

Financial Matters

www.inclusionireland.ie/content/page/making-will

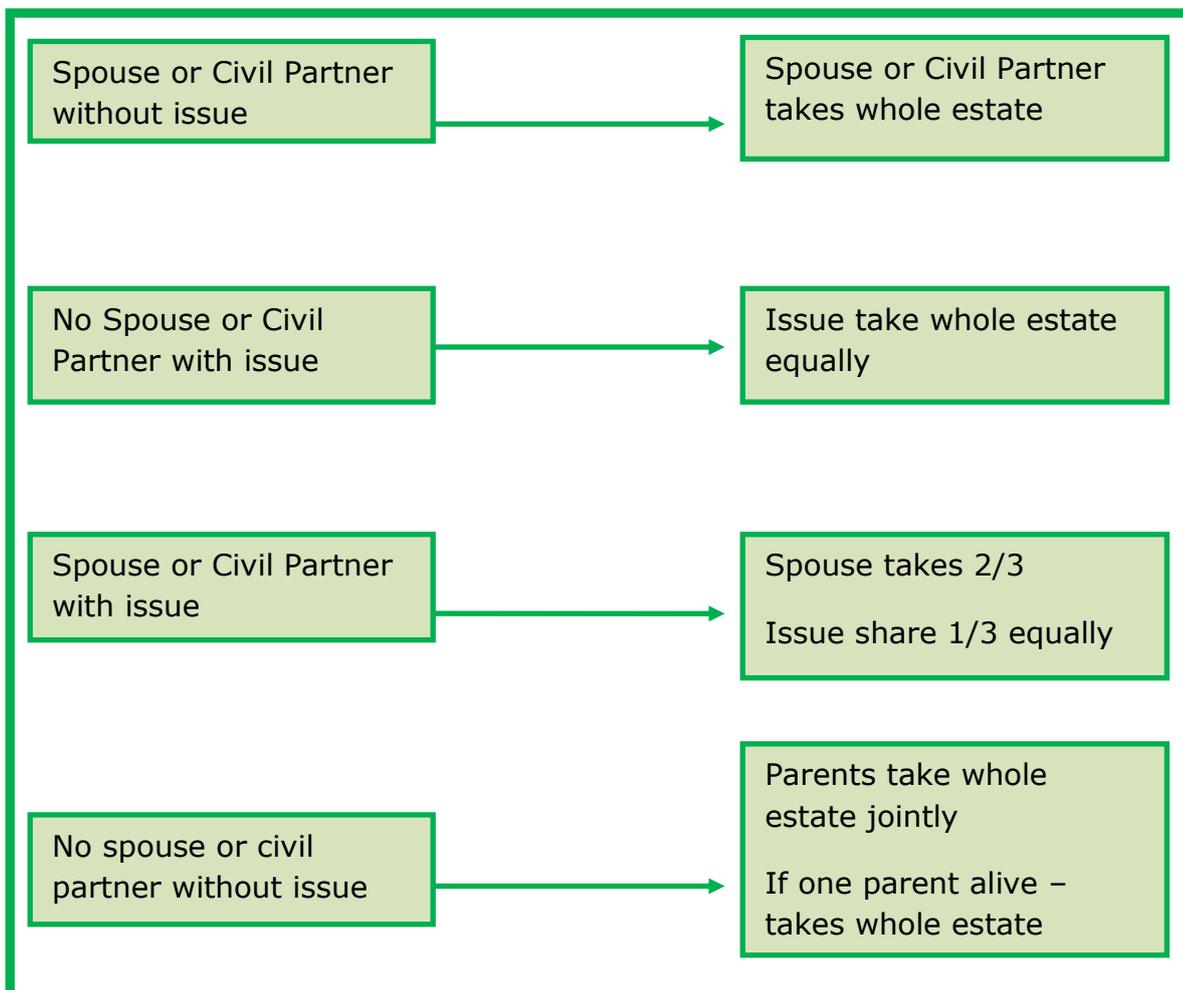
Wills

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?

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 Intestacy?



Issue means children or offspring

Financial Matters



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 and 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 and understand that you are making a will.

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, (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.

Should I make particular 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 plan for the future, it is worth remembering the means test for any state benefits being received. A person’s payment from the Department of Social Protection may be impacted on if they inherit a certain amount¹. Parents should also be aware that some people with an intellectual disability have been made a Ward of Court following significant inheritances. This may occur where somebody becomes concerned about a person’s ability to manage their own financial affairs.

¹ <http://www.inclusionireland.ie/content/page/making-will>

Financial Matters

Some people have used trust funds when benefiting their son or daughter in a will. Generally speaking the capital in a trust fund will not interfere with state benefits,

and irregular or once off payments from the trust are also generally not assessed as means.

However, regular maintenance payments would be considered as cash income and be assessed as means. Advice should be sought from the Department of Social and Family Affairs for the latest information.

Discretionary Trusts

Many parents look towards setting up a trust fund, and often use a discretionary trust. There are many trust fund types available and a discretionary trust is only one to consider.

In a discretionary trust, the trustees have discretion over when and how much they give to the beneficiary. It is important that trustees are people who you trust, and although it is up to the trustees to make decisions about the trust, you may leave a 'letter of wishes' to guide the trustees.

A Discretionary Trust;

- Is a way of indirectly benefitting a person;
- The person setting up a trust is called a Settlor;
- The Settlor can set up a trust while alive, or through a will;
- Where the trust states that it is exclusively for the benefit of an incapacitated person there is an exemption of the tax levies;
- The assets in the trust are not considered for means testing of Disability Allowance;
- Two or more people called trustees are named to decide how the assets in the trust are used;
- As the name suggests the trustees have complete discretion as to how the assets are used;

Financial Matters



Who can be a trustee?

A trustee could be someone in your family, a friend or a professional person such as a solicitor or accountant. Careful thought should 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?

Particular attention should be given to Capital Acquisitions Tax thresholds and any changes made in the annual government Budgets should be noted. There are also Trust Taxes to consider and Discretionary Trusts attract an initial and annual tax. There is an exemption to this tax in the form of people who, are because of age or improvidence or physical, mental or legal incapacity incapable of managing their affairs.

Visit www.revenue.ie for further information

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