

The Rules of Intestacy

If a person dies without leaving a valid will in England or Wales, then the law states who inherits. The person is said to have died 'intestate'.

The Rules

1) Where There is a Surviving Spouse or Civil Partner Who Survives 28 Days

- (a) If there are no issues or specified relatives, then the spouse or civil partner takes the whole net estate absolutely if he/she survives 28 days.
- (b) If there are issue of the intestate, then the spouse or civil partner takes:
 - i) The personal chattels absolutely
 - ii) A fixed sum of £250,000 (if there is enough in the estate) with interest thereon from the date of death
 - iii) A life interest in one half of the balance of the net of estate. This means that the income is paid to the spouse or civil partner for life and when the spouse has died, that half goes to the intestate's children or civil partner (or remoter issue in place of a child who had died) at age 18 or earlier marriage
 - iv) The remaining half of the net estate goes directly to the children of the intestate (or to remoter issue in place of a child who has died) at age 18 or earlier marriage
- (c) If there are no issue of the intestate but there are specified relatives, then the spouse takes:
 - i) The personal chattels absolutely
 - ii) A fixed sum of £400,000 (if there is enough in the net estate) with interest thereon from the date of death
 - iii) One half of the net estate absolutely
 - iv) The other half of the net estate goes to the specified relatives

2) Where There is No Surviving Spouse or Civil Partner or The Spouse Does Not Survive 28 Days

- (a) If the intestate leaves issue, then the net estate goes to them absolutely at age 18 or earlier marriage
- (b) If there are no issue of the intestate, but there are specified relatives, then the specified relatives take the net estate

3) Where There is No Spouse or Civil Partner Who Survives 28 Days, Issue or Other Relatives

The net estate goes to the *Crown*, the *Duchy of Lancaster* or the *Duke of Cornwall* for the time being.

Definitions

“Personal Chattels” means, broadly, articles of household or personal use or ornament, e.g. clothes, furniture, jewellery, private motor cars and domestic animals. The expression does not include any article used by the intestate at the date of his/her death for business purposes, nor does it include money or securities.

“Joint Tenants” If the interest owned property (e.g. a house or bank account) with his/her wife/husband (spouse) then this property will automatically pass to the surviving spouse and will not be dealt with under intestacy rules, nor will the value be taken into account in ascertaining the spouse’s entitlement under the intestacy rules.

“Net Estate” is the value of the property owned by the intestate at the date of his/her death (excluding property owned as joint tenants) but subtracting the value of:

- (b) The Personal Chattels
- (c) Debts of the intestate
- (d) Any Inheritance Tax payable
- (e) Fair and reasonable solicitors costs incurred or to be incurred in administering the intestate’s estate
- (f) The probate fees payable to obtain a Grant of Letters of Administration

The relatives of the intestate who may benefit on intestacy are as follows:

- (a) Surviving spouse or civil partner
- (b) Issue (i.e. children, grandchildren, great grandchildren)
- (c) *The specified relatives:*
 - Parent/s
 - Brother/s or sister/s of the whole blood or their issue
 - Brother/s or sister/s of the half blood or their issue
 - Grandparents
 - Uncle/s or aunt/s of the whole blood or their issue
 - Uncle/s or aunt/s of the half blood or their issue

Issue other than children of the intestate, only take the share which their parent would have taken had that parent not died before the intestate.

Subject Notes

- 1) An unmarried partner does not automatically inherit on intestacy unless they have entered into a civil partnership. In order to qualify as a surviving spouse or civil partnership, that person must have survived the intestate by 28 days and have been legally married to him/her or entered into a civil partnership at the time of death.
- 2) The only relatives entitled on intestacy are those specified above. The specified relatives take the net estate in the order specified above. If there is a qualifying person in a higher category of specified relatives, then relatives in lower categories do not inherit e.g. if there is a parent or parents, then brothers and sisters cannot inherit.
- 3) The Inheritance (Provision for Family and Dependants) Act 1975 gives the right for certain people to claim financial provision from an intestate’s estate in certain circumstances (see separate note on Family Provision). An unmarried partner might have a claim under this Act.

- 4). If a surviving spouse or civil partner has a life interest in one half of the net estate, then he/she may elect to take a capital value instead of the life interest within 12 months of the Grant of Letters of Administration.

If you require advice regarding your particular circumstances, please telephone us to speak to one of our specialists in this field.

Or REQUEST A CALL BACK at a time convenient to you.

Please note:

The above information is only a summary of the main provisions and professional advice should be sought from us if a person dies intestate. They are only relevant to individuals who were domiciled and resident in England or Wales and where there are no foreign law complications.

Disclaimer

These notes have been prepared by **Curwens Solicitors** as general guidance only and cannot be taken as legal advice. **Curwens Solicitors** will not be liable for any loss, direct or consequential, suffered by anyone acting or omitting to act as a result of the contents of these notes.

Enfield:
020 8363 4444
enfield@curwens.co.uk

Cheshunt:
01992 631 461
cheshunt@curwens.co.uk

Hoddesdon:
01992 463 727
hoddesdon@curwens.co.uk

Royston:
01763 241 261
royston@curwens.co.uk