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s o l i c i t o r s

Intestacy know the facts

Property

Family

Wills & Probate

Business

Tax Planning

It is very easy for us to put off making a will. Nobody likes to think about what happens when they are gone but it is important to make sure your loved ones are looked after.

Some people think there is no reason for them to make a will as they believe that their estate will automatically pass to their husband, wife or partner. Unfortunately this is one of many myths that surround dying without a will (known as "intestacy"). We hope this article will clarify this important area of the law.

If a married person dies intestate the personal chattels, first £125000.00 of the deceased's estate plus a life interest in half the remaining estate passes to their surviving spouse. The remainder and the other half is divided between the deceased's children regardless of whether they are the children of the surviving spouse.

If your spouse dies before you and you die intestate it is right to assume that your estate will be divided amongst your surviving children but this is not always as straight forward as you might think. For example, at the time A and B married 20 years ago A already had a 2 year old son, C. A and B went on to have two more children, D and E and B treated all three children as her own. When A died his small estate passed to B who died three years later leaving no will. B had always assumed her estate would be divided between C, D and E but under the intestacy rules the estate was divided between D and E leaving C with nothing. Step-children will not benefit from your estate unless specified in a will.

There is no such thing as a common law wife/husband. To illustrate this; Y and Z lived together for 25 years but their house was in Y's sole name. Y always intended to make a will leaving everything to Z but never got round to it. As a result of Y dying intestate all his estate including the house passed to his parents. Whilst Z may have a claim under trust law, it would have been much simpler if Y had left a will expressing his wishes.

There are bound to be some occasions where family relationships break down entirely. If you find yourself in this situation it is imperative you make a will. For example, A dies intestate leaving behind two sisters B and C. A and B had not spoken for 20 years whereas A and C were always close and C cared for A during her long illness. It is clear that A would want to benefit C but as A died intestate then A's estate is divided equally between B and C.

When a person does not have any close family the intestacy rules allow distant family to benefit. However once family becomes too far removed the estate passes to the Crown. This is called "Bona Vacantia". Making a will would allow that person to benefit close friends or charities rather than there estate passing to a relative they have not seen in years or the Crown.

As this article shows neglecting to make a will can lead to uncertainty and heartache for those left behind. Stop that happening by making your will. Please contact us for further information or speak to our receptionist who will make an appointment for you.

Hopley Pierce & Bird

5 King Street
Wrexham
LL11 1HF

www.hopleypierce-bird.co.uk • jl@hopleypierce-bird.co.uk • 01978 315100