



Don't leave it too late!

No-one likes to spend too much time thinking about dying and anyway “everything goes automatically to my nearest and dearest doesn't it?” Statistics indicate that with over 60%¹ of adults in the UK failing to make a Will, you would not be alone in making this assumption but along with them you would be in for a nasty surprise in believing that those closest to you would necessarily be “looked after”.

It is true that if you die without a valid Will your estate will be dealt with but it is the Law of Intestacy which determines who will inherit your estate. In many cases this may result in a division of assets which had you been alive, you would never have agreed to.

The Law of Intestacy is a relatively arbitrary set of legislation which steps in to divide assets in a way that the State views as fair to the parties involved. Broadly speaking this system is based upon identifying the closest “classes” of relatives, dependents and next of kin and then dividing the estate amongst them. In the most extreme cases where no obvious next of kin are to be found an extensive process of research has to be gone through in order to find out where the estate should be allocated.

An example of this is the case of the estate of Maureen Smythe. Before she died intestate, she had been widowed twice. When she died, the solicitor who was dealing with the case needed to find a family member who could represent the estate but he had no record of how many children she had or where they were. The only son from the second marriage was located via research. Further research was then undertaken to identify any children from the first marriage. As a starting point, the son from the second marriage suggested there had been two sons both of who now lived in Canada. Both proved very elusive and research had to be approached at quite an oblique angle. Details of the death of Mrs Smythe's husband were needed in order to locate his brother. Through him it was discovered that the Mrs Smythe's elder son had been born in France and had then been adopted out of the family – which effectively ruled him out of any entitlement under the estate, he had never been to Canada, but lived in Malta. His brother, who was finally located in Ontario, had never even known he had a brother!

Happily, identifying the next of kin in most cases is not this complicated but even in more traditional circumstances you would be surprised how the assets are split up.

Appropriate legal advice is needed and no action should be taken based on this article, as there may be some exceptions. As a general rule for a married person with children, when one of the spouses dies intestate, the remaining spouse gets everything up to £125,000 plus personal possessions. Anything remaining is then divided in two with half going to the children at 18 or on marriage, if this is earlier. The other half is held in trust

¹ Society of Trust and Estate Practitioners

during the lifetime of the surviving spouse where he or she will receive the income this generates. On their death this half then also goes to the children.

For a married person with no children, but whose parents (full brothers or sisters or nephews or nieces) are alive the surviving spouse gets everything up to £200,000 plus personal possessions. Anything remaining is divided in two. Half of this goes to the spouse and half to the parents. If there are no living parents then the estate goes to the brothers or sisters or their children. Obviously for the surviving spouse this would result in their losing what they considered to be assets they should have inherited from their spouse.

For an unmarried person in a relationship with children, the result of intestacy can be even more draconian. Once their partner has died, their estate will go to the children at 18 or on their earlier marriage – leaving the surviving partner with nothing.

It doesn't take much imagination to see the inequitable outcomes that dying intestate could create, in the worst cases, leaving the surviving spouses or other family members with insufficient finances and legal problems. This is the last thing anyone wants when they are already having to deal with a tragic loss.

If you are married or in a Civil Partnership there is a degree of protection but the transition from this life to the next can easily be made much simpler for those left behind by not leaving the decision in the hands of the State. It is vital to ensure that you have a valid Will that has been properly prepared. Drafting a Will need not be complicated or expensive, with a pair of simple Wills from the Howell-Jones Partnership costing in the region of £200 plus VAT. Once completed this simple process not only gives you control over the distribution of your assets but you can also be confident that there will be no nasty surprises for those you leave behind.

If you die tomorrow without a valid Will – who would you want to inherit?

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