

## **INTESTACY**

### **General**

Intestacy rules set out how a deceased person's assets are divided if he or she has made no Will or has not made a Will which has effectively disposed of all his assets. Intestacy law in England is different to that in Ireland. Irish intestacy rules will apply to Irish domiciled individuals. The following rules are therefore only applicable to English domiciled individuals.

Certain close relatives of the deceased are entitled to apply to the Court offices for a grant of "administration". The administrator is obliged to distribute the deceased's assets in accordance with the intestacy rules.

The administrator must pay funeral, administration expenses, debts and other liabilities out of the ready money or if necessary, out of the proceeds of the deceased's assets. The administrator is entitled to sell any assets as necessary to pay the debts and ultimately to distribute the assets. The remaining assets are divided in accordance with the intestacy rules.

The people who take the deceased's assets under the Intestacy rules will depend on what relatives have survived the deceased. Closer classes of relative take to the exclusion of more remote classes. Generally, children of a pre-deceased relative take their parent's share.

### **Spouse**

Where a spouse or civil partner survives the deceased by 28 days and there are no children, parents, brother or sisters, the spouse or civil partner take the whole of the deceased's assets. If there is a spouse and an issue (i.e. children or grandchildren) who survive the deceased, the spouse is entitled to personal movable items and an amount of £195,000 within interest 6% from the date of death of payment (the so called

“Statutory Legacy”) and entitlement for life in one half of the remaining assets, if anything remains. Spouses are entitled to the income value of the half for their life. The issue are entitled to the other half of the asset and the “remaining” interest in the other half to which the spouse has a life interest, after the spouse’s lifetime. In this context, the remaining interest means the interest after the spouse’s death. Therefore, if the assets are less than £195,000.00, the spouse will take all.

Personal movable items include furniture and domestic animals ornaments, books, pictures, jewellery, wines, liquors and consumable. It includes articles of household and personal use. This includes movables such as a yacht, stamp collection, collections of watches etc.

Where the deceased is survived by a spouse but no children or other issue (grandchildren) survive, and there are parents or brothers and sisters (of whole blood), then the spouse takes the personal movable items, the above Statutory Legacy and one half of the remaining assets (i.e. half of the capital not just the income for life) a life interest. The other half passes to the intestate's parents or if neither survives to the brothers and sisters of the whole blood (i.e. not half siblings) or their issue.

The spouse is entitled to make certain choices or “elections”. Where the spouse has an entitlement for life to part of the deceased’s assets, he or she can opt in writing to capitalise that life interest. This must be done within 10 months of the date of the death. The period can be extended. The effect of making this claim instead of receiving the income only from one half of the deceased’s assets is that the spouse or civil partner takes a capital sum representing the value of the life interest. There is a statutory formula for arriving at the capitalised value. If this is not used, it can be agreed between the spouse and the executor.

### **Children and Others**

Subject to the above entitlement of the spouse, the residuary or remaining assets are held for the issue of the intestate. The deceased’s children take the exclusion the

remoter issues except where a child has predeceased his parent leaving children, in which case the children take their parent's share.

An adopted child is treated as a legitimate child of his adopted parents, not of his natural parents. An illegitimate child is treated as born legitimate. Since 1987, the distribution of assets is to be determined without regard to whether the parents of a particular person were or not married. In other words all children are included. This applies not only to children of the deceased but also to other children who may take in substitution etc.

If there is no spouse, civil partner or issue the following rules apply; the parents equally, if both are alive, but if none then the brothers and sisters of the whole blood i.e. who share the same parents; if none, then brothers and sisters of the half blood i.e. who share only one parent; if none, then grandparents equally if more than one; if none then uncles and aunts of the whole blood i.e. brothers and sisters of the whole blood of one of the parents; and if none, then uncles and aunts of the half blood. If the intestate is not survived by any relatives in the above categories, his assets pass to the Crown (the UK State).

The benefits pass equally to members of the same class of relatives concerned as at the date of death (including unborn but conceived children) who attain the age of eighteen or marry under that age. Also included, are the issue of any class member who predeceased that class member who stands in place and takes his or her parent's share, provided they attain eighteen years or marry earlier. Where a potential beneficiary is living at the date of death but does not reach the age of eighteen, the estate will be dealt with as if that person never existed.

### **Family Home**

Where spouses were joint tenants of assets such as the family home, they will pass automatically by operation of law to the surviving spouse, outside and separate from the intestacy rules. If, however, a property is not in joint names, the deceased's share in it, will pass to the deceased's estate.

The spouse has a right to require the personal representative to appropriate the family home in part or total satisfaction of the spouse's statutory legacy and/or absolute or life interest in the deceased's remaining assets. If this is not adequate to purchase the deceased's share, the deficiency may be made up by the spouse out of his or her own resources.

The spouses "election" must be made within 12 months of the Grant. The personal representatives cannot sell the family home during this period without the consent of the spouse. In certain more unusual cases, the consent of Court is required.

### **Assets Passing Directly**

Many classes of assets will not pass under a Will or under the Intestacy rules. Assets held in joint names will pass automatically by operation of law to the joint owner. In contrast assets held in two names but as tenants in common, will pass proportionately on the death of each.

Policies of insurance, written in trust for another, will not pass under the deceased's estate. Such policies are common ways of mitigating Inheritance Tax.

Benefits under pension schemes are usually drafted in such a way that they do not form part of the estate. A deceased can make a nomination of a beneficiary to the scheme.

Certain class of assets may be passed by nomination. These include monies in certain Friendly and Industrial and Provident Societies, National Savings Certificates.

Each of the above kinds of assets e.g. jointly owned assets nominated will be considered part of the deceased's estate for Inheritance Tax purposes. Trust policies, which are written in trust for third party and pension scheme, payable at the discretion of the trustees do not form part of the deceased's estate for Inheritance Tax purpose.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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