

EXPLANATORY NOTES

RULES OF INTESTACY

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Over half of the adult population in England and Wales do not currently have a Will.

If you die without having made a Will, the law dictates who will benefit from your estate under the rules of intestacy. This may well not be who you would actually wish to benefit and can result in significant issues, and upset, for those left behind.

What many people do not know is that if you have prepared a Will, but none of your named beneficiaries survive you, this is called a “partial intestacy” and the rules of intestacy will again apply.

A well-planned Will can ensure that you specify who benefits from your estate after you have died, (or which charities), avoiding the rules of intestacy and providing peace of mind for both you and your family or friends.

The rules of intestacy cover a number of scenarios.

(A) The deceased was married or in a civil partnership and leaves both spouse or civil partner and children

If the estate is worth up to £322,000

- The surviving spouse or civil partner inherits all of the estate.

If the estate is worth over £322,000

The surviving spouse or civil partner receives:

- all personal belongings;
- all jointly held assets, but not necessarily the house as this will depend how it was held (“joint tenants” or “tenants-in-common” – please let me know if you have any questions regarding this;
- £322,000 of other assets; and
- half of the remainder of the estate.

The children (but not stepchildren) will receive half of the remainder of the estate once they are 18.

(B) The deceased was married or in a civil partnership and leaves a spouse or civil partner but no children

The surviving spouse or civil partner receives all of the deceased’s assets.

(C) The deceased leaves children but no spouse or civil partner

Everything passes equally to the children of the deceased (but not stepchildren) once they are 18.

(D) The deceased leaves no children and no spouse or civil partner

In this case, the whole estate passes equally to the first group of qualifying relatives that survive the deceased. The order of family inheriting is as follows:

- parents of the deceased;
- brothers and sisters of the deceased, or, if they have already died, their children;

- half blood brothers and sisters of the deceased, or, if they have already died, their children;
- grandparents of the deceased;
- uncles and aunts of the deceased;
- half blood uncles and aunts of the deceased; and
- if none survive then the estate passes to the Crown.

Please note:

- The intestacy rules do not recognise unmarried partners or couples who are not in a civil partnership. They have no rights under the rules of intestacy, even if they have been together for many years and have children together. (They may potentially be able to bring a claim against the estate.)
- Charities have no rights under the rules of intestacy.
- The term “children” includes legitimate, illegitimate, and adopted, but **excludes** stepchildren.
- The value of the family home, if owned by the deceased in their sole name or as “tenants-in-common” with their surviving spouse or civil partner, is included in the surviving spouse’s or civil partner’s entitlement of up to £322,000 referred to in (A) above. This could put the survivor’s security of their home at risk.

As mentioned, by preparing a well-planned Will, you can ensure that you provide for the people and/or charities you want to benefit, rather than leaving decisions to the law. A well-planned Will can therefore provide you, and those left behind you, with both security and peace of mind.

This handout is for information purposes only and covers the basic principles and should not be relied upon. If you would like to discuss intestacy and Wills or related matters, please contact me and I will be very happy to discuss this with you further.

This booklet deals in general terms with a complex subject. While we believe the contents to be correct, they should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation. You must always seek legal advice concerning any situations referred to in this booklet and Wanstall Consulting or its author can accept no responsibility for any loss suffered by any person as a result of acting in reliance upon the contents of this booklet.

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