

BRINGING AN INHERITANCE CLAIM AGAINST A DECEASED ESTATE – FREQUENTLY ASKED QUESTIONS

What happens if a relative or friend dies without making a valid Will?

When a person dies without making a valid Will the law dictates who shares in the estate under the rules of intestacy. The rules set out how the estate has to be distributed after the death, passing to one or more of the spouse, the civil partner, the children or other close blood relatives according to fixed rules. Any other person who thinks they have a valid claim to share in the estate will have to apply to the court or get agreement from the family (where permitted).

We can advise and if necessary represent you if you need to bring a claim against the estate of a person who has died without leaving a valid Will.

Who does **not automatically inherit from an estate if there is no valid Will?**

The following list highlights some of the people who have no legal right to inherit from an estate under the rules of intestacy where a person has died without leaving a valid Will:

- Unmarried partners (sometimes referred to as common-law husband / wife)
- Same-sex partners who are not in a civil partnership or same-sex marriage together
- Foster children (but not including children who are legally adopted)
- Family members through marriage only (e.g. step-children, brother-in-law, spouse's parents)
- Friends, colleagues, carers, staff

Sometimes a person will make a promise or gives an assurance to another person saying that they will make provision for them in their Will but then dies before they have been able to do so. Such comments are often made in response to something done by the person who has not otherwise been provided for.

We represent clients who fall into one of the categories listed above and who feel that they are entitled to share in an estate where there is no valid Will. We act for them by demonstrating to the court that if the person who died had made a valid Will then they would have made some provision in that Will. We do this in various ways, for example by producing evidence of the relationship with the person that has died and discussions that had taken place in the past.

Evidence of the relationship can include material that the client and deceased had lived together as a couple for many years leading up to the death, sharing joint banking and savings accounts, and buying a home or other assets together from joint funds.

Claims of this nature, if successful, will result in provision being made for the claimant from the deceased's estate – either by agreement with the other beneficiaries or under a court order.

DIRECTORS

John Rubinstein Martin Lewis Jacques Smith Pui Yee Tang

CONSULTANTS

Peter Phillips Imran Mian David Herbert

ASSOCIATE SOLICITORS

Blair Gould Phyllis Charteris-Black Tessa Manisty Bhavini Nakeshree Louise O'Farrell

What can I do if I feel I am entitled to a share or a greater share of a deceased estate?

As well as helping people who have no automatic entitlement to inherit from an estate, we also represent close family members who believe that the fixed rules of intestacy do not make sufficient provision for them or, worse, treat them unfairly.

For example, if an adult child has given up their career to live with and care for a dying parent throughout their final years then the carer might expect to inherit a greater share of the estate than their siblings who did not contribute to the parent's care.

In some cases it might also be able to show the court that there was an understanding that certain property or assets would go to the person who provided the final years of care or otherwise acted to their detriment to repay the loss endured by what they have given up.

However, we might be instructed instead to challenge such a claim by advising the other siblings who assert that their parent wanted the estate dividing equally between the children, irrespective of the amount of personal care received from just one of the children.

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