country where charity established
- purpose and objects of the charitable organisation
- activities and beneficiaries of charity
- reporting period
- average number of employees in reporting period
- number of individuals volunteering for the charity in reporting period
- gross income in reporting period as supplied by the charity

- total expenditure in reporting period as supplied by the charity
- name of charity trustees/officers/directors
- other locations and premises in Ireland
- whether operating in Northern Ireland and registration number if registered there
- other countries charity is operational in

It is advisable to quote the Registered Charity Number in your Will to ensure that your gift goes to the correct charity. It is also recommended that you check the correct address of the charity's principle location of its operations.

**Gifts to Irish amateur sports clubs**

Similar to charities, amateur Irish sports clubs can qualify for an exemption from Inheritance Tax as long as the gift is used for a 'public purpose'. The latter term is not defined by the Revenue Commissioners. The club should be a recognised sports club ideally affiliated to a National Governing Body within the Federation of Irish Sports.

Thus you may also wish to consider making a gift in your Will to your local sports club and the same considerations apply as outlined above in respect of charities.

If you have already made a Will and now wish to make a gift to an amateur sports club you can do so by using a codicil without having to draft an entirely new Will. LawOnline provides a codicil document process specifically for the purpose of making a gift to an amateur Irish sports club – see Codicil making a gift to an Irish amateur sports club.