

WILLS AND INHERITANCE

Leaflet No. 9.



LEGAL AID BOARD

This leaflet is not an interpretation of the law.

LEAFLET No. 9

WILLS AND INHERITANCE

Making a will

A person who makes a valid will can ensure that, subject to certain limitations, his / her estate will go to the person(s) named in the will. Estate refers to the assets held by a person at the time of death, for example, property, possessions and money. Where a person dies without having made a valid will, his / her estate is divided according to rules laid down in legislation.

A person must be over eighteen years of age and of sound mind to make a valid will. Certain formal requirements must also be satisfied, for example, the requirement of witnesses to a will.

Personal representatives

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, this is called a grant of probate. Where there is no will, a grant of letters of administration is obtained.

Rights of spouses

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

Where a person dies having made a valid will, his / her spouse 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 can choose to take the legal right or any gift made in the will. This choice must be made within six months of the personal representatives notifying the spouse of the right, or within one year of the granting of probate, whichever is the later.

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

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. 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

Where the family home is held by the spouses as joint tenants, the surviving spouse automatically inherits the deceased spouse's interest. Otherwise, the surviving spouse may be able to require that the family home be transferred to him / her as part of his / her legal right share.

Factors affecting inheritance rights

There are a number of factors that affect inheritance rights:-

- **marriage** - marriage revokes a will unless it has been made in contemplation of that marriage;
- **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 in respect 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.

Payment of tax on inheritance

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 upon the relationship between the deceased and the benefitting 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 and 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

Probate tax is the tax which is payable on the total value of a deceased person's estate. Personal representatives are responsible for paying this tax.

Legal Aid Board, Quay Street, Cahirciveen, Co. Kerry. Tel: (066) 947 1000

Fax: (066) 947 1035 Locall No. 1890 615200 Website: www.legalaidboard.ie

Legal Aid Board Information leaflets

Leaflet No. 1.	Civil legal aid	Leaflet No. 8	Children and family law
Leaflet No. 2.	Family law - general	Leaflet No. 9.	Wills and inheritance
Leaflet No. 3.	Separation	Leaflet No. 10.	Customer care and complaints procedure
Leaflet No. 4.	Divorce	Leaflet No. 11.	Applying for legal services
Leaflet No. 5.	Nullity	Leaflet No. 12.	Withdrawal of legal services
Leaflet No. 6.	Maintenance	Leaflet No. 13	Financial eligibility
Leaflet No. 7.	Domestic violence	Leaflet No. 14	Civil legal aid for complainants in rape and certain sexual assault cases