Fact File: What if I die without a Will?

If you should die without a Will, your estate would be considered as being 'intestate' and be subject to the state's Intestacy Rules. There are three basic principles as to what would happen next.

Principle 1

Firstly, if you own assets jointly with another (or others), then property law may operate automatically to pass your share to the surviving co-owner/s, outside of your estate. This applies only to joint assets held under a 'joint tenancy'. If an asset is jointly-owned under a 'tenancy-in-common', then your share does not pass automatically to your surviving co-owner/s, but forms part of your estate.

Principle 2

Secondly, your net estate (everything you own apart from joint assets passing automatically to others, and after paying your debts, the cost of your funeral, the cost of winding up your estate, and any Inheritance Tax) is divided by the Intestacy Rules between what are still sometimes called your 'next of kin' – your closest family – in a manner intended to be reasonably fair in most cases.

Principle 3

Thirdly, if someone feels unfairly treated by that process, he or she may have a right to make a claim against your estate, asking a judge to distribute your estate more fairly. These claims are complex, expensive and uncertain – a last resort.

The Intestacy Rules

If you don't have a Will when you die – and shockingly that applies to about two thirds of us – then (after jointly owned property held under a joint tenancy has passed to your surviving co-owners) it is the Intestacy Rules which set out who gets what, and major changes to those Rules, and other related rules, came into force on 1st October 2014.

If you are married or in a Civil Partnership and

- if you don't have children (or grandchildren and so on – 'descendants'), then your other half inherits everything – simple
- if you do have descendants, then
  - your other half will get
  - your personal goods (basically, everything except real estate, money, documents representing money, and things you use in connection with a business)
  - the first £250,000 and
    half the rest of your estate, and
    your descendants will share the other half.

Now, this is not what most people expect. Most people expect the surviving spouse or Civil Partner to get everything. And this could result in an unnecessary Inheritance Tax bill.

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Over the past three years, the Treasury has taken about £200m from people who died without a Will, and a lot of that will have been avoidable.

If you are not married or in a Civil Partnership (which includes widows and widowers), and

- if you leave descendants, they inherit
- if you do not leave descendants, then

everything goes to your parents or, if they are not living,

then to your brothers and sisters (or their descendants).

If you do not have any of those, then aunts and uncles or their descendants, or great aunts and great uncles or their descendants, may be in line. Very complicated – see a Solicitor.

Co-habitees get nothing.

That's right – if you are living with someone as what used to be called 'man and wife', although this also includes same-sex relationships, but you are not married or in a Civil Partnership, then your other half gets nothing.

Changes on 1st October 2014 make it easier for your partner to make a claim against your estate, but that is a complicated, expensive and uncertain business, and it does not solve the basic problem.

If you are living with someone but you are not married or Civil Partners, then the only way to make sure he or she inherits from you is to make a Will. Also, the only way to reduce or avoid a double Inheritance Tax charge – once on your death and again on your partner's death – is to make a Will linked with the right sort of Trust.

Step-children get nothing.

Unless you have actually adopted them – which is rare – your step-children are not in line for anything under the Intestacy Rules. Again, the October 2014 changes make it easier for a step-child to go to a judge and make a claim against your estate but, again, that is a complex, expensive and uncertain business.
It used to be that a step-child could make a claim only if you were married to the child's father or mother. Now a step-child can do that if you have treated him or her as 'a child of the family', whether or not you were married to his father or mother.

Very often these days, two people, each with children of their own (sometimes by more than one relationship), will get together and the two of them will go on to have more children. The Intestacy Rules are quite a blunt instrument, and they do not cope well with that sort of complexity.

Summing up

The most important thing to know about the Intestacy Rules is what they don't do.
The only way to be sure that your (unmarried and non-Civil Partner) partner inherits from you is to make a Will and, if you want to avoid a double Inheritance Tax charge, to link that Will with the right sort of Trust.

And if your family includes children who are yours but by more than one partner, or who are not yours, but who are part of your family, the only way to make sure that they are all treated as you would wish is to make a Will.

If you are the last surviving parent of a child, a Will is also the only way you can appoint the Guardian who will take over as parent, and the Trustees who will manage the money, if you die while your child is still young. Even if you think the Intestacy Rules may do what you want, so that you do not need a Will, (as you have seen) the

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Rules are complicated, family structures are more complex than they used to be, and it is terribly easy to get it wrong.

So, Make a Will.

Making a Will

To properly make a Will, you need to understand the family and financial circumstances, and the wishes, of the person making the Will.

You also need a thorough knowledge of the law of equity, succession law, trust law and Inheritance Tax, and of large elements of property law, family law, company law, insolvency law, Capital Gains Tax and Income Tax – only solicitors are trained and professionally qualified in all these areas.

For something as vital as your Will, why even think of gambling by doing it yourself or using an amateur, when you can go to a professional?

And if you are concerned about Inheritance Tax or interested in the uses of trusts, go to a solicitor who is a member of STEP – that's the Society of Trust and Estate Practitioners. STEP is the key multi-national grouping which gathers together lawyers, accountants, financial advisors, authors, academics and others who are high-level specialists in this field.

About the Wills Probate and Trusts Department at Colemans Solicitors LLP…

Whether it is advising on the effect of the Intestacy Rules in your family circumstances, making a Will to fit your needs, creating trusts to shelter assets from unnecessary tax or from third-party risks, helping wind up an estate, or making or opposing a claim against an estate, the solicitors at Colemans who deal with this area of the law are acknowledged specialists.

The head of this department, Michael Cutler, has been a solicitor for over 30 years, was accepted as a member of Society for Trusts Estates and Probate (STEP) almost 20 years ago, and was invited by the national regulator of all legal services to sit on a panel assessing Wills written by lawyers and non-lawyers across the country.

Michael's colleague Belinda Harvey is a qualified member of STEP and is also a member of the specialist group Solicitors for the Elderly (SEP). Both Michael and Belinda also specialise in explaining complex technicalities in plain English.

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