



# maddenlaw

LEGAL SERVICES & SOLUTIONS

## GUIDE AND INSTRUCTIONS FOR MAKING A WILL

### PERSONAL DETAILS

First Name		Surname	
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*Are you known by any other name? Yes      If yes, please detail: \_\_\_\_\_*  
**No**

*Please bring photo ID with you*

Current Address		Former Address	
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*Please bring proof of address with you, bank statement, Revenue document or a utility bill*

Date of birth		PPS number	
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Telephone		Email	
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*Can a draft Will be emailed to you at this address?*  
**Yes**  
**No**

Domicile of birth		Domicile of choice (if applicable):	
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Current Civil Status	Single	Divorced / Civil Partnership dissolved
	Married	Civil Partnership
	Widowed	Legally Separated
	Deserted spouse	Engaged
	Co Habiting	

### DETAILS OF CURRENT SPOUSE/ CIVIL PARTNER

First Name		Surname	
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Address			
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Date and place of marriage or Civil Partnership			
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DETAILS OF FORMER SPOUSE/ CIVIL  
PARTNER

First Name		Surname	
Address			
<b><i>Please bring a copy of your separation or divorce order with you</i></b>			

DETAILS OF COHABITANT (IF APPLICABLE)

First Name		Surname	
Address			
<b><i>Please bring a copy of your co-habitation agreement or deed of renunciation, if applicable</i></b>			

YES    NO

Is there any Ante Nuptial or Ante Civil Partnership Agreement/ Renunciation of Legal Right Share of Spouse or Civil Partner?	
Is there a Cohabiting Agreement in place?	
Do you intend to marry or enter in a marriage or Civil Partnership?	
If you are not leaving your spouse a legal right share, will your spouse be renouncing their legal right share?	
Have you made a Will before?	
If so, where is the original located: _____	

The law imposes certain restrictions on how you may deal with your estate. Your spouse or civil partner has a legal right to half of your estate where you have no children. If you have children, your spouse or civil partner is entitled to one-third of your estate. However, the one-third share which your civil partner is entitled to can be subject to a possible claim by one of your children. 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, considering their position in life. Your spouse or civil partner 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).

The Legal Right Share excludes trust property, joint property passing by survivorship, property which the deceased person had a limited (life interest) in and validly nominated property.

A spouse may renounce their Legal Right Share. A bequest may also be made in addition the Legal Right Share.

Being separated or divorced from your spouse does not mean that your spouse automatically loses the legal right to a share of your estate; however, the rights may be cancelled under the terms of a separation agreement or judicial separation or can be cancelled by court order when there is a divorce. These provisions also apply to civil partners under legislation which was commenced in January 2011.

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. These provisions also apply to civil partners under legislation which was commenced in January 2011.

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 whatever you have left for him/her under your Will. In addition, a surviving cohabitant has the right to apply to court for provision from the deceased cohabitant's estate now that the relevant legislation has come into force.

Executors should be chosen with extreme care. Choose people of appropriate age and level of responsibility who will administer the instructions in your will effectively. The primary duty of executors is to administer and distribute the estate of the deceased. The executors in performing their duties may exercise such powers as are given to them in the will and by the Succession Act 1965. They may sell the whole or any part of the estate, not only for the payment of debts to creditors, but also for distributing the estate among the beneficiaries. While one executor can be sufficient it is wise to appoint more than one. From a practical point of view, you should ask the people whether they are willing to act as an executor rather than to "land" an executor with the role without notice.

Executor 1			
First Name		Surname	
Address			
Relationship to you, if any			

Executor 2			
First Name		Surname	
Address			
Relationship to you, if any			

## CHILDREN

List the names and address of your children.

	First Name	Surname	Age	Address
1				
2				
3				
4				
5				
6				

YES    NO

Do any of your children have special needs?	<input type="checkbox"/>	<input type="checkbox"/>
Are you a guardian of any children?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have any foster children?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have any adopted children?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have any step children?	<input type="checkbox"/>	<input type="checkbox"/>
Do any of your children have another guardian appointed to them?	<input type="checkbox"/>	<input type="checkbox"/>
Have you given any of your children any gifts to date?	<input type="checkbox"/>	<input type="checkbox"/>
If so, have these been in advancement of an inheritance?	<input type="checkbox"/>	<input type="checkbox"/>
Are any of your children not taking a benefit under your Will?	<input type="checkbox"/>	<input type="checkbox"/>

If you have minor children, under the age of 18, we advise that you set up a Trust and appoint Trustees and Guardians. Where there is a bequest to an underage child and there is no receipt clause, or no trustees appointed, there is nobody in whom the legal personal representative may vest the assets or from whom he may obtain a receipt. The same people can act in all roles, and also as Executors, or you can appoint different people to the different roles.

