

# SUCCESSION LAW

SUCCESSION LAW ACT 1965

## WHAT IS A WILL?

A will is a written document created by a person of what they want to be done after their death and relates to the distribution of their property. On your will, you will be identified as a testator/testatrix. The law in relation to this area is set out in the *Succession Act 1965*. Your will must be created by a legal professional.

If you create a valid will, you will die testate. This means that your property will be divided according to your own terms. If you do not make a will in your lifetime or it is deemed not to be legally valid, you will die intestate. This means that your property is divided under the rules, found in Part VI of the *Succession Act 1965*.

## PROCEDURE:

On the unfortunate event of a death of a person, their property will go to their personal representative. If they made a will during their lifetime, their personal representative will be the executor of the will. If a will is not made, the administrator will be the personal representative for your will.

Firstly, your personal representatives must get a grant of representation. This validates their position. The grant is labelled as a grant of probate. This validates the position of executors and a grant of letters of administration where it appoints administrators.

Your personal representative will own the estate to distribute and administer it. S.13 says if there is no will made, the property will go to the President of the High Court until an administrator is arranged.

### **WHAT DOES A PERSONAL REPRESENTATIVE DO?**

Your personal representative is obliged to pay funeral, testamentary admin, and other charges. S.46 says that your personal representative will remove any debts and liabilities you have. Upon completion, they will administer shares to the beneficiaries. They have a full year to comply with this. Despite this, s.62 says creditors can act before the year is out. Section 52 to 54 outlines that your property will be given to the beneficiaries. The High Court has powers under section 26(2) to cancel a grant of probate if they feel there is extreme misconduct and any conflicts of interest.

### **TESTATE SUCCESSION:**

Section 77 and 78 of the *Succession Law Act 1965* lays out the requirements for a valid will. They are as follows:

#### **1) Capacity**

Section 77 requires that you have the legal capacity to make a valid will. Section 77(1)(a) explains that you must be 18 years of age to make a will. Despite this, a person under the age of 18 who is, or who has been, married can make a valid will.

Additionally, section 77(1)(b) requires that you must be of sound disposing mind. This means that you understand that you are creating a will, you understand who is going to benefit from your property, you are free from any mental illness that may affect your will and that you appreciate the claims you are making. Also, a will may be not valid due to undue influence. The burden of proof is on the person saying there is undue influence. Proof of actual pressure or threats is needed.

#### **2) Writing**

- Section 78 requires that your will be in writing. This can be pen, pencil, crayon, type, or print.

#### **3) Signed**

- Section 78(1) requires that you must sign your will at the bottom of the page. If you cannot sign your will for a valid reason, it can be signed by another person in your presence or by your direction.
- You should not worry if you have trouble reading and writing as case law suggests initials and stamps are sufficient as a signature.

#### 4) Witnessed:

- Section 78(2) requires that your signature must be witnessed by two people at the same time. After your signature, the two witnesses must sign the will saying that they witnessed the signing.
- The witnesses do not need to know the contents of your will and their signature must not be influenced by personal gain, for instance s.82 says they cannot receive a gift under the will that they witnessed.

#### **SPOUSAL RIGHTS UNDER SECTION 111:**

- Civil partners have the same succession rights as spouses under Section 81 of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*.

TYPE OF RELATIONSHIP	WHO RECEIVES MY ESTATE	SECTION
Spouse and no kids	Spouse is entitled to ½ of the estate	s.111 (a)
Spouse and kids	Spouse is entitled to 1/3 of the estate	s.111 (a)
Spouse and left nothing under will	Spouse is automatically entitled to a Legal Right Share	s.111

- If a gift has been given under a will, your spouse can decide if they want either the gift or their LRS s. 115(1)(a).
- Your spouse must tell your personal representative of their choice. If your spouse does not pick, they will automatically get the gift.
- Generally, the one with the bigger value is chosen. If the gift is less value but has sentimental value, your spouse may take it in part satisfaction of your LRS s 114(2)
- Your personal representative must inform everyone in writing of that right. S. 56(4)
- If stated in a will that your spouse/partner gets both the gift and LRS they will receive both.

#### **APPROPRIATION OF THE HOME:**

Section 56 allows for spouses to have a right to appropriate the home. Your Personal representative is obliged to notify them of this right.

