Probate & Estate Administration
The Intestacy Rules

In an ideal world, all individuals would ensure that they have a valid will in place so that their wishes are carried out following their death.

Unfortunately, however, situations can and do arise where there is no will, or the will that is in place is not valid.

This guide provides a brief overview of what happens, from a legal and financial perspective, when somebody dies in such circumstances.

If you have any concerns about intestacy and dealing with the estate administration, Charter Tax are licensed to provide probate services in England and Wales and can help you during this difficult time.

What is intestacy?

Intestacy is where someone dies without leaving a will or the will that is left is invalid. It is also possible to have "partial intestacy", where a valid will does not deal with all of the deceased's estate (for example, failing to advise what should be done with the remainder of the estate after all specific legacies have been made).

In cases of intestacy, the personal representatives are called "administrators", and they will need to obtain a "grant of letters of administration", giving them authority to deal with the estate.

Once the grant of letters of administration has been obtained, the estate administration process continues in a similar way to when probate is obtained, i.e. ensuring that the relevant taxes are calculated and paid, all assets are collected in and all debts paid.

Unlike the situation where there is a will that stipulates what happens to the estate, if an individual dies intestate (or partially intestate) there are rules that set out which family members are entitled to benefit, in what order and in what proportion.

Who benefits under the intestacy rules?

Determining who benefits under the intestacy rules depends on the deceased's family situation at the time of their death and we have set out below a brief summary of the entitlements.

It should be noted that spouses or civil partners that have separated, but are still legally married or in a civil partnership, will still stand to inherit under the intestacy rules.

SURVIVING SPOUSE/REGISTERED CIVIL PARTNER ONLY: Entitled to everything, provided they survive 28 days after the deceased.

SURVIVING SPOUSE/CIVIL PARTNER AND CHILDREN: Spouse/civil partner takes:

- All personal chattels
- A statutory legacy (tax-free) of £270,000, plus interest from the date of death
- Half of the remainder of the estate absolutely

Children share between them:

- Half of the remainder – if 18 or over, absolutely; if under 18, held on trust on their behalf until they reach 18 (or until they marry, if earlier)

"Children" includes children adopted by the deceased, but not step-children or foster children unless they have been legally adopted.

Note that if the value of the estate is £270,000 or less, the children will inherit nothing.

SURVIVING SPOUSE/CIVIL PARTNER AND NEAR RELATIVES, BUT NO CHILDREN: The surviving spouse/civil partner is entitled to everything.

NO SPOUSE/CIVIL PARTNER BUT SURVIVING CHILDREN: The children share everything equally. If one child has died, but has left their own children, those children take their place for their estate entitlement.

NO SURVIVING SPOUSE/CIVIL PARTNER/CHILDREN: There is an order in which relatives inherit:

1. Parents
2. Siblings of the whole blood, i.e. that share both parents (or, if the sibling has died, their children)
3. Siblings of the half blood, i.e. that share one parent (or, if the sibling has died, their children)
4. Grandparents
5. Uncles and aunts of the whole blood or their descendants
6. Uncles and aunts of the half blood or their descendants

IF THERE ARE NO KNOWN RELATIVES: The estate passes to The Crown.

What if an individual will not inherit under the intestacy rules?

Due to the strict rules that must be applied in cases of intestacy, it is possible that there may be people who were maintained by the deceased who will not inherit anything from the estate.

They will need to consider whether they are able to make a claim against the estate under the Inheritance (Provision for Family and Dependants) Act 1975 and should seek legal advice on this matter. If appropriate, such a claim can be made at any time before the grant is obtained, or within six months afterwards.

CHARTER TAX

The Family Home

Where the deceased and their spouse/civil partner owned the family home jointly, there are two ways in which this can be held.

If the property was owned as **joint tenants**, the deceased's share will automatically pass to the survivor.

However, if they owned the property as **tenants in common**, the deceased's share forms part of the distributable estate and is therefore dealt with under the intestacy rules.

The surviving spouse/civil partner is able to request that the deceased's share in the property is passed to them in full or partial settlement of their statutory legacy. The difficulty here can be if the value of the half share is worth more than the statutory legacy to which the survivor is entitled.

Contact us

At Charter Tax, we understand that losing a loved one is a difficult time for family and friends. You can be confident that we will provide a compassionate, confidential and personal service, taking as much of the administrative burden away from you as possible.

If you would like to have an initial discussion with us, at no cost to you, about how we can help, please contact **Mark Howard** at mark.howard@charter-tax.com or **Jane Hodge** at jane.hodge@charter-tax.com or call us on **01580 313108**.

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