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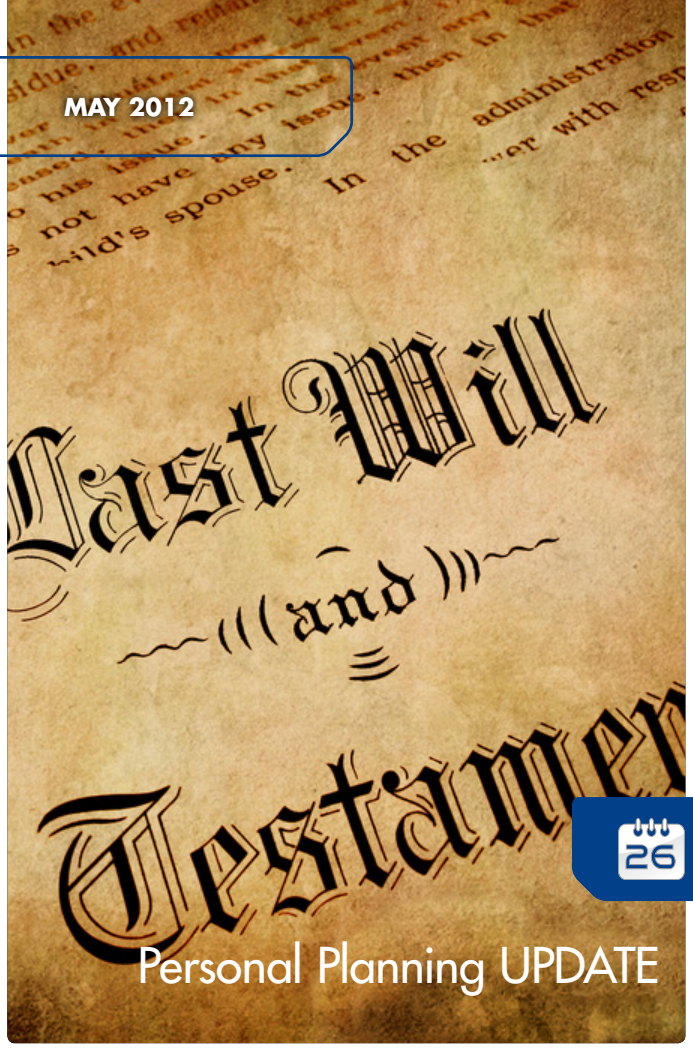

You don't have a Will? Don't die intestate

Intestacy is the consequence of dying without a Will.

Various surveys indicate that about two-thirds of adults fail to make a Will. Even those who do may still be caught by the rules of intestacy. A Will may prove to be invalid because of a procedural defect or even just because no-one can find it. A subsequent marriage often revokes a Will while a divorce can alter its terms.

The main advantages of having a Will are:

- Your property transfers according to your wishes
- You may make arrangements to avoid or reduce inheritance tax
- You can choose who you want to administer your estate
- You can create a trust, e.g. to provide for dependants when simply leaving them money or property is not deemed appropriate
- You can create a trust or make other arrangements to reduce your estate and protect yourself for health care charges in older age
- You may specify who you wish to look after any [under-age] children
- You can decide what type of funeral you wish (such as cremation or burial).

An executor acts as the personal representative. Without a will an administrator has to be appointed instead of an executor. This can be a slower process, and the appointment may be challenged

All these planning advantages are lost without a Will.

Without a Will you are allowing the State to decide what happens to your estate and in this case your property may not devolve as you would wish. In particular, a surviving spouse or civil partner will not automatically receive everything.

A partner with whom you live but where there is no marriage or civil partnership is not treated as a spouse and may receive nothing.

Intestacy - so who gets what?

The rules on who receives what depend on the part of the UK where the deceased lived.

For England and Wales, the law is governed by the Administration of Estates Act 1925.

For Northern Ireland, the provisions are broadly the same, but the governing law is the Administration of Estates Act (Northern Ireland) 1955.

A completely different law applies in Scotland.

Contact us so we can advise how to make arrangements to ensure that your wishes are carried out, and that the inheritance tax liability is minimised.

