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**MAKING A WILL**

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**REPUBLIC OF IRELAND**

## **WHAT HAPPENS IF I DIE WITHOUT MAKING ANY WILL?**

If single and you die without making a Will, the law of intestacy provides that your parents (provided they survive you) inherit your Estate. If your parents have predeceased you, then to your surviving brothers and sisters will inherit equally. If you die without parents or siblings then to your nearest relatives in accordance with the rules of intestacy set out in the Succession Act, 1965.

If married and 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 your predeceased child's Estate will inherit a share as if that child had survived you. In those circumstances, the inheritance will not necessarily go to your grandchildren but will be distributed in accordance with your predeceased child's will or in accordance with the rules of intestacy.

## **WHY SHOULD I MAKE A WILL?**

It is important for you to make a will because if you do not, and die without a will, the law on intestacy decides what happens to your property. A will can ensure that proper arrangements are made for your dependants and that your property is distributed in the way you wish after you die, subject to certain rights of spouses/civil partners and children

It is a very foolish to assume that if your next of kin know your wishes that they will sort it out between themselves. Firstly all of your next of kin will need to agree. Secondly, there are often tax consequences that make some arrangements between next of kin undesirable.

If you have a minor child or children i.e. children under the age of 18, then we recommend in the strongest terms that you have a Will to appoint Guardians and Trustees for those children and that proper provisions is made for them.

These issues are dealt with in more detail below.

## **WHERE DO I START?**

Record the basic information (see 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 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, A PARTNER OR A CIVIL 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. Do not assume that the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 conferred inheritance rights upon cohabiting couples. If you are in a cohabiting relationship and you die without a will, your partner has no right to any share of the Estate no matter how long you have been together, apart from what was held jointly. Many people are not aware of this, so it is very important to know your rights in this situation. For further information please refer to [www.citizensinformation.ie](http://www.citizensinformation.ie)

A statutory civil partnership registration scheme for same-sex couples was introduced in January 2011 under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. On registration of a civil partnership, civil partners are treated in the same way as spouses under the tax and succession codes. A Civil partner has a legal right to a share in their partner's Estate when they die, no matter what that deceased partner may have said or specified in your will. This does not apply to cohabiting couples. In other words, if you are in a cohabiting relationship, there is nothing to prevent you from leaving some or all of your property to your partner in your will.

However, if you are or have been in a civil partnership, your civil partner may be legally entitled to a share of your Estate even though you are now separated from him/her.

## **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 last 2 pages of this booklet set out the relevant information regarding inheritance tax.

## **TAX FREE THRESHOLD**

The tax free threshold amount increases each year (see last 2 pages).

## **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, may be 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 last 2 pages of 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 last 2 pages of 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 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 son or daughter.

#### 6. **SURVIVING SPOUSE RELIEF**

If the 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 last 2 pages of this 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 on the death of the person creating the trust, once his /her spouse and all other children are over the age of 21. There will be a refund if the trust is distributed fully within a certain number of years. There is a further tax liability each year following the first year. Please refer to the last two pages of this leaflet for the precise details.

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# INSTRUCTIONS FOR MY WILL

(This should be completed to give an overview of the value of your Estate and your wishes.  
Precise details of each asset are not required)

## PERSONAL DETAILS

**Full Name** .....

**Address** .....

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**Occupation** .....

**Date of Birth** .....

**PPS Number** .....

**Instructions in relation to burial** .....

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## EXECUTORS AND TRUSTEES

**Name** .....

**Address** .....

**Name** .....

**Address** .....

**Name** .....

**Address** .....

### Children

**Name** ..... **Age** .....

**Name** ..... **Age** .....

**Name** ..... **Age** .....

**Other dependants, e.g. co-habiting partner, aged parent or  
handicapped relation:**

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**Guardians of infant children**

**DETAILS OF ASSETS**

<b>House</b>	<b>Value €</b>
<b>Contents (insurance value)</b>	<b>Value €</b>
<b>Bank/Building Society accounts</b>	<b>Value €</b>
<b>An Post</b>	<b>Value €</b>
<b>Business</b>	<b>Value €</b>
<b>Pensions</b>	<b>Value €</b>
<b>Life Insurance Policies</b>	<b>Value €</b>
<b>Other Property (e.g. stocks or shares)</b>	<b>Value €</b>

**SPECIFIC DEVICES OR BEQUESTS**

<b>Beneficiary</b> .....	<b>Property</b> .....
<b>Beneficiary</b> .....	<b>Property</b> .....

**PECUNIARY LEGAIES**

<b>Beneficiary</b> .....	<b>€</b> .....
<b>Beneficiary</b> .....	<b>€</b> .....

**RESIDUE OF ESTATE**

<b>Beneficiary</b> .....
<b>Name of Stockbroker/Accountant</b> .....
<b>Specify any assets (including house) that you hold jointly</b> .....

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**Which of your beneficiaries have received or are likely to receive other benefits?**

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**Location of title deeds or share certificates**

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## 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, a registered Civil Partner and to divorce persons in certain circumstances. A “partner or co-habitee” 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 a significant sum (in excess of €330,000 can be passed on tax free, the sum called “Group Threshold A” is changed annually and can be found in the Inheritance Section at [www.revenue.ie](http://www.revenue.ie) If you leave property to a lineal ancestor (e.g, a grandparent or to a lineal descendant (e.g, a grandchild), brother, sister or niece or nephew then a sum in excess of €33,000 (Group Threshold B) can be passed on tax free. If you leave property to anyone else (for example a friend or “partner”) then a sum in excess of €16,000 (Group Theshold C) can be passed on tax free. Visit [www.revenue.ie](http://www.revenue.ie) for current Group Threshold Rates.

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.

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## **WHAT HAPPENS AFTER THE TAX FREE THRESHOLD IS USED UP?**

Inheritance tax is paid on the balance of the inheritance at the rate of 25%

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## **WHEN DO I HAVE TO PAY INHERITANCE TAX?**

The filing and payment date in respect of benefits taken in the period from the 1<sup>st</sup> January to 31<sup>st</sup> August is now the 30<sup>th</sup> September. The taking of a benefit is by reference to the "Valuation Date" of the inheritance. Ordinarily, in the context of an inheritance, the "Valuation Date" will mean the date of the Grant of Probate but it can mean the date of death in many circumstances. Specific legal advice should be taken at the earliest instance after the death of person who has made the bequest.

The filing and payment date in respect of benefits taken in the period from the 1<sup>st</sup> September and the 31<sup>st</sup> December is the 30<sup>th</sup> September in the following year. Compared to some years ago, Inheritance Tax is typically paid a lot sooner than previously. Interest and penalties apply to late payment.

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## **AGRICULTURAL PROPERTY**

At present (2011), to claim relief, 80% of the beneficiary's property (after the inheritance) must consist of agricultural assets. The value of the agricultural property he/she receives is discounted significantly when calculating the taxable inheritance. The amount of the discount is available at [www.revenue.ie](http://www.revenue.ie). Specific advice should be taken to ascertain whether you can qualify for this relief.

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## **BUSINESS PROPERTY**

Currently, the value of the business property is discounted significantly when calculating the taxable inheritance. The amount of the discount is available at [www.revenue.ie](http://www.revenue.ie). Specific advice should be taken to ascertain whether you can qualify for this relief.

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## **OPTION OF GIVING A GIFT**

At present, if a gift is given then the first €1,270.00 is exempted in a calendar year from any donor.

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## DISCRETIONARY TRUST

At present (2011) , 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). Please refer to [www.revenue.ie](http://www.revenue.ie) for up to date rates.

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## PROBATE TAX

Probate Tax is abolished for deaths occurring on or after 6<sup>th</sup> December 2000.

**Disclaimer: The information herein is intended as a general guide only  
No responsibility is accepted for errors or omissions howsoever arising.**

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