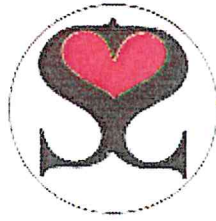
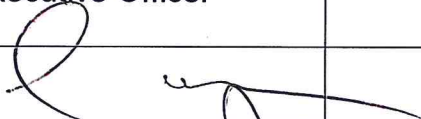
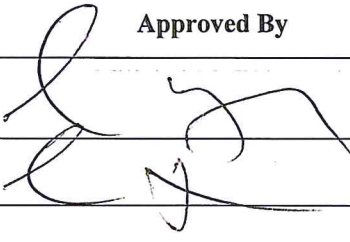


SOS Kilkenny clg



Guidelines for Supporting Adults in SOS to make a Last Will and Testament

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|--|---|--------------|
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1.0 Purpose of Policy

1.1 The purpose of this document is to give guidance to clients, families and staff to support clients on making a last Will and Testament. The purpose is to give staff the information to be able to answer client queries or family queries on making a last Will and Testament.

2.0 Scope of the Policy

2.1 This document applies to all those supporting clients attending S.O.S Kilkenny Ltd. The information on making a last Will and Testament is generic thus applies to all adults.

3.0 Definitions

3.1 What is a Will?

3.1.1 A Will lets you choose who you want to have your money and things you own after you die.

3.1.2 A Will is written on paper generally with the help of a Solicitor. It is a legal document and means that people must carry out the choices you make in your Will. You must sign the document in front of two witnesses, who must also sign the document.

3.1.3 In the strictest sense, a "Will" has historically been limited to real property while "Testament" applies only to dispositions of personal property (thus giving rise to the popular title of the document as "Last Will and Testament").

3.2 What are the Intestacy Rules?

| Relative Surviving | Share |
|--------------------------------------|---|
| Spouse and children | Spouse takes two thirds and children take the remainder |
| Spouse and no children | Spouse takes whole estate |
| Children and no spouse | Children take whole estate |
| Father, mother, brothers and sisters | Each parent takes one half of estate |
| Parent, brothers and sisters | Parent takes whole estate |
| Brothers and sisters | All take in equal shares |
| Nephews and nieces | All take in equal shares |

3.3 What is an Executor?

- 3.3.1 An executor is a person named in the Will who has the job of carrying out the terms of the Will;
- 3.3.2 An executor can benefit from the Will (unless they or their spouses are witnesses);
- 3.3.3 An executor must be over 18;
- 3.3.4 An executor must be of sound mind.

3.4 What is a Testator?

- 3.4.1 A testator is the person making their Will.

3.5 What is Sound Mind?

- 3.5.1 To be considered to have sound mind a person must:
 - 3.5.1.1 Have legal capacity at the time will being made;
 - 3.5.1.2 Understand what a Will is;
 - 3.5.1.3 A Ward of Court cannot make a Will.

4.0 Responsibilities

- 4.1 It is the responsibility of frontline staff to inform the social work department or their line manager when a client wishes to make their last Will and Testament.
- 4.2 It is the responsibility of the social work department or a senior manager to support an individual in making their last Will and Testament in consultation with the person's next of kin where the person is agreeable to this consultation.
- 4.3 It is the responsibility of all staff to be familiar with and to adhere to this document as closely as is reasonably possible.
- 4.4 It is the responsibility of all Residential Managers to ensure that each staff member is familiar with this document, know how to access it and to monitor compliance.

- 4.5 While it is the responsibility of each individual to make their own Will, people attending S.O.S Kilkenny Ltd., need staff or family to make them aware of the importance of making a will.
- 4.6 Education on what a will is may be required and support to make a will may be required.
- 4.7 Staff should inform service users of the following before they make a Will:
 - 4.7.1 The kind of things a person can leave in a Will these include –
 - 4.7.1.1 Anything you own can be named in your Will.
 - 4.7.1.2 For example, people can say who they want to have their money, property, jewellery, furniture, books, bicycle etc.
 - 4.7.1.3 That wills are not final and can be changed or altered.
- 4.8 Staff should inform service users what happens if they do not make a Will?
 - 4.8.1 If a client does not make a Will then they get no say in how their estate (their money and things) are divided.
 - 4.8.2 That the Government use certain rules to decide who in their family gets their money and things after they die. These rules are called ‘Intestacy rules’.
- 4.9 Staff should inform the client who they can include in their Will?
 - 4.9.1 Individuals can choose to leave some money or any of their things to any named person.
 - 4.9.2 For example you could include: Family, friends, charities.

