

“MY HUSBAND WON’T MAKE A WILL, WHAT SHOULD I DO”?



Last week I had a meeting with a lady who was very concerned her husband won't make a Will. Their situation was not uncommon. They are in their 50's, and both have grown up children from previous marriages. They own their own house jointly, with no mortgage, and no major other assets.

As neither of them have a Will currently, it is a bit of a lottery as to who benefits. Quite naturally, they would both like to benefit their own children. On the first death, the house which is the major asset will pass to then survivor. If there is still no Will, when the second partner dies, (via the laws of intestacy), it would then pass to the surviving partners children. The children of the first

partner to die will not benefit. The laws of intestacy state, where a deceased person's assets go, if they do not have a Will.

A solution in a case like this, is for the couple to change the way the house is owned. Most jointly owned property is owned as normal “joint tenancy” where the house will pass to the survivor on death. However, this can be changed to “joint tenants in common” so they each can own their own half share.

For example, if the house is worth £200,000, they could each own a half share worth £100,000. This on its own, however, will not totally solve the problem. As we saw before, under the intestacy rules, the surviving partner will still get the share from the late partner, so they will still own the house.

What is needed is for the couple to write Wills. The Wills can allow the surviving partner to remain in the house, after the first death. Each partner can benefit their own children in their Will, but the children may not receive very much, until the house is ultimately sold.

This type of arrangement can also help in situations where the surviving partner re-marries, after the death of their spouse. In such cases, there is a real danger that all the children lose out, as the new spouse takes everything.

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“Mr Rodman was so easy to talk to, very understanding and I felt I had all the time I needed to discuss with him making my Will, I never felt rushed. I now have a Will and Trust in place which has given me peace of mind.”

Mrs J F Kendal

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DO A MARRIED COUPLE NEED A WILL?

If a couple are married, and don't have Wills, it is often assumed that on death, everything will pass to each other. Some people may say for this reason, they don't need a Will.

So let's consider how the law works. Firstly, if assets are jointly owned, they pass to the joint owner. This is often the case with a house. However, a house can also be owned, “tenants in common” where two parties own their own share. Personal belongings also pass to the spouse.

Estates of up to £250,000 in value, will pass to the spouse. So if for example, the husband owns the house in his sole name, which is worth £200,000, and this is the main asset in his estate, it will go to his wife absolutely. Over this figure, things get more complicated. The spouse receives the first £250,000, and half of the excess. For example, if the husband has assets worth £500,000 in his sole name, £250,000 goes to his wife and she will receive a further £125,000. The other £125,000 goes to his children.

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DO A MARRIED COUPLE NEED A WILL? (CONTINUED...)

The other half is paid to the children, if they are grown up, or held in trust for them if they are under eighteen. This could mean that the children own a part share in the family home on the death of their father. This can make things more complicated for a surviving spouse.

The situation can get more complicated, if the couple die together, and it is impossible to say who died first. It is said the younger partner has survived the older. So assuming they inherit from the older one, with no Will, their children will benefit, if there are any. If not, we are looking at parents, or brothers and sisters. The family of the older partner will not benefit at all.

If there are no children, and a married spouse dies with no Will, the surviving spouse

will receive the whole estate. This was reviewed about five years ago and was not always the case. Finally, if a couple are not married, and one of them dies, a “partner” has no legal claim to the assets of the deceased, and any children of the deceased person would have a stronger claim. If there are no children, then the parents or brothers or sisters will benefit as above. A partner of a deceased person, can make a claim through the courts, if they were dependent financially on their late partner previously, although this may not be easy or quick to conclude.

So in conclusion, nothing is simple if you don't have a Will.



DO CHILDREN STILL BENEFIT IF THEY ARE ADOPTED AND THEIR BIOLOGICAL PARENTS DIE AND THERE IS NO WILL?

When it comes to Wills, it gets more complicated when children are put up for adoption, or adopted by a new parent. A further complication is the situation where there is no Will, and we need to consider what the law says.

When a child is given for adoption, any legal rights the child would have had from their birth parent are cancelled. Having said that, there is nothing to stop the birth parent writing a Will, in the normal way, and leaving a gift to their child. This is particularly likely where a birth parent gets in touch with a child later in life, (or vice versa) and by then, they may be grown up.

Consideration should be made when writing the Will, it might be best to name any children individually, rather than just stating “my children” or “my grandchildren”, which can get confusing if you have birth children and adopted children together. This also applies with “Step children”.

Once the adoptive parents have adopted a child, the child has the same legal rights as their own children. So for example, if the adoptive parents don't make a Will, any adopted children will benefit alongside children of the full blood.

The 1975 Inheritance and Family Provision Act provides for “dependents” that have not benefited in an estate, so a child may be able claim under this act. This again will also apply to adopted children as it could be said the legal parent has a duty to provide for them. It may not apply to birth children (as we saw earlier), who are later adopted, as any legal right to inherit will be lost once they are adopted by their new parent.

As always, it is important the parents seek professional advice, and make Wills, so their wishes can be clearly understood and followed by their executors.



HAVE YOU THOUGHT ABOUT MUSIC FOR YOUR FUNERAL?

When writing a Will, it is a good time to think about your funeral. The obvious questions arise, whether you would like to be buried or cremated, and where. It is also wise to think about the practical arrangements of the funeral itself. Normally, the funeral director will advise family members of what they could have. However, it can be helpful if you give thought to the funeral while you are still alive and so you can leave instructions.

It is traditional to have a funeral service, either at a church or crematorium. Increasingly, people are choosing to be buried in Woodland locations, and so the service may be held near the burial site.

Most funeral services normally include music, either singing to a piano or organ, or recorded music, or even music played live by a band or orchestra. Traditionally, the congregation sang hymns at funerals. As fewer people attend church they don't always know the hymns, and therefore don't sing which can be awkward. A service at the crematorium will typically be less formal and likely to include some recorded music played through an amplifier and speakers. It can be good to have a combination of singing and recorded music.

As always, it is helpful to say what you would like in your Will, or letter of wishes. Many families will bring a CD to the funeral that can be played.

It is wise to be mindful of the atmosphere, and timing and location. Funerals are sad occasions so you don't want to make the event more painful than necessary. Co-op Funeral Care provide information about popular choices or funeral music on their website. They also provide a list of the most popular choices. The 2019 winner is “My Way” by Frank Sinatra. “Time to say goodbye” by Andrea Bocelli and Sarah Brightman, which is a true classic, was chosen in second place.

Some of the subjects discussed in this publication are complicated. You may want to contact us for more information on **01539 728020**

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