

Intestacy provisions

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Dying without a will – the intestacy rules

Do you have a will? Do you know what will happen to your property if you die without having one? Approximately 30 million people in the UK do not have a will and yet the vast majority of these people do not know what will happen on their death. Many assume that their assets will pass to their spouse or partner, or to their children. However, with the complex make-up of many modern families, the reality is often very different.

What many people do not appreciate is that if they are not married to their partner then, under the intestacy rules, their partner will receive nothing. Nor, indeed, will any stepchildren, as they will not be counted as your children.

Under the intestacy rules, if you die without a will and are survived by your spouse and children, then your personal belongings and the first £250,000 of your assets will pass to your spouse or civil partner. The balance will be split into two shares. One share will be held on life interest trusts for your spouse (they are entitled to the income from the share but not the underlying capital) and will then pass to your children on their subsequent death. The other share will pass equally to your children at age 18 with an immediate charge to inheritance tax to pay if the amount exceeds your available nil rate band (currently £325,000). This could mean that assets (such as the matrimonial home) will have to be sold to provide for the children's share and could also mean that your children have control of significant assets at the young age of 18.

What is clear is that in many situations the statutory rules which set out the order in which members of your family benefit may not coincide with your wishes. Most married couples want the survivor to receive everything but this will only be the case in the unlikely situation that they have no children, parents, siblings, or nephews or nieces.

A recent television show which appeared on BBC2 entitled 'Can't Take it with You', was designed to confront people's perception of wills. Withers' partner, Sue Medder, was the series legal consultant and assisted Sir Gerry Robinson in this endeavour. Charlie Tee, one of our assistant solicitors in the Wealth Planning team, was the off-screen advisor to the programme.

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