England, Wales and Northern Ireland

The laws on who receives what changed on 1 February 2009, having remained unchanged since 1993.

If the deceased left a spouse (husband, wife or civil partner) AND children:
The spouse receives:

- All personal chattels (moveable assets)
- A legacy of £250,000
- A life interest in half of what is left.

The children receive the rest. Parents, brothers or sisters receive nothing.

A life interest means that the person may use the items during their lifetime. The assets then pass to the children.

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You don't have a Will? Don't die intestate

If the deceased left a spouse, no children, but other relatives:
The spouse receives:

- All personal chattels
- A legacy of £450,000
- Half the remainder absolutely.

If the deceased left parents, they inherit the rest. If there are no parents, brothers and sisters inherit. They inherit equally. If any of them has already died, their share may pass to any surviving children or other descendants.

If the deceased left no spouse, but left children: The children inherit everything.

If the deceased left no spouse or children: The estate goes to the highest placed living person or group of living relatives on this list:

1. Parents
2. Brothers and sisters
3. Brothers and sisters of the half blood (one parent in common)
4. Grandparents
5. Uncles and aunts
6. Uncles and aunts of the half blood.

If someone dies and leaves no-one on this list. The estate is "bona vacantia". This means that the whole estate goes to the State.

A beneficiary has already died

In each case (except parents and grandparents), if a person in the group has already died, their share passes to their descendants. So if uncles and aunts inherit, and an uncle has died, their share will pass to the children, the deceased's cousins.

Children

For all inheritance purposes, a child includes an adopted child and an illegitimate child. It also includes a child that has been conceived but not born at the time of the death.

A child does not include someone who was given up for adoption by the deceased.

Scotland

In Scotland, the main law is the Succession (Scotland) Act 1964. This has been amended several times, particularly by the Law Reform (Parent and Child) (Scotland) Act 1986.

If there is no Will, the estate devolves in this order:

- Prior rights
- Legal rights
- Other rights.

A surviving spouse has prior rights to:

- The dwelling house in which the spouse was resident, to a maximum value of £473,000
- Furnishings and furniture in that house up to £29,000, plus:
  - » £50,000 if there are children, or £89,000 if there are not.

Once the prior rights have been satisfied, the legal rights must be settled.

In addition to the prior rights, the spouse is entitled to:

- One third of the moveable estate if there are children, or
- One half of the moveable estate if there are no children or remoter descendants.

Moveable estate means such items as money, shares, cars, furniture and jewellery. It does not include land and buildings.

If there are children in addition to a spouse, they have legal rights to one third of the moveable asset(s). If there is no spouse, they receive half. All children inherit equally. Since 1986, children inherit from a parent even if the parent was unmarried.

After the prior rights and legal rights, the balance of the estate passes under the other rights provisions. Under this the balance of the state passes wholly to the highest surviving person or persons in the list below:

(a) Children
(b) Parents and brothers and sisters (half to parent or parents, half to siblings)
(c) Brothers and sisters
(d) Parents
(e) Husband, wife or surviving partner
(f) Uncles and aunts
(g) Grandparents
(h) Brothers and sisters of grandparents
(i) Remoter ancestors
(j) Brothers and sisters of any surviving ancestor of oldest generation
(k) The Crown.

Where more than one person in a group inherits, the estate is divided equally between them. There is no precedence on grounds of age or sex (except in relation to titles and coats of arms).

If a relative who would have inherited has died, their share passes to their children. However no person can inherit more than one share under their provision.

Brothers and sisters of the whole-blood inherit before those of the half-blood.

Adopted children and adoptive parents have the same rights as natural children and natural parents.

If a person *has* made a Will, the prior rights do not apply, *but the legal rights apply regardless of what the Will says.* However, someone cannot inherit under both a Will and the legal rights of intestacy. The beneficiary must choose which to inherit.

Deed of variation

If the laws of intestacy do not give the desired result, it is possible for all the beneficiaries to make a deed of variation within two years. This requires unanimous agreement. For inheritance tax, the estate is taxed as if distributed in accordance with the deed. We can advise you on this.

The above is only a general guide - in some circumstances the rules may vary so seeking advice pertinent to your siutation is essential. Don't delay