

MAKING YOUR WILL/TIPS and TAX ADVICE

My name is John Gaynor and I am a General Practitioner and have worked in Thomas Street for the last 45 years. Although I term the Practice as a general one, in the last 15 to 20 years, I have focused on the making of Wills and the Administration of Estates and since the introduction of the Enduring Power Act in 1996, I have acted in that area both creating Enduring Powers of Attorney and registering same.

Starting with the idea of a Will, it is an expression of what you want to happen when you pass on. The making of your Will shows thoughtfulness and care for those you leave behind and not chaos or allow the State to dictate how the possessions you leave behind are distributed.

The usual Will will nominate an Executor and maybe a Trustee and their purpose is to ensure that your wishes, as set out in the Will, are carried out. Generally, the Executor would be a close member of family – a spouse or adult child – but you can choose a Professional to act in this capacity if you so wish, though it would be more normal to choose a member of family, as doubtless they would be inheriting part or most of your Estate and would have a vested interest in ensuring that your wishes are adhered to.

Having appointed an Executor, you then have to decide how to divide your Estate and your Estate would typically consist of an interest in property if you own a house, bank accounts, savings or investments that you hold.

In a simple Will for a married couple for example, the spouse would usually appoint the other spouse as Executor and leave whatever they possess to that spouse and in the event of that spouse passing before them, appoint one of the children to act as Executor and distribute the Estate equally amongst their children.

You may not however have a spouse and in that case you will leave your Estate to your siblings or close friends.

The tax payable on inheritances formerly known as Death Duties and now known as Capital Acquisition Taxes is as follows:

Spouses do not have any tax liability when they inherit, but children have a tax threshold of €310,000.00 each, after which they are taxable at the rate of 33%.

The tax implications of bequeathing or leaving assets to siblings or friends are unfortunately more punitive. Tax between siblings commences after they have received their tax free amount of €32,500.00 and then they are taxed at the rate of 33%. Any expenses in the Probate process are allowable against the tax, but nevertheless it is a substantial tax bill in some cases. In the case of friends or non-relatives, the tax threshold is €16,250.00.

There are some obvious tax reliefs such as the Dwellinghouse Relief and that means that if the relative to whom you bequeath the family home has lived in that home with you for 3 years before you pass on and remains there for 6 years afterwards, they will not pay tax on the dwellinghouse provided they do not own another property or house.

In the event that a person passes without making a Will, then the distribution of their Estate is determined by the Succession Act 1966, the basic provisions of which are if there is a spouse and children, the spouse is entitled to two-thirds of the Estate and the children one-third.

If there is a spouse and no children, all will go to the spouse and if there is no spouse or children, then the Estate will be divisible amongst the Deceased's parents or parent. In the case of brothers and sisters without spouse, children or parents, then the Estate is divisible equally amongst the surviving siblings and the children of deceased siblings take their parents' share.

Of note, if you hold a Credit Union account, it is possible to nominate the proceeds of the account to anyone you choose and this means that the sum of €23,000.00 can be distributed to the Nominee without the necessity of taking out a Grant of Probate or Letters of Administration where there is no Will. Any monies above this amount will require a Grant of Probate for distribution. It is useful to be aware of this fact, as frequently funds are required quickly for expenses after someone passes away and these monies can be released to you from the Credit Union on production of the Deceased's Death Certificate only.

For further information please visit our website at <https://www.jgs.ie/> or call our office at 01-4540068

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