

# METCALF MOAT UPDATE

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**METCALF MOAT**

IFA LIMITED

*'Growing by  
recommendation'*

YOUR FIRST CALL FOR INDEPENDENT FINANCIAL ADVICE

## **Where there's a Will (or not)...Guide to Intestacy**

In the course of our relationship with our clients, one question that consistently comes up is, 'What happens when I die?' Obviously, we cannot comment on the spiritual aspect of the question, but to help address the more legal points as in 'who's going to get the money?' we have put together this edition of The Metcalf Moat Update with help from our 'Corporate' Partners, Batchelors Solicitors, of Bromley.

It outlines what happens if you die without making a valid will. This is known as dying intestate. For specific advice regarding the drawing up or review of a Will, we would recommend you discuss this with Batchelors or your own legal representative.

### **What Is Intestacy?**

If you die without making a Will you are said to be "Intestate". When this happens your estate and possessions are shared among surviving relatives according to a complex formula laid down by the Administration of Estates Act 1925 called "Rules of Intestacy".

### **Intestacy – What Happens?**

If you die without leaving a valid Will then the law decides how your estate and possessions will be distributed. Many people assume that, if they die without making a Will, all their assets and possessions will pass to their spouse or long term partner. Unfortunately this is a false assumption because if you die without leaving a Will the strict Intestacy Rules will apply. This may mean that someone you do not wish to benefit will in fact do so whilst others who you wish to benefit, for example stepchildren and unmarried partners, will be left with nothing.

From the 1st February 2009 the only situations in which a surviving spouse/civil

partner will automatically inherit everything are:

- \* If there are children and the estate is worth less than £250,000.
- \* Or, if there are no children and the estate is worth less than £450,000
- \* The only other way is if there are absolutely no living blood relatives.

### **Important Note For Unmarried Couples**

**Intestacy Rules do not recognise unmarried partners at all.** If therefore your partner dies without making a Will their estate will pass to their parents, if they are living, if not it goes to their brothers or sisters.

### **Rules Of Intestacy – Who Gets What?**

**MARRIED** - *If you have a lawful spouse/civil partner: (i.e. you are legally married)*

If your estate is worth **less** than £250,000 then your spouse/civil partner gets everything. If your estate is worth **more** than £250,000 and you have no other surviving relative (e.g. children, grandchildren, parents), then your spouse/civil partner will still get everything.

**MARRIED WITH CHILDREN** - *If you have a lawful spouse/civil partner plus children:*

If your estate is worth **less** than £250,000 then your spouse/civil partner gets everything. If, however, your estate is worth **more** than £250,000, then your spouse/civil partner would get £250,000 and a life interest (the right to take income but not the capital itself) in half of anything over this sum. Your children would get half the sum over £250,000 immediately and be entitled to the other half on the death of your spouse/civil partner. Should any of the children die before you then their children would be entitled to take their parent's share.

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*If you have a lawful spouse, no children, but parents/ brothers/sisters/ grandparents/aunts/uncles:*

If your estate is worth less than £450,000 then your spouse gets everything. If your estate is worth more than £450,000 then your spouse would get 450,000, plus half the balance. The remaining half goes to the other relatives in this order of priority - parents; brothers/sisters; half brothers/sisters; grandparents; aunts/uncles; spouses of aunts/uncles.

*UNMARRIED COUPLES - If you are not lawfully married but have children:*

Your estate will be shared between the children. Should they die before you then their children would take their share. Your partner would get nothing.

*If you are not lawfully married, have no children, but have parents or have had brothers/sisters/grandparents/aunts/uncles:*

Your estate will be shared equally amongst them in this order of priority - parents; brothers/sisters; half brothers/sisters; grandparents; aunts/uncles; spouses of aunts/uncles. If any of these have predeceased, but have living children then the children will take their parent's share. Your partner would get nothing.

*If you are not lawfully married, and have no other relatives:*

Your estate will go to the Crown. Your partner would get nothing. Intestacy rules do not recognise "common law" partners or stepchildren. This underlines the importance of making a valid will for couples affected by these rules.

### **Rules Of Intestacy – Right To A Grant Of Administration:**

To be entitled to take out a Grant of Administration the applicant must have a beneficial interest in the estate of the intestate. It is therefore necessary to first of all apply the rules of succession outlined above before deciding who has the right to take out a grant.

Furthermore if a minority (i.e. a child under the age of 18) or life interest arises on the intestacy, the grant must be made to at least two but not more than four individuals. Providing the applicant has a beneficial interest the order of priority is the surviving spouse, the children or the children of any child who has died, the father or mother of the deceased and brothers and sisters of the whole blood or the child of any brother or sister of the whole blood who has died.

### **Do I Really Need A Will?**

The simple answer is "Yes". Every adult should make a Will and review it regularly, particularly if your circumstances change, such as you get married, have

children or get divorced. In fact it is important to note that marriage invalidates any Will made before marriage.

### **Why Do I Need A Will?**

The main reason is so that you can decide who should benefit after your death rather than allow the Intestacy Rules to decide it for you. If you fail to make a will the intestacy rules may mean that the people to whom you would like to leave your estate receive little, or nothing at all, whilst others may benefit whom you did not wish to do so.

The second reason is to avoid Inheritance Tax which is payable by your estate on assets over £325,000 (as of 6 April 2011). Although that may seem like a lot of money the fact is that with the majority of people now owning their own properties it is worth sitting down to work out what your estate would be worth if you were to die tomorrow. You need to take into account your house, furniture, car, savings, investments and all your personal belongings, plus any death benefits under pension or life policies. There are some simple things that can be done during your lifetime and under your Will, to reduce or negate any Inheritance Tax liability. These opportunities may be lost if you die intestate.

If you have children then it is possible to appoint guardians who will be responsible for your children's upbringing if neither parent is alive, and you can appoint someone you trust to look after your assets until the children become old enough to take responsibility for themselves.

### **Other Points To Note**

If you are reading this because someone close to you has died without a Will, you must first look at the Intestacy Rules above and decide whether you have any right to act as a Personal Representative. If you are entitled, and require assistance in this regard, Batchelors offers a Guide to Personal Representatives, or contact them on 0208 768 7000 if you need additional support.

If you are not entitled under the Intestacy Rules, or are not happy with the entitlement you have, it is sometimes possible to vary who benefits under intestacy if all parties who benefit are over 18 and consent to the variation. Batchelors can assist with this if you find yourself in this situation now, but it should not be relied on as future Tax Laws that allow the variation to be made in a tax effective way are also subject to change.

If under an intestacy you feel that reasonable financial provision has not been made for you then you may have a claim under The Inheritance Provision for Family and Dependents Act 1975. A separate guide for claims of this nature are also available from Batchelors.

### **Working In Partnership With Batchelors Solicitors.**

The main content of this publication has been provided to us by Batchelors Solicitors who are based in Bromley, Kent. In recent times we have worked in partnership with Batchelors, helping a number of their clients with their Financial advice needs, and referring our clients who have needed Solicitor services for drafting Will's, amongst other things.

If you haven't made a Will or want to review an existing one and would like to speak to someone, our contact at Batchelors Solicitors is Sarah Hickey – A Partner and head of their private client department. Please contact her on 0208 768 7000 and let her know you are a client of Metcalf Moat.