No Will? – The rules of Intestacy will be applied

When a person dies without leaving a will, their estate must be shared out according to the rules of intestacy. The person is called an intestate person.

Only married or civil partners and some other close relatives can inherit under the rules of intestacy. The same rules of intestacy apply if the will proves not to be valid, 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.

Partners who separated informally can still inherit under the rules of intestacy. Cohabiting partners (there is no such thing as 'common-law' partners!) can't inherit under the rules of intestacy.

So, if there are surviving children, grandchildren or great grandchildren of the deceased and the estate is valued at over £250,000, the partner will inherit:

- all the personal property and belongings of the person who has died, and
- the first £250,000 of the estate, and
- half of the remaining estate.

For example: Jill was in a civil partnership with Bob and they adopted a daughter called Tia. Jill died without leaving a will. Her estate is worth £450,000. After Bob inherits the first £250,000, the estate that is left is worth £200,000. Bob can have half of this - £100,000.

If there are no surviving children, grandchildren or great-grandchildren, the partner will inherit:

- all the personal property and belongings of the person who has died and
- the whole of the estate with interest from the date of death.

Jointly-owned property

Most couples jointly own their home and there are two different ways in which this is done - 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.

For example: Jon and Sue are married and own their house as beneficial joint tenants. They have a child called Eve. Jon dies intestate leaving the jointly-owned flat worth £300,000, and £50,000 in shares in his own name. The house goes automatically to Sue, leaving an estate of £50,000 which also goes to Heather, as it is worth less than £250,000. Eve inherits nothing.

However if Jon had owned the flat in his name alone, his estate would have been worth £350,000. It would be shared out according to the rules of intestacy, that is, Sue would get the first £250,000. This leaves an estate of £100,000. Sue would get £50,000 and Eve would get the remaining £50,000.

Children –

Children of the intestate person will inherit if there is no surviving married/civil partner. If there is a surviving partner, they will inherit only if the estate is worth more than a certain amount.

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Children - if there is no surviving married or civil partner

If there is no surviving partner, the children of a person who has died intestate 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

If there is a surviving partner, a child only inherits from the estate if the estate is valued at over £250,000. If there are two or more children, the children will inherit in equal shares:

- one half of the value of the estate above £250,000.

All the children of the parent who has died intestate inherit equally from the estate. This also applies where a parent has children from different relationships.

For example: Joseph and Mary were married and have two children, Tom and Amy.
Later, Joseph and Mary get divorced and Joseph then has a child, Abbie with his new partner Grace.
Joseph and Grace do not marry and Joseph then dies. Mary does not inherit under the intestacy rules because she is divorced from Joseph and neither does Grace because she has not married Joseph, so in this situation Tom, Amy and Abbie inherit all of Joseph's estate in equal shares.

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) also have rights to inherit under the rules of intestacy. But in reality you have to be a biological child to inherit.

Children do not receive their inheritance at once, they receive it when they:

- reach the age of 18, or
- marry or form a civil partnership under this age.

Grandchildren and great grandchildren

A grand or great grandchild cannot inherit from the estate of an intestate person unless;

- their parent or grandparent has died before the intestate person, or
- their parent is alive when the intestate person dies, but dies before reaching age 18 without having married or formed a civil partnership

In these circumstances, the grand or great grandchildren will inherit equal shares of the portion to which their parent or grandparent would have been entitled.

For example: Al has two sons, Ian and Simon. Ian has one daughter, Hannah. Ian sadly dies when Hannah is two years old. Al dies intestate when she is 20. Hannah inherits Ian's share of Al's estate.

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:

- if there is a surviving married or civil partner
- if there are children, grand 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 intestate person had no surviving married/civil partner, children, grand or great grand-children, parents, brothers, sisters, nephews or nieces. The order of priority amongst other relatives is as follows:-

- grandparents
- uncles and aunts. A cousin can inherit instead if the uncle or aunt who would have inherited died before the intestate person
- half-uncles and half-aunts. A half-cousin can inherit instead if the half-uncle or half-aunt who would have inherited died before the intestate person.

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No Will? The rules of Intestacy will be applied

Who cannot inherit

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

- unmarried partners. It is worth noting here that despite urban myth to the contrary there is no such thing as a “common law” relationship
- lesbian or gay partners not in a civil partnership
- relations by marriage
- close friends
- carers

However, even if you can't inherit under the rules of intestacy, you may be able to apply to 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 in its entirety 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.

If you are not a surviving relative, but you believe you have a good reason to apply for a grant, you will need legal advice.

Rearranging the way the estate is shared out

It is possible to rearrange the way property is shared out when someone dies intestate, if done within two years of death. This is a deed of family arrangement or variation and will work if all the people who would inherit under the rules of intestacy 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, the amount that people get is different to the amount they would get under the rules of intestacy.

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 them, you would not inherit under the rules of intestacy. However, you could apply to court for financial help. You must have lived with them for at least two years immediately before their 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 time limit but in some circumstances this can be extended.

The court may order:

- regular payments from the estate
- a lump sum payment from the estate
- property to be transferred from the estate.

Rejecting your inheritance

If you reject your inheritance, known as disclaiming it, there are special rules about who can inherit.

Any queries that you have regarding Wills or Intestacy should be discussed with a solicitor who is experienced in these matters. We will be happy to introduce you to someone who can help.

Please contact us

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