



The Intestacy Rules

The Intestacy Rules (which are contained in the Administration of Estates Act 1925 s46) deal with the devolution of an individual's estate where they die without leaving a Will. Additionally, the rules also apply, to a limited extent, where there is a Will but due to a defect in the way it was drafted part of the estate is undisposed of, in which case there is a partial intestacy. The application of these rules in most instances will not result in the desired distribution of an individual's estate.

The provisions were last updated with effect from 1 February 2009. The respective rights of the family will depend on whether the deceased is survived by a spouse/civil partner and can be summarised as follows;

Where there is a surviving spouse/civil partner

- 1.1 The spouse/civil partner takes the whole of the estate if the deceased leaves no children, parents, brothers or sisters or their issue;
- 1.2 If there are children surviving, the spouse/civil partner will have the following entitlement
 - Personal chattels
 - A statutory legacy of £250,000 (increased from £125,000 with effect from 1 February 2009)
 - A life interest in half of the residue (if any)
 - The children (or their issue) share the other half of the residue and also take the surviving spouse's/civil partner's share on his or her death;



1.3 If there are no children but one or more of parents, brothers and sisters and their issue survive, the spouse/civil partner will have the following entitlement

- Personal chattels
- A statutory legacy of £450,000 (increased from £200,000 with effect from 1 February 2009)
- Half the residue (if any) absolutely.
- The other half is shared by the parent(s) absolutely or, if neither survives, the brothers and sisters (or their issue) absolutely.

A surviving spouse/civil partner can elect to take the family home in satisfaction of any absolute interest, including the capital value of any life interest.

1.4. Where there is no surviving spouse/civil partner any children (or their issue) will take the whole estate absolutely.

1.5 In the absence of children or remoter issue, the whole estate passes to the other surviving relatives in the following specified order of preference:

- parents;
- brothers and sisters (or their issue);
- half-brothers and sisters (or their issue);
- grandparents;
- uncles and aunts (or their issue);
- parents' half-brothers and sisters (or their issue).

1.6 If the deceased is not survived by any of the above relatives their estate will pass to the Crown

2. Unmarried Couples

2.1 The surviving partner of a couple who were unmarried or not in a civil partnership has no right to any share in the deceased partner's estate under the intestacy rules.

2.2 In certain circumstances the surviving partner has limited rights under other statutory provisions:

- If the survivor was being wholly or partly maintained by the deceased immediately before the death, they can apply to the Court for reasonable maintenance out of the estate.
- If the surviving co-habitee was living with the deceased for at least two years prior to the death, in the same household as the deceased in the capacity of husband or wife/civil partner, an application can also be made for maintenance. In those circumstances there is no need to show maintenance by the deceased during his/her lifetime. While the Court has power to award income only and not capital, it can capitalise any income provision awarded.

3. Deeds of Variation

It may be possible in certain circumstances for the beneficiaries entitled under the Intestacy Rules to vary the manner in which the deceased's estate passes. This can be achieved using a Deed of Variation. It is important to note, however, that if any of the beneficiaries are under the age of 18 it will not be possible to enter into such an arrangement without the approval of the Court.

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