

What happens when...

Someone dies without a Will?

When someone dies without making a Will this is called "Dying Intestate".

Where someone has a properly drawn up Will in place, then that sets out who will be responsible for making arrangements and how the estate will be divided.

Where there is no Will, then the state decides how the assets of the person who has died should be divided and who will arrange the funeral etc.

Most people assume that if someone dies leaving a spouse and children, then everything will go to the surviving spouse. This is true in some cases, but not all. It depends on how much money is in the estate. The rules change from time to time.

If the deceased is survived by a spouse and children the spouse receives all personal chattels, £250,000 absolutely (or the entire estate if less) and half of anything left over. The children receive the other half between them.

If the deceased is survived by a spouse but no children then the spouse receives all personal chattels and £450,000 (or the entire estate if less) and one half of the residue absolutely. The remainder is distributable to the deceased's parents otherwise their brothers and sisters or if they have died, nieces and nephews. If a spouse survives and there are no children, no parents, brothers, sisters, nephews or nieces then the spouse receives everything.

Where there is no Will, as no one has been appointed to sort out things such as funeral arrangements, sorting out a house etc and this becomes the responsibility of the person or persons who under the law will receive the estate.

The order of people responsible for dealing with an estate and receiving the assets are as follows:

- Spouse – subject to the financial restrictions referred to above.

If there is no spouse then;

- Children equally. This includes only the children of the deceased including adopted children but not stepchildren. All children take equally and no one has a better claim than another, for example because they are older. The effect of this can be that if someone dies without a Will and have fallen out with one of their children, maybe many years ago, that child will still take a share of the estate and could end up making all the arrangements.

If one of the deceased's children had died before them leaving children of their own, then those children (grandchildren of the deceased) will share equally between them their deceased parent's share in the estate.

If there are no surviving children or grandchildren, then;

- The parents of the deceased -- only the blood parents not step parents will inherit equally.

If they have both died then;

- The deceased's brothers and sisters in equal shares. This includes adopted siblings but not half or step siblings. If any of them have died leaving children then their children will take their deceased parent's share.

If there are no brothers, sisters, nieces or nephews then;

- The deceased's half-brothers or half-sisters (and the children of any deceased half-brother or half-sister).

If there are none then;

- The deceased's grandparents in equal shares.

If they are no longer alive then;

- The deceased's uncles and aunts in equal shares (and the children of any deceased uncle or aunt).

If there are none of these then;

- The half-brothers and half-sisters of the deceased's parents (and the children of any deceased half uncle or half aunt).

If no one comes into any of the above categories;

- Then the estate goes to the Crown, the Duchy of Lancaster or the Duchy of Cornwall.

The rules of intestacy were set up nearly 100 years ago and do not cater for many of the sorts of relationships that are current today. They do not make provision for unmarried couples or couples living together, for stepchildren stepparents or step brothers or sisters

The intestacy rules do not take account of any friends who may have done a lot for the deceased during their lifetime and who they would want to benefit. The only way to guarantee that the people you choose sort things out for you and that your property goes to the people you want is to write a Will.

As you will see, the effects of not making a Will can be quite complicated, and your estate can end up going to someone you would not want to benefit. Making a Will can be as much about who is not allowed to inherit as who will inherit. It makes sense to have a properly drawn up Will in place to make sure that your wishes are carried out.

To make a Will contact Poole Townsend for a free initial appointment without obligation.

For your free appointment please call either...

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