### ***Who is a child for the purposes of Succession Law?***

1. Children of your blood
2. Children validly adopted

### ***Who is not a child for the purposes of Succession Law?***

1. Step-children
2. Foster Children
3. Children for whom you act in loco parentis

### ***Appointment of Guardians to minor children***

The role of the Guardian is to be in effect in loco parentis to the child for whom he is appointed Guardian. A Guardian has responsibility for decision making for the minor children in areas such as health, religion and education. A direction can be made in the will that the children are to reside with the Guardian. If there is another Guardian already appointed, wither by consent or by a Court Order, the direction in the Will can be challenged.

Guardian 1			
First Name		Surname	
Address			

Guardian 2			
First Name		Surname	
Address			

### ***Appointment of Trustees (if your children at under 18)***

The role of the Trustees is to carry out, as per the trust deed, the wishes of the settlor.

The Trustees will have control over the finances of the estate and can have discretion to make payments to the children during the life time of the Trust. They can have the power to sell property of the estate. All money and assets held on trust must be accounted for to the beneficiaries when they reach the age of majority. You can decide what age the children must reach to end the Trust, at which point the beneficiary takes their share absolutely. You can limit the powers that are given to the Trustees in the Will.

Trustee 1			
First Name		Surname	
Address			

Trustee 2			
First Name		Surname	
Address			

## ASSETS

	List of property owned by you	Solely/ Jointly?	Location of Deeds	Approximate value (€)
1	1.(a) Outstanding mortgage: € _____ (b) Fair Deal/ Nursing Home security? Yes No	SOLELY JOINTLY		€
2	2.(a) Outstanding mortgage: € _____ (b) Fair Deal/ Nursing Home security? Yes No	SOLELY JOINTLY		€
3	3.(a) Outstanding mortgage: € _____ (b) Fair Deal/ Nursing Home security? Yes No	SOLELY JOINTLY		€
4	4.(a) Outstanding mortgage: € _____ (b) Fair Deal/ Nursing Home security? Yes No	SOLELY JOINTLY		€

	Name(s) of life policies	Solely/ Jointly?	Nominated?	Approximate value (€)
1		SOLELY JOINTLY		€
2		SOLELY JOINTLY		€
3		SOLELY JOINTLY		€

	Name of pensions held	Solely/ Jointly?	Nominated?	Approximate value (€)
1		SOLELY /JOINTLY		€
2		SOLELY /JOINTLY		€
3		SOLELY /JOINTLY		€

Is there any Pension Adjustment Order in place?

YES / NO

*If yes, please provide copy*

	Shares	Where are the certificates?	Number held	Approximate value (€)
1				€ _____
2				€
3				€ _____
4				€

	Bank accounts	Solely/ Jointly?	Approximate value (€)
1		SOLELY /JOINTLY	€
2		SOLELY /JOINTLY	€
3		SOLELY /JOINTLY	€ -

	Credit Union account	Solely/ Jointly?	Nominated?	Approximate value (€)
1		SOLELY JOINTLY		€
2		SOLELY JOINTLY		€

YES / NO

Have you received tax advice on passing business assets?

Have you transferred any land or assets or an interest or a portion of any assets in the last ten years?

## NAME AND ADDRESS OF YOUR ACCOUNTANT

First Name		Surname	
Telephone		Email	
Company Name			
Company Address			



# BENEFICIARIES - HOW WOULD YOU LIKE TO DISPOSE OF YOUR ESTATE

	First Name	Surname	Relationship to you	Details of gift
1				
2				
3				
4				
5				
6				
7				

## BENEFICIARIES - HOW WOULD YOU LIKE TO DISPOSE OF YOUR ESTATE

	Gifts to Charity	Charity Registered Number	Amount
1			€
2			€
3			€
4			€

### **RESIDUE- IMPORTANT**

Most Wills require a residue clause if specific legacies are bequeathed; Who is inheriting the Residue? The residue will catch all the estate not otherwise specifically disposed of by Will

YES NO

Are any of your beneficiaries separating/divorcing?
Are any of your beneficiaries under 18?
Are you aware of any person who is expecting to inherit from your estate that is not inheriting?
Have you created an Enduring Power of Attorney?
If any of the beneficiaries predecease you, do you require a gift over clause to another person, e.g., their children?
Details of any specific burial or funeral requests:

## LAPSE

Normally, where a beneficiary predeceases the testator, the gift lapses and falls into the residue of the estate. However, where a child of the testator predeceases leaving issue (not just children) alive at the date of death of the testator, the gift shall not lapse but shall take effect as if the death of that person had happened immediately after the death of the testator. The benefit that would have been received by such a child is preserved and will pass through the deceased child's estate but not necessarily to the grandchildren. If the deceased child has made a will leaving all of his estate to his spouse such benefit would be preserved and would pass to such son or daughter in law.

The Will can determine where the gift of a child (or any beneficiary) should go if that child should predecease the testator.

## TAX FREE THRESHOLD

A gift or inheritance from a spouse or civil partner is not liable to inheritance tax. This will only apply to a legal spouse or civil partner and to divorced persons or where a civil partnership is terminated in certain circumstances. A "cohabitant" or "partner" in the general meaning (i.e. not a "civil partner") is treated as a stranger for tax purposes. If you leave property by Will to someone other than a spouse or civil partner 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 and will also depend on whether any other benefits have been received.

