

The Importance of Wills

How often do you find yourself saying in relation to making a Will, "Someday", "I'll get to it" or "Next year" and every other possible excuse in the book? Look at how often you decide it must be done. You may delay, but time will not. Farmers can spend most of their life protecting their most valuable asset, their farmland. Generations have worked hard to keep the farming business viable and in the family. Why is it so that in death many of us fail to protect our assets and secure the interest of the person or persons we wish to farm the land after we have passed on? Why is it that so many of us do not make a Will? It's a new year, a fresh start so let's get on and do it!

If I could give one single piece of advice to farmers it would be to make a Will or review their existing Will. It is vitally important for every farmer to have a valid Will made. Failure to make a Will can leave your family with an appalling mess to be resolved. This can be very expensive, cause family disputes and result in some land having to be sold, the farm becoming unviable and possibly being sold in its entirety.

Consequences of not making a Will

When a person dies without making a Will the rules of intestacy apply governing who is entitled to receive a person's property should they die. Very often the application of the rules of intestacy results in the deceased person's property being distributed in a manner that they would never have wanted. This is because the rules set out a list of people who are entitled to receive shares in the deceased's property as well as the amount of these shares and the order in which they are entitled to receive them. For example, if you die leaving a spouse and children your spouse will inherit two-thirds of your estate and your children will inherit the remaining one third in equal shares. If you die a bachelor without parent or children your brothers and sisters will inherit your estate in equal shares. By making a Will you can choose who you wish to inherit your assets rather than this decision being made by the law.

When you make a Will you also get to choose who will administer your estate. A Will allows you to name the person or persons who would be the most suitable and who will ensure your wishes are carried out. If you do not make a Will this is also decided by the rules of intestacy and may fall to someone you would never choose.

By making a Will you also get to choose who will inherit items such as cars, things of sentimental value etc. and ensure that they pass to the people who will appreciate them most.

It is particularly important if you have young children and want to provide appropriate care for them after your death that you make a Will.

As the law stands the Single Farm Payments are attached to the farmer and not to the land. If it is your wish to have the Single Farm Payments go to a family member who is to inherit the farm, you should state this expressly in your Will. Otherwise the Single Farm Payment could end up in the residue of your Will and could pass to someone who has no involvement with the farm whatsoever.

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It is also important to mention in your Will who you intend to benefit in relation to the Livestock, Bloodstock, Plant and Machinery. If this is not mentioned specifically in the Will it may fall to the person or persons entitled to the residue of your estate. In many circumstances where the family are reasonable the Will is ignored and the beneficiary who is to receive the farmland receives the livestock, bloodstock, plant and machinery. On the other hand, you cannot depend on this. In some cases it can lead to expensive disputes.

Careful Will drafting can have a significant impact on the level of Inheritance Tax which will be paid. It provides an opportunity to assess the position and consider what steps can be taken to minimise the inheritance tax liability. The small cost of making a Will can represent excellent value when compared to the tax savings that can be made.

By making a Will you can also choose to create a life interest for someone possibly a spouse or a child with special needs. A life interest entitles someone to a right to enjoy the use of a property exclusively or the income that the capital generates during their lifetime. Once that person passes away it will revert to the beneficiary you choose.

Conclusion

Making a Will essentially provides you with lots of choices about what happens to your estate once you pass away. You wouldn't leave anyone else make a decision about your farm and assets now so why would you when you have passed away? Do not give up your right to choose!

You should not wait for advanced age to make a will. Even if a Will has been made earlier in one's life, it is important to update it because people's circumstances can change e.g. divorce, death etc. If a single person makes a will prior to marriage the Will is revoked by the marriage. It is necessary to review your Will post marriage and make a new Will. We all have a natural reluctance to contemplate our own death but it is one thing in life that is guaranteed. My advice to every farmer in the country is if you have not yet made a Will, do so immediately. It is much easier to make a Will when you are in full health than doing so in a hospital bed some time in the future. As the old saying goes, "Never put off until tomorrow what you can do today." Let others leave their future in someone else's hands, but not you.



The above article was written by Karen Walsh, Solicitor, and appeared in the Irish Examiner's Farming Supplement. Karen Walsh comes from a farming background in Grenagh, Co. Cork.

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