



Wills Information

Making a Will during covid times

Carmody Moran Solicitors were delighted to be finalists in the Irish Law Awards category for Excellence in Client Service in 2017, 2019, and again in 2021, and we aim to provide our clients with top class legal services and excellent client communication and care.

We endeavour to offer our legal services at competitive rates while maintaining these high standards. During covid health restrictions, we can offer clients appointments digitally or by telephone to take instructions regarding the making of your Will. We will then meet with you outdoors in a socially distanced space to comply with best health and safety standards of care when meeting with you to execute your Will. This is important as there are special execution requirements around the making of Wills for a Will to be valid.

Legal fees for a straight forward Will

Our fees in respect of drafting and arranging for the execution of a straight forward Will start at **€195 plus VAT at 23% which is a total of €240.**

**The above fee is on the basis of a telephone or zoom consultation, the drafting of a straight forward Will that can then be prepared in advance of the consultation and completed following legal advice.*

Complex Wills and Trusts

If your Will is more complex more complex or urgent, this impacts the fee. For example, your Will intends:

- ✓ to intend to incorporate a Trust, and /or
- ✓ requires specialised tax advices, and /or
- ✓ requires the input of a medical opinion, and /or
- ✓ to deal with complex arrangements, and / or
- ✓ deal with circumstances that requires detailed legal advice,
- ✓ deals with substantial properties and assets over one million euro

Then the expertise, responsibility, care and attention to detail, and time drafting and advising you regarding matters will increase, and this additional professional time in turn increases the applicable fee.

Acting in your best interests and in the interests of your Estate can involve an assessment of your legal capacity and this may include obtaining a Medical Certificate to accompany your Will. You can anticipate that a Medical Certificate will be required if you have a significant health diagnosis and / or are of advancing years. This is because in order to prove the Will in due course this contemporaneous Medical Certificate will be required. There is little to be gained by cutting corners putting in place a Will that later cannot be enforced.

If home visits, legal assessments of capacity are required, and additional appointments, you will appreciate the time spent working with you on preparing your Will will increase and so too with the professional's time involved and the applicable fees. We will not levy such fees unless they are agreed with you first and we will be upfront and transparent in our billing.

Legal fees for more complex Will matters

In these time of complex circumstances, you can anticipate that more than one appointment will be required and that the preparation of your Will is likely to involve specialised drafting and care that will increase the professional fees as additional legal advice is likely to be required and our fees in such instance start at:

€350 plus VAT @ 23% being €430.50

This estimate allows for two consultations. Thereafter hourly rates are €150 plus vat in such matters which rates apply to the work involved drafting the Will and also liaising and corresponding with medical practitioners if required.

Frequently Asked Questions when considering making a Will.

Do I need a Solicitor to make a Will? Why not just make a home crafted Will?

Some people will create their own will in order to save time and legal costs. Even if the will has been drafted in accordance with the required principals, it is still open to challenge before the Court. If a testator has not taken proper legal advice, it can easily be assumed that the will is not valid. This is not necessarily true, but it can be quite costly if a challenge is brought before the Courts.

Mr. Justice Senan Allen of the High Court of Ireland stated *In the Matter of the Estate of Patrick John Mannion [2021] IEHC 117*, that when a will was prepared without the benefit of legal advice, the thinking was that it would save paying a Solicitor to prepare it on his behalf. However, a challenge to the High Court was very costly indeed and was ultimately paid from the estate of the testator, he stated "*If in a roundabout way, Fr. Mannion's object that Mr. Shields should administer his estate has been achieved, his object in avoiding lawyers' fees has fairly spectacularly failed. The costs of this application must be borne by his estate.*"

A homemade or a generic stationary Will might seem like a great saving. It may save €300 to €500 in legal fees, depending on the complexities of the Will, however, if challenged in the High Court the costs to the Estate ultimately could cost many, many, multiples of that sum, indeed a six-figure sum is not out of the question for the cost of a High Court hearing allowing

for numerous sets of legal costs between the Estate and the Will challenger, and beneficiaries. Taking expert advice in your legal life planning from highly experienced Wills and Probate Solicitors could ultimately be the best value legal advice you spend when you consider the alternative 'bleak house' type scenario.

The case of Mannion above, is not the only recent case that demonstrates the value in having legal expertise and input into the making of your Will.

Ms. Justice Úna Ní Raifeartaigh stated in the similar case of *In the Matter of the Estate of Mary Philomena Maureen McEnroe [2021] IECA 28* that "The appellant had no choice but to bring the application in order to get a grant and administer the estate, and the difficulty arose out of the actions of the deceased herself, not by reason of any conduct on the part of the appellant. Accordingly, we will grant the costs of the appeal and reverse the High Court decision and award the High Court costs to the appellant also, both to come from the estate in due course."

