

## **WHO INHERITS IF THERE IS NO WILL – THE LAW IN SCOTLAND**

*This is only a general background guide. Consult your solicitor for specific advice on your own circumstances.*

If you do not leave a valid Will or it is not completely effective, perhaps because someone you named in it died before you, then your estate is dealt with under the rules of Intestacy. Your estate is all property and assets you own at your death including your share of any joint accounts or property, household goods and personal effects. It is not up to your family to decide what happens. Spouses do not automatically inherit everything; indeed they do not automatically inherit joint bank accounts or personal effects.

The *Succession (Scotland) Act 1964* sets out the rules and they are not straightforward. There are three stages to be worked through. First, the statutory Prior Rights on Intestacy of the surviving spouse or Civil Partner are deducted. These rights only apply where there is no Will. For a lot of married couples the calculations stop here as the statutory Prior Rights take up the whole estate. Otherwise, after Prior Rights, the Legal Rights due to the surviving spouse and children are deducted and, finally, whatever is left over is called “the Free Estate” and is distributed in line with rules set out in the 1964 Act. If there are children then they inherit the whole Free Estate. If there are no children the whole Free Estate is divided so that one half goes to the deceased’s surviving parents and one half to their siblings. In the absence of children, parents, brother and sisters, then the spouse inherits. After that Scots law gives inheritance rights to much more distant relatives than is the case in other countries. In England research into a family tree is cut off at a certain juncture. In Scotland it is possible that the whole estate will be exhausted in trying to trace heirs. If no relatives can be traced then your estate goes to the government.

### **The Prior Rights on Intestacy of a surviving spouse or civil partner – amounts for deaths on or after 1 February 2012**

**HOUSE:** The deceased’s house (or share in it) up to a value of £473,000 but mortgage liability will be inherited with this and a spouse could be left in a very difficult situation. This is lost if the spouses were not living together in the house as their normal residence.

**FURNITURE:** A right to the furnishings owned by the deceased in the house but only up to a value of £29,000. Heirlooms are not included.

**CASH:** A cash sum of £50,000 if the deceased was survived by children or £89,000 if there are no children. The liability for this has to be apportioned between the moveable estate and the heritable estate. Heritable estate is land, houses and other buildings although if they are assets of a firm or other business then they might be classified as moveable estate. Any payments or benefits made to the surviving spouse automatically from items such as life insurance policies or pensions may exhaust this right.

The amounts are all lower if the death occurred before 1 February 2012.

## **LEGAL RIGHTS**

The net movable estate is then liable for any Legal Rights due. The net moveable estate is everything -except for any houses, buildings and land- left over once debts, costs and Prior Rights have been paid. If there is only a surviving spouse they inherit one half. If there is no spouse but there are children they inherit one half. If there are a spouse and children then the spouse inherits one third and the children one third divided equally among them. In Scotland, children are entitled to their inheritance at age 16.

## **COHABITANTS**

A cohabitant has no automatic right to inherit anything and that is the case no matter how long a couple live together. For deaths on or after 4 May 2006, a cohabitant can ask the court for a share of the estate if their cohabitant dies without a Will. They cannot ask for anything if there is a Will. A court application must be made within six months of the death. The court may decide not to award anything and cannot award more than spouse/civil partner could inherit. The court considers a number of factors such as the size of the estate, any other money received by the cohabitant e.g. from pensions, the extent of any other claims, including claims by other cohabitants, and whether Prior and Legal rights have been claimed by a spouse or any children.

## **FREE ESTATE**

The free estate is made up of what is left over after debts, liabilities, Prior Rights and Legal Rights. If the deceased did not leave a surviving spouse or children then the whole estate is Free Estate. The 1964 Act sets out a list of who is entitled to the Free Estate which leads to sometimes lengthy investigations into the family tree and tracing very distant relatives. If no relatives can be traced then the Free Estate is passed to the Crown. The categories entitled to inherit the Free Estate are as follows:-

1. Children, or the descendants of predeceasing children
2. If there is no-one in Category 1, any surviving parents and brothers and sisters (or descendants of predeceasing brothers and sisters) inherit. Parents share one half of the Free Estate and the brothers and sisters take the remaining one half. If only parents survive then they take all or if only brothers and sisters (or their descendants) survive then they take all. Half blood siblings only inherit if there are no full blood siblings.
3. If there is no-one in Categories 1 & 2 the deceased's surviving spouse inherits the whole free estate.
4. If there is no-one in Categories 1, 2, or 3- surviving uncles and aunts or the descendants of any predeceasing uncles and aunts inherit.

5. If there is no-one in Categories 1,2,3, or 4 – any surviving grandparents or the descendants of predeceasing grandparents inherit
6. If there is no-one in Categories 1,2,3,4 or 5 – any surviving brother and sisters of grandparents or if they have predeceased their descendants inherit.
7. If there is no-one in Categories 1, 2,3,4,5 or 6 then any surviving great grandparents or if they have predeceased their descendants inherit. Failing which the brothers and sisters of great grandparents or their descendants stand to inherit whom failing great great grandparents and their descendants or the brothers and sisters of great grandparents or their descendants and so on back through even earlier generations of ancestors.

### **DIVISION AMONG HEIRS**

There are rules about how an inheritance is divided where there is more than one heir. If the heirs are all equally closely related to the deceased then they share equally. For example if a widow dies survived by all of her three children, Tom, Dick and Harry, those children divide her estate equally between them; each receives a one third share. It becomes more complicated if the heirs are not all as closely related to the deceased. In such cases the division is made at the level of the nearest surviving relative. If, for example Tom died before his mother leaving two children of his own they would split Tom's one third share. If Tom, Dick and Harry all died before their mother with Tom being survived by his two children, Dick by his five children and Harry being childless, each grandchild would receive a one seventh share.

### **INHERITANCE BY THE CROWN**

If no heirs can be traced then the estate passes to the Crown. The department that deals with this in Scotland is the office of the Queen's Lord Treasurer and Remembrancer. That office publishes lists of estates referred to it and these are freely available to the public.