



What happens if you die without a Will?

What is Intestacy?

If a person dies without a Will, then there are default rules which determine who inherits. The deceased is described as 'intestate' which may be either partially or wholly intestate.

Wholly intestacy – is where there is no Will or the Will has been revoked or is invalid for some reason e.g. because of marriage, lack of capacity or failure to sign properly.

Partially intestate – is where the Will fails to deal with the whole estate and assets pass outside of the Will according to intestacy rules. This could be because a beneficiary has died before the deceased and no reserve beneficiary or that a beneficiary has witnessed the Will, invalidating their legacy.

Some reports indicate that as much as 60% of the population do not have a Will. Among those aged 65 and some reports state the figure is approximately 25%. Lots of people fail to make a Will on grounds of expense or because they do not understand the ramifications of not having one. They simply expect everything to transfer to their loved ones.

A person who dies without leaving a Will has died intestate; what happens to their estate depends on the set of circumstances.

The order of inheritance is:

1. Spouse/Civil Partner
2. Children, Grandchildren, great-grandchildren and so on (called 'issue')
3. Parents
4. Brothers and Sisters or their issue
5. Half-brothers and sisters or their issue
6. Grandparents
7. Aunts and Uncles or their issue
8. Half-aunts/uncles or their issue

The question of who takes what depends on the date of death and the size of the estate and which relatives are alive at the time of death. This may mean that those you want to benefit from your estate will not. If you are in a same sex relationship, unmarried or have step-children (that you consider that same as your natural children), all may lose out because you have not put a Will in place.

The rules of intestacy generally do not suit most people.

Some potential pitfalls:

Tax

If your residual estate is more than £250,000, half of the remainder would be distributed to children. This could mean that your spouse is left with an adverse tax position or that your children inherit assets they are not prepared for. In this instance, they may need to sell assets to pay a tax they were not expecting.

Example:

Jane and James have two children. They own their £1.2 million property as tenants in common. James has other assets of £600,000, mainly made up of two rental properties. He dies without a Will. The position is as follows:

- James' estate is half of the property and £600,000. Meaning an estate of £1.2 million.
- Jane receives £725,000.
- The children receive £475,000.

James' Nil Rate Band is £325,000 and has the transferable element of his Residential Nil Rate Band (currently at £100,000 to raise by a further £25,000 each year until April). If they use his bands on the inheritance to his children there would still be £50,000 of taxable estate, which equates to a £20,000 inheritance tax bill. This could be avoided by doing a Will.

Broken Families

The modern British family is completely different to 50 years ago. It is much more likely these days that parents have divorced, had children from previous relationships etc. The concept of 2.4 children has long gone and there is a variety of family units. Intestacy does not cater for them all.

Someone may die intestate, without a spouse, children or parents. However, they have a full blood sibling and two half-siblings. Even though they are closer with their half-siblings and consider them the same as their full blood sibling, intestacy dictates that only the full-blood sibling would inherit.

The rules could mean children completely lose out, otherwise known as sideways disinheritance.

Example:

James has divorced and then remarried. He has children from his previous relationship. He has a modest estate of £200,000. This all passes to his new spouse, whom has children of her own. She then passes away without a Will and the estate passes to her children in its entirety. James' children would lose out completely, despite all parties intentions.

Same Sex Couples

Many same sex couples are unmarried and co-habiting. If one of the couple die, then the nearest blood relative inherits everything and not the intended partner, despite the intentions. It is imperative that they get a Will in place to ensure that the right people inherit.

For more information on what happens in differing situations, please speak with an Estate Planner. A solicitor can draft a Will, to give you complete peace of mind. Please speak with your Financial Adviser for further information.