

NO WILL - WHO INHERITS THE ESTATE?

When a person dies without leaving a valid Will, their property (the Estate) must be shared out according to certain rules. These are called the rules of intestacy. A person who dies without leaving a Will is called an intestate person. If someone makes a Will but it is not legally valid, the rules of intestacy decide how the Estate will be shared out, not the wishes expressed in the Will.

Married Partners and Civil Partners

Married partners or civil partners inherit under the rules of intestacy only if they are actually married or in a civil partnership at the time of death. So, if you are divorced or if your civil partnership has been legally ended, you cannot inherit under the rules of intestacy. Partners who have separated informally can still inherit under the rules of intestacy.

If there are surviving children, grandchildren or great grandchildren of the person who died and the Estate is valued at more than £450,000, the civil partner or surviving spouse will inherit:-

- All the personal property and belongings of the person who has died, and
- The first £450,000 of the Estate and
- A life interest in half of the remaining Estate. This means that if you are entitled to the life interest, you cannot get rid of or spend that part of the Estate. You can however have the benefit of it during your lifetime.

What about our home?

Couples may jointly own their home. There are two different ways of jointly owning a home. These are beneficial joint tenancies and tenancies in common.

If the partners were beneficial joint tenants at the time of the death, when the first partner dies, the surviving partner will automatically inherit the other partner's share of the property. However, if the partners are tenants in common, the surviving partner does not automatically inherit the other person's share.

Couples may also have joint bank or building society accounts. If one dies, the other partner will automatically inherit the whole of the money.

Property and money that the surviving partner inherits does not count as part of the Estate of the person who has died when it is being valued for the intestacy rules.

Children

Children of the intestate person will inherit if there is no surviving married or civil partner. If there is a surviving partner they will inherit only if the Estate is worth more than £450,000.

Children – if there is no surviving married or civil partner

If there is no surviving partner, the children of a person who has died without leaving a Will, inherit the whole Estate. This applies however much the Estate is worth. If there are two or more children, the Estate will be divided equally between them.

Children – if there is a surviving partner

A child whose parents are not married or have not registered a civil partnership can inherit from the Estate of a parent who dies intestate. These children can also inherit from grandparents or great grandparents who have died intestate.

Adopted children (including step-children who have been adopted by their step-parent) have rights to inherit under the rules of intestacy. Otherwise, you have to be a biological child to inherit.

Children under the age of 18 years do not receive their inheritance immediately. Inheritance is managed by trustees on the child's behalf until they reach the age of 18.

Grandchildren and Great Grandchildren

A grandchild or great grandchild cannot inherit from the Estate of an intestate person unless their parent or great grandparent has died before the intestate person. The grandchildren and great grandchildren will inherit equal shares of the share to which their parent or grandparent would have been entitled.

Other close relatives

Parents, brothers and sisters and nieces and nephews of the intestate person may inherit under the rules of intestacy. This will depend on a number of circumstances:-

- Whether there is a surviving married or civil partner
- Whether there are children, grandchildren or great grandchildren
- In the case of nephews and nieces, whether the parent directly related to the person who has died is also dead
- The amount of the Estate

Other relatives may have a right to inherit if the person who died intestate had no surviving married partner or civil partner, children, grandchildren, great grandchildren, parents, brothers, sisters, nephews or nieces. The order of priority amongst other relatives is as follows:-

- Grandparents
- Uncles and aunts
- Cousins

Who cannot inherit?

The following people have no right to inherit where someone dies without leaving a Will:-

- Unmarried partners
- Lesbian or gay partners not in a civil partnership
- Relations by marriage
- Close friends
- Carers

However, even if you cannot inherit under the rules of intestacy, you may be able to apply to the Court for financial provision from the Estate.

If there are no surviving relatives

If there are no surviving relatives who can inherit under the rules of intestacy, the Estate passes to the Crown. This is known as bona vacantia. The Treasury Solicitor is then responsible for dealing with the Estate. The Crown can make grants from the Estate but does not have to agree to them.

Rearranging the way the Estate is shared out

It is possible to rearrange the way property is shared out when someone dies without leaving a Will, provided this is done within two years of the death. This is called making a Deed of Family Arrangement or a Deed of Variation. All the people who would inherit under the rules of intestacy must agree. If they agree, the property can be shared out in a different way so that people who do not inherit under the intestacy rules can still get some of the Estate. Or they could agree that the amount that people get is different to the amount they would get under the rules of intestacy. If you think that the way the Estate is shared out should be rearranged, you will need legal advice.

Applying for financial help

You may be able to apply to Court for reasonable financial help from the Estate of the person who has died intestate. For example, if you were living with the person who has died but you were not married to him, you would not inherit under the rules of intestacy. However, you could apply to Court for financial help. You must have lived with him for at least two years immediately before his death. Another example is if you were always treated by the person who died as a child of the family. You would not inherit under the rules of intestacy, but you could apply to the Court for financial help. You must make the application within a certain time limit.

The Court may order:-

- Regular payments from the Estate

- A lump sum payment from the Estate
- Property to be transferred from the Estate

If you want to go to the Court for financial help, you will need legal advice.

It is advisable to seek proper legal and financial advice and, as always, **Busbys** are here to help. If you have any comments or queries regarding anything contained within this article or indeed if you require any advice on Estates, Probates, Trusts, Inheritance Tax, Enduring Powers of Attorney or Lasting Powers of Attorney, please do not hesitate to contact me on **01288 35 9000** or by email at **sharon.piper@busbyslaw.co.uk**

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