

THE RULES OF INTESTACY

Who can inherit if there is no will?

When someone dies without leaving a legally valid will, their estate is distributed in line with a set of rules covering what is known as intestacy. Subsequently, if you die without making a will, you will be defined as an intestate individual.

The rules of intestacy apply to spouses, civil partners or, if there is no surviving spouse or civil partner, other close relatives, such as any children. These rules differ depending on where you live in the UK, however.

If a will is not considered to be legally valid, intestacy rules determine how the deceased's estate is distributed – regardless of any wishes contained in the will. For this reason, it is essential to make a legally valid will and regularly review it.

This article aims to outline the process of failing to plan your estate. We can help you with estate planning to ensure any people or causes close to you are provided for after you die.

SPOUSES AND CIVIL PARTNERS

If you were married or in a civil partnership at the time your spouse or partner died, and they did not make a legally valid will, you may inherit their estate – including any property, possessions, money or investments – through intestacy.

Intestacy rules will not apply if your marriage or civil partnership has ended when your spouse or partner dies. Equally, the rules do not apply if you only cohabited with your partner.

Partners who are separated but remain married or in a civil partnership at the time of death can still inherit under the rules of intestacy.

DIRECT DESCENDANTS

Intestacy rules may seem fairly straightforward so far but a different set of criteria comes into play when surviving direct descendants are involved, such as any children, grandchildren or great-grandchildren.

If your spouse or civil partner's estate is valued at more than £250,000 when they die, you will inherit all of their property and possessions, plus the first £250,000 of the estate's value and half of what's left.

The remainder of your spouse or civil partner's estate will be equally split among the surviving direct descendants, although you will inherit the whole estate from the date your partner died if no children, grandchildren or great-grandchildren are involved.

Example

David was married to Uma, and they had a daughter called Zara. David died suddenly in England without making a will, and left an estate worth £2 million, which included a house and personal possessions worth £500,000 after his debts were repaid.

As David died intestate, Uma was entitled to the family home and his possessions, which were free from inheritance tax as the assets passing to a spouse or civil partner are exempt.

She was also entitled to the first £250,000 of the £1.5m balance, which was also tax-free. On top of that, she was entitled to half (£625,000) of the £1.25m left of the estate, again tax-free.

Zara received the balance (£625,000) less 40% inheritance tax on the amount above the £325,000 nil-rate band, so £625,000 less £120,000 giving £505,000. Uma received the house, any personal possessions and £875,000 from the rest of the estate.

If David had made a legally valid will, his estate would have been distributed according to his wishes.

The residence nil-rate band, which stands at £150,000 in 2019/20, did not apply as Uma inherited the family home rather than direct descendants, such as children or grandchildren.

Speak to us about planning your estate, which includes making a legally valid will to ensure your loved ones are provided for.

CO-OWNED ASSETS

Intestacy rules do not apply to unmarried couples, even if you have cohabited with your partner for several decades.

However unfair that might seem, there are two ways of jointly owning a home in England and Wales which are aimed at protecting your interest in the property should your partner die or your relationship break down.

One of these ways is to buy a home with your partner as joint tenants, which enables the surviving owner to inherit the deceased's share of the property automatically transferred to them through a rule of survivorship.

Conversely, if you were to buy a property with your partner as tenants in common, the rule of survivorship does not apply and you would not automatically inherit their share of the home.

Owning a property with your partner is not the only asset you may jointly own. You may have money saved in a bank or building society account. The surviving partner inherits this money when the other one dies.

The same can be said about any property your spouse or civil partner owned, as you will automatically inherit that. As such the value of these assets will not contribute to the value of the deceased's estate.

Example

Sam and Chloe were married with a child called Louis. Sam died and Chloe automatically inherited the home they owned as beneficial joint tenants, worth £325,000.

Sam also had shares in his own name worth £75,000, which made up the value of his estate. As this is worth less than the £325,000 nil-rate band for inheritance tax, Chloe also inherited Sam's shares, while Louis received nothing.

If Sam owned the home in his own name, his estate would have been worth £400,000 and inheritance tax would have been owed at 40% on £75,000 of that (£30,000).

Sam's estate would have been worth £355,000 after tax, and Chloe would have received the first £250,000 of that under the rules of intestacy. She and Louis would have shared the rest.

NORTHERN IRELAND AND SCOTLAND

What we have covered so far applies to people in England and Wales, and intestacy differs in Northern Ireland and Scotland.

In Northern Ireland, for instance, the rules depend on the deceased's circumstances when they die.

Surviving spouses or civil partners in Northern Ireland are entitled to inherit everything worth less than £250,000.

The surviving partner will only receive half of the estate's value above this if there is one child involved, or a third of the estate's value if there is more than child.

A hierarchy of potential beneficiaries applies thereafter, so seek professional advice where necessary.

In Scotland, the surviving spouse or civil partner has a right to the entire estate where no children are involved.

A dative petition order may be needed to apply to your local sheriff clerk to be named executor of estates worth more than £36,000.

Children, parents and siblings can benefit from the deceased's estate if they die intestate in Scotland, and it is wise to seek professional advice.

NO SURVIVING RELATIVES

Where there are no surviving relatives to inherit under intestacy rules, the estate goes to the Crown through bona vacantia.

A Treasury solicitor handles the estate on the Crown's behalf, and can make grants from the estate using their own discretion.

Making a legally valid will is the best way to make sure your assets are distributed in the way you want after your death.

 **We can help plan your estate.**

IMPORTANT INFORMATION

The way in which tax charges (or tax relief, as appropriate) are applied depends on individual circumstances and may be subject to future change. Some estate planning and inheritance tax advisory services are not regulated by the FCA.

This document is solely for information purposes and nothing in it is intended to constitute advice or a recommendation.

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