Orchid Financial Services Ltd

Dying without a valid will

How intestacy rules can affect your beneficiaries.

It's easy to assume your property and possessions will automatically go to loved ones when you die, but in reality this is seldom the case.

Thousands of people die every year without making a will, without properly drafting one or where the execution of the will fails to meet certain legal requirements.

This results in a situation known as intestacy, where usually a family member picks up the pieces and takes on the often strenuous task of processing your estate.

If you die without making a will, your estate – including all your money, property and possessions – will be divided according to the law and not your wishes. Those laws differ slightly between the countries in the UK, although the principles are similar.

Intestacy rules

According to research from YouGov, 66% of adults have heard of intestacy but around nine in 10 admit they don't understand how the rules work.

Someone who dies without making a will is referred to as the **intestate person** and their estate will be handled by an **administrator,** a task usually taken on by a close relative.

The administrator has to apply for a 'grant of representation' in England and Wales before they can formally handle the deceased's estate and should seek professional advice before applying through probate. This process is called 'confirmation' in Scotland and 'grant of letters of administration' in Northern Ireland.

To apply for the grant of representation, grant of letters of administration or confirmation, there are four steps for the administrator or their appointed solicitor to follow:

- complete a probate application form (P1 in England, Wales and Northern Ireland, C1 in Scotland)
- complete an inheritance tax form (they must value the estate)
- send these to your local probate registry
- swear an oath (sent from the probate office).

England and Wales

Only surviving spouses or civil partners, including those who were informally separated at the time of death, and certain close relatives – including children, grandchildren and great grandchildren – can inherit under the rules of intestacy in England and Wales.

The surviving spouse or civil partner inherits all of the deceased's estate if no children are involved.

If the deceased's estate is worth more than £250,000, the surviving spouse or civil partner inherits all personal property and possessions plus half of the remaining estate, with the deceased's offspring entitled to equal shares of the rest.

Your estate will be passed on to the Crown and handled by the treasury solicitor if you die without a will and there are no surviving relatives to inherit your estate. This is known as bona vacantia.

Northern Ireland

Intestacy rules in Northern Ireland are complicated as they depend on the deceased's situation at the time of death.

If the deceased's estate is worth less than £250,000, the surviving spouse or civil partner inherits everything. However, if the estate is worth more than £250,000 the surviving spouse or civil partner will receive:

- personal items (not including any business property)
- £250,000 tax-free (£450,000 if there are no children involved)

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- if there is one child involved, half of anything over the threshold
- if more than one child is involved, a third of anything over the threshold.

Thereafter, a hierarchy of potential beneficiaries applies. It would be a good idea to seek professional advice for more information.

Scotland

Where there is a surviving spouse or civil partner only, they receive the entire estate.

However, where children, parents or brothers and sisters of the deceased survive the living spouse or civil partner gets:

- the interest in their house up to £473,000 (a cash alternative is available if the house has a greater value)
- furniture and household goods worth up to £29,000
- a legacy of £50,000 if there are children or £89,000 otherwise.

If there are any children, the remaining balance of the estate is shared between them. When no children are involved, the balance of the estate is shared between the parents and siblings (including their surviving children if siblings have pre-deceased).

Partial intestacy

Your estate can be subject to partial intestacy if your will does not fully dispose of all your assets.

If you haven't updated your will for some time or you don't have a legally valid will, the rules of partial intestacy may apply.

For example, Peter writes a will containing the sentence: "I give all of my money to my children and all my possessions to my wife".

The wording of the first section states any money Peter had will go to his children – but does not state the amount for each child in either monetary or percentage form.

Similarly, the use of "possessions" would likely be deemed ambiguous by a Probate Court.

Does it just relate to Peter's personal belongings or does it mean property, land or shares?

Potential problems

Family fallouts

With divorce, second marriages and half-siblings becoming more commonplace, modern family dynamics are triggering more family disputes.

The High Court heard 164 disputes relating to estates and wills in 2015 – up two-thirds from 97 in 2013, while dozens of other unreported cases will either have been settled out of court or in regional family courts.

Intestate rules exclude the following people from inheriting your estate:

- unmarried partners
- partners not in a civil partnership
- stepchildren who have not been formally adopted by the deceased
- close friends
- carers.

Probate bills, or the legal costs involved with sorting out your estate, will eat into the estate's value. But family disputes which end up in court will further erode the amount your beneficiaries receive, particularly if they drag on for months or even years in complex cases.

Tax

Inheritance tax (IHT) at 40% is charged on the portion of estates worth more than £325,000. Anything below this threshold is inherited tax-free.

In addition, the recently-introduced residence nil-rate band (RNRB) is designed to make it easier for individuals to pass on the family home to 'direct descendants'.

Using the RNRB from 2020 onwards, married couples and civil partners will be able to leave an estate worth up to £1 million to their children, grandchildren, stepchildren, foster children, adopted children or lineal descendants.

There are also various gifts, exemptions and reliefs that can be used to minimise IHT.

Tax on inherited pensions was scrapped in 2014, resulting in those who die under the age of 75 being able to leave this pot tax-free.

Making a valid will

Writing a legally valid will, and keeping it up to date, is the only way to avoid intestacy and ensure your beneficiaries are looked after when you die.

To make a legally valid will, you must:

- be 18 or over
- make it voluntarily and not under duress
- be of sound mind
- sign it in front of two adult witnesses
- have the two adult witnesses sign it in your presence.

Once you have made your will, it would be wise to seek professional advice to guarantee it is valid before storing it in a safe location which is known to the executor.

The government recommends you revisit your will every five years or at any time your situation changes. This includes:

- having a child
- divorce
- death of the executor, guardian or beneficiary
- marriage or civil partnership
- moving to a new property.

Contact us for advice on planning your estate.

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