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THE CONSEQUENCES OF NOT HAVING A WILL

The Inheritance and Trustees' Powers Act 2014 which came into force on 1 October 2014 contains the law of intestacy – the rules which apply when a person dies without leaving a Will.

"In an ideal world, the most sensible thing that individuals can do is set out their intentions in a Will". So stated a Minister, as the Act made its way through Parliament. This is not in dispute, but studies suggest that more than half the adult population still do not have a Will. For those people, the law must provide the solution. It falls to the legislation to weigh up and balance the different interests of the family members and set out how the estates of those people are to be distributed.

Another issue is that even for those who have made a Will, if they go on to marry and have not included a special form of words within their Will then it will be cancelled (revoked) by the marriage. This can lead to tragically unintended consequences such as a new spouse receiving everything and minor children being left with nothing.

So what does happen if no valid Will is left when a person dies? The current intestacy rules:

1. Where a person dies without a Will, leaving a spouse but no children:

   - the spouse inherits the whole estate. Parents/ siblings do not have any entitlement, whatever the size of the estate.

2. Where a person dies without a Will, leaving a spouse and children:

   - their 'personal chattels' and the first £250,000 in their estate pass to their spouse;
   - half of the balance passes to the deceased's children at 18;
   - the other half passes to the spouse outright.

In such circumstances the balance is weighted firmly in favour of the spouse which may provide the best solution in the case of a first marriage where the children are those of both spouses (although it may not be what the couple would have chosen). It may provide a less than ideal solution where it is a second marriage, with children on both sides.

Moreover, if the surviving spouse subsequently dies intestate without remarrying, it will be his or her children who inherit under the intestacy rules and they may ultimately receive considerably more than the children of the first spouse to die.

It should be borne in mind that the intestacy rules will not normally apply to assets owned by the spouses jointly. Such assets will usually (although not always) pass to the spouse on the first death "by survivorship".

Personal Chattels

The intestacy rules state that the deceased's 'personal chattels' pass to their spouse on the first death. The statutory definition of 'personal chattels' is 'tangible moveable property', with the stated exceptions of money, securities for money, property used solely or mainly for business purposes and assets held purely as an investment.

This definition can cause some issues in practice. Is an asset used solely or mainly for business purposes? Is an asset, such as a coin collection, a wine collection, a work of art or precious jewellery at the bank, held as an investment? If the answer is yes, the asset will not pass under a gift of 'personal chattels' in a Will. If the answer is no, then it will. Where there are such assets, the client's intentions need to be ascertained and the Will carefully drafted. These matters can be emotive, and in the case of more valuable assets, can have a significant impact.

The key message – do not rely on the intestacy rules!

The intestacy rules are a "one size fits all" framework and in many cases will result in a distribution that would not have been intended and may be manifestly unfair.

An intestacy can also increase estate administration costs because the personal representatives must ensure they have accounted for all potential beneficiaries which can mean instructing tracing agents and/or carrying out genealogical research.

The overriding message must be to get a professionally drawn Will in place.

Reasons to make a Will:

1. To ensure your hard won assets pass in accordance with your wishes, in the knowledge that you have considered your responsibilities to the intended beneficiaries and their different needs and interests.

2. To avoid the distress to close family members of leaving the distribution of your estate to legislation, which may well not provide a solution suited to your particular circumstances. It can be a great help to family, at a very upsetting time, to know there is a Will and that your wishes are being carried out.

3. To exercise a choice of executors and trustees – those who are responsible for administering the estate and carrying out the terms of the Will.

4. To appoint guardians for children under the age of 18. This is particularly important where there are members on both sides of the family willing to take on the role. Without an appointment in the Wills, there is room for misunderstanding and acrimony in relation to one of the most important aspects to be sorted out where there are young children.

5. To ensure your 'personal chattels' are dealt with according to your wishes.

6. To state the age at which children should benefit. Under the intestacy rules they become entitled at 18. Often it may be more appropriate to defer their entitlement until 21 or 25 but give the trustees flexible powers to benefit the children before that age.

7. To provide for other family members' needs eg an elderly relative with limited resources.

8. To take into account Inheritance Tax considerations.

9. The intestacy rules do not provide at all for those who are cohabiting but not married. Where a couple are living together but not married, it is very important for them to get Wills in place to provide for each other.

10. To remove the statutory survivorship period of 28 days.

11. To keep estate administration costs to a minimum.

A summary of the intestacy rules:

The deceased leaves:	Beneficiaries receive:
Spouse only	Surviving spouse receives entire estate as long as they survive the deceased by 28 days
Spouse and children	Surviving spouse receives all chattels, the first £250,000 and half of anything over that. Children receive the other half equally on reaching 18 or marrying before 18.
If there is no surviving spouse, or children (or grandchildren— if a child dies before a parent then their child(ren) inherit their share) then the following relatives inherit, in this order. A category can only inherit if there are no surviving members of the preceding category:	
Parents	Entire estate, equally or to the survivor
Siblings (or nieces/nephews if siblings have prede-ceased)	Entire estate equally, or to their children if a sibling has predeceased. If a sibling has predeceased leaving no children, all to any surviving siblings equally
Half siblings	Entire estate equally, or to their children if a half sibling has predeceased. If a half sibling has predeceased leaving no children, all to any surviving half siblings equally
Grandparents	Entire estate, equally if more than one.
Aunts and Uncles	Entire estate, equally if more than one. If one has died before the deceased then their child(ren) inherit their share
Half Aunts and Uncles	Entire estate, equally if more than one. If one has died before the deceased then their child(ren) inherit their share

If no relatives survive the deceased in any of the above categories then the estate passes to the Crown, the Duchy of Lancaster or the Duchy of Cornwall.

Deeds of Variation

It is possible in some cases to vary an intestacy so that people other than those prescribed by the rules can benefit. However, this can only happen if all those who benefit under the rules agree and can consent (e.g. are over 18 and have mental capacity).

It is also possible to apply to Court for a variation of an intestacy, but this is unlikely to be approved where this involves reducing the inheritance of a minor or other beneficiary who cannot consent.

Case Study

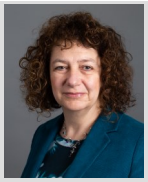
A man (Mr A) who had been widowed but left no children died without making a Will. The only relative was a nephew with sketchy details of the family tree and whose own mother (Mr A's sister) had already died.

It was necessary to instruct genealogists and tracing agents to formally identify the blood relatives of Mr A and their children where they had already died, at considerable cost to the modest estate. Beneficiaries were located in Australia, America, Spain and France which further increased costs.

Another cost in these cases is obtaining indemnity insurance to protect the personal representative of the estate in the event that another beneficiary comes forward once distributions have been made.

Finally, It is not just a question of getting a Will in place; it is then a question of reviewing it periodically to ensure it is up to date and still reflects your wishes and circumstances. It is a good idea to review a Will at least every five years or following a change of circumstances.

Carolyn Bagley



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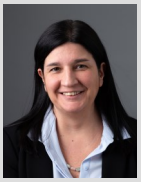

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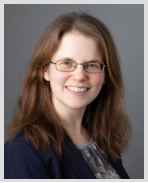

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