Not getting proper legal advice ultimately cost the deceased estate a significant sum, which is clearly not what the testator intended. It is always beneficial to seek legal advice. The testator may have saved the small fee by not going to a solicitor, but ultimately cost her estate legal fees in excess of €250,000. Avoiding a small cost now can give rise to wholly unintended consequences.

Why should I make a Will?

There are many benefits to making a will/estate planning, while the consequences of not doing so can be very costly for the estate and disastrous for the survivors particularly if there are children involved.

Everyone who has assets should make a Will. A Will is particularly important if you have children, even more pressing if you are a younger parent and have young children to protect. Wills should not be viewed as a preserve of the older person.

Children under 18 years, whose parents have not made a will, stand to lose the most. Without a will, the next of kin of these children will have to make an application to the court to have executors and trustees appointed to administer the assets of the estate. All discretion is taken away from the family and decision-making is left to bureaucracy. The cost and stress can be enormous.

A Will is not just relevant for people with substantial assets, it is relevant for all persons who have responsibilities.

In the absence of a Will control is effectively lost over the distribution of assets on death and the provisions of the Succession Act 1965 apply and the law determines who is to inherit and who is to be responsible for the administration. Unfortunately, in many cases, this can be quite often contrary to what the deceased person wished for and can result in the most unsuitable person assuming the role of a personal representative. Contact our probate solicitors in Blanchardstown if more information is needed.

I made a Will many years ago, should I update it?

Just because you have made a will in the past, does not mean you cannot make another one and amend the terms as you wish. You can change your will at any time, and as often as you like. Remember, a will is about your wishes and you are entitled to change your mind.

It is especially important to update your will if your circumstances have changed. A change in circumstances could be anything from the sale of property, if you get married, have a child, the death of a family member etc. If you update your will after a change in circumstances, it is less likely to be challenged before the Courts.

Good intentions can still lead to a challenge of a will. High Court Judge, Ms. Justice Nuala Butler, discussed this on the 26th of February 2021 when she stated that

“In normal course, where a testator makes a gift in his will of a specific item of property which no longer exists or which he no longer owns at the date of his death, the gift will fail and is said to be adeemed. To determine whether a gift has been adeemed, the court must construe the terms of the will to ascertain exactly what the testator intended to leave. In particular, a court must look to the extent to which the phrasing of the gift by the testator can be taken to have contemplated a change in the form of the property the subject of the gift. Obviously, a gift that is phrased generally will be far less likely to be held to have been adeemed than one which is phrased specifically.”

This case related to a gift of shares left in a will. The shares in question no longer existed as described in the will meaning the gift was invalid. The change in the name and type of gift specified at the time when the will was made, ultimately meant the provision in the will was invalid.

A testator needs to be mindful of any change, big or small, which may alter his or her will contrary to what was intended. If you are in doubt, seek legal advice. You may not need to change the terms of your will, but it is always better to be safe than sorry. A small error could end up costing your estate thousands in Court Costs.

To proceed

If you wish to proceed, please telephone our office and we will send you a formal fee estimate and some initial information and an instruction sheet to review.

To progress, we will need to put in place a retainer to act and you will need to revert to us by email or telephone with:

- ✓ Your name and home address
- ✓ Your contact telephone number
- ✓ A scan copy of your passport and a utility bill with your home address.

We will then arrange to furnish you with an instruction sheet for completion and return ahead of arranging your first consultation by telephone.

When preparing for your Wills Consultation, it is useful to have the following information to hand:

- An outline of your financial assets and liabilities
- The names and addresses of those who you wish to benefit

Once an appointment is arranged Carmody Moran Solicitors will in consultation provide such expert legal advice and this gives you an opportunity to review your situation and ask the expert questions regarding your specific circumstances. We will then work with you to explain the various considerations when making your Will in plain english, take full instructions and prepare a draft Will for you to review before arranging for execution of your Will.

Preparation and Execution of Wills during Covid

In most cases during the Covid-19 emergency, we shall arrange a telephone or digital consultation with you following receipt of your completed instruction sheet. We will then prepare a draft of your Will and we can either:

- You can attend in your car the carpark to the rear of our building and we will witness your Will through your car window. You will need to bring your own pen and comply with all social distancing / HSE guidelines, or alternatively,
- We can discuss with you arranging for the digital execution of your Will via zoom consultation, you will need to arrange to have two witnesses available for this purpose who are not beneficiaries of your Will, or related to beneficiaries, and both witnesses and you will need to be present for the digital consultation.
- If you wish, we can meet with you at your home or garden (travel time will apply bearing in mind we will have to bring two staff members to witness your Will).

If you wish to proceed to make an appointment, please telephone us on [01 8272888](tel:018272888) or

Email: solicitor@carmodymoran.ie

Web: www.carmodymoran.ie

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