5.0 Confidentiality

- 5.1 Article 40.3.1 of the Irish constitution sets out that privacy is a core personal right and confidentiality stems from this right.
- 5.2 All staff must ensure that they are aware of the importance of keeping information confidential as outlined in SOS Kilkenny Ltd. contract of employment.
- 5.3 All staff must treat all information regarding a person’s assets as privileged and confidential.
- 5.4 It is accepted practice that care needs are communicated and recorded as part of the persons care and support. Professional judgement and responsibility should be exercised in the sharing of such information with professional colleagues. The confidentiality of each person’s records must be safeguarded.

6.1 Procedures

- 6.1 The client and their family should be advised to seek legal advice when drawing up a will. While it is not essential to have a solicitor draw up a will it is best practice.
- 6.2 Questions to consider in making a will: What is a Valid Will?
 - 6.2.1 A valid Will must be in writing;
 - 6.2.2 The person making the Will must be 18 or over or have been married;
 - 6.2.3 The person making the Will must be of sound mind (have appropriate mental capacity);
 - 6.2.4 The Will must be signed and dated by the person making the Will;
 - 6.2.5 The Will must be signed by two witnesses who are not beneficiaries in the Will;
 - 6.2.6 The Will must have two executors named in it;
 - 6.2.7 An undated will is not necessarily invalid, but a witness will have to swear that the will was executed before the testator died to satisfy the Probate office.

6.3 Factors impacting on the Making of a last Will and Testament in 2014

- 6.3.1 Establishing mental capacity to make a Will is a challenging area at present.
- 6.3.2 The Mental Capacity Bill which was drafted in 2008 is still pending at the time of writing. However this draft defines capacity as “the ability to understand the nature and consequences of a decision in the context of available choices at the time the decision is to be made”. It advocates for supported decision making for people lacking capacity and also includes provisions for the establishment of a Guardian Board to replace the Ward of Court.
- 6.3.3 While a person’s capacity to make a decision should be assessed in context, under current legislation (The Lunacy Regulation (Ireland) Act 1871) a Ward of Court has been deemed to be of “unsound mind” and thus loses the right to make decisions on his/her own behalf.

- 6.4 Factors for consideration in establishing a person's capacity to make a Will; the person making their Will must;
- 6.4.1 Understand that he/she is making a will;
 - 6.4.2 Understand that a Will is a document that will dispose of his/her assets on death;
 - 6.4.3 Know the nature and extent of his/her estate;
 - 6.4.5 Be able to have regard for those who might expect to benefit from his/her estate and decide whether he/she wants to benefit them.
- 6.5 In the event of a challenge to the capacity of the person making their Will, the Courts will decide and have been called upon to do so on many occasions.
- 6.6 Capacity to make a Will may be proved by a sworn statement from a doctor or solicitor who attended the deceased at the time the Will was made.
- 6.7 Within S.O.S. Kilkenny Ltd., it is a social worker or senior manager who can support an individual to make their last Will and Testament in consultation with the individual's next of kin where the individual agrees to this consultation.

This Policy should be read in conjunction with the following policies:

- The SOS Kilkenny clg Data Protection Policy
- The SOS Kilkenny clg Data Breach Policy

Appendix 1 Sample of Last Will and Testament

Last Will and Testament

I, the undersigned,

(full names)

.....
of (residential address)

.....
.....
.....
hereby declare this to be my Will. I hereby revoke all previous wills or testamentary writings made by me.

I nominate (full name)

.....
(address)

.....
.....
.....
to be the Executor of my Estate. Should he/she be unwilling or unable to act as executor, I nominate (full name)

.....
(address)

.....
.....
.....
I direct that the executor of my estate shall/shall not be required by the Master of the High Court or other competent authority to give security for proper performance of his duties. (give details of security to be given or draw a line through if not applicable)

.....
.....
I direct that my estate shall devolve as follows:

Special Bequests:

.....
.....
.....
.....
.....
.....
.....

Appendix 1 Sample of Last Will and Testament

After my special bequests I bequeath the residue of my Estate to:

.....
.....
.....
.....
.....
.....

In witness whereof I have signed this will in (place)

.....
.....
.....

on the(day) of (month) (year) in the presence of the undersigned witnesses who in my presence and in the presence of each other have signed this will as witnesses.

Date:

.....
WITNESS 1.

.....
(TESTATOR)

.....
WITNESS 2.