

Intestacy

What if I don't make a Will?

If you don't leave a valid Will, your estate will pass in accordance with the intestacy rules which set out who is entitled to inherit from your estate which in some circumstances could mean the Crown. The rules of intestacy are complicated and vary depending on circumstance.

What does this mean for married couples?

If you are married or are in a civil partnership, the first person entitled to your estate under the intestacy rules is your spouse/civil partner, but they will not necessarily inherit the whole of your estate (the Civil Partnership Act 2004, which came into effect on 5th December 2005, gave same-sex couples the right to register their partnerships, giving them broadly the same legal rights as married couples).

The amount your spouse or civil partner would inherit depends on how much is in your estate and which of your blood relatives survive you.

Joint Assets:

Assets held in joint names usually pass automatically to the other joint owner(s) and do not form part of your estate (please contact us if you are unsure about the type of joint ownership you share with another). These assets will pass to the other owner regardless of your situation and outside of the below.

Estate less than £250,000

In England and Wales, if you are married or in a civil partnership and your total estate is worth less than £250,000, including your home or other property, then all the money passes to your spouse or civil partner. This is the case even if you are separated but still married. The only exception is jointly owned property and joint savings and bank accounts where the asset automatically passes to the joint owner, even if they were not your spouse or civil partner. For this to happen the property must be owned as Joint Tenants and not as 'Tenants in Common' (please contact us if you are unsure).

Estate more than £250,000 and have children

If your estate is worth more than £250,000 and there are children, grandchildren or great-grandchildren, then the first £250,000 goes to your spouse or civil partner. They then inherit half of the remaining money, with the other half passing to your children when they reach eighteen.

Estate more than £250,000 and don't have children

If your estate is worth £250,000 or more, and there are no surviving children, then your spouse or civil partner receives everything absolutely.

What does this mean for an unmarried person?

As an unmarried couple, without a Will, the person with whom you share your life may not inherit anything as they do not have the same 'rights' as those in a marriage or civil partnership; in law, they have no automatic entitlement to the estate. Put simply, if you're not married and living together, there are no guarantees that your partner will automatically receive any of your money or property should you die.

Joint Assets

As above, assets held in joint names usually pass automatically to the other joint owner(s) and do not form part of your estate (please contact us if you are unsure about the type of joint ownership you share with another). These assets will pass to the other owner regardless of your situation and outside of the Intestacy rules.

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If you are not married but have children

Your estate would be split equally between your children.

If you are not married and have no children

It is important to note that if there is no spouse or children, then the Intestacy Rules have a set order as to who would inherit. If none of a specific category exist, then the estate would be inherited by the next. The order is parents, siblings or their descendants, half siblings or their descendants, grandparents, full uncles and/ or aunts or their descendants, half uncles and/or aunts or their descendants. If none of those exist, then it passes to The Crown.

Situations not covered by the Intestacy rules

Other things you should consider about the effects of the intestacy rules and, if any of the following circumstances apply to you, the intestacy rules may not cater for your situation in the way that you would wish and you should make a Will:

- You are living together but are not legally married or in a civil partnership but wish your partner to inherit some or all of your estate;
- You are legally married or in a civil partnership and have children and you wish your spouse or civil partner to inherit all of your estate;
- You have no living relatives and wish to leave your estate to your friends or to a charity (the Crown may take your estate if you die without a Will and have no surviving relatives);
- You are legally married or in a civil partnership but don't wish your spouse or civil partner to inherit anything;
- You are legally married or in a civil partnership but have no children;
- You are legally married or are in a civil partnership and have children from a previous relationship and you wish to ensure that your children receive something from your estate;
- You have dependant relatives, e.g. children under 18, elderly relatives or relatives with a disability who have special needs and you want to make sure that they are looked after and provided for (if you make a Will you can appoint guardians to look after your children and set up Trusts within it to provide for dependants);
- Your estate is large and may be liable for Inheritance Tax and you wish to make arrangements for tax planning.

Definitions

Words used in everyday language often have different meanings in the legal sense and the following explanations are intended as a guide rather than strict legal definitions: -

- A spouse is a person who was legally married to the deceased when he or she died
- A civil partner is someone who was in a registered civil partnership with the deceased when he or she died, but does not include people simply living together as unmarried partners or as 'common law husband and wife'
- The term children includes children born in or out of wedlock as well as legally adopted children; it also includes adult sons and daughters. It does not, however, include step-children
- Brothers and sisters of the whole blood have the same mother and father; brothers and sisters of the half blood (more commonly referred to as "half-brothers" or "half-sisters") have just one parent in common
- Uncles and aunts of the whole blood are brothers and sisters of the whole blood of the deceased's father or mother
- Uncles and aunts of the half blood are brothers and sisters of the half blood of the deceased's father or mother

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