

# McKAY NORWELL W.S.

## LEGAL UPDATE

Edition 2

### INTESTACY

#### Why you must make a Will

For this edition of our Legal Update Robert Forman, our Head of Private Client Services, gives a guide to the consequences when someone dies without having made a will – and the steps those affected should take to deal with the situation.

#### 1. What exactly is intestacy?

This is what happens when someone dies without making a will. Even in cases where a Will has been executed, there may be intestacy or partial intestacy, where, for example, potential beneficiaries have already died and no provision has been made for that occurrence

#### 2. Is intestacy common?

More common than you might think – even among those who die owning substantial assets. Some people intend making a will “but never get round to it”; others shy away from doing so because they don’t want to think about death, especially their own. Lots of adult children assume that their parents have made a will – when in fact they haven’t.

#### 3. Action to be taken

When someone dies intestate close relatives should contact us as soon as possible to take action that will minimise the hassle that inevitably follows.

#### 4. What happens next?

On behalf of the relatives we will apply to the court for the appointment of an executor to divide the assets among the beneficiaries. With our help, he prepares a list of assets, and the court issues a “Confirmation” which certifies that the executor has the right to deal with them.

#### 5. The inventory

This contains all the assets of the deceased – land, buildings, shares, savings accounts, cars, jewellery, even furniture and personal effects. These assets form the estate to be divided under the rules of intestate succession.

#### 6. Rules of intestate succession.

Broadly speaking, at present a spouse or civil partner has ‘prior rights’ to the house up to £300,000; contents up to £24,000; and a lump sum of £42,000 if there are surviving children and £75,000 if not. After ‘prior rights’ have been satisfied then ‘Legal rights’ apply. If there are children, one third of the net moveable estate goes to the spouse and one third to the children, the remainder of the estate going to the children. If there are no children one half of the net moveable estate goes to the spouse and the remainder of the estate goes to other relatives of the deceased. Accordingly if there is a spouse with children all the assets will go to them. This does not, however, necessarily mean that the assets are shared out as the deceased would have wished. If there are no children the whole estate may not go to the spouse. In the event of a widow or widower dying without leaving a Will, the estate will go to the children, but again, not necessarily in the way the deceased would have wanted.

#### 7. What about siblings, nieces, nephews, cousins, etc.?

They have no prior or legal rights under the intestacy rules, but if the deceased does not have a spouse or children, other relatives will normally qualify for a share of the estate as next of kin. If relatives cannot be traced then the assets will go to the Crown– i.e. the Government. To be avoided!!

#### 8. Winding up when someone dies intestate.

It is always difficult to predict how long it will take to wind up any form of estate, because much depends on the type of estate and various other factors. However, generally speaking there is a bit more involved in winding up an intestate estate. In many cases, a Petition needs to be presented to the Sheriff Court and we may need to get a Bond of Caution before Confirmation will be issued. Bonds of Caution are provided by insurance companies. They are guarantees (for the benefit of creditors and beneficiaries) that the estate of the deceased will be properly distributed. They are not needed where everything goes to the spouse, but if a bond is required, it is an additional step which can cause delays. Again, timescales can vary depending upon the circumstances of each individual case.

#### 9. The position with Inheritance Tax

Whether there is a will or not, relatives will not get anything until prior expenses are paid – e.g. funeral, tax, legal and creditors (if any). HM Revenue & Customs do not draw any distinction between intestate and testate estates and will still seek their appropriate slice of Inheritance Tax.

#### 10. If spouses and children have rights anyway, making a will isn’t so important, is it?

When the widow is left with no income of her own, the intestacy rules can make it difficult for her to use her husband’s estate for the maintenance, education and benefit of the children. Provisions in a Will can allow a widow to use the money for these purposes, but if there is no Will the rules can be rather inflexible and make it difficult to cope with the expense of seeing the children through school and university years. This probably isn’t what her husband would have wanted **and is one more good reason why most people, whatever their age, and especially if they have dependants, really should make a Will. We are happy to meet you to discuss this further.**

**We offer a free will to all existing clients.**

**To have a will drawn up and ensure that your family is properly provided for, contact Robert Forman on 0131 222 8000.**

### STOP PRESS

Richard Godden, one of our Partners in his starring role as **The Miser** in the Festival Fringe.

