

Rules of Intestacy

When a person dies without having made a valid Will, the administration of their estate will have to be dealt with under the Rules of Intestacy.

The Rules of Intestacy may apply for a number of reasons, for example:

- ⦿ The Will was not signed;
- ⦿ The Will was not witnessed by two independent witnesses;
- ⦿ The Will was made invalid when the testator entered into marriage or civil partnership (it is possible to avoid this by preparation of a Will in contemplation of marriage/civil partnership);
- ⦿ The Will was destroyed or unable to be located.

When administering an intestate estate, the Administrator's authority comes from the Grant of Letters of Administration. The first matter to determine under the Rules of Intestacy is who should be the Administrator and obtain the Grant of Letters of Administration and ultimately who will benefit from the estate.

If the deceased was married or in a civil partnership at the time of their death, it would usually fall to the surviving spouse or civil partner to act as the Administrator. If the deceased was unmarried, widowed or divorced at the time of their death, the closest living relative would act as Administrator. We can assist you in choosing the correct person to act.

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Beneficiaries under the Rules of Intestacy

Distribution of estate under the Inheritance and Trustees' Powers Act 2014

If the Intestate leaves spouse/civil partner only:

The residuary estate goes to the surviving spouse/civil partner absolutely.

If the Intestate leaves spouse/civil partner and children:

1. The surviving spouse/civil partner receives:

- (a) The personal chattels absolutely.
- (b) The fixed net sum (currently £250,000) absolutely together with interest thereon.
- (c) One half of the residue absolutely

2. The remaining half share of the residue of the estate is held on the trust for the children until the age of 18.

If the Intestate leaves children but no spouse/civil partner:

The residuary estate goes to the children in equal shares after the age of 18.

If the Intestate leaves no spouse/civil partner and no children:

The order of inheritance is as follows:

1. Parents
2. Brothers or sisters or their descendants, in equal shares
3. Half siblings or their descendants, in equal shares
4. Grandparents
5. Uncles/aunts or their descendants, in equal shares

If the Intestate leaves no spouse/civil partner nor blood relatives:

All of the estate goes to the Crown.

"Child/children" includes legally adopted children and children born outside of marriage.

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The statutory legacy currently stands at £250,000 but it will be index-linked and regularly reviewed, with interest at the Bank of England rate as at the date of death.

New definition of chattels

The Inheritance and Trustees' Powers Act 2014 has also amended the definition of personal chattels, as follows :

“Tangible movable property, other than any such property which consists of money or securities for money, or property used at the death of the intestate solely or mainly for business purposes, or was held at the death of the intestate solely as an investment.”

Section 55(1)(x), AEA 1925 as amended by section 3, ITPA 2014.

People who cannot inherit under the Rules of Intestacy

The following people cannot inherit under the Rules of Intestacy but they may be able to claim under the Inheritance (Provision for Family & Dependents) Act 1975:

1. Cohabitees/same sex partners not in a civil partnership.
2. Former spouse/civil partner of the deceased who has not remarried.
3. A person treated as a child of the deceased.
4. A person who, immediately before the death, was being maintained wholly or partly by the deceased.

Joint Assets

Jointly owned assets can be held in one of two ways – beneficial joint tenancy or tenancy in common. Assets held under a beneficial joint tenancy pass by survivorship. This means that when the first person dies, the asset passes automatically to the surviving joint owner and does not form part of the estate for intestacy purposes (but is included for Inheritance Tax).

Assets held under a tenancy in common, however, are different. Each owner is deemed to own a specific share of the asset, which does not automatically pass to the surviving joint owner. These assets would form part of the estate for intestacy purposes.

Missing Beneficiaries

When somebody dies intestate, it can be difficult to locate the people who should administer or benefit from the estate. We can discuss your options with regard to locating missing beneficiaries and to assist you with employing tracing agents, if necessary.

For further information regarding the Rules of Intestacy and intestate estates, please consult a member of our Tax Trust & Estates Team on the contact information below.