



## May 2014 newsletter

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## Helping you to understand

We often get asked to clarify the current Intestacy Laws to help our clients understand why a Will is such an important document to complete during your lifetime.



### Also

We often get asked about the different roles that appear in the text of a Will and in this issue of our newsletter we will try to help you understand two roles, that of a Guardian and a Trustee, hopefully helping you to choose the right person for the role when you make your own Will.

## Current Intestacy Laws

Who inherits your estate on your death depends on your marital status, your children and the surviving members of your immediate family.



The information presented below applies only to England & Wales. The laws of intestacy are different in Scotland and Northern Ireland. To view a flowchart on our website that details the laws of intestacy in England & Wales [click here](#).

Who inherits your estate on your death depends on your marital status, whether you have children and the surviving members of your immediate family. The rules date back to 1925 and they are soon to be amended (once the Inheritance and Trustees' Powers Bill received Royal Assent (which we will cover in a future Newsletter).

Note, however, that any person who is financially dependent on the deceased, whether they inherit on intestacy or not, could make a claim through the courts under the Inheritance (Provision For Family And Dependents) Act 1975.

There are some general rules that apply to all situations and others that are specific to your situation (depending on your marital status and whether you have children). These are summarised below.

### General Rules

- The spouse/Civil Partner will benefit if he/she survives the intestate by 28 days, otherwise the estate will be dealt with as if there had been no spouse.
- If a class of relative existed but has died, then if they had had children, those children will inherit equally what would have been their parent's share. This goes as far as cousins who are the remotest relatives that can inherit under the laws of intestacy.
- Within each class of relative, relatives of the full blood (i.e. they share the same parent) take preference over half blood (i.e. only one parent in common.)
- In-laws have no rights.
- Legally adopted children have the same rights as their adopted parent's natural children, but lose all rights to their birth parents' estates.
- Stepchildren and foster children have no automatic rights.
- Common Law partners are not recognised. They have to go to Court if they wish to be allocated an inheritance.
- Same sex partners are not recognized – unless married or in a Civil Partnership. They have to go to court if they wish to be allocated an inheritance.

- Children may only inherit from their 18th birthday.
- In searching for a beneficiary to inherit under intestacy, if any relative is found at a particular level then the “search” stops and the entire estate is either distributed to that one relative or equally distributed to the relatives found.

### Single Person

Regardless of how long a couple have lived together, or if there are children involved, if they are not married or in a Civil Partnership then they are currently classed as single. Their partners have no automatic inheritance rights. They inherit nothing! The entire estate is distributed in the following order:

1. Children
2. Parents
3. Brothers & Sisters
4. Half Brothers & Half Sisters
5. Grandparents
6. Aunts & Uncles
7. If no Cousins then it goes to the Treasury.

### Married or in Civil Partnership - No Children

The entire estate is distributed as follows:

- The surviving spouse gets the first £450,000 plus goods and all personal chattels.
- They also get half of the remainder.
- The other half is distributed to the deceased's parents, if none then to their brothers and sisters and, if any of the brothers and sisters have died, to their children.
- However if none of the above deceased's family are alive to inherit, the surviving spouse gets everything.

### Married or in Civil Partnership - With Children

The entire estate is distributed as follows:

- The surviving spouse gets the first £250,000 plus goods and all personal chattels.
- Half the rest goes to the deceased's children immediately (or on trust until they are 18.)
- The other half goes to the children but the surviving spouse gets a lifetime interest. Hence they can spend the income but not touch the capital.

## Helping you to understand the role of a Guardian

These are essentially the same as those of a parent, and will include decisions about schooling and health as well as moral and social training. There will be financial, social and emotional implications, and these should be discussed with the parents before taking on the role.



The terms of the Will should be such that the executors (and subsequently the trustees) can do all that is necessary to provide financial help to the guardians.

While guardians have daily responsibility for the children, it is better for the financial control to be handled by someone different, normally the trustees of the estate.

Through their appointed Trustees of their Wills, most parents will make financial arrangements for their children in the event of their death, but guardians may be able to claim child benefit and receive a guardian's allowance if both parents are deceased.

This means that appointed Trustees and Guardians can share potentially difficult decisions such as provision of funds for the children's upbringing and other capital expenditure before the youngest child attains 18. Trustees in this event are obligated to use available estate funds to provide for the maintenance, benefit and advancement of the children. Trustees and Guardians need to work together to resolve issues and agree reasonable expenditure of funds.

*An aside: If you have been appointed as a guardian, you should also make a Will to further safeguard the future of the children.*

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## Helping you to understand the role of a Trustee

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The role and responsibilities of a trustee should not be undertaken lightly. If you have been chosen as a trustee, the person who has appointed you feels that you can be trusted to act in the best interests of the beneficiaries, and can manage this important role if or when you may be required to act.



Trustees are under a statutory duty of care (Section 1 Trustee Act 2000). This means that they must take reasonable skill and care when dealing with trust assets, and if there is ever any question as to whether they have exercised reasonable skill and care, the law will take into account any special knowledge that they may have.

Trustees must understand the terms of the trust so that they can follow the trust rules.

Decisions between all trustees must be unanimous and where a trust is established to benefit a number of beneficiaries equally, the trustees must not favour one beneficiary or type of beneficiary over another. In this case often a letter of wishes is provided by the settler to help the appointed Trustees. It is advisable to check if this is available and accessible.

Trustees are advised to seek professional advice when making investments. Trustees should not be put in a position of conflict between their own personal interests and the interests of the trust and its beneficiaries.

Trustees may delegate their duties of administration and investment to professionals if permitted by the trust deed, however, the overall responsibility will remain with the trustees.

The trustees' duties include:

- Registering the trust assets in the trustees' names;
  - Liaising with other trustees to act in the best interest of the beneficiaries;
  - Investing the trust funds without making personal profit or causing loss to the trust;
  - Acting impartially and treating all classes of beneficiaries fairly in accordance with the terms of the trust and any letter of wishes that comes to their attention;
  - Holding annual trustees meetings and maintaining accurate accounts/records; and Completing annual tax returns to HMRC on any income tax, capital gains tax and entry, exit and 10-yearly inheritance tax charges on the trust assets.
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## Famous people who died without a Will

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### Stieg Larsson - Author

The author of "The Girl who Played with Fire", died without leaving a will, his estate was inherited by his father, rather than his partner.



### Bob Marley - Musician

Had six children by different 'baby mothers' and three by his wife. Marley did not make a will. He left an estimated \$30 million, and dozens of claimants which lead to squabbles over his legacy.

### Barry White - Musician

Left children, wives and girlfriends fighting over his fortune when he died.

### Pablo Picasso - Artist

Died intestate and left no Will, it took 6 years to settle his estate at a cost of \$30 million. His assets were eventually divided up among six heirs.

### Abraham Lincoln - US President

The 16th US president and a lawyer left no Will

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## Testimonials

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Cornerstone Wills made one of those easily put-off, but vitally important tasks very simple indeed. An extremely knowledgeable consultant, clear advice and a swift turnaround made for a painless process and all at a very competitive price. **Chris, London**



A fantastic service. Very thorough and informative. Made the process of making a Will very easy and nowhere near as stressful as first presumed. **Anon, London**

I can't thank you enough for the wonderful Probate service you've given me. It was most impressive. You have been so professional in your communication and organisation. You have been very supportive and extremely kind and your common sense advice has been so helpful. I have recommended your service to several people. **Sue, Fleet**

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## Thank you

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We would like to thank the following clients for referring new clients to us and in recognition have received a £10 Marks & Spencer voucher.

**Ben, Jing, Hamish and Andrea**

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*Cornerstone  
Wills  
Thanks  
You*

