

Distribution on Intestacy

Introduction

Where a person dies on or after 1 October 2014 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 absolutely; ***
 - b a statutory legacy of £270,000 absolutely;
 - c half the residue absolutely
- 2 The rest of the estate (i.e. half the residue) 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

The spouse takes the whole estate absolutely

Where the Intestate leaves no surviving spouse

One of the following eight classes take in this order:

- 3 issue on the statutory trusts;
- 4 parents (equally if more than one);
- 5 brothers and sisters of the whole blood on the statutory trusts;
- 6 brothers and sisters of the half blood on the statutory trusts;
- 7 grandparents (equally if more than one);
- 8 uncles and aunts of the whole blood on the statutory trusts;
- 9 uncles and aunts of the half blood on the statutory trusts;
- 10 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.

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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.

- 2 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). However, if a child is adopted after a natural parent's death, that child will not lose any contingent interest in the deceased's estate.
- 3 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.

- 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 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 £270,000) is reviewed every five years. The statutory legacy was increased from £250,000 on 6 February 2020 so for deaths on or before 5 February 2020, the statutory legacy remains at the previous level of £250,000.
- 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.

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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 February 2020 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 Helen Stewart on 01892 510000 or by email at:

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*Depending on the circumstances, significantly different rules apply to deaths before 1 October 2014. Please contact us for more information.

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

*** The definition of personal chattels has been amended to become:

"tangible movable property, other than such property which:

- consists of money or securities for money
- was used at the date of death of the intestate solely or mainly for business purposes, or
- was held at the date of death of the intestate solely as an investment

Please contact us for further information.

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