

WILLS & INHERITANCE

Leaflet No. 9



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This leaflet is not an interpretation of the law.

In this leaflet the term 'spouse' means the husband or wife in a marriage.

Making a Will

How can I be sure, that after I am deceased, my wishes will be carried out?

If you make a valid Will you will ensure that, subject to certain limitations, your estate will go to the person(s) named in the Will.

The word 'estate' refers to the assets held by a person at the time of death, for example, property, possessions and money.

What happens if I have not made a valid Will?

If you die without having made a valid Will, your estate is divided according to rules laid down in legislation.

Is there an age limit for making a Will?

You must be over eighteen years of age to make a Will.

Can a person with a mental disorder, for example, dementia, make a Will?

You must be of sound mind to make a valid Will.

Are there any other requirements for making a Will?

Certain formal requirements must also be satisfied, for example, the requirement of witnesses to a Will. As a Will is difficult if not impossible to correct after your death you are strongly advised to consult a solicitor to draft your Will for you.

Personal representatives

Who is responsible for dealing with a Will on behalf of the deceased?

- **Personal representatives** give effect to a Will or divide up the estate of a person who died without making a valid Will.
- The personal representatives must get a grant of representation before dealing with an estate.
- Where there is a Will, a **Grant of Probate** is obtained.
- Where there is no Will, a **Grant of Letters of Administration** is obtained.

The **Personal Representative** is the person who is responsible for organising and sorting out the deceased's affairs.

If there is a Will, the Personal Representative is appointed by being named in the Will as its Executor. If there is an intestacy (no Will), the Personal Representative will probably take on the responsibility simply because he or she is the deceased's spouse or one of the next-of-kin. A Personal Representative who has not been appointed by Will is called an Administrator.

A Grant of Probate is where a Will has been made and the Executor or the Solicitor working on behalf of the Executor applies to the Probate Office for a Grant of Probate. This will allow the deceased's estate (assets) to be distributed according to his/her Will.

Rights of spouses/civil partners

Has a married person or civil partner any right to a share in their spouse's/civil partner's estate?

Generally, a person has a legal right to a share of the estate of his/her deceased spouse/civil partner.

Does a spouse/civil partner have any rights where there is a valid Will?

Where a person dies having made a valid Will, his/her spouse/civil partner has a legal right to:

- half of the estate, if there are no children; or
- one third of the estate, if there are children.

A spouse/civil partner can choose to take the legal right or the share given in the Will.

- the personal representative must notify the spouse of this right; and
- this choice must be made within six months of the personal representatives notifying the spouse/civil partner of the right; or
- within one year of the granting of probate, whichever is the later.

Does a spouse/civil partner have any rights where there is NOT a valid Will?

Where a person dies without having made a valid Will, his/her spouse has a legal right to:

- all of the estate, if there are no children; or
- two thirds of the estate, if there are children.

Rights of children

Do children have rights to a share in their parents Will?

- Generally, a child does **not** have an automatic right to a share in his/her parent's estate where the parent died having made a valid Will.
- However, a court can award a child a share of his/her parent's estate where it finds that the parent *"failed in his moral duty to make proper provision for the child in accordance with his means"*. Such an application must be brought in the High Court within **six months** of the date of the Grant of Probate.
- A child bringing such an application need not be under eighteen years of age or have been financially dependent on the parent.

Do adopted children and children of unmarried parents have any rights to a share in their parents estate?

Adopted children and children whose parents are not married to each other have the **same rights** as children of a marriage.

Family home and inheritance

Who will inherit the family home?

Where the family home is held by the spouses/civil partners as joint tenants, the surviving spouse/civil partner automatically becomes the sole owner of the property. Otherwise, the surviving spouse/civil partner may be able to require that the family home be transferred to him/her as part of his/her legal right share.

Please see note above about the legal rights of spouses/civil partners.

Factors affecting inheritance rights

There are a number of factors that affect inheritance rights:

Marriage - Marriage revokes a Will unless it has been made with the marriage in mind.

Separation agreement - Spouses may agree to end their legal right to a share in each others' estate;

Judicial separation:

- When making an order for judicial separation, the court may make an order extinguishing the spouses legal right to inherit from each others' estate.
- The court must be satisfied that adequate and reasonable provision has been made for a spouse before it will extinguish his/her rights.
- However, unless the court orders otherwise, there are still certain circumstances, where a person can apply to court for a share of the estate of his/her spouse. Such applications must be made within six months of the Grant of Probate or Letters of Administration of that estate;

Divorce - A divorced person is not a spouse and has no legal right to a share in the estate of his/her former spouse. However, unless the court orders otherwise, there are certain circumstances in which a person can apply for a share of the estate of his/her former spouse. Such an application must be made within six months of the Grant of Probate or Letters of Administration in respect of that estate. A person who remarries after divorce cannot make such an application; and

Desertion - A person who has been in desertion of their spouse for two years or more immediately before the death of his/her spouse, may not be entitled to take a legal right share in the estate of his/her deceased spouse.

Criminal offences – A person who has committed serious criminal offences against the deceased is precluded from taking his/her legal right share or applying to court for proper provision to be made out of the estate.

Dissolution of civil partnership - A person whose civil partnership has been dissolved is not a civil partner and has no legal right to a share in the estate of his/her former civil partner.

Payment of tax on inheritance

If I benefit from a Will do I have to pay any tax?

A person who benefits from the estate of a deceased person may be liable to pay **Capital Acquisitions Tax (CAT)**.

- The amount of tax payable will depend on the relationship between the deceased and the benefiting person and the value of the inheritance.
- There are some exemptions to the requirement to pay tax, for example, currently no tax is payable on inheritances between spouses or former spouses.
- Any tax payable must be paid within a specific period.
- A surviving spouse may benefit from a number of tax exemptions and reliefs.
 - The exemption and relief categories and the amounts change from time to time.
 - Full details are available from the Revenue Commissioners.

Probate tax

What is probate tax?

Probate tax is the tax which is payable on the total value of a deceased person's estate.

Who is responsible for paying probate tax?

Personal representatives are responsible for paying probate tax.

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