

Inheritance Rights of Grandchildren – Child of a Pre-deceased Child

This article looks at the inheritance rights of a grandchild in circumstances where that grandchild's parent has predeceased the grandparent. It is assumed for the purposes of this article that all parties are domiciled in the Republic of Ireland and the assets comprised in any inheritance are in this jurisdiction also. It is worth noting that a grandparent is under no obligation to provide for their grandchild under their Will. Please also bear in mind that reference in this article to a "child" can mean an adult child.

Intestate Succession

Where the grandparent dies without having made a valid Will his or her Estate is distributed in accordance with the rules of intestacy. If the grandparent leaves a spouse and children then the spouse gets 2/3 of the Estate and the child or children get 1/3 split between them equally. If the grandparent's spouse has predeceased him or her then the child or children get the entire Estate. Where does a grandchild or grandchildren stand if their parent predeceased the grandparent in such circumstances? Effectively, the grandchild or grandchildren step into their deceased parent's shoes and will take the share their parent would otherwise have taken if they had not pre-deceased the grandparent. This mode of entitlement to an inheritance is known as taking "per stirpes".

Importantly, no distinction is drawn between grandchildren born inside or outside marriage. It is also interesting to note that a grandchild who is conceived but not yet born at the time of his or her parent's death still falls within the required definition of grandchild for the purposes of taking a "per stirpes" inheritance provided that unborn child is subsequently born live.

To give an example, Mary is a widow with 2 surviving adult children Tom and Angela and one predeceased child, Aidan. Tom and Angela do not have any children. Aidan's girlfriend was pregnant with his child at the time he was killed in a factory accident. Aidan's child was subsequently born and named Siobhan. Siobhan is Mary's only grandchild. Mary dies without having made a Will. What is Siobhan's entitlement as grandchild? Applying the rules set out above, Siobhan is entitled to the share her father, Aidan would have received if he had lived. As such Siobhan will be entitled to 1/3 of her grandmother Mary's Estate.

Testate Succession

Where a parent makes a valid Will leaving a share of their Estate to their child, and that child subsequently dies before their parent, leaving a child (a grandchild being a child of a predeceased child), upon the death of the parent (who is also a grandparent), s.98 of the Succession Act, deems that the predeceased child survived their parent. This scenario will arise where a parent fails to amend their Will after the death of a child (who in turn is a parent or about to become a parent). It once again illustrates the importance of reviewing Wills in the context of major life events.

The effect of s.98 is that the pre-deceased child's entitlement under the Will is distributed to their Estate which in turn will be distributed in accordance with the Will of the pre-deceased child or under the Rules of Intestacy applying to that child's Estate if they had no valid Will. There is a critically important distinction between what happens where there is no valid Will ("intestacy"), in that case a grandchild receives their pre-deceased parent's share whereas where there is a Will leaving a share to a pre-deceased child the fact of the existence of the grandchild prevents the bequest lapsing but the grandchild does not necessarily receive any benefit. Such grandchild will only benefit if their deceased parent had made a Will leaving a part of their Estate to them or if they happen to benefit under the Rules of Intestacy as applied to their parent's Estate.

As in the case of Intestacy, no distinction is drawn between grandchildren born inside or outside of marriage. Once again, a grandchild who is conceived but not yet born at the time of his or her parent's death still falls within the required definition of grandchild for the purposes of s.98 and ensuring that the bequest to a predeceased child with a child (even an unborn child) will not lapse provided that unborn child is subsequently born live.

By way of example, Harry is a widower with 1 surviving adult child Seamus and one predeceased child, Thomas. Seamus does not have any children. Thomas' wife, Maggie was pregnant with his child at the time he was killed in a road traffic accident. Thomas' child was subsequently born and named Kathy. Kathy is Harry's only grandchild. Harry dies having made a valid Will many years ago before Thomas was killed. Under the Will he left half of his Estate to Thomas. Thomas died without having made a valid Will and had no other children. What is Kathy's entitlement as grandchild? Applying the rules set out above, by virtue of Kathy's existence, Thomas is deemed to have survived his father Harry and as such his Estate is entitled to the half share in his father's Estate. As Thomas had no Will, his Estate will be distributed in accordance with the Rules of Intestacy pursuant to which his wife, Maggie will be entitled to two thirds and his daughter Kathy will be entitled to one third. So in this instance Kathy's benefit comes from her father's Estate rather than directly from her Grandfather's Estate. Equally if her father had made a Will leaving everything to his wife, Maggie then Kathy would have received nothing.

Another Scenario

The final permutation is where the grandparent makes or updates their Will after the death of their child. Unless such Will makes an express provision for the grandchild (child of the predeceased child), then such grandchild has no entitlement otherwise.

By way of example, Mary is a widow with 1 surviving adult child Sorcha and one predeceased child, Hazel. Hazel has a husband and two sons. Hazel dies in a sporting accident and as such predeceases her mother, Mary. After Hazel's funeral, Mary makes a new Will leaving a portion of her Estate to

Hazel's husband but makes no provision for Hazel's sons. In those circumstances, when Mary dies her grandsons will receive no benefit from her as that is her wish as expressed under her Will.

For further advice regarding the issues raised in this article, please contact the author, Fergal McManus.

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