The law is clear, and has recently been changed in England and Wales. If you die intestate (without leaving a valid Will), there are new statutory provisions for surviving spouses and registered civil partners and the state will distribute your assets according to strict rules.

If you die leaving a surviving spouse/civil partner and children your surviving spouse/civil partner will inherit the first £250,000 of your estate as a statutory legacy, together with your personal possessions. The remainder is divided equally between your surviving spouse/civil partner (50 per cent entitlement) and your children (50 per cent entitlement), with your surviving spouse/civil partner receiving only an income entitlement (life interest) from their half share and the children inheriting absolutely their share at the age of 18 or when they marry, whichever is the earlier. On the death of your partner their life interest will be divided equally among the children, but their interest will be an absolute interest i.e. they will be entitled to the capital.

Some examples

Suppose you were a husband who died without making a valid will, leaving a wife, two young children and an estate of £900,000. The estate would be divided as follows:

Your widow would receive the statutory £250,000, your personal possessions and the income for life from £325,000 (half of the £650,000 remaining). The children would each receive £162,500, held in trust until they reach 18 (the other half of the £650,000 remaining).

When your widow dies, her life interest in her £325,000 will be shared equally between the two children, but they will receive absolute entitlement to this money.

If you died leaving the same sum but had no children, your widow would receive the first £450,000 of the estate (half of the total value) as a statutory legacy, together with your personal possessions, and also half of the remainder. The other half of the remainder, in this case £225,000, would pass first to any surviving parents; if there were no surviving parents, it would pass to your brothers and sisters or their children and then remoter family.

Assessing your options

If you haven’t made a will, you need to ask yourself urgently if these statutory provisions are right for you and your family. For example, if you have a partner and children, and something happened to you, would you want your partner to be left with just £250,000 and only a life interest in half the balance of your estate?

If you have a partner but no children, are you happy that they may not inherit all of your estate?

If you’re in a long-term relationship which is not legally recognised, are you happy that your partner will not inherit any of your estate on your death? You may wish to remember nephews, nieces, godchildren or friends, and the state makes no provision for individual legacies. What will happen to family heirlooms on your death?

What about children?

If both parents were to die what would happen to the children on your death? Have provisions been made for the appointment of guardians, and how would the guardians manage financially?

Do you feel your children will be ready to assume the responsibility of managing a potentially substantial sum of money at the age of 18? They will receive it regardless of your wishes unless you specify otherwise.

Food for thought?

It should be. The circumstances of life change over time, and accidents happen everyday. Making a will, and keeping it up to date, is the very best form of family insurance.

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