

WILLS – INHERITANCE RIGHTS OF SPOUSES AND CHILDREN

NB If there is no Will then the situation is more complicated as a different set of rights apply. This is only a general background guide to a complex area of law. Consult your solicitor for specific advice on your own circumstances.

No matter what the Will says, Scots law gives certain people a right to claim a cash payment. This forced heirship entitlement is known as 'Legal Rights'. Houses or other buildings and land are not usually subject to Legal Rights, although they may be if owned by a firm or business. The entitlement is based on a calculation of the value of the Moveable estate once debts and some costs have been paid. You have to choose whether you want to abide by what is set out in the Will or if you want to claim Legal Rights. You cannot claim both.

Who can claim Legal Rights?

Children of the person who has died and the surviving widow, widower or same sex civil partner are all entitled. Illegitimate children are entitled. Adopted children are generally treated in the same way as other children. Different rules might apply to inheritance from people who died before 10 September 1964 or who made a Will before that. Co-habitants and step-children are not entitled.

What happens if someone who was entitled to Legal Rights has already died?

If any child has died then their children stand in. No one stands in for a spouse or civil partner who has died.

What can be claimed?

The claim is limited to a cash sum based on the value of the net "Moveable" estate. Property such as bank accounts, company shares, business assets life insurance policies, cars and shares of jointly owned investments or other items are all Moveable and taken into account. There is no entitlement to claim any specific items.

Widow/Widower or Civil Partner is entitled to claim one-half of the net moveable estate if there are no surviving children, or one-third if there are surviving children.

Surviving children are entitled, among them, to claim a one-half share of the net movable estate if there is no surviving widow/widower or Civil Partner or a one-third share if there is a surviving spouse or civil partner. If one child decides not to claim it does not increase the amount due to the other children. If children claim Legal rights some lifetime gifts from the parent have to be brought into the calculation.

When must a claim be made?

Within 20 years of the death.

How do you claim Legal Rights?

Let the Executor know that you intend to claim your Legal Rights. The Executor may well contact you about it. You really need to know how much is involved before you decide whether or not to claim and it will be some time after the death before all the valuations and debts are known and a proper calculation can be done. If a solicitor is acting for the Executor then you can let their office have your details.

Problem Areas

Not all property paid for by the person who died becomes part of their estate. Some pensions and life policies are held in such a way that they are not part of the estate. On the other hand, in Scotland, where property is held in joint names it generally belongs to whoever paid for it. This means that Scottish joint bank accounts belong to whoever contributed the funds and the deceased's share has to be taken into account for Legal Rights purposes.