## **LOSS OF SPOUSAL RIGHTS**

In limited circumstances spouses will not be entitled to their rights if they are in the following categories:

### **1. Desertion**

1. Section 120 says that if a spouse deserts the family home for two years up until the testators death, they are not allowed to take a share in the testators estate.

### **2. Crime**

2. If a spouse is imprisoned with a criminal offence against their spouse for two years or more, they are not allowed to take a share in the testators estate.

### **3. Divorce**

### **4. Judicial Separation**

## **CHILDREN'S SUCCESSION RIGHTS:**

Children's rights are not automatic compared to spousal rights. The child may appoint someone to make a s.117 application to the court. The basis for the application is that the deceased failed their responsibility to make a proper provision for the child. The court will examine the application as if they were the parent. You have 6 months to make a s.117 application.

An adopted child, a child of age, a child under 18 and children who are not dependent on the testator financially and children who are financially dependant are all considered a child in this instance.

Upon an application, the court will examine the following:

1. Age of children
2. How much money the testator makes
3. How many children
4. What are the children doing in life?
5. How much money does the child have?
6. Did the testator make financial provisions for the child?

Section 86 of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* acknowledges that when coming to a decision on a section 117 application, the courts may limit the legal right share of the surviving civil partner to put right a failure of moral responsibility by the testator. The courts may examine the following:

1. Failure to provide for grandchildren is considered as a moral duty.

2. The needs of children are considered. This means that if a child requires assistance, the courts will consider this when seeing if a share should be distributed. For instance, special needs or autism.
3. The child's actions will be considered, and this may limit or extend the share under s.117
4. Financial situations

### **ALTERATION OF WILLS:**

Generally, anything that comes after the signatures is void. However, there are three ways that will make alterations valid.

1. Revoke your original will and make a new one.
2. Write changes on the will. Each change must be signed and witnessed.
3. Add a codicil. This means creating a new section that needs to be witnessed and signed.

### **REVOKING OF WILLS UNDER SECTION 85**

Wills can be revoked at any time up until the time of death. The three ways of revoking a will are as follows:

1. Another marriage.
2. By writing.
3. By destroying the will/ Lost will

### **INTESTATE SUCCESSION:**

A person dies intestate when they die leaving no will or leaves a will but not all their property is covered in the will. This is known as partial intestacy. Section 74 establishes that if a will administers a portion of the estate, the gifts will be given out first, and the balance will be divided upon the beneficiaries.

- Section 3(2) states that If a child was born after the deceased, they have a right to inherit as if they were born while he was alive.
- Section. 72 states that half blood relatives are of equal status with full blood relatives.
- Importantly under 26 of the Adoption Act 1952, adopted children have the same rights as a child who is blood related
- Section 67(4) of the Succession Act lays out how shares are to be distributed between kids. If the kids have the same degree of relationship to the person making the will, the shares will be distributed equally. if do not have the same level of relationship, the shares will go to a person or that persons kids.

### **DISTRIBUTION RULES FOR INTESTATE SUCCESSION:**

TYPE OF RELATIONSHIP	WHO RECEIVES MY ESTATE	SECTION
Spouse and no kids	Whole estate goes to the surviving spouse.	s.67(1)
Spouse and kids	Spouse takes 2/3 of the estate. Kids take 1/3 of the estate that is divided equally	s.67(2)
Kids but no spouse	Kids take the whole estate and is then divided equally	s.67(3)
No spouse or no kids	Parents take whole estate in equal shares.  If 1 parent alive, they take the whole estate	s.68
No spouse, no kids, and no parents	Estate is divided equally between siblings.  If a sibling predeceases, their kids receive the share	s.69(1)
No spouse, no kids, no parents, and no sibling	Estate is equally divided between nieces and nephews	s.69(2)
No spouse, no kids, no parents, no siblings, no nieces, or nephew.	Next of kin or your closest degree of blood relative obtains the estate	s.70
No next of kin	The state will get your estate	s.73

### **ADVANCEMENTS:**

Section 63 states that any advancements received by a child will be taken account of when shares are being administered. For instance, if money or property was given to a child during their lifetime. This will apply unless it is intended not to by the person making the will. Intention can be shown by writing it into your will. If the gift was intended to be given alongside the shares, then the testator must have evidenced that in their will. If the advancement is equal to the share the child is entitled to, the child will receive nothing. If it is less, the child receives the rest. If the advancement is greater, the child is not obliged to pay the balance.