For instance, where you leave property to a child or a child of your civil partner, or a minor child of a deceased child or, in certain circumstances, to a foster child or to a parent (in an unrestricted form) then the tax-free threshold is the largest; known as the Group A threshold. If the property is left to a parent (where it is a restricted interest), brother or sister, niece or nephew, or grandchild, then Group B threshold applies, and if property is left to anyone else (for example a friend, in law, cousin or "partner") then Group C threshold applies. The tax-free thresholds are updated annually, usually in January in line with inflation.

Details of the threshold amounts for the current year can be found here. ([www.revenue.ie](http://www.revenue.ie))

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.

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

Inheritance tax is paid on the balance of the inheritance at the rate that applies on death. Details of the current year rates can be found here. ([www.revenue.ie](http://www.revenue.ie))

## VALUATION DATE

The date for payment of inheritance tax (the valuation date) depends on the circumstances of each case. The valuation date determines the value of the assets subject to tax, the timing for the payment of the tax and the timing for the filing of the tax return. Where the valuation date is between 1 January and 31 August, the pay and file date is on or before 30 September in that year. Where the valuation date is between 1 September and 31 December, the pay and file date is on or before 30 September in the following year. Interest on overdue tax is payable at a rate of 0.0219% per day. A surcharge is payable on the late filing of a return and penalties and/or publication on default could apply.

## HOW CAN THE IMPACT OF INHERITANCE TAX BE REDUCED?

You may wish to plan the passing of your assets to minimise the tax that your beneficiaries have to pay. If so,

Step 1 Look at the reliefs and exemptions available.

Step 2 Look at dividing up your property to use all available tax-free thresholds.

Step 3 Look at how best your beneficiary can fund the tax.

## WHAT EXEMPTIONS OR RELIEFS ARE AVAILABLE?

### 1. Agricultural property

To qualify for agricultural relief, 80% of the beneficiary's property (after a gift/inheritance) must consist of agricultural assets as defined. The value of the agricultural property he/she receives may then be discounted when making the CAT return provided other conditions are met.

### 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 when calculating the inheritance tax (if any) subject to other conditions.

### 3. Favourite nephews/nieces

If the beneficiary is a nephew or niece who worked full-time in the business/on the farm with you for five years, and you leave the business/farm to him/her, then he/she may be entitled to the same tax-free threshold as a son or daughter in relation to that property.

### 4. Dwelling exemption

The criteria for qualifying for this relief have changed recently and specific tax advice should be sought in relation to this relief.

### 5. Minor child of deceased child

If you leave property to a grandchild who is the child of a child of yours who has predeceased you, and that grandchild is under the age of 18, then that grandchild will be entitled to the same tax-free threshold as a child.

### 6. Surviving spouse or civil partner relief

If property is left to the spouse or civil partner of a deceased member of your family, that spouse or civil partner will be entitled to the tax-free threshold amount that the deceased family member would have been entitled to in relation to that inheritance.

### 7. Charitable bequests

Bequests made to charities may be exempt from tax.

### 8. Other exemptions

In some circumstances, certain other types of property may be exempt from CAT provided certain conditions are met.

***NB: Each exemption and relief has conditions that must be met, and these are subject to change under annual Finance legislation. Professional specialised tax advice should be obtained when considering whether an exemption or relief is applicable. This advice should be taken before your Will is made.***

### OPTION OF GIVING A GIFT (other than by will)

If a gift is given, then a small gift exemption can be claimed. The current Small Gift Exemption is €3,000 from any one person in any one calendar year. Provided you retain sufficient assets to ensure your and your dependants' wellbeing for your lifetimes, making a gift of property which is likely to increase in value would be a sensible tax planning opportunity. NB: Gifting property may trigger a liability to Capital Gains Tax or Stamp Duty and professional advice should be sought. A gift of assets may be considered if later the donor avails of ancillary State support under the Fair Deal Scheme.

I confirm that I have carefully considered the above information and replied accurately to all of the questions. I acknowledge that if any of the above information or my family circumstances change that I am advised to review the Will made. I understand that Madden Law advise only on Irish Law and the disposition of Irish assets. I acknowledge that I have been advised to receive specific tax advice and review the will made in light of a changes to the Finance Acts or tax legislation

Date

\_\_\_\_\_  
Please sign here in the presence of the solicitor at your appointment

Please return this form to our office in advance of your consultation. Please notify us of your preferred day and time for an appointment.

Please provide the following documents when attending for your appointment:

1. Copy marriage certificate, divorce order, title deeds, if applicable
2. Photo ID
3. Proof of address, e.g. bank statement or utility bill.



maddenlaw LEGAL SERVICES & SOLUTIONS

📍 Third Floor, The Bryanstown Centre, Dublin Road, Drogheda, Co. Louth. Eircode: A92 H4XH

☎ 353 (0)41 980 3336

✉ shona@maddenlaw.ie

🌐 www.maddenlaw.ie

