



## **Spouses and Children: Know Your Inheritance Rights**

### **Legal Terms**

Testacy = Legal term used when person dies having made a valid Will

Intestacy = Legal term used where a  
person dies without making a valid Will

### **What are Spouse's and Children's Inheritance Rights in Intestacy?**

When a person dies intestate (without a Will) the law dictates the manner in which the deceased's estate is divided.

There are three possible scenarios:

1. Spouse and no children – spouse entitled to all of the estate
2. Spouse and children – spouse entitled to 2/3rd's and children share the remainder
3. Children only – children share in entire estate

### **What are the Rights of a Surviving Spouse in a Testate Situation?**

The surviving Spouse has very definite and automatic rights in a testacy situation. The Succession Act provides that irrespective of the terms of a Will a spouse is entitled to a specific share in an estate. This is known as the 'Legal Right Share'. The purpose of this Legal Right Share is to prevent the deceased from disinheriting the surviving Spouse. The size of the 'Legal Right Share' depends on whether the deceased had children. Where there are children the Legal Right Share of the spouse is a 1/3<sup>rd</sup> of the estate. Where there are no children the Legal Right Share is ½ of the estate.

### **What happens in a situation where the surviving Spouse is not ignored but perhaps gets a token Inheritance?**

The spouse has a right of election. This means that the spouse can choose between the Legal Right Share and the Bequest OR if the Legal Right Share exceeds the bequest the right to take the gift as partial satisfaction of the Legal Right Share.

### **Can a Spouse look to get a specific asset to make up his/her Legal Right Share?**

The general rule is no, the spouse cannot pick and choose. An exception exists where the Spouse has the right to specifically require that the dwelling in which she resides is given to the spouse in satisfaction of his/her Legal Right Share. Usually, the surviving Spouse will have to pay the difference in value if there is one. However, there are circumstances where this rule is relaxed.

### **Do the rights of Inheritance and the Legal Right Share survive marital breakdown?**

#### **Spouses living apart informally**

When spouses are living apart informally they continue to be spouses in the eyes of the law and therefore their rights under the Succession Act are not affected.

#### **Deed of Separation**

In a situation where a married couple have executed a Deed of Separation very often they will have renounced their entitlements under the Succession Act and in the event of the death of either of them they will not be entitled to inherit.

#### **Judicial Separation**

Often, but not always, the Courts in judicial separations will grant an order extinguishing a spouses rights under the Succession Act.

#### **Divorce**

When a divorce is obtained in Ireland the marriage is dissolved and, therefore, the Spouses lose their rights to their share on intestacy or their Legal Right Share.

### **Do children have similar entitlements?**

#### **Intestacy**

On intestacy children have a right to a 1/3 share in the Estate if there is a surviving Spouse. If there is no surviving Spouse they are entitled to share the entire estate equally.

#### **Testacy**

In a testacy situation children, in contrast to the rights of a spouse, do not have a right similar to the legal right share.

In contrast what they have is a right to apply to the Court to have provision made for them out of the estate. The Court will only do so if it finds that the deceased parent has failed in his moral duty to make proper provision for the child in accordance with his means.

The courts will look at all the surrounding circumstances, in particular:

- The age of the child
- Their position in life
- The age and position of the other children of the testator
- The means of the parent

- Whether and what provision the parent made for the child during his lifetime
- They may look at the conduct of the child towards their parent
- Whether that child had a need which the parent was able to satisfy in accordance with his/her means.

There are strict time limits within which applications must be made by an aggrieved child, making it imperative to seek legal advice at the earliest opportunity.

### **What is the impact of the Civil Partnership Act?**

With the new Civil Partnership Act qualifying cohabitants can make an application to the Court for provision out of the estate of their deceased partner.

### **For More Information**

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