

### Intestacy: Proposed changes



The intestacy rules apply where the deceased did not leave a valid Will or it does not dispose of his/her entire estate. Care needs to be taken to ensure that a Will deals with all aspects of the estate including provision for scenarios such as family disaster; and that once drafted, valid Wills are not unknowingly revoked, for example by marriage or the execution of a foreign Will.

#### The Intestacy Rules

The Intestacy Rules only apply to property that could have passed under a Will. Jointly owned property will not therefore be subject to the Rules, nor will trust assets, nor nominated assets.

The order of entitlement under the Intestacy Rules depends on the value of the deceased's estate and which members of his/her family survive him/her. Spouses and civil partners are entitled, however cohabitants or 'common law' partners are not. Cohabitants will only receive if they successfully bring a claim under the Inheritance (Provision for Family and Dependents) Act 1975, which can be time consuming and costly.

Currently, the Intestacy Rules provide a fixed sum for the surviving spouse plus a life interest in half the remaining estate if there are children. The estate is therefore 'shared' for the surviving spouse's lifetime which can be awkward, particularly if the relationship is rocky or the children have financial or matrimonial problems. The fixed sum is increased if there are no issue.

#### Proposed changes

The Law Commission has proposed that the current Intestacy Rules be amended to provide:

- A surviving spouse should receive a fixed sum plus one half of the residue absolutely (as opposed to the 'life interest' currently available)
- A cohabitant should be able to inherit under the Intestacy Rules without the need to make a 1975 Act claim where that person has either lived with the deceased for 5 years or more or lived with the deceased for 2 or more years and had a child with the deceased who also lived with them at date of death.

The proposals will end the 'sharing' of the estate between surviving spouse and children. This is a cleaner solution, enabling the surviving spouse to make a new life without being financially linked to the children.

A further bulletin about this will follow once a response to the proposals is published. If you have any queries about how the changes affect you or your clients, please do not hesitate to contact us.

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If you require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact: Duncan Bailey in Liverpool on 0151 600 3451, Richard Bate in Manchester on 0161 836 8840 or Stephen Marriott in Preston on 01772 229816.

If you wish to receive the bulletin please let us know by contacting [Liz.Fox@brabnerscs.com](mailto:Liz.Fox@brabnerscs.com)

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