

Distribution on Intestacy

Introduction

Where a person dies on or after 1 February 2009 without leaving a valid Will, the law provides that his or her estate must be distributed in accordance with the following paragraphs.

Where the Intestate leaves a surviving spouse*, but no issue (i.e. children or their descendants), and no parents or brothers or sisters of the whole blood or their issue

The spouse takes the whole estate absolutely.

Where the Intestate leaves both a spouse and issue

- 1 The spouse takes:
 - a the personal chattels (i.e. movable property such as cars not used for business purposes, furniture, jewellery, etc. but not money) absolutely;
 - b a statutory legacy of £250,000 absolutely;
 - c a life interest in half the residue. This means that the income from this half share of residue is payable to the spouse, who is not entitled to the capital.
- 2 The rest of the estate (i.e. half the residue immediately plus half the residue on the death of the spouse) goes to the "issue" on "the statutory trusts". Property held on such statutory trusts for issue is to be divided in equal shares among such of the children of the Intestate who are living at the Intestate's death and who either attain the age of

18 years or marry under that age. Where a child predeceases the Intestate, but leaves issue living at the Intestate's death, then those children, if they attain the age of 18 or marry, will take the share in the residuary estate which their parent would have taken had such parent survived the Intestate and married or attained the age of 18. The issue, therefore, take "per stirpes".

Where the Intestate leaves a spouse and no issue, but leaves a parent, or brother or sister of the whole blood or their issue

- 1 The spouse takes:
 - a the personal chattels absolutely;
 - b a statutory legacy of £450,000 absolutely;
 - c half the residue absolutely.
- 2 The other half of the residue goes to the parent(s) or, if none, to the brothers or sisters of the whole blood on the statutory trusts. Property held on such statutory trusts is to be divided equally between the brothers and sisters of the whole blood who are living at the Intestate's death and who either attain the age of 18 years or marry under that age. Where a brother or sister predeceases the Intestate, but leaves issue living at the Intestate's death, then such issue take "per stirpes" (see paragraph 3.2) on attaining the age of 18 years or on earlier marriage.

Where the Intestate leaves no surviving spouse

One of the following eight classes take in this order:

Head Office
3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 549884

Thames Gateway
The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

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- 1 issue on the statutory trusts;
- 2 parents (equally if more than one);
- 3 brothers and sisters of the whole blood on the statutory trusts;
- 4 brothers and sisters of the half blood on the statutory trusts;
- 5 grandparents (equally if more than one);
- 6 uncles and aunts of the whole blood on the statutory trusts;
- 7 uncles and aunts of the half blood on the statutory trusts;
- 8 the Crown, as bona vacantia.

"Statutory trusts" here mean trusts for any members of the class (e.g. brothers and sisters of the whole blood) living at the Intestate's death who attain the age of 18 years or marry, with the issue living at the Intestate's death of any member of the class who predeceases the Intestate taking "per stirpes" (see paragraph 3.2) on attaining the age of 18 years or on earlier marriage.

Further Matters

- 1 Certain legal disadvantages of illegitimacy have been removed in relation to the death of an Intestate on or after 4 April 1988. The principle is that illegitimacy is not to be taken into consideration in determining:
 - a the rights of succession of an illegitimate person;
 - b the rights of succession to the estate of an illegitimate person; and
 - c the rights of succession traced through an illegitimate relationship.
- Thus, illegitimacy is irrelevant for the purpose of entitlement on intestacy, whether by an illegitimate person or to his estate. Entitlement will depend entirely on proof of the relevant blood relationship. There is no special protection for personal representatives who distribute property without having made enquiries as to the existence of 'illegitimate' relatives. Personal representatives could be personally liable if they fail to take account of potential claims by illegitimates. Personal representatives should, therefore, advertise for claimants in order to obtain statutory protection.
- 1 A child who has been formally adopted is treated, for the purpose of the devolution of property, as a child of the adopting parents (and not as a child of the natural parents).
 - 2 The Intestate's spouse will benefit under the intestacy rules only if he or she survives the Intestate for at least 28 days. This applies to deaths on or after 1 January 1996.
 - 3 A surviving spouse who is entitled to a life interest in half the residue, may require the personal representatives to purchase or redeem the life interest by paying its capitalised value. This may be done by appropriating any part of the residue to the surviving spouse. Election to this effect must usually be made within 12 months after the Grant of Letters of Administration to the estate.
 - 4 A surviving spouse is given special rights where part of the residuary estate includes an interest in the matrimonial home in which the surviving spouse was

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resident at the time of the Intestate's death. The spouse has a right by notice (normally within 12 months of the Grant of Letters of Administration) to require the personal representatives to appropriate that home to him or her in or towards satisfaction of any absolute interest which he or she has in the Intestate's estate, or in or towards the capital value of a life interest which the spouse has elected to have redeemed. However, if the spouse's redeemed interest in the residuary estate is not large enough, the spouse must make up the difference in cash.

- 5 It may be possible for the beneficiary or beneficiaries under an intestacy, by a Deed of Variation within two years after the death, to vary the dispositions under the intestacy law. The estate would then be administered subject to the agreed variations.
- 6 The amount of the spouse's statutory legacy (currently £250,000 or £450,000) is subject to change from time to time.
- 7 A special rule applies if spouses are separated by a decree of judicial separation and the separation is continuing. In that event the property of the deceased spouse passes on intestacy as if the other spouse were already dead.

Disclaimer

This information sheet has been prepared to highlight some key issues relating to Distribution on Intestacy. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at January 2010 and may be affected by subsequent changes in the law. We do not accept any responsibility for action which may be taken as a result of reading this information sheet.

Should you require any specific legal advice on the issues covered, please contact Alan Dickins or Helen Stewart on 01892 510000 or by email at:

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* All references to the term 'spouse' include a civil partner as defined by Section 1 of the Civil Partnership Act 2004