



Making a Will



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WHAT HAPPENS IF I DIE WITHOUT MAKING ANY WILL?

If you die without making a Will, the law provides that your spouse is entitled to your entire estate if there are no children. If you leave a spouse and children your spouse gets two-thirds and one-third goes to your children. If you do not have a spouse, your entire estate goes to your children. If a child of yours dies before you, leaving children, then those children take their parent's share. If you do not have a spouse or children, your parents are entitled to your entire estate. If both parents are deceased, then your estate is divided between your brothers and sisters (if any brother or sister dies before you and leaves children, then those children (nieces and nephews) take their parents share).

WHERE DO I START?

Record the basic information (see the questionnaire attached to this leaflet):

- **Your Assets, Their Value and Where They Are Located**
It is important that after your death your Executors will have details of all your assets and know where to find bank books, shares/savings certificates, deeds, life insurance policies and all relevant financial information.
- **Nearest Relatives**
Set out particulars of your immediate family, i.e. the names of your spouse, children or other dependants (including their dates of birth) or otherwise your closest living relatives and their addresses.
- **Executors**
Choose the person/s best suited to carrying into effect the terms of your Will. An advantage of making a Will is that your beneficiaries avoid the cost of an Administration Bond (this is an insurance policy) which is required where no Executors are appointed. A minimum of two Executors are recommended and if you are a senior citizen, at least one of those should be younger than you.
- **Proposed Division of Your Estate**
The usual format is:
 - ❖ Cash legacies (e.g. friends, charities, religious).
 - ❖ Bequests of specific property (e.g. jewellery, furniture, etc.). It may be convenient to deal with these in a letter of wishes coupled with a discretionary power for the Executors appointed in the Will.
 - ❖ Any other special provisions (see "special circumstances").
 - ❖ Residuary bequest (which may comprise most of your estate). Consider the possibility that some relatives/friends may be disappointed and think about any explanation you would like your Executors to give.





- **Restrictions (where a Will is made)**

The law imposes certain restrictions on how you may deal with your estate. Your spouse has a legal right to half of your estate where there are no children. If there are children, your spouse is entitled to one-third of your estate. Your children are not automatically entitled to any part of your estate but they may apply to court if you fail in your moral duty to make proper provision for them in accordance with your means, taking into account their position in life. Your spouse also has a right to require that the family home and household contents be included in his/her share (and the share of children under the age of 18).

- **Special Circumstances / Assets**

Special considerations arise if:

- ❖ Any of the beneficiaries are under 18 years of age (see "What if I have young children?").
- ❖ Any of the beneficiaries suffer from a disability (see "Discretionary Trust").
- ❖ A farm or business is involved or your dwelling house is the main asset (see "No cash assets" and "Discretionary Trust").

- **Funeral Wishes**

You should inform your family in your lifetime as to what your funeral wishes are, as your Will may not be read until after the funeral. If you wish to have a headstone on the grave, you should state this in the Will.

WHAT IF I HAVE YOUNG CHILDREN?

If you have children under 18 years of age, your Will should give directions for the care of those children and how they are to be provided for. Unmarried couples additionally should ensure that each of their Wills clearly states who is to have custody and guardianship of their children if one of them dies. Most importantly, both married and unmarried couples should ensure that their Wills clearly state who is to have custody and guardianship if both spouses/partners die.

- **Guardians**

A Guardian is the person you select to take over your role as parent in rearing your children under 18 years of age.

- **Trustees**

You can appoint a trustee to look after the assets in your estate; an Executor can also be a Trustee. Your Will should give your Trustees enough powers to allow them to be flexible in deciding what maintenance and other payments should be made for the benefit of your children.

- **Provision for children**

You may wish your estate to be divided equally between your children when they reach a specified age. You can arrange for them to receive an income from the estate, possibly from 18 years of age; alternatively, you

may set up a 'discretionary trust' for your children until the youngest reaches age 18 (see "What is a Discretionary Trust? "). Alternatively, if the children are likely to stay with a relative, consider enabling your Executor/Trustee to advance money to the new household budget, including allowing for monies for increased mortgage payments on a larger home to accommodate both families.

WHAT IF I'M SEPARATED, DIVORCED OR A PARTNER?

Being separated from your spouse does not mean that your spouse automatically loses his/her legal right to a share of your estate; however, his/her rights may be cancelled under the terms of a separation agreement or judicial separation, or can be cancelled by court order when a couple divorce.

In the case of divorce, a former spouse who claims that proper provision has not been made for him/her may apply to court for a share of the deceased's estate within 6 months from the date of grant of probate or grant of administration. Personal representatives are required to make reasonable attempts to notify the former spouse. A share will not be given to a former spouse who has remarried. The same rules apply to a separated spouse.

In the case of unmarried partners, the "partner" will have no succession rights and will therefore be limited to whatever rights he/she may establish in contract (e.g. where he/she has financially contributed to the purchase of a property) or where he/she is entitled under your Will.

WHAT IF I HAVE NO CASH ASSETS?

If your only asset is a house, business or farm and you do not have sufficient cash, you can leave the house to a particular beneficiary on condition that the beneficiary arranges for legacies to be paid to other beneficiaries. In the case of an elderly brother/sister, you could consider leaving the house, business or farm to them for their lifetime and state in your Will what you want done with the property after their death.

WHAT IS THE SIGNIFICANCE OF JOINT PROPERTY?

Property held jointly (rather than in separate shares) passes on to the survivor where there is clear evidence that this is intended. However, there are legal rules which may prevent this.

With bank accounts, it is not unusual to open a joint account for convenience (e.g. where the original account holder is elderly or immobile) or for a specific purpose

(e.g. to pay for the funeral). It is therefore important when opening such accounts to specify in writing whether it is intended that the survivor is to keep the money. You should take specific steps to ensure that your intention is clear as to what is to happen to the account on your death.

WHAT IS A DISCRETIONARY TRUST?

This provides your Trustees with full power to apply capital and income at their discretion for the benefit of your beneficiaries. This may mean that some beneficiaries will receive more than others - that is up to the Trustees to decide. A discretionary trust can be useful where beneficiaries are young, suffer from a disability, are elderly, for a dependant relative and for tax planning purposes for larger estates.

CAPITAL ACQUISITIONS TAX

Capital Acquisitions Tax (CAT) is a tax on gifts and inheritances. Inheritance tax may have to be paid if property is inherited on the death of any person (e.g. under a Will or on intestacy). Gifts and inheritances between spouses are exempt. The loose-leaf insert with this booklet sets out the relevant information regarding inheritance tax.

TAX FREE THRESHOLD

The tax free threshold amount increases each year (see loose-leaf insert).

VALUATION DATE

The date for payment of inheritance tax (the valuation date) depends on the circumstances of each case. Tax must be paid within 4 months of the valuation date and interest is payable on overdue tax (for rate of interest payable, see loose-leaf insert with this booklet).

EXEMPT PROPERTY

In some circumstances certain types of property (e.g. government stocks) left to persons who are not resident or domiciled in Ireland, or heritage property, maybe exempt from CAT (See section on dwelling house).

HOW CAN THE IMPACT OF INHERITANCE TAX BE REDUCED?

It is important to plan the passing of your assets so as to minimise the tax that your beneficiaries have to pay.

- Step 1 Look at the reliefs available.
- Step 2 Look at dividing up your property to use all available tax free thresholds.
- Step 3 Look at providing a fund to pay CAT (insurance).

WHAT RELIEFS ARE AVAILABLE?

1. AGRICULTURAL PROPERTY

If a specified percentage of the beneficiary's property (after an inheritance) consists of agricultural assets, then the beneficiary may qualify for agricultural relief, so that the value of the agricultural property he/she inherited is reduced by a specified percentage when calculating inheritance tax (if any). The relevant percentages are set out in the loose-leaf insert accompanying this leaflet.

2. BUSINESS PROPERTY

If business property, which would generally include assets such as a business or shares in a family company, is inherited, then the beneficiary may be entitled to claim business relief so that the value of the business property inherited is reduced by a specified percentage when calculating the inheritance tax (if any). For details of the current percentage reduction, please refer to the loose-leaf insert accompanying this leaflet.

3. FAVOURITE NEPHEWS/NIECES

If the beneficiary is a nephew or niece who worked full-time in the business with you for five years, and you leave the business to him/her, then he/she will be entitled to the same tax-free threshold as a son or daughter in relation to that property.

4. DWELLING HOUSE

If you leave a house to a beneficiary who has continuously occupied it as his/her main residence for a period of three years immediately before the date of your death, and he/she continues to occupy it for a period of six years after the date of death, then such a beneficiary will be exempt from tax on the value of the house provided all the conditions for exemption are complied with.

5. MINOR CHILD OF DECEASED CHILD

If you leave property to a grandchild who is the child of your deceased child, and the grandchild is under the age of 18, then that grandchild will be entitled to the same tax free threshold as a son or daughter.

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6. SURVIVING SPOUSE RELIEF

If property is left to the spouse of a deceased member of your family, that spouse will be entitled to the tax free threshold amount that the deceased family member would have been entitled to in relation to that inheritance.

NB: Each relief has conditions that must be met. Professional advice should be obtained when considering whether a particular relief is applicable.

OPTION OF GIVING A GIFT (OTHER THAN BY WILL)

If a gift is given then a small gifts exemption can be claimed. See the attached leaflet for details of the current exemption limit. A gift is ideal for property that is likely to increase in value. **NB: Gifting property may trigger a liability to Capital Gains Tax or Stamp Duty and professional advice should be sought.**

DIVIDING UP PROPERTY

If you divide your property among the family of the person you wish to benefit, the tax free thresholds available are multiplied accordingly.

For example, if, instead of leaving property to your daughter, you leave the property to your daughter, son-in-law and three grandchildren, then you can leave each person property to the amount of the tax free threshold relevant to each of them individually, without triggering a tax liability.

PLANNING FOR THE PAYMENT OF TAX

If inheritance tax is going to arise on your estate then it is possible to take out an insurance policy (called a section 60 policy) the proceeds of which are exempt from inheritance tax if used to pay inheritance tax.

DISCRETIONARY TRUST

A discretionary trust is useful where the person making the Will wants to benefit a wide group of people (for instance to include grandchildren, persons not yet born and future spouses) and would like to provide for some flexibility as to who should benefit or the amount they should be given.

Discretionary trusts are liable to a once off tax (see attached leaflet for details) on the death of the person creating the trust, once his/her spouse, and all their children are over the age of 21. There will be a refund if the trust is distributed fully within a certain number of years (see attached leaflet for details). There is a further tax liability each year following the first year (see loose-leaf leaflet for details).

TAX FREE THRESHOLDS

A gift or inheritance from a husband or wife is not liable to inheritance tax. This will only apply to a legal spouse, and to divorced persons in certain circumstances. A "partner" is treated as a stranger for tax purposes.

If you leave property by Will to someone other than a spouse then the first portion, known as the tax free threshold, is taken free of tax. The amount of the tax free threshold depends on your relationship to the beneficiary.

If you leave property to a son/daughter, or in certain circumstances to a parent or foster child, or a minor child of a deceased child, then up to €422,148 can be taken tax free. If the property is left to a parent, brother or sister, niece or nephew, or grandchild, then up to €42,215 can be passed on tax free, and if you leave property to anyone else (for example a friend or "partner") then they can take up to €21,108 without paying inheritance tax.

However, if a person has received other gifts or inheritances since 5 December 1991 they are added together (aggregated) according to certain rules relating to the date on which the gifts were received and from whom they were received. The effect of this may be to reduce or remove the tax free threshold available. If aggregation does apply, then the tax bite may prove disproportionate and professional advice should be sought.

These tax free thresholds apply in 2002. The amount of each tax free threshold is increased every year in line with inflation.

WHAT HAPPENS AFTER THE TAX FREE THRESHOLD IS USED UP?

Inheritance tax is paid on the balance of the inheritance at the rate of 20%.

VALUATION DATE

Tax must be paid within 4 months of the valuation date and interest on overdue tax is generally 12% per annum.

AGRICULTURAL PROPERTY

At present, to claim relief, 80% of the beneficiary's property (after a gift/inheritance) must consist of agricultural assets. The value of the agricultural property he/she receives is discounted by 90% when making the CAT return.

BUSINESS PROPERTY

Currently, the value of the business property is discounted by 90% when filing the CAT return.

OPTION OF GIVING A GIFT

At present, if a gift is given then the first €1,270 is exempted in a calendar year from any disponent.

DISCRETIONARY TRUST

At present, discretionary trusts are liable to a once off tax of 6% on the death of the person creating the trust, once his/her spouse, and all their children are over the age of 21. There will be a refund of 3% if the trust is distributed fully within 5 years. There is a further payment of 1% due each year following the payment of 6% (except for the first year).

PROBATE TAX

Probate Tax is abolished for deaths occurring on or after 6 Dec. 2000.

**Disclaimer: The information herein is intended as a general guide only.
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