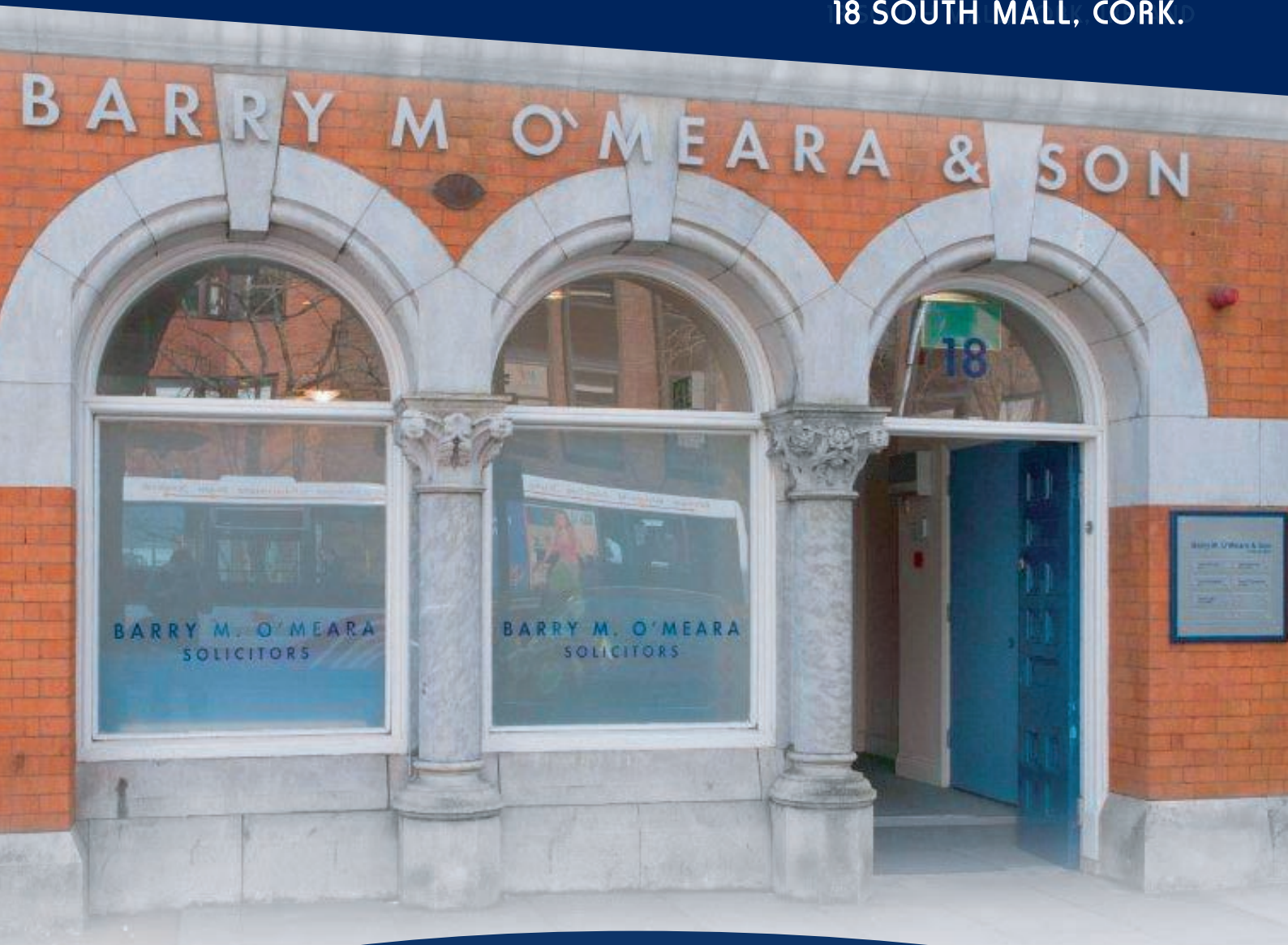


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WILLS & ESTATES

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Why Make A Will?

- A Will allows for an individual to provide for the special needs of family members and minor children. It allows for distribution of your assets according to your wishes.
- A Will helps to avoid the possibility of a dispute.
- A Will allows for tax planning in order to reduce potential tax liabilities for beneficiaries.
- A Will allows the Testator (the person making the will) to appoint somebody they trust to administer and distribute their estate.
- A Will is something many of us put off doing and if you do not make a will the law decides how an estate is distributed. For example a married man dies without make a will leaving him surviving him his wife and two children, his wife receives two thirds of his estate and his children one third. This can cause unnecessary stress and hardship if the children are under 18 years of age.
- A well drafted Will ensures that those whom you intend to benefit are provided for in the most effective and tax efficient way possible.

Who can make a Will?

Anybody can make a will as long as they are aged 18 years or over or have been married and also are of sound disposing mind.

Of what can a Will dispose?

All personal and real property of an individual can be included in a will and any other property which an individual is beneficially entitled subject to some exceptions. For example joint property does not form part of an individual's estate but passes by survivorship into the survivor's name. However the placing of money into a joint bank account will not in all instances be transferred by survivorship and sometimes the background and the reason for the transferring of the property into joint names will be queried. A typical example of joint property not forming part of a deceased's estate is where a couple have bought a house jointly (in legal terms this is described as "joint tenants").

Can I change my Will?

It is important to remember that an individual can change their will at any time and can sell any of the assets referred to in their will. In other words the will speaks from the date of death and does not take effect until the death of the testator. It should be noted that a will is revoked by subsequent marriage except if it is made in contemplation of the marriage.

Should I update my Will?

It is advisable to revisit your will to take account of changes in your circumstances and if necessary the circumstances of your beneficiaries and also legislation. This is particularly important if tax planning has been undertaken in the drafting of your will.

Discretionary Trusts in Making a Will

- Discretionary Trusts are commonly seen in wills made by a couple with young children where the couple wish to provide for the children until they reach the age of 21 years. This age is specified so that the trust is not subject to Discretionary Trust tax.
- The couple will usually appoint two trustees to manage the trust and provide for the children according to their needs and circumstances.
- The trustees can pay or appoint income or capital or both to some or all of the beneficiaries. This type of trust allows flexibility in providing for the financial requirements of the beneficiaries. The trustee can use their discretion and take into account the particular requirements and circumstances of the beneficiaries throughout the duration of the trust.
- Unless the children have special needs the trust will usually be wound up when the youngest child is 21 and the proceeds of the trust divided amongst the children.
- There may be tax implications in relation to discretionary trusts and we can advise you on same.

Common Misconceptions in relation to Wills

- A Beneficiary can also be an executor in a will.
- Your assets do not have to be specifically mentioned in the will. For example you can simply leave "all your estate" to your spouse.
- The fact that you have made a will is confidential and cannot be disclosed to anybody without your permission.
- Even where they are not provided for in a will, a spouse has a legal entitlement to a share in their deceased spouse's estate. Where there are children to the marriage this is one third of the estate and where there are no children to the marriage this is half of the estate. Certain conditions apply.

- A child is not entitled as a right to any part of their parent's estate, however Irish Succession Law places a legal obligation on parents to make proper provision for their children in accordance with their own financial situation and the financial requirements and circumstances of the child. It does not require that children be treated equally. Where a child feels that he has not been properly provided for under a parent's will he can make an application in Court for determination as to whether the parent failed in their moral duty to make provision for the child.
- A Court will consider the application from the point of view of a prudent and just parent.

Estate & Tax Planning

While the primary function of a will is to leave assets to beneficiaries, a will is also a tax planning opportunity. A will should be structured to reduce the exposure to taxation on death for the beneficiary. Careful tax planning may prompt the transfer of assets which are currently in the testator's name into the joint names of the testator and spouse. For example where the estate consists of one house and a number of bank accounts, a testator may consider transferring the house and all bank accounts into joint names as this may avoid the necessity of having to take out a grant of probate at all.

Consideration should also be given to the amount left to specific beneficiaries as it may result in a Capital Acquisitions Tax liability for them. Currently gifts and inheritances between spouses are exempt from Capital Acquisitions Tax and children are entitled to receive a certain amount of gifts and inheritances tax free from their parents. Lower thresholds apply to other relatives and to non-relatives. This figure usually changes at each government budget.

Disclaimer: The information herein is intended as a general guide only. No responsibility is accepted for any errors or omissions howsoever arising. Specialist legal advice from a Solicitor should be sought before taking any action in response to the issues raised in this article.

Your Contact:

We would be happy to discuss any of the above with you and you might please contact our Probate and Wills Partner **Crona Hughes** at 021 4273005 or crona.hughes@bmomeara